

Internal Revenue Service

Department of the Treasury

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Date: 3-20-00

In re: Request for Private Letter Ruling under § 42(n)(4) of the Internal Revenue Code

Legend:

Agency =

Partnership =

Project =

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Dear :

This letter responds to a letter dated December 16, 1999, and subsequent correspondence, that was submitted on behalf of Agency and Partnership, requesting permission under § 42(n)(4) of the Internal Revenue Code and § 1.42-13(b) of the Income Tax Regulations to correct an administrative error in an allocation of the low-income housing credit dollar amounts.

Agency and Partnership have made the following representations:

Partnership, a calendar year taxpayer using the accrual method of accounting, is a State limited partnership that was formed on c for the purpose of acquiring, developing, and operating the Project, a d-unit low-income housing project. The District Office of the Internal Revenue Service that has examination jurisdiction over Agency and Partnership is located in District.

In g, Partnership raised funds for the acquisition, construction, and development of the Project. The buildings in the project were placed in service from e to f. The Project received a total allocation of g low-income housing tax credits in the amount of \$h. The credit amount allocation was calculated based on qualifying expenditures of acquisition and construction costs of the buildings in the Project.

On r, the independent accountant of Partnership submitted a report (Accountant's Report) to Partnership. The Accountant's Report represented the cost

certification of all construction and development expenditures, and it identified all of the capitalizable costs of the Project for low-income housing tax credits. The Accountant's Report calculated construction and development expenditures for the d buildings totaling \$s. The Accountant's Report was delivered to Agency at that time.

On t, Agency requested individual building cost figures for each building in the Project. The independent accountant of Partnership submitted the information to Agency on u. This information showed only the construction costs of each building. Also delivered to Agency was the source and use funds spread sheet prepared by Partnership, dated v. When the Form 8609s (Low-Income Housing Credit Allocation Certification forms) were prepared for the buildings in the Project on w, Agency relied upon the figures reported in the u correspondence submitted by Partnership's accountant. As a result, only the construction costs were used. The other qualifying expenditures were omitted, and Agency based the allocable credit on a maximum qualified basis figure of j instead of o. Agency and Partnership represent that the correct amount of aggregate credits that should have been allocated to the Project is \$bb.

Partnership did not notice the understatement of maximum qualified basis or the administrative error or omission on the Form 8609s until k. Partnership and Agency then began a review of the filed Form 8609s to determine the cause of the error and a course of corrective action. By letter to the Service dated l, Agency requested approval to correct the administrative error or omission. The Service responded to Agency's inquiry by correspondence dated m, indicating that formal submission of a letter ruling request under § 1.42-13(b) of the Income Tax Regulations was necessary.

As required under § 1.42-13(b)(3)(v), Agency and Partnership agree to such conditions as the Secretary considers appropriate if the above ruling request 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 or omission does not include a misinterpretation of the applicable rules and regulations under § 42.

Under § 1.42-13(b)(3)(iii), except as provided in § 1.42-13(b)(vi), which is not relevant here, a state agency must obtain the Secretary's prior approval to correct 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 1) requires a numerical change to the credit amount allocated for the building or project; 2) affects the determination of any component of the state's housing credit ceiling under

§ 42(h)(3)(C); or 3) affects the state's unused housing credit carryover that is assigned to the Secretary under § 42(h)(3)(D) .

The correction in this case involves a numerical change to the amount of low-income housing credits allocated to each of the buildings in the Project, and requires a numerical change to the credit amount allocated for the Project. As represented above, it was the intent of Agency and Partnership to allocate the maximum amount of § 42 credits to the Project. Agency and Partnership discovered, subsequent to filing Form 8609s, that the aggregate qualified basis of the buildings was understated, resulting in a lower amount of low-income housing tax credits for the Project than intended. This error did not result from a misinterpretation of the applicable rules and regulations under § 42. Thus, a correctable administrative error occurred in this case.

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

1. Agency committed an administrative error when it inadvertently used the incorrect qualified basis figures, as reported on the Form 8609s for each building in the Project;
2. Because of this administrative error, the Form 8609s inaccurately reflect the intent of Agency and the Partnership when the Form 8609s were filed; and
3. After Agency agreed that there was an administrative error, Agency and Partnership attempted to correct the administrative error within a reasonable period of time.

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

1. Amend the Form 8609 for each building in the Project to correct the administrative error described above by adjusting the amount of § 42 credits and maximum qualified basis for each building consistent with figures appearing on Exhibit C of Partnership's and Agency's ruling request submission. On the amended Form 8609s, Agency will indicate that it is making the correction under § 1.42-13(b)(3)(iii)(A);
2. Reduce Agency's q credit ceiling by \$n. This amount represents the \$p in increased § 42 credits for the Project, plus interest, compounded annually. The interest is calculated as the average of the annual Federal mid-term rate and the annual Federal long-term rate under § 1274(d)(1) for x applied to the period beginning y and ending z; and

3. The \$n reduction of the Agency's housing credit ceiling must be reflected on line 5a of the g Form 8610, Annual Low-Income Housing Credit Agencies Report, that represents \$1.25 multiplied by the state population. The Agency should asterisk line 5a and briefly explain at the bottom of the Form 8610 that this line amount reflects the correction required by this letter ruling. When filed, a copy of this letter ruling must also be attached to the Form 8610.

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 § 42, or on whether the amount of fees other than construction costs are appropriately included in the eligible basis of each building in the Project.

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

In accordance with the power of attorney on file, a copy of this letter is being sent to the Partnership's authorized legal representative.

Sincerely yours,

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

Enclosure:
6110 copy