Internal Revenue Service

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Department of the Treasury

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Date:
MARCH 19, 1999

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

Legend:

Agency =

Partnership =

Project =

BINs =

State X =

District =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

u =

v =

w =

x =

Dear :

This letter responds to a letter dated November 20, 1998, and subsequent correspondence, that was submitted on behalf of the Agency and the 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.

The Agency and the Partnership have made the following representations:

The Partnership is a calendar year taxpayer that uses the accrual method of accounting. The Partnership is a State X limited partnership that was formed on date a for the purpose of owning and operating the Project, a b-unit low-income housing project. The District Office of the Internal Revenue Service that has examination jurisdiction over the Agency and the Partnership is District.

On c, the Partnership submitted an application to the Agency for a reservation of d § 42 credits in the maximum amount of $e. The application reflected a site plan calling for b units in f buildings. On g, the Project received the reservation from the Agency conditionally allocating credits in the amount of $h. On i, the Agency and the Partnership entered into binding agreement allowing the Partnership to elect the appropriate percentage month for purposes of § 42(b)(2)(A)(ii)(I) with the buildings in the Project assigned the building identification numbers of BINs. On j, the Agency and Partnership executed a carryover allocation in the amount of $h.

The Project was constructed and placed in service by the Partnership as of k. After receipt of the placed-in-service cost information, the Agency conducted and additional review of the Project pursuant to newly-adopted procedures for limiting developer fees. As of the Agency's d qualified allocation plan, the Agency limited developer fees. However, the Agency did not initiate procedures for enforcement of the developer fee limits until l, a date after the Agency's review of the Project's application and after the Partnership received its carryover allocation.

The Agency applied the new developer fee limits to the Partnership's Project in l, which reduced the total amount of§ 42 credits for the Project to $m. The Agency issued the Form 8609s, Low-Income Housing Credit Allocation Certification, for the buildings in the Project in n, effective as of o, with the reduced § 42 credits. The Partnership filed a lawsuit on w against the Agency seeking reinstatement of the higher amount of § 42 credits.

In x, the Agency and the Partnership engaged in discussions and negotiations to resolve the dispute. During a meeting held on v, the Board of Commissioners of the Agency agreed that it was inappropriate to apply the new procedures for enforcing developer fee limits to the Partnership's Project after the Project had been placed in service. It was the intent of the Agency to implement these procedures in the pre-construction stages of a project's assessment. The procedures had not been implemented in d when the Partnership received the carryover allocation. Furthermore, at the time the carryover allocation was executed and at the time the Agency issued the Form 8609s, the Agency intended that the Partnership receive the maximum amount of § 42 credits allowable for the Project, based on the procedures in place at the time the Partnership applied for the credits. The Agency and the Partnership contend that subjecting the Project to the new developer fee limits after execution of the carryover allocation, and after the Project was placed in service, was an administrative error resulting in reduced § 42 credits reported on the Form 8609s. Correction of the

administrative error will result in increase of $p in total § 42 credits for the Project by the Agency.

The Agency and the Partnership request a ruling granting approval to correct the Form 8609s for the buildings in the Project because of an administrative error or omission described above at the time the Project was placed in service and the Form 8609s were issued. As required by § 1.42-13(b)(3)(v), the Agency and the Partnership agree to such conditions as the Secretary considers appropriate if the 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)(A), 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 requires a numerical change to the credit amount allocated for a building or project.

As represented above, it was the intent of the Agency and the Partnership to allocate the maximum amount of § 42 credits to the Project. This error did not result from a misinterpretation of the applicable rules and regulations under § 42. However, the reduced credits resulted in Form 8609s for the buildings in the Project that were inconsistent with the carryover allocation. Thus, a correctable administrative error occurred in this situation.

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

1. The Agency committed an administrative error when it applied new developer fee limits to the Project, after the carryover allocation was executed and after the project was placed in service, which reduced the amount of § 42 credits for each building in the Project;

2. Because of this administrative error, the Form 8609s inaccurately reflect the intent of the Agency and the

Partnership when the d carryover allocation was executed; and

3. After the Agency agreed on v that there was an administrative error, the Agency and Partnership attempted to correct the administrative error within a reasonable period of time.

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

1. Amend the Form 8609s to correct the administrative error described above by increasing the amount of § 42 credits and maximum qualified basis for each building in the Project to the credit amounts described for the buildings in the carryover allocation dated j. On the amended Form 8609s, the Agency will indicate that it is making the correction under § 1.42-13(b)(3)(iii)(A);

2. Reduce the Agency's q housing credit ceiling by $r. 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 s, applied to the period beginning t through ending u; and

3. The $r reduction of the Agency's q housing credit ceiling must be reflected on the line 5a of the q 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 and the amount of developer fees 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,

/s/ Susan J. Reaman
SUSAN J. REAMAN
Chief, Branch 5
Office of Assistant
Chief Counsel
(Passthroughs and Special
Industries)

Enclosure:
6110 copy