Section 42 – Low-Income Housing Credit

IRS provides safe harbors under which IRS will treat a residential rental unit in a building as a low-income unit if the incomes of the individuals occupying the unit are at or below the applicable income limitation before the beginning of the building's credit period, but exceed that limitation at the beginning of the building's credit period (Rev. Proc. 2003-82). This revenue procedure addresses questions that have arisen regarding when individuals must satisfy the applicable income limitation under §42(g)(1) or §142(d)(4)(B)(i) of the Internal Revenue Code when they move into a residential unit in an existing building under §42(j)(5) on or after the date a taxpayer acquires the existing building for rehabilitation under §42(e), but before the beginning of the first taxable year of the building's credit period under §42(f)(1).

Because of these questions, some taxpayers require that the individuals' incomes not exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period, even though the individuals' income did not exceed the applicable income limitation when the individuals moved into the unit. This has resulted in some individuals being evicted, where permissible under local law, from low-income housing projects.

This revenue procedure only applies to residential units in a building where the incomes of the individuals occupying the unit are at or below the applicable income limitation under §42(g)(1) or §142(d)(4)(B)(i) before the beginning of the first taxable year of the building's credit period under §42(f)(1), but their incomes exceed the applicable income limitation at the beginning of the first taxable year of the building's credit period.

Two safe harbors are provided, each with its own set of conditions. The first relates to existing buildings under §42(i)(5) and new buildings under §42(e)(1). Among other conditions, a residential unit in such buildings will be considered a low-income unit under §42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under §42(f)(1), if either (a) §42(h)(1) applies to the building and the taxpayer either receives an allocation to rehabilitate the existing building or enters into a binding commitment for an allocation to rehabilitate the existing building by either the end of the taxable year the taxpayer acquired the existing building or the end of the taxable year the individuals started occupying the unit, whichever is later; or (b) §42(h)(1) does not apply to the building by reason of §42(h)(4) and the tax-exempt bonds for the project are issued by either the end of the taxable year the taxpayer acquired the existing building or the end of the taxable year the individuals started occupying the unit, whichever is later.

The second safe harbor relates to new buildings under §42(i)(4) (not including new buildings under §42(e)(1). Among other conditions, a residential unit in a new building under §42(i)(4) will be considered a low-income unit under §42(i)(3)(A) at the beginning of the first taxable year of the building's credit period under §42(f)(1), if the taxpayer elects under §42(f)(1)(B) to treat the taxable year succeeding the taxable year the building was placed in service as the first taxable year of the credit period.

The revenue procedure is effective for taxable years ending on or after Nov. 24, 2003.

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