

May 1, 2013

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2013-22)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Notice 2013-22, 2013-2014 Guidance Priority List

Dear Ladies and Gentlemen:

The LIHTC Working Group was established to provide a platform for low-income housing tax credit (“LIHTC”) industry participants to work together to resolve technical and administrative LIHTC program issues. On behalf of the members of the LIHTC Working Group, we would like to recommend the following issues in priority order for addition to the Guidance Priority List for 2013-2014.

1. We are requesting guidance as it relates to the exception under Internal Revenue Code (“IRC”) Section 42(d)(6) for any federally or state assisted building. IRC Section 42(d)(6) does not currently define “federally or state assisted” building.
2. We are requesting guidance under IRC Section 42(j), which provides for recapture of LIHTCs, in relation to tax credit recapture for projects that have received Section 1602 subawards under the American Recovery and Reinvestment Act of 2009 (“Section 1602”). Treasury has expressed its intentions to issue separate recapture procedures for Section 1602 fund subawards; however, no procedures have yet been issued.
3. We are requesting guidance under IRC Section 142 on whether a low-income housing project that has lost its rural designation is held harmless at the highest national non-metro median income that the project achieved if its income limit was originally determined using the national non-metro median income afforded to rural projects under IRC Section 42(i)(8).
4. We are requesting guidance regarding the application of IRC Section 42 requirements as they conflict with the requirements of other affordable housing governmental assistance programs. In certain circumstances, the construction of affordable housing projects requires additional financing from other governmental assistance programs. The funds provided by these assistance programs may include restrictions that conflict with program guidance under IRC Section 42. Guidance is needed on whether IRC Section 42 projects

can be held harmless by virtue of complying with other affordable housing governmental assistance program requirements.

5. We are requesting guidance on the documented legislative intent included in the technical explanation prepared by the Joint Committee on Taxation explaining revenue provisions of the Health Care and Education Affordability Reconciliation Act of 2010, footnote 344 (“Footnote 344”). Footnote 344 clarified that the codification of the economic substance doctrine is not intended to disallow tax credits in a transaction that achieves the basic purpose or plan for which the tax credits were intended by Congress. In addition, we request that Treasury provide guidance as to the applicability of Footnote 344 to Section 1602.

The LIHTC Working Group has submitted previous comment letters to the Internal Revenue Service and the Department of the Treasury requesting guidance on the above-mentioned issues. A copy of these comment letters, as listed in Appendix A, can be reviewed at www.lihtcworkinggroup.com. Please contact us if you would like us to resubmit our comment letters in Appendix A for your review.

We appreciate the opportunity to comment on the 2013-2014 Guidance Priority List. The furtherance of these issues will help the LIHTC program better provide affordable housing in our communities by providing clarification and lessening the risks in the LIHTC program compliance. Thank you in advance for your time and careful consideration of these issues. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

THE LIHTC WORKING GROUP

Very truly yours,

NOVOGRADAC & COMPANY LLP



by

Stacey Stewart

Appendix A – LIHTC Working Group Comment Letters

1. LIHTC Working Group Letter Regarding Definition of “Substantially Assisted, Financed, or Operated” in the Housing and Economic Recovery Act of 2008 (original letter: March 11, 2009; reissued: July 14, 2010).
2. LIHTC Working Group Letter Regarding Recapture Rules Surrounding Section 1602 of the American Recovery and Reinvestment Act of 2009 (original letter: July 30, 2009; reissued: August 2, 2010).
3. LIHTC Working Group Letter on Rural Designation Uncertainty (January 30, 2013).
4. LIHTC Working Group Letter on Conflicting Affordable Housing Program Requirements (February 27, 2013).
5. LIHTC Working Group Letter Seeking Guidance Related to Codification of Economic Substance and Low-Income Housing Tax Credits (October 27, 2010).