

Private Letter Ruling
Number: 9827038
Internal Revenue Service

SEP 7, 1998

Internal Revenue Service
Department of the Treasury
P.O. BOX 7604
Ben Franklin Station

Dear

This letter responds to a letter dated b, requesting a ruling on behalf of Agency and Partnership under § 42(n) of the Internal Revenue Code and § 1.42-13 of the Income Tax Regulations to correct an administrative error in an allocation of low-income housing tax credits.

Partnership and Agency have made the following representations:

Partnership was formed to acquire, rehabilitate, develop, own, and operate the Project, an h unit apartment complex located in City. All of the residential units in the Project are intended for occupancy as low-income units within the meaning of § 42(i)(3).

On f, WW, President of Corp, a member of GP who is the managing general partner of Partnership, submitted to Agency an application for c credits for the Project (the "c Credit Application"). As stated in the c Credit Application, the Project originally was designed to consist of h residential units in one building. The existing building actually consisted of i sections, each of which contained a central corridor and interconnecting outdoor breezeways. Without the knowledge of WW, the architectural plans that were prepared by Partnership's architect on which the building rehabilitation design was based, had eliminated the central corridor and interconnecting outdoor breezeways between the sections of the building. When filing the c Credit Application, Partnership considered the layout to be one building based on its expectancy of maintaining the existing interconnecting breezeways.

The c Credit Application specified that the eligible basis of the Project would be \$j. Because 100 percent of the residential rental units were intended for qualified low-income tenants and the Project is located in a qualified census tract qualifying for a 130 percent step-up in basis under § 42(d)(5)(C), the c Credit Application specified that the qualified basis of the Project would be \$k. Because the Project involved the acquisition and substantial renovation of an existing building with no federally-subsidized financing, the Project qualified for the 70 percent present value credit under § 42(b)(2)(A). Accordingly, Partnership requested a c credit allocation of \$m. Agency issued a reservation dated n, reserving c credits for the Project in the amount of \$p (the 'c Credit Reservation ').

On r, Agency and Partnership entered into a c Low-Income Tax Credit Carryover Allocation Agreement allocating \$5 of the c credits to Partnership (the "c Carryover Allocation"). The c

Carryover Allocation reflected that Partnership would have an accumulated basis in the Project as of t, equal to at least SU, representing approximately oo percent of the reasonably anticipated total basis in the Project of \$x. The c Carryover Allocation specified the total number of buildings in the project as one.

At or about the time that the c Carryover Allocation was issued, WW learned that the architectural plans that had been drafted before the filing of the c Credit Application had provided for the removal of the central corridor and interconnecting outdoor breezeways between the i sections. Because there were no structural changes to the external walls of the Project and the number of dwelling units and the unit mix remained the same, WW did not realize the significance of creating j distinct buildings with separate means of ingress and egress, and did not convey this information to Agency until early d.

On z, Partnership submitted an Application for Low Income Housing Tax Credit Commitment (the "d Credit Application") to Agency. In the d Credit Application, Partnership stated that the one building structure has been sectioned into i buildings. Revised architectural plans had removed the central corridor and the outdoor breezeways between building sections. However, the number of dwelling units, the unit sizes, the bedroom mix, the maximum monthly rents, and the location of external walls remained the same. On ee, Agency issued a Commitment for Low Income Housing Tax Credit allocating c and d credits in the amount. of \$cc (the "d Commitment"). The d Commitment, however, reflected that the number of buildings in the project was only one, rather than i.

On dd, WW sent a letter to Agency explaining that the c Credit Application anticipated one building and, therefore, only one building identification number (BIN). This letter stated that subsequent to the c Credit Reservation and the c Carryover Allocation, however, changes were made to the architectural plans that separated what Partnership originally considered to be a single building consisting of i sections into i distinct buildings, each of which required a separate BIN. Partnership requested permission to surrender the c credits in exchange for d credits in the same amount for the i buildings. On ee, Agency denied the request, but recommended that Partnership obtain a private letter ruling from the Internal Revenue Service to correct the administrative error or return the credits and compete for credits in kk.

Furthermore, at Partnership's request, on ff, Agency issued a revised commitment in the amount of \$gg in c credits and d credits. On hh Agency and Partnership entered into a d Low Income Housing Tax Credit Carryover Allocation Agreement allocating an additional \$jj in d credits to Partnership (the "d Carryover Allocation"). The d Carryover Allocation reflected that, as of t, Partnership had an actual basis in the Project of \$11, representing nn percent of the total reasonably expected basis of \$mm.

In connection with the above statement of facts, Agency makes the following representations. First, Agency intended to make a project-based allocation of low-income housing credits for the Project. Second, the number of buildings in the Project was not material to the c Carryover Allocation or d Carryover Allocation for the Project. Third, the fact that the Project had one building rather than i buildings would not have affected the amount of credits allocated to the

Project, the ranking of the Project in Agency's £ or d allocation rounds, or any other aspect of the c Carryover Allocation or d Carryover Allocation for the Project.

Agency and Partnership request permission under § 42(n) to correct the administrative error by amending the c Carryover Allocation and d carryover Allocation to include a BIN for each of the i buildings in the Project and attaching a copy of the amended c Carryover Allocation and d Carryover Allocation to amended Forms 8610, Annual Low-Income Housing Credit Agencies Report, for c and d. As required by § 1.42-13(b)(3)(v), Agency, GP, and Partnership have agreed to the conditions the Secretary considers appropriate if the ruling is granted.

Under § 42(n)(4), state and local housing credit 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 results in 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 does not include a misinterpretation of the applicable rules and regulations under § 42.

Under § 1.42-13(b)(3)(i), an agency's correction of an administrative error or omission must amend the document so that the corrected document reflects the original intent of the agency, or the agency and the affected taxpayer, and complies with applicable rules and regulations under § 42. Under § 1.42-13(b)(3)(iii)(A), the Secretary must pre-approve a correction of an administrative error or omission if the correction is not made before the close of the calendar year of the error or omission and the correction requires a numerical change to the credit amount allocated for a building or project.

Under § 1.42-13(b)(3)(iv), an agency must submit a request for the Secretary's approval within a reasonable period of time after discovering the administrative error or omission. Under § 1.42-13(b)(3)(v), to obtain the Secretary's approval under § 1.42-13(b)(3)(iii), an agency, or the agency and the affected taxpayer, must agree to the conditions the Secretary considers appropriate.

In the present case, Partnership failed to inform Agency before the c Credit Application and the c Carryover Allocation were issued that the correct number of buildings in the Project was i instead of one. This error did not result from a misinterpretation of the applicable rules and regulations under § 42. However, the error did result in allocation documents that did not accurately reflect the intent of the Agency and partnership at the time the c Carryover Allocation and d Carryover Allocation were executed. Thus, a correctable administrative error occurred in the present case.

Based solely on the representations and the relevant law and regulations set forth above, we conclude as follows:

1. Partnership committed an administrative error when it failed to inform Agency that the correct number of buildings in the Project was i instead of one;

2. Because of this administrative error, the c Carryover Allocation and d Carryover Allocation inaccurately reflect the intent of Agency and Partnership when the c Carryover Allocation and the d Carryover Allocation were executed;

3. Agency and Partnership attempted to correct the administrative error within a reasonable period of time after they became aware of the error; and

4. To correct the administrative Agency must amend the c Carryover Allocation and d Carryover Allocation to include a BIN for each of the i buildings in the Project. On the amended c Carryover Allocation and d Carryover Allocation, Agency will indicate that it is making the correction under § 1.42-13(b) (3). In addition, Agency must attach a copy of the amended c Carryover Allocation to an amended Form 8610 for c, attach a copy of the amended d Carryover Allocation to an amended Form 8610 for d, and file both the amended carryover allocations and the amended Forms 8610 with the Service. When completing the amended Form 8610, Agency should follow the specific instructions on the Form 8610 under the heading "Amended Reports."

No opinion is expressed or implied regarding the application of any other provision of the Code or regulations. Specifically, we express no opinion on whether the Project qualifies for the low-income housing credit under § 42 nor the validity of the Project's costs included in eligible basis.

This letter 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,

Kathleen Reed
Assistant to the Branch Chief, Branch 5
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

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