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LEGEND

Taxpayer =

Parent =

Fund =

Allocatee =

Sub-CDE =

Round =

a =

b =

c =

e =

f =

g =

h =

i =

j =

k =

l =

Dear _____ :

This letter responds to your letter dated June 4, 2009, submitted on behalf of Taxpayer, requesting a letter ruling involving the new markets tax credit (NMTC) under § 45D of the Internal Revenue Code. The ruling concerns the application of the 6-month cure period under § 1.45D-1(e)(6) of the Income Tax Regulations to the transaction described below.

FACTS

Taxpayer is a wholly-owned subsidiary of Parent. Taxpayer is engaged in community development activities that include providing investment capital to new market tax credit transactions. Fund is wholly-owned by Taxpayer and is treated as a disregarded entity for federal income tax purposes. Fund was formed for the purpose of holding Taxpayer's membership interest in Sub-CDE. Allocatee and Sub-CDE were formed for purpose of serving or providing investment capital for low-income communities or low-income persons.

Allocatee received an allocation of NMTC authority during Round in the amount of \$a and sub-allocated \$b of that authority to Sub-CDE. On c, Taxpayer made a \$b capital contribution to Fund. Fund in turn made a \$b capital contribution in cash to Sub-CDE in exchange for a e% membership interest. The remaining f% membership interest in Sub-CDE is held by Allocatee. Sub-CDE designated the \$b capital contribution as a qualified equity investment (QEI) and filed Form 8874-A, Notice of Qualified Equity Investment for New Markets Credit, with the Internal Revenue Service on or about g.

From g to the present, Taxpayer represents that the investors worked diligently to satisfy the substantially-all requirement found under § 45D(b)(1) by the 12-month deadline of h required by § 1.45D-1(c)(5)(iv) to invest the cash in one or more qualified low-income community investments (QLICs). Fifteen projects were considered with the greatest amount of time being spent on 4 potential projects including (1) the renovation and development of a 300,000 square foot mixed-use building in i, (2) the development of a building to house a supermarket, pharmacy, and bank in j, (3) the renovation of the j in i, and (4) the construction of a new liquid storage facility.

Taxpayer represents that the two most viable projects were the third and fourth projects described above. However, on k, Taxpayer received notice from both projects that the deals would not be completed by the h deadline. Taxpayer is confident that both projects can be closed by the end of l, however, Taxpayer will not proceed with the investment unless Taxpayer is confident that the cure period under § 1.45D-1(e)(6) is available to correct Sub-CDE's failure to invest substantially all of the proceeds of Fund's QEI in a QLICI within the 12-month period.

RULING REQUESTED

The 6-month cure period described in § 1.45D-1(e)(6) is available to correct Sub-CDE's failure to invest substantially all of the proceeds of Fund's QEI in QLICIs within the 12-month period specified in § 1.45D-1(c)(5)(iv).

LAW AND ANALYSIS

Section 45D(a)(1) provides that for purposes of § 38, in the case of a taxpayer who holds a QEI on a credit allowance date of such investment which occurs during the taxable year, the NMTC for such taxable year is an amount equal to the applicable percentage of the amount paid to the qualified community development entity (CDE) for such investment at its original issue.

Section 45D(b)(1) provides that the term QEI means any equity investment in CDE if (a) such investment is acquired by the taxpayer at its original issue solely in exchange for cash, (b) substantially all of such cash is used by the CDE to make QLICIs, and (c) such investment is designated for purposes of § 1.45D-1 by the CDE.

Section 45D(d)(1) provides that the term QLICIs mean (a) any capital or equity investment in, or loan to, any qualified active low-income community business, (b) the purchase from another CDE of any loan made by such entity which is a QLICI, (c) financial counseling and other services to businesses located in, and residents of, low-income communities, and (d) any equity investment in, or loan to, any CDE.

Section 1.45D-1(c)(5)(i) provides that the term substantially all means at least 85 percent. The substantially all requirement must be satisfied for each annual period in the 7-year credit period using either the direct-tracing calculation or the safe-harbor calculation. For the first annual period, the substantially-all requirement is treated as satisfied if either the direct-tracing calculation or the safe-harbor calculation is performed on a single testing date and the result of the calculation is at least 85 percent.

Section 1.45D-1(c)(5)(iv) provides that the taxpayer's cash investment received by the CDE is treated as invested in a QLICI only to the extent that the cash is so invested within the 12-month period beginning on the date the cash is paid by the taxpayer to the CDE.

Section 1.45D-1(e)(6) provides that if a QEI fails the substantially-all requirement, the failure is not a recapture event if the CDE corrects the failure within 6 months after the date the CDE becomes aware (or reasonably should have become aware) of the failure. Only one correction is permitted for each QEI during the 7-year credit period.

CONCLUSION

Based on the information submitted and representations made, we conclude that the 6-month cure period found under § 1.45D-1(e)(6) is available to correct Sub-CDE's failure to invest substantially all of Fund's QEI proceeds in QLICs within the 12-month period required by § 1.45D-1(c)(5)(iv). However, the 6-month cure period is not automatically tacked on to the 12-month period. As the rule states, the 6-month cure period begins on the date the CDE becomes aware (or reasonably should have become aware) of the failure to invest substantially all of the QEI proceeds in a QLICI within the 12 month period. Here, if the facts are as represented, Sub-CDE, in both projects, became aware on k that it would fail to invest substantially all of Fund's QEI proceeds in QLICs by h. The cure period, under these facts, would begin on k and continue for 6 months.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representatives.

Sincerely,

Paul F. Handleman

Paul F. Handleman
Chief, Branch 5
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: