

Private Letter Ruling
Number: 9842047
Internal Revenue Service

JUL 20, 1998

Internal Revenue Service
Department of the Treasury
Washington, DC 20224

Dear

This letter responds to your letter dated b, which replaces your submission dated a, on behalf of Partnership and Agency requesting a ruling under § 42(n) of the Internal Revenue Code and § 1.42-13(b) of the Income Tax Regulations to allow Partnership and Agency to correct an administrative error or omission in an allocation of low-income housing credit dollar amounts. The Internal Revenue Service District Office that will have examination jurisdiction over the Partnership is located in City.

The relevant facts as represented in your submission is set forth below.

FACTS:

Partnership, is a State limited partnership that was formed to construct, develop and operate a multi-family low income housing project at Address, pursuant to § 42. The general partner of Partnership is General Partner, a State non-profit corporation.

Agency is the housing authority in State that allocates low income housing tax credits.

In connection with the development of the project, Partnership applied for a reservation of low-income housing tax credits with Agency and received a reservation of low-income housing tax credits from Agency dated c. At the time the application was submitted to Agency, the initial site plan for the project provided for d buildings, one containing f units and one containing e units. However, Schedule C to the application entitled "Building by Building Information" indicated that there were d buildings containing g units each for a total of h units, due to anticipated design changes to the site plan. The project is to be known as Project Name and all h units viii be § 42 restricted income units. Consistent with the site plan submitted with the application, a carryover allocation was issued by Agency to Partnership on j. The carryover allocation was a project-based allocation and d building identification numbers (BINs) were issued to the project. The d BIN numbers assigned are j and k. Subsequent to the submission of the application, the submitted site plan was confirmed to consist of d buildings, one containing f units, and the other containing e units, for value engineering purposes.

In l. Partnership made another application with Agency-for additional tax credits for the project. During this process, Partnership discovered that d building permits had been issued for the d stairwells of the L unit building (which buildings were located on a common slab with a common roof and were divided by a firewall and had d separate addresses). A m building permit had been

issued for the e unit building. Accordingly, the project to be constructed now consists of n buildings rather than d buildings. Although the number of buildings was increased, the project contains the same number of total units, the same number of low income units, the same mix of one, two and three bedroom units as called for under the original plan, and each unit consists of the same square footage as in the original plan. The project is expected to be completed by o. Nothing in the documents submitted to Agency during the development process indicated that the number of buildings in the project had changed. Agency then issued the carryover allocation in the amount of \$p per year to the project based upon the original d building plan. Once Partnership realized that the carryover allocation should have included n BINs, it notified Agency that the error had occurred.

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

RULING REQUESTED:

Partnership and Agency request the Service to rule that Agency can amend the g carryover allocation to include a BIN for each of the n buildings in the project.

As required under § 1.42-13(b) (3) (v), each of the Partnership, General Partner, and Agency hereby agree to such conditions as the Secretary considers appropriate if the above ruling request is granted.

LAW AND ANALYSIS:

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 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 § 42.

Partnership committed an administrative error by designating the project as a d building project in its g credit application and Partnership and Agency have proceeded through the credit allocation process based upon this error although each had a clear understanding of the scope of the project and this understanding was mutual. It was only when Partnership discovered that n and not d building permits had been issued, for the project that Partnership realized that the project should more properly be designated as n buildings. We do not believe that this error was a misinterpretation of the applicable rules and regulations under § 42. This error created a document (i.e., carryover allocation) that inaccurately reflects the intent of Partnership and Agency at the time the document was originally completed. The intent of Agency was to allocate the same amount of credit to the project, notwithstanding the number of buildings or units in the

project. Further, the change does not affect the amount of housing credit dollar amount allocated to the project nor the ranking of the project in Agency's g allocation round, nor any other aspect of the carryover allocation for the project. Thus, a correctable administrative error occurred in this situation.

Under the represented facts, the carryover allocation is the credit allocating document. 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 to a building or project. This correction would involve a numerical change to the credit amount allocated to the g buildings that initially received BINs.

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

1. Partnership committed an administrative error when it failed to correctly identify the actual number of buildings in the project in its g credit application;
2. Because of that administrative error, the carryover allocation inaccurately reflects the intent of Partnership and Agency as of the time the carryover allocation was executed;
3. Agency will correct the administrative error within a reasonable period of time after Agency became aware of the administrative error; and
4. Agency may issue an additional BIN to the existing d BINs to accurately reflect that there are n buildings in the project.

To correct this administrative error, Agency must do the following:

1. Amend the carryover allocation to include a BIN for the additional building in the project. The new BIN does not have to be in sequential order with the existing d BINs and the existing g BINs shall continue in effect. On the amended carryover allocation, Agency should indicate that it is making the correction under § 1.42-13(b), and
2. Attach a copy of the amended carryover allocation to an amended Form 8610, Annual Low-Income Housing Credit Agencies Report, for q, and file the amended Form 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 provisions of the Code or regulations. Specifically, we express no opinion on whether the project qualifies for the low-income housing credit under § 42.

In accordance with the power of attorney, we are sending a copy of this letter ruling to the Partnership's authorized representatives.

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,

KATHLEEN REED

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

Enclosure:
6110 copy