NOVOGRADAC
& COMPANY LLP
CERTIFIED PUBLIC ACCOUNTANTS

August 16, 2006

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2006-65)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Notice 2006-65 Public Comment Invited on Recommendations for Notice 2006-65 (Excise Tax on Certain Tax-Exempt Entities Entering into Prohibited Tax Shelter Transactions)

Dear Sir or Madam:

As consultants with many clients in the Low Income Housing Tax Credit ("LIHTC"), the New Markets Tax Credit ("NMTC), and the Historic Tax Credit ("HTC") industries, we request that the Department of Treasury and Internal Revenue Service (the "IRS") consider our recommendations regarding Notice 2006-65. We believe that our suggestion for guidance will help clarify and eliminate confusion related to Internal Revenue Code ("IRC") Section 4965. By providing guidance regarding IRC Section 4965, we believe that the LIHTC, NMTC and HTC programs will be able to better serve their intended purpose of encouraging investments in low-income housing, low-income communities, and historic buildings.

In general, IRC Section 4965 imposes an excise tax on certain tax-exempt entities that enter into "prohibited tax shelter transactions" (and managers of such entities that approve the entity's participation in the transaction). Pursuant to IRC Section 4965(e)(1), a prohibited tax shelter transaction is defined as any listed transaction and any prohibited reportable transaction. The term "prohibited reportable transaction" means any confidential transaction or any transaction with contractual protection which is a reportable transaction (as defined in section 6707A(c)(1)). There are concerns that common business structures involving tax-exempt entities and LIHTC, NMTC, and HTC transactions will be considered prohibited tax shelter transactions without regard to the purpose and nature of the LIHTC, NMTC, and HTC programs. The penalties for incorrectly interpreting IRC Section 4965 are steep and burdensome. Therefore, we strongly request your attention to this matter.

It is expected that the impact of the current guidance, without further clarification, will result in dwindled participation in the LIHTC, NMTC and HTC transactions by tax-exempt entities. It is apparent that it is the intent of Congress to encourage non-profit participation in the LIHTC, NMTC, and HTC programs. Pursuant to IRC Section 42(h)(5), at least 10% of each state's LIHTC allocation authority is required to be made available for allocation to projects where "qualified non-profit organizations" materially participate in the project. State LIHTC allocation agencies provide benefits for non-profit entities by providing preferences for projects that involve significant non-profit participation. Non-profit organizations are also given the added benefit of being able to purchase LIHTC projects after their compliance period for a minimum price that may be below the project's actual market value. Without additional

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clarification, the impact of the excise tax will hinder Congress's efforts to encourage tax-exempt entities to participate in the LIHTC, NMTC, and HTC programs.

Existing authoritative language provides for compliance oversight of the LIHTC, NMTC and HTC transactions. The LIHTC program (as defined in IRC Section 42) provides for substantial oversight and monitoring by the respective state housing credit agencies. The CDFI Fund of Treasury Department is charged with monitoring the NMTC program (as defined in IRC Section 45D). The National Park Service oversees the HTC program (as defined in IRC Section 47). With monitoring and compliance already in place, there is little concern for potentially abusive tax shelter transactions to take place via LIHTC, NMTC, and HTC transactions. While the NMTC program is fairly new, the LIHTC program has been in place for nearly twenty years and the HTC program for a good number of years longer than that. Actual instances of abusive transactions involving LIHTC, NMTC and HTC incentives are virtually nonexistent.

In order to clear the uncertainties provided in IRC Section 4965, as described above, we recommend that the IRS and Treasury provide a list of transactions, such as LIHTC, NMTC, and HTC transactions, that are excluded from the definition of prohibited tax shelter transactions. Clarifying guidance that the tax-exempt entities involved in LIHTC, NMTC, and HTC transactions are not to be considered when applying the excise tax pursuant to IRC Section 4965 would alleviate the current heightened level of anxiety and uncertainty regarding the applicability of IRC Section 4965 to tax-exempt entities' participation in LIHTC, NMTC, and HTC transactions.

We appreciate the opportunity to submit our suggestion on this important issue that should be included in the guidance to IRC Section 4965. We believe that further guidance on this issue is essential to sustain and increase the impact of the LIHTC, NMTC and HTC programs. Thank you in advance for your time and consideration.

Please do not hesitate to contact me if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,
NOVOGRADAC & COMPANY LLP

by Robert S. Thesman

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