

§ 1.42-12 Effective dates and transitional rules.

(a) *Effective dates*—(1) *In general.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the rules set forth in §§ 1.42-6 and 1.42-8 through 1.42-12 are applicable on May 2, 1994. However, binding agreements, election statements, and carryover allocation documents entered into before May 2, 1994, that follow the guidance set forth in Notice 89-1, 1989-1 C.B. 620 (see § 601.601(d)(2)(ii)(b) of this chapter) need not be changed to conform to the rules set forth in §§ 1.42-6 and 1.42-8 through 1.42-12.

(2) *Community Renewal Tax Relief Act of 2000*—(i) *In general.* Section 1.42-6 (a), (b)(4)(iii) *Example 1* and *Example 2*, (c), (d)(2)(viii), and (e)(2) are applicable for housing credit dollar amounts allocated after January 6, 2004. However, the rules in § 1.42-6 (a), (b)(4)(iii) *Example 1* and *Example 2*, (c), (d)(2)(viii), and (e)(2) may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and on or before January 6, 2004. Otherwise, subject to the applicable effective dates of the corresponding statutory provisions, the rules that apply for housing credit dollar amounts allocated on or before January 6, 2004, are contained in § 1.42-6 in effect on and before January 6, 2004 (see 26 CFR part 1 revised as of April 1, 2003).

(3) *Electronic filing simplification changes.* Sections 1.42-6(d)(4) and 1.42-8(a)(6)(i), (a)(6)(ii), (a)(7) *Example 1* and *Example 2*, (b)(4)(i), and (b)(4)(ii) are applicable for forms filed after January 6, 2004. The rules that apply for forms filed on or before January 6, 2004, are contained in § 1.42-6 and § 1.42-8 in effect on and before January 6, 2004 (see 26 CFR part 1 revised as of April 1, 2003).

(4) *Utility allowances.* The first sentence in § 1.42-10(a), § 1.42-10(b)(1), (2), (3), and (4), the last two sentences in § 1.42-10(b)(4)(ii)(A), the third, fourth, and fifth sentences in § 1.42-10(b)(4)(ii)(B), § 1.42-10(b)(4)(ii)(C), (D), and (E), and § 1.42-10(c) and (d) are applicable to a building owner's taxable years beginning on or after July 29, 2008. Taxpayers may rely on these provisions before the beginning of the building owner's taxable year begin-

ning on or after July 29, 2008 provided that any utility allowances calculated under these provisions are effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008. The utility allowances provisions that apply to taxable years beginning before July 29, 2008 are contained in § 1.42-10 (see 26 CFR part 1 revised as of April 1, 2008).

(b) *Prior periods.* Notice 89-1, 1989-1 C.B. 620 and Notice 89-6, 1989-1 C.B. 625 (see § 601.601(d)(2)(ii)(b) of this chapter) may be applied for periods prior to May 2, 1994.

(c) *Carryover allocations.* The rule set forth in § 1.42-6(d)(4)(ii) relating to the requirement that state and local housing agencies file Schedule A (Form 8610), "Carryover Allocation of the Low-Income Housing Credit," is applicable for carryover allocations made after December 31, 1999.

[T.D. 8520, 59 FR 10074, Mar. 3, 1994; 59 FR 15501, Apr. 1, 1994, as amended by T.D. 8859, 65 FR 2328, Jan. 14, 2000; T.D. 9110, 69 FR 504, Jan. 6, 2004; T.D. 9420, 73 FR 43868, July 29, 2008]

§ 1.42-13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions.

(a) *Publication of guidance.* Under section 42(n), the Secretary has authority to prescribe regulations as may be necessary or appropriate to carry out the purposes of section 42. The Secretary may also provide guidance through various publications in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(b) of this chapter.)

(b) *Correcting administrative errors and omissions*—(1) *In general.* An Agency may correct an administrative error or omission with respect to allocations and recordkeeping, as described in paragraph (b)(2) of this section, within a reasonable period after the Agency discovers the administrative error or omission. Whether a correction is made within a reasonable period depends on the facts and circumstances of each situation. Except as provided in paragraph (b)(3)(iii) of this section, an Agency need not obtain the prior approval of the Secretary to correct an administrative error or omission, if the correction is made in accordance with

paragraph (b)(3)(i) of this section. The administrative errors and omissions to which this paragraph (b) applies are strictly limited to those described in paragraph (b)(2) of this section, and, thus, do not include, for example, any misinterpretation of the applicable rules and regulations under section 42. Accordingly, an Agency's allocation of a particular calendar year's low-income housing credit dollar amount made after the close of that calendar year, or the use of an incorrect population amount in calculating a State's housing credit ceiling for a calendar year are not administrative errors that can be corrected under this paragraph (b).

(2) *Administrative errors and omissions described.* An administrative error or omission is 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. Administrative errors and omissions described in this paragraph (b)(2) include the following—

- (i) A mathematical error;
- (ii) An entry on a document that is inconsistent with another entry on the same or another document regarding the same property, or taxpayer;
- (iii) A failure in tracking the housing credit dollar amount an Agency has allocated (or that remains to be allocated) in the current calendar year (e.g., a failure to include in its State housing credit ceiling a previously allocated credit dollar amount that has been returned by a taxpayer);
- (iv) An omission of information that is required on a document; and
- (v) Any other type of error or omission identified by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) as an administrative error or omission covered by this paragraph (b).

(3) *Procedures for correcting administrative errors or omissions—(i) In general.* An Agency's correction of an administrative error or omission, as described in paragraph (b)(2) of this section, must amend the document so that the cor-

rected document reflects the original intent of the Agency, or the Agency and the affected taxpayer, and complies with applicable rules and regulations under section 42.

(ii) *Specific procedures.* If a document corrects a document containing an administrative error or omission that has not yet been filed with the Internal Revenue Service, the Agency, or the Agency and the affected taxpayer, should complete and file the corrected document as the original. When a document containing an administrative error or omission has already been filed with the Service, the Agency, or the Agency and the affected taxpayer, should refile a copy of the document containing the administrative error or omission, and prominently and clearly note the correction thereon or on an attached new document. The Agency should indicate at the top of the document(s) that the correction is being made under § 1.42-13 of the Income Tax Regulations.

(iii) *Secretary's prior approval required.* Except as provided in paragraph (b)(3)(vi) of this section, an Agency must obtain the Secretary's prior approval to correct an administrative error or omission, as described in paragraph (b)(2) of this section, if the correction is not made before the close of the calendar year of the error or omission and the correction—

- (A) Is a numerical change to the housing credit dollar amount allocated for the building or project;
- (B) Affects the determination of any component of the State's housing credit ceiling under section 42(h)(3)(C); or
- (C) Affects the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

(iv) *Requesting the Secretary's approval.* To obtain the Secretary's approval under paragraph (b)(3)(iii) of this section, an Agency must submit a request for the Secretary's approval within a reasonable period after discovering the administrative error or omission, and must agree to any conditions that may be required by the Secretary under paragraph (b)(3)(v) of this section. When requesting the Secretary's approval, the Agency, or the Agency and the affected taxpayer, must file an

application that complies with the requirements of this paragraph (b)(3)(iv). For further information on the application procedure see Rev. Proc. 93-1, 1993-1 I.R.B. 10 (or any subsequent applicable revenue procedure). (See § 601.601(d)(2)(ii)(b) of this chapter.) The application requesting the Secretary's approval must contain the following information—

(A) The name, address, and identification number of each affected taxpayer;

(B) The Building Identification Number (B.I.N.) and address of each building or project affected by the administrative error or omission;

(C) A statement explaining the administrative error or omission and the intent of the Agency, or of the Agency and the affected taxpayer, when the document was originally completed;

(D) Copies of any supporting documentation;

(E) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the housing credit dollar amount allocated for any building or project; and

(F) A statement explaining the effect, if any, that a correction of the administrative error or omission would have on the determination of the components of the State's housing credit ceiling under section 42(h)(3)(C) or on the State's unused housing credit carryover that is assigned to the Secretary under section 42(h)(3)(D).

(v) *Agreement to conditions.* To obtain the Secretary's approval under paragraph (b)(3)(iii) of this section, an Agency, or the Agency and the affected taxpayer, must agree to the conditions the Secretary considers appropriate.

(vi) *Secretary's automatic approval.* The Secretary grants automatic approval to correct an administrative error or omission described in paragraph (b)(2) of this section if—

(A) The correction is not made before the close of the calendar year of the error or omission and the correction is a numerical change to the housing credit dollar amount allocated for the building or multiple-building project;

(B) The administrative error or omission resulted in an allocation document (the Form 8609, "Low-Income

Housing Credit Allocation Certification," or the allocation document under the requirements of section 42(h)(1)(E) or (F), and § 1.42-6(d)(2)) that either did not accurately reflect the number of buildings in a project (for example, an allocation document for a 10-building project only references 8 buildings instead of 10 buildings), or the correct information (other than the amount of credit allocated on the allocation document);

(C) The administrative error or omission does not affect the Agency's ranking of the building(s) or project and the total amount of credit the Agency allocated to the building(s) or project; and

(D) The Agency corrects the administrative error or omission by following the procedures described in paragraph (b)(3)(vii) of this section.

(vii) *How Agency corrects errors or omissions subject to automatic approval.* An Agency corrects an administrative error or omission described in paragraph (b)(3)(vi) of this section by—

(A) Amending the allocation document described in paragraph (b)(3)(vi)(B) of this section to correct the administrative error or omission. The Agency will indicate on the amended allocation document that it is making the "correction under § 1.42-13(b)(3)(vii)." If correcting the allocation document requires including any additional B.I.N.(s) in the document, the document must include any B.I.N.(s) already existing for buildings in the project. If possible, the additional B.I.N.(s) should be sequentially numbered from the existing B.I.N.(s);

(B) Amending, if applicable, the Schedule A (Form 8610), "Carryover Allocation of the Low-Income Housing Credit," and attaching a copy of this schedule to Form 8610, "Annual Low-Income Housing Credit Agencies Report," for the year the correction is made. The Agency will indicate on the schedule that it is making the "correction under § 1.42-13(b)(3)(vii)." For a carryover allocation made before January 1, 2000, the Agency must complete Schedule A (Form 8610), and indicate on the schedule that it is making the "correction under § 1.42-13(b)(3)(vii)";

(C) Amending, if applicable, the Form 8609 and attaching the original of this amended form to Form 8610 for the

year the correction is made. The Agency will indicate on the Form 8609 that it is making the “correction under § 1.42-13(b)(3)(vii)”;

(D) Mailing or otherwise delivering a copy of any amended allocation document and any amended Form 8609 to the affected taxpayer.

(viii) *Other approval procedures.* The Secretary may grant automatic approval to correct other administrative errors or omissions as designated in one or more documents published either in the FEDERAL REGISTER or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(c) *Examples.* The following examples illustrate the scope of this section:

Example 1. Individual B applied to Agency X for a reservation of a low-income housing credit dollar amount for a building that is part of a low-income housing project. When applying for the low-income housing credit dollar amount, B informed Agency X that B intended to form Partnership Y to finance the project. After receiving the reservation letter and prior to receiving an allocation, B formed Partnership Y and sold partnership interests to a number of limited partners. B contributed the low-income housing project to Partnership Y in exchange for a partnership interest. B and Partnership Y informed Agency X of the ownership change. When actually allocating the housing credit dollar amount, Agency X sent Partnership Y a document listing B, rather than Partnership Y, as the building’s owner. Partnership Y promptly notified Agency X of the error. After reviewing related documents, Agency X determined that it had incorrectly listed B as the building’s owner on the allocation document. Since the parties originally intended that Partnership Y would receive the allocation as the owner of the building, Agency X may correct the error without obtaining the Secretary’s approval, and insert Partnership Y as the building’s owner on the allocation document.

Example 2. Agency Y allocated a lower low-income housing credit dollar amount for a low-income housing building than Agency Y originally intended. After the close of the calendar year of the allocation, B, the building’s owner, discovered the error and promptly notified Agency Y. Agency Y reviewed relevant documents and agreed that an error had occurred. Agency Y and B must apply, as provided in paragraph (b)(3)(iv) of this section, for the Secretary’s approval before Agency Y may correct the error.

(d) *Effective date.* This section is effective February 24, 1994. However, an Agency may elect to apply these regu-

lations to administrative errors or omissions that occurred before the publication of these regulations. Any reasonable method used by a State or local housing credit agency to correct an administrative error or omission prior to February 24, 1994, will be considered proper, provided that the method is consistent with the rules of section 42. Paragraphs (b)(3)(vi), (vii), and (viii) of this section are effective January 14, 2000.

[T.D. 8521, 59 FR 8861, Feb. 24, 1994, as amended by T.D. 8859, 65 FR 2328, Jan. 14, 2000]

§ 1.42-14 Allocation rules for post-2000 State housing credit ceiling amount.

(a) *State housing credit ceiling—(1) In general.* The State housing credit ceiling for a State for any calendar year after 2000 is comprised of four components. The four components are—

(i) The unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component);

(ii) The greater of—

(A) \$1.75 (\$1.50 for calendar year 2001) multiplied by the State population; or

(B) \$2,000,000 (the population component);

(iii) The amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus

(iv) The amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

(2) *Cost-of-living adjustment—(i) General rule.* For any calendar year after 2002, the \$2,000,000 and \$1.75 amounts in paragraph (a)(1)(ii) of this section are each increased by an amount equal to—

(A) The dollar amount; multiplied by

(B) The cost-of-living adjustment determined under section 1(f)(3) for the calendar year by substituting “calendar year 2001” for “calendar year 1992” in section 1(f)(3)(B).

(ii) *Rounding.* Any increase resulting from the application of paragraph (a)(2)(i) of this section which, in the case of the \$2,000,000 amount, is not a multiple of \$5,000, is rounded to the next lowest multiple of \$5,000, and which, in the case of the \$1.75 amount,