

26 CFR 601.601: Rules and regulations
(Also Part I, §§ 42 and 142)

Rev. Proc. 2019-17

SECTION 1. PURPOSE

This revenue procedure provides guidance regarding the general public use requirements for qualified residential rental projects financed with tax-exempt bonds under § 142(d) of the Internal Revenue Code (Code). Specifically, this revenue procedure coordinates these requirements with the provisions in § 42(g)(9). Under § 42(g)(9), a project does not violate the general public use requirement under § 42 as a result of specified occupancy restrictions or preferences (for example, certain housing preferences for military veterans).

SECTION 2. BACKGROUND

.01 State and local governments may issue tax-exempt bonds under § 103 to finance exempt facilities (exempt facility bonds). A qualified residential rental project, as defined in § 142(d), is one type of exempt facility that may be financed with exempt facility bonds.

.02 To satisfy the requirements of § 142(d), a specified portion of the residential units in a residential rental project must serve individuals with qualifying incomes. For example, under § 142(d)(1)(A), a residential rental project satisfies these requirements if 20 percent or more of the residential units in the project are occupied by individuals whose income is 50 percent or less of area median gross income.

.03 Under § 1.103-8(a)(2) of the Income Tax Regulations, to qualify as an exempt facility, a facility must serve or be available on a regular basis for general public use, or be part of a facility so used, as contrasted with similar types of facilities that are constructed for the exclusive use of a limited number of private business users. For example, an apartment building for which employees of an adjacent factory are given preference over other potential tenants is not available for use by the general public. See § 1.103-8(b)(9), Example 2.

.04 Section 42 provides a low-income housing credit in an amount equal to a portion of the qualified basis (as defined in § 42(c)(1)) of each qualified low-income building (as defined in § 42(c)(2)) that is part of a qualified low-income housing project (as defined in § 42(g)).

.05 Section 1.42-9(a) provides that a residential rental unit in a building that is not for use by the general public is not eligible for a low-income housing credit under § 42. Section 1.42-9(a) further provides that a residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development. Section 1.42-9(b), however, provides that if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for a low-income housing credit under § 42.

.06 Section 42(g)(9) provides that a project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (A) with special needs, (B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or (C) who are involved in artistic or literary activities. For example, there are certain Federal or State programs that support housing for military veterans. Section 42(g)(9) was added to the Code by § 3004(g) of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, 122 Stat. 2654, 2884.

.07 Section 142(d) does not contain a provision similar to § 42(g)(9). Low-income housing credits under § 42 and exempt facility bonds issued under § 142(d) are often used together to finance residential rental projects. Questions have arisen as to whether a project that is treated as not failing the general public use requirement solely based on the restrictions or preferences provided under § 42(g)(9) for purposes of the

low-income housing credit under § 42 may be treated as not failing the general public use requirement applicable to tax-exempt financing of qualified residential rental projects under § 142(d).

SECTION 3. SCOPE

This revenue procedure only applies to exempt facility bonds that finance qualified residential rental projects under § 142(d) and does not affect the rules applicable to exempt facility bonds that finance other exempt facilities. For rules applicable to exempt facility bonds that finance other exempt facilities, see, generally, § 1.103-8.

SECTION 4. APPLICATION

A qualified residential rental project (as defined in § 142(d)) does not fail to meet the general public use requirement applicable to exempt facilities solely because of occupancy restrictions or preferences that favor tenants described in § 42(g)(9) (for example, certain housing preferences for military veterans).

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to bonds sold before, on, or after April 3, 2019.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Johanna Som de Cerff on (202) 317-6980 (not a toll free call).