

Date: December 27, 1996

LEGEND:

Partnership = \*\*\*

Agency = \*\*\*

General Partner = \*\*\*

Limited Partner A = \*\*\*

Limited Partner B = \*\*\*

Limited Partner C = \*\*\*

City D = \*\*\*

City E = \*\*\*

Project F = \*\*\*

Section G = \*\*\*

Section I = \*\*\*

Section J = \*\*\*

Section K = \*\*\*

a = \*\*\*

b = \*\*\*

c = \*\*\*

d = \*\*\*

e = \*\*\*

f = \*\*\*

g = \*\*\*

h = \*\*\*

i = \*\*\*

j = \*\*\*

k = \*\*\*

l = \*\*\*

m = \*\*\*

Dear \*\*\*

This letter responds to your letter of March 1, 1996, and subsequent correspondence, requesting a private letter ruling under section 42(n)(4) of the Internal Revenue Code and section 1.42-13(b) of the Income Tax Regulations to correct an administrative error in an a carryover allocation of low-income housing tax credits. This request is submitted by the Partnership and the Agency.

FACTS

The Partnership is comprised of a General Partner and limited partners: Limited Partner A, Limited Partner B, and Limited Partner C. The location of the District Office of the Internal Revenue Service that will have examination jurisdiction over all returns filed by

the Partnership and the General Partner in its role as both General Partner and Limited Partner C, is City D. The location of the District Office of the Internal Revenue Service that will have examination jurisdiction over all returns filed by Limited Partner A and Limited Partner B is City E.

The Partnership was formed for the purpose of building, developing, owning and operating a b unit apartment complex known as Project F.

The Agency utilizes a Guidebook to inform prospective applicants, including the Partnership, about application procedures. Section G of the Guidebook specifically states:

#### Building Allocations

The tax credits are to be reserved and allocated on a PER BUILDING basis, and not on a project basis (emphasis original).

No contrary statement was included in any other section of the Guidebook or in the application materials.

An APPLICATION for a credits was submitted to the Agency on c by the General Partner. Section I of the application specified that the Project would consist of d residential buildings and one non-residential accessory building designated as an e. This d building total was additionally specified in Section J of the application.

The application for low-income housing credit further specified that the eligible basis of Project F would be f. Because one hundred percent of the units were intended for rental to qualified low-income tenants, the credit application specified that the qualified basis of the project also would be f.

The Partnership reported this qualified basis information on a project basis on the credit application. The Partnership additionally reported this information on a building-by-building basis, as required by an attachment to Section K of the credit application. The attachment's instructions mandated that: "QUALIFIED BASIS MUST BE DETERMINED ON A BUILDING-BY-BUILDING BASIS" (emphasis added). It was the understanding of the Partnership that this information was required because the Agency did not issue project- based allocations and required all housing credit to be allocated on a building-by-building basis. The Partnership provided the requested information for each Project F building, including the accessory building.

Because of the Guidebook statement quoted above and the application instructions referenced in the ruling request, the chief financial officer of the General Partner, called the Agency to confirm that it was required to supply the building-by-building basis information required by the schedule and to find out if it was possible to secure a project-based allocation pursuant to section 42(h)(1)(F). The chief financial officer was informed by an Agency staff member that completion of the building-by-building schedule of

reasonably anticipated basis was indeed required and that the project-based computations were not acceptable to the Agency. The Partnership understood from the Agency's response, in light of the Guidebook statement quoted above and application requirements, that it was required to provide the building-by-building schedule of reasonably anticipated basis as part of an overall requirement that it receive a building-by-building allocation of low-income housing tax credit pursuant to section 42(h)(1)(E).

The Partnership completed the application and allocation process on an accelerated schedule during the Agency's fourth application cycle. It both received the Guidebook and filed its application with the Agency in g. In the first week of i, it received the Agency carryover allocation, completed its cost certification for the project, and filed the carryover allocation with the Agency by the end of the month.

The carryover allocation further reinforced the Partnership's understanding that it was required to receive a building-by-building allocation of tax credit by attaching as Exhibit A the building-by-building schedule of reasonably anticipated basis information supplied by the Partnership in the application. Notes on the schedule specifically stated that "[i]f separate housing credit dollar amount IS NOT identified with respect to each building in the Project, this allocation is made on a project basis pursuant to section 42(h)(1)(F) of the Code" (emphasis added).

The Partnership had already been informed by the Agency that it was "required" to complete the building-by-building schedule reasonably anticipated basis. Since Exhibit A did indeed "[identify] separate housing credit dollar amount ... with respect to each building in the Project [F]," and since the Partnership had been instructed by the Agency that it was required to identify such information, Exhibit A further reinforced the taxpayer's belief that it was not entitled to a project-based allocation.

Acting upon this misunderstanding of the Agency's policy, the Partnership checked the box on page 2 of the carryover allocation which stated that "[t]he owner has requested the Agency to assign portions of this allocation to the individual buildings listed in Exhibit A, and has so indicated in the aforementioned exhibit."

In the carryover allocation, j BINs were assigned to Project F. The Agency based Exhibit A of the carryover allocation on the building-by-building qualified basis information provided in the attachment to the application submitted by the Partnership, and mistakenly assigned a BIN number and qualified basis to the accessory building e.

In connection with the above statement of facts, the Agency represents that (1) had the owner requested, it would have made a project-based allocation to Project F pursuant to section 42(h)(1)(F); (2) the number of buildings in Project F was not material to the carryover allocation for Project F; and (3) the fact that Project F had d buildings rather than j buildings would not have affected (a) the amount of credit allocated to the project, b) the ranking of Project F in the Agency's a allocation round, or c) any other aspect of the carryover allocation for Project F.

## LAW AND ANALYSIS

Section 42(a) provides a tax credit for investment in low-income housing buildings placed in service after December 31, 1986. To claim the credit, a taxpayer must satisfy various requirements under section 42. One requirement is that a building (other than certain buildings financed with tax-exempt bonds under section 42(h)(4)) must receive an allocation of housing credit dollar amounts from the applicable state or local housing credit agency (agency).

Under section 42(n)(4), agencies may correct administrative errors and omissions concerning allocations and recordkeeping within a reasonable period of time after their discovery. Section 1.42-13(b)(2) defines an administrative error or omission as a mistake that creates a document that inaccurately reflects the intent of the agency at the time the document is originally completed or, if the mistake affects a taxpayer, a document that inaccurately reflects the intent of the agency and the affected taxpayer at the time the document is originally completed. Section 1.42-13(b)(1), however, provides that an administrative error or omission does not include a misinterpretation of the applicable rules and regulations under section 42.

Under section 1.42-13(b)(3)(iii)(A), the Secretary must pre-approve a correction of an administrative error if the correction is not made before the close of the calendar year of the error AND the correction requires a numerical change to the credit amount allocated for a building or project. In this case, the carryover allocation, not the Form 8609, is the document on which the Agency allocated a housing credit dollar amount to the project.

The Partnership committed an administrative error when it failed to inform the Agency on the carryover allocation of its intent to elect a project-based allocation. The Agency erred by mistakenly assigning a BIN number and qualified basis to the accessory building. In addition, the Agency committed an administrative error when its representative failed to inform the Partnership that, regardless of the requirement that information be supplied to the Agency on a building-by-building basis, applicants were permitted to make an election to receive project-based allocations pursuant to section 42(h)(1)(F). In fact, it was and (still is) the practice of the Agency to allocate tax credits to projects on either a project or a building-by-building basis based upon the request of the applicant. By stating that tax credits are to be [sic] reserved and allocated on a per building basis and not on a project basis section G of the Agency's Guidebook was issued in error and did not accurately reflect the allocation options available to tax credit applicants.

To correct the administrative errors relating to the issuance of the carryover allocation, the Agency must do the following:

1. Amend the Agency's Guidebook to correct any existing errors concerning the availability of project-based allocations.
2. Amend the carryover allocation to reflect a project-based allocation of credit.

3. Amend the carryover allocation in all applicable sections to reflect the project total of k residential buildings, and k sequential BIN numbers.
4. If any outstanding BINs need to be cancelled, the Agency should file a Form 8823 indicating the obsolete numbers.
5. Attach a copy of the amended carryover allocation to an amended Form 8610 and file the amended Form 8610 with the Philadelphia Service Center. When completing the amended Form 8610, the Agency should follow the instructions on the Form 8610 under the heading "Amended Reports."

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether the project qualifies for the low-income housing tax credit under section 42.

Under the power of attorney on file, we are sending a copy of this ruling to the Partnership's authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Barbara B. Walker  
Assistant to the Chief,  
Branch 5  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)