



IRS Backs Off On Its October 2000 TAMs Findings

By Michael J. Novogradac, CPA

When the Internal Revenue Service (IRS) released Revenue Ruling 2002-9 last month, it substantially reversed the stand it had taken regarding impact fees in a series of Technical Advice Memoranda (TAMs) released in Fall 2000. On February 15, the IRS handed down a ruling that held that impact fees imposed by state or local governments on the development or expansion of residential rental property should be capitalized to the cost of the building (s) constructed. Furthermore, the IRS noted that such costs are generally included in the eligible basis of buildings otherwise qualifying for low-income housing tax credits. While a major victory for the multi-family and affordable housing industries, the ruling will, however, need closer scrutiny and analysis in the weeks and months to come. (For industry comments on the ruling, see story on page 1.)

Of particular note is the IRS' decision that such capitalizable fees are entirely allocable to the building or buildings in question but not to the land. According to Richard Goldstein, of Nixon Peabody LLP, the ruling states that any change in a taxpayer's treatment of impact fees in order to conform to the ruling would amount to a change in method of accounting; that such changes would not be raised as an audit issue in any year before the year in which such changes occurred; and the Service would not pursue any challenges already made on audit. In other words, Goldstein says, the ruling appears to be completely retroactive, provided the taxpayer follows the change in method of accounting procedures. While the ruling is cause for celebration, the industry must remain focused on the issue, studying the types of fees that are specifically included under the ruling, as well as examining those fees that are similar to impact fees but may not be specifically includable under a literal reading of the ruling. Further guidance will be needed on how gray-area fees will be treated by the IRS. There are two important messages in this IRS ruling: (1) in large measure the "impact fee" issue has been favorably resolved, and (2) there is still much work to be done in clarifying and resolving gray-area fees and other TAM related issues. Novogradac & Company LLP will, at its "Credit & Bond Financing for Affordable Housing Conference" in New Orleans, May 15-17, examine the many issues left unsettled by this most recent IRS ruling. For a copy of the Revenue Ruling 2002-9, visit www.taxcredithousing.com. ❖

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