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Department of the Treasury

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Person to Contact:

Telephone Number:

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Legend:

Partnership =

Agency =

State X =

Project =

a =

b =

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f =

g =

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Dear _____ :

This letter responds to a letter dated November 1, 2001, and subsequent correspondence, that was submitted on behalf of the Agency and the Partnership by their authorized representative, 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.

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 c-building low-income housing project.

Pursuant to a carryover allocation dated f, the Agency allocated \$d of § 42 credits to the Partnership's Project based on the estimated eligible basis of \$e. The buildings in the Project were placed in service in g. According to the Partnership, the eligible basis of the Project was \$h, based upon cost certifications provided to the Agency.

The Agency's qualified allocation plan (QAP) addresses the requirement in § 42(m)(2)(B)(iv) that the Agency consider the reasonableness of the developmental costs of the Project in allocating housing credit amounts by using development and construction cost limits under the HUD 221(d)(3) program. The QAP does not address whether the HUD 221(d)(3) limits should be applied on the date of the allocation or on the date the Project is placed in service.

The Agency used the HUD 221(d)(3) limits for l, the year of carryover allocation, in determining the final amount of § 42 credits for the Project. Using the l limits, on i the Agency issued the Form 8609s, Low-Income Housing Credit Allocation Certification, which reduced the Partnership's allocation of § 42 credits to \$j based upon a total eligible basis of k. If the Authority had used the HUD 221(d)(3) limits for m, the year the Project was placed in service, the Partnership's allocation would have been \$n of § 42 credits based on an eligible basis of \$r.

Upon receipt the Form 8609s reflecting the reduced § 42 credits, the Partnership contested the reduction. The Partnership assumed that the Agency would use m numbers in making its final determination. After reviewing the matter, the Agency agreed that it had committed an administrative error by not allowing the Partnership to use the HUD 221(d)(3) limits for m, the year the Project were placed in service.

The Agency represents that the \$p difference between the \$d carryover allocation of § 42 credits and the \$j in reduced § 42 credits was treated as returned § 42 credits in o by the Agency pursuant to § 1.42-14(d)(2)(iii), which allows credits returned after September 30 to be treated as returned January 1 of the succeeding year.

The Agency and the Partnership request a ruling granting approval to correct the Form 8609s for the buildings in the Project because of the administrative error described above at the time the Agency determined the reasonableness of the Project's developmental costs and issued the Form 8609s. 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 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) and (B), an 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, or affects the determination of any component of the State's housing credit ceiling under § 42(h)(3)(C), respectively.

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

1. The Agency committed an administrative error when it used the l HUD 221(d)(3) limit upon making its final review of the reasonableness of the Partnership's developmental costs of the Project under its QAP;
2. Because of this administrative error, the Form 8609s inaccurately reflect the intent of the Agency and the Partnership at the time the Agency issued the Form 8609s; and
3. After the Agency agreed 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 and basis amounts based on the HUD 221(d)(3) limits for m, resulting in a total of \$n in § 42 credits based on a total eligible basis of \$r. On the amended Form 8609s, the Agency will indicate that it is making the correction under § 1.42-13(b)(3)(iii)(A) and (B); and
2. Amend line 5b on the o Form 8610, Annual Low-Income Housing Credit Agencies Report, that represents the amount of the credit ceiling returned in o from allocations made prior to o, by reducing the amount of the § 42 credits returned from the Partnership's Project from \$p to \$q. The Agency should asterisk line 5b 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. Attach copies of the amended Form 8609s to the amended o Form 8610 and mail the amended Form 8609s to the Partnership. When completing the amended Form 8610, the Agency should follow the specific instructions on the Form 8610 under the heading "Amended Report."

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 amounts included in the eligible basis of each building in the Project.

This ruling is directed only to the taxpayers 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 Agency's and the Partnership's authorized legal representative.

Sincerely yours,
SUSAN J. REAMAN
Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

6110 copy
Copy of Letter