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## Charging Rent on Exempt Units

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**E**xempt units are an important part of a low-income housing tax credit (LIHTC) development. From property managers to security officers to maintenance workers, on-site employees are often the backbone to a successful LIHTC property. However, there has been considerable gray area in the LIHTC industry about whether employees living in exempt units could pay rent. Last month, the Internal Revenue Service (IRS) released a program manager technical assistance (PMTA) memo dated June 2, 2014 (PMTA 2014-22), which clarified the IRS position regarding charging for exempt units. In the memo, the IRS states, “Charging resident managers or maintenance personnel rents, utilities, or both for units in a qualified low-income building does not make the units residential rental units and not facilities reasonably required for the project under §1.103-8(b)(4)(iii).”

Treasury Regulation 1.103-8(b)(4)(iii) says, “Under paragraph (a)(3) of this section, facilities that are functionally related and subordinate to residential rental projects include facilities for use by the tenants, for example, swimming pools, other recreational facilities, parking areas, and other facilities which are reasonably required for the project, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance personnel.”

In PMTA 2014-22 the IRS also stated that, “The general-public-use requirement of §1.42-9 does not apply in the case of units for resident managers or maintenance personnel in a qualified low-income building because the units are not residential rental units but facilities reasonably required for the project.”

### Background

Many LIHTC developments have property managers or other employees who live on-site. Revenue Ruling 92-61 stated that the cost of an exempt unit is included in eligible basis, but the exempt unit is not included in the applicable fraction when determining how much credit the project can generate. However, the IRS Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, contained the following sentence, “If the owner is charging rent for the unit, the Service may determine that the unit is not reasonably required by the project because the owner is not requiring the manager to occupy the unit as a condition of employment.” That led many people in the industry to believe the rent could not be charged on exempt units. However, the new guidance from the IRS clarifies that charging rent for an exempt unit is not germane to the discussion about whether the unit is reasonably required.

### Analysis

PMTA 2014-22 clarifies that charging rent is not a factor in determining if a unit is considered an exempt unit. PMTA 2014-22 says “whether or not the owner of the project charges rents, utilities, or both for the units are not relevant in the treatment of the units as facilities that are reasonably required for the project. As such, the fact that the owner of a qualified low-income building charges rents, utilities, or both for units for resident managers or maintenance personnel is not relevant in the treatment of such units as facilities reasonably required for the project.”

Although charging rent is not relevant in determining whether the employee unit is an exempt unit, the unit still

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needs to be reasonably required for the LIHTC project. Typically the owner will need approval from the state agency for the number of exempt units on the property. In addition, any changes to the number of exempt units will often have to be approved by the state agency. As stated in PMTA 2014-22, "The character and size of the project are, among other things, relevant in determining whether any property, including an employee-occupied unit, is functionally related and subordinate to the project."

## Conclusion

PMTA 2014-22 states that charging for exempt units does not disqualify the unit from being considered exempt. An owner would still need to be careful that the employee unit is reasonable required for the project and that the state agency has approved the exempt unit(s). It is also important to check with your state agency for their interpretation of charging rent on exempt units. ❖

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