



September 30, 2019

Ms. Laurie Brimmer
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

Re: Low-Income Housing Credit – Relief from Compliance in Declared Major Disaster Areas –Revenue Procedure 2014-49

Dear Ms. Brimmer:

We are writing this letter on behalf of the LIHTC Working Group. The members of the LIHTC Working Group are participants in the low-income housing tax credit (“LIHTC”) industry who work together to help resolve technical LIHTC program issues and provide recommendations to make the LIHTC program even more efficient in delivering benefits to help build affordable housing. Our group includes nonprofit and for profit developers, syndicators, investors, accountants and lawyers.

We are writing this letter to provide comments on Revenue Procedure 2014-49, which provides temporary relief from certain requirements of Internal Revenue Code (“IRC”) Section 42 for owners of low-income properties and housing credit agencies (“Agencies”) affected by presidentially declared disaster areas. Specifically, we are requesting that the U.S. Department of the Treasury and the Internal Revenue Service (“IRS”) provide certain temporary disaster relief for all LIHTC properties that suffer a casualty loss, regardless of the cause.

We presume the guidance adopted presidentially declared disaster areas as the eligibility criterion because it is discrete and discernable. However, when applied to LIHTC properties that have suffered casualty losses, the bright line becomes both unnecessary and problematic (the problematic areas are discussed in further detail below). The role of the Agencies in LIHTC transactions makes the use of disaster declarations unnecessary. The IRS already entrusts the Agencies with extensive discretion, including the amount of LIHTCs allocated to each development. Thus, it is reasonable to conclude that the Agencies can also be authorized to make the determination of whether a casualty loss merits the various forms of relief described below.



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Relief for Carryover Allocations

According to Revenue Procedure 2014-49, if a LIHTC building owner has a carryover allocation for a building located in a presidentially declared disaster area, and the casualty loss occurred prior to the carryover deadline in IRC Section 42(h)(1)(E), an Agency may grant the owner an extension to meet the 10-percent basis requirement of IRC Section 42(h)(1)(E)(ii) if the owner incurs more than 10 percent of its reasonably expected basis in the LIHTC building no later than the expiration of the Agency-granted extension.

Likewise, if a LIHTC building owner has a carryover allocation for a LIHTC building located in a presidentially declared disaster area, and the disaster occurs on or after the date of the carryover allocation, an Agency may grant the owner an extension for the placed in service requirement of IRC Section 42(h)(1)(E)(i) as long as the owner places the building in service no later than the expiration of the extension.

By their very nature, casualties are beyond the control of property owners, including the timing of such events. As such, if a LIHTC building owner is not able meet the 10-percent basis requirement or the placed in service requirement per IRC Section 42(h)(1)(E), in the event of a casualty loss, then taxpayer that owns a LIHTC building should be granted relief identical to that which is offered in Revenue Procedure 2014-49. Specifically, a taxpayer should be able to avail themselves of the same procedures outlined in Section 7 of Revenue Procedure 2014-49, which governs the specific steps by which an owner of a LIHTC building in a presidentially declared disaster can apply for carryover allocation relief. This relief should apply to all LIHTC buildings, regardless of whether the casualty event is made a presidentially declared disaster.

Recapture Relief

Revenue Procedure 2014-49 also echoes the relief from recapture provided by IRC Section 42(j)(4)(E), which states that to the extent a LIHTC building is in a presidentially declared disaster area, and the qualified basis was restored in a reasonable period of time not to exceed 24 months from the end of the year the area was declared a presidentially declared disaster area, the building will not face recapture. Additionally, such a building will not lose any credits during the reasonable period of time, even though there was a reduction in qualified basis at the end of a tax year.

However, there is additional guidance that unintentionally creates contrary and inequitable results for LIHTC properties that are damaged in disasters that are not declared as major disasters by the president. Chief Counsel Advice Memorandum 200912012 provides that if a LIHTC building suffers a casualty loss and is fully restored and rented to low-income tenants within the same taxable year, then there is no recapture and no loss of credits. However, if the building is not restored by the end of the taxable year, no credit would be allowed for the entire taxable year. This applies even if the reasonable restoration period of 24 months extends into the next taxable year. This could potentially create two disparate

treatments of LIHTC properties damaged by a casualty merely because of the casualty event's timing.

For example, if a LIHTC property suffers a casualty event on December 28, the property owner would only have three days to repair the damage and move its low-income tenants back into their respective units; otherwise no tax credit would be allowed for the entire taxable year. However, if the same LIHTC property suffers a casualty loss on January 28, the property owner would instead have over 11 months to complete the same process.

The only variable in the above example is the timing of the casualty event. Since the timing is beyond the LIHTC property owner's control, it is not completely unfounded to conclude that the taxpayer should be granted relief identical to that which is offered in Revenue Procedure 2014-49 from the loss of tax credits if the LIHTC building is suitable for occupancy within a reasonable period of time.

Compliance Monitoring Relief

Section 9 of Revenue Procedure 2014-49 grants Agencies the ability to extend the due dates for scheduled compliance reviews for up to one calendar year from the date of a building's restoration and placement again into service. By doing so, LIHTC building owners have time to correct physical deficiencies prior to inspections by the Agencies. As described in the sections above, compliance monitoring relief should be granted to all LIHTC building owners that suffer a casualty loss due to the fact that the timing and severity of a casualty event is beyond the LIHTC building owner's control.

Buildings in the First Year of the Credit Period

For LIHTC buildings in the first year of the LIHTC tax credit period that are severely damaged or destroyed in a presidentially declared disaster, Revenue Procedure 2014-49 grants Agencies the ability to toll the beginning of the first year of the tax credit period under IRC Section 42(f)(1) through no later than the end of the 25th month following the close of the month of the disaster declaration. Again, given the uncontrollable nature of casualty events, allowing all LIHTC property owners to take advantage of a tolling period for the first year of the tax credit period will help to preserve the flow of tax credits for LIHTC buildings damaged in a casualty event.

Conclusion

We applaud the flexibility provided to presidentially declared disaster areas in Revenue Procedure 2014-49 and believe that this flexibility should be extended to all buildings earning LIHTCs, regardless of whether they are located in a major disaster area. We recommend that casualty loss relief for a LIHTC property not located in a presidentially declared disaster area be applied in a manner similar to the relief offered by Revenue Procedure 2014-49. This will help to facilitate the flow of tax credits to LIHTC property

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owners. Casualty losses can have a detrimental financial effect on a building's cash flow, which could send a building into foreclosure and risk the future of affordable rental housing that is so desperately needed in our country. We believe that taking this step aligns with Congress' intent when it created the LIHTC program. Congress has already demonstrated strong bipartisan support for extending casualty relief beyond presidentially declared disaster areas, as evidenced by Democratic and Republican co-sponsorship of the Affordable Housing Credit Improvement Act of 2019.

Thank you in advance for your time and careful consideration of this issue. 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 
Dirk A. Wallace