

Notice 2020-49

I. PURPOSE

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic (Emergency Declaration). The Emergency Declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).” This notice postpones to December 31, 2020, the due dates for making investments, making reinvestments, and expending amounts for construction of real property under § 45D of the Internal Revenue Code (Code) due to be performed or expended on or after April 1, 2020, and before December 31, 2020.

II. BACKGROUND

Section 38(b) of the Code provides a credit against income taxes for certain business credits, including the new markets tax credit determined under § 45D(a). See § 38(b)(13).

Under § 45D(a)(1), a taxpayer may claim the new markets tax credit on certain credit allowance dates described in § 45D(a)(3) over a 7-year credit period with respect

to a qualified equity investment (QEI) in a qualified community development entity (CDE) described in § 45D(c).

Under § 45D(b), in general, a QEI means any equity investment in a CDE if:

(A) the investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of such cash is used by the CDE to make qualified low-income community investments (QLICIs); and (C) the investment is designated for purposes of § 45D as a QEI by the CDE.

Section 45D(c)(1) provides that a domestic corporation or partnership is a CDE if:

(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities (as defined in § 45D(e)) or low-income persons; (B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Secretary of the Treasury or his delegate (Secretary) as a qualified CDE.

Section 45D(d)(1) defines a QLICI as: (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in § 45D(d)(2)); (B) the purchase from another qualified CDE of any loan made by such entity that is a QLICI; (C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any qualified CDE.

Section 45D(d)(2)(A) defines a qualified active low-income community business (QALICB), with respect to any taxable year, as any corporation (including a nonprofit

corporation) or partnership if for such year, among other requirements, (i) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community, (ii) a substantial portion of the use of the tangible property of the entity (whether owned or leased) is within any low-income community, (iii) a substantial portion of the services performed for the entity by its employees are performed in any low-income community, and (iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property (as defined in § 1397C(e)).

Under § 45D(d)(3), with certain exceptions, a qualified business is any trade or business within the meaning of § 1397C(d) of the Code. Together, these sections and § 1.45D-1(d)(5)(ii) of the Income Tax Regulations provide that the rental to others of real property located in any low-income community is a qualified business (for purposes of § 45D) only if the property is not residential rental property (as defined in § 168(e)(2)(A) of the Code) and there are substantial improvements located on the real property.

Section 1.45D-1(c)(5)(i) provides a safe harbor with respect to a CDE's investment in QLICs. Generally, a CDE must invest at least 85 percent of its QEI in QLICs.

Section 1.45D-1(c)(5)(iv) provides the timing requirement of a CDE's investment in QLICs. Specifically, it provides that a taxpayer's cash investment received by a CDE is treated as invested in a QLICI as defined in § 1.45D-1(d)(1) only to the extent that the cash is so invested within the 12-month period beginning on the date the cash is paid by the taxpayer (directly or through an underwriter) to the CDE. Thus, a CDE generally

has a 12-month period to invest cash it receives that is designated as a QEI in a QLICI under § 1.45D-1(c)(5)(iv).

Section 1.45D-1(d)(2)(i) provides in general that amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a QLICI must be reinvested by the CDE in a QLICI no later than 12 months from the date of receipt to be treated as continuously invested in a QLICI.

Under § 1.45D-1(d)(4)(i)(E), in general, with respect to any taxable year, a QALICB must have less than 5 percent of the average of the aggregate unadjusted basis of its property that is attributable to nonqualified financial property. Nonqualified financial property means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property except reasonable amounts of working capital held in cash and other forms, and certain debt instruments. See § 1.45D-1(d)(4)(i)(E)(1)(i); see also § 1397C(e).

Section 1.45D-1(d)(4)(i)(E)(2) provides that the proceeds of a capital or equity investment or loan by a CDE that will be expended for construction of real property within 12 months after the date the investment or loan is made are treated as a reasonable amount of working capital under § 1.45D-1(d)(4)(i)(E)(1)(i).

III. TIME-SENSITIVE ACTIONS AFFECTED BY COVID-19 EMERGENCY

A time-sensitive action to which this notice applies is an action required to be performed by a CDE or QALICB, which is due to be performed on or after April 1, 2020, and before December 31, 2020, in order to meet the requirements under §§ 1.45D-1(c)(5)(iv), 1.45D-1(d)(2)(i), or 1.45D-1(d)(4)(i)(E)(2).

IV. RELIEF FOR SPECIFIED TIME-SENSITIVE ACTIONS AFFECTED BY COVID-19 EMERGENCY

A. TIME LIMIT FOR MAKING INVESTMENTS

For purposes of § 1.45D-1(c)(5)(iv), if the last day of the 12-month period during which a CDE must invest the cash it receives in a QLICI would fall on or after April 1, 2020, and before December 31, 2020, the last day of the 12-month period is postponed to December 31, 2020. Accordingly, the 12-month investment requirement is treated as timely satisfied if the cash is so invested by December 31, 2020.

B. TIME LIMIT FOR MAKING REINVESTMENTS

For purposes of § 1.45D-1(d)(2)(i), if the last day of the 12-month period during which a CDE must reinvest in a QLICI amounts it receives, in payment of, or for capital, equity or principal with respect to a QLICI, would fall on or after April 1, 2020, and before December 31, 2020, the last day of the 12-month period is postponed to December 31, 2020. Accordingly, the 12-month reinvestment requirement is treated as timely satisfied to the extent that the amounts are reinvested in a QLICI by December 31, 2020.

C. TIME LIMIT FOR EXPENDING AMOUNTS FOR CONSTRUCTION OF REAL PROPERTY

For purposes of § 1.45D-1(d)(4)(i)(E)(1) and (2), if the last day of the 12-month period for a QALICB to expend the proceeds of a capital or equity investment or loan by a CDE for construction of real property would fall on or after April 1, 2020, and before December 31, 2020, the last day of the 12-month period is postponed to December 31, 2020. Accordingly, the proceeds are treated as a reasonable amount of working capital

of the QALICB and the 12-month requirement is treated as timely satisfied if the proceeds are so expended by December 31, 2020.

D. OTHER REQUIREMENTS

Except as expressly provided in this notice, all other rules and requirements of § 45D and § 1.45D-1 continue to apply by their terms.

V. DRAFTING INFORMATION

The principal authors of this notice are Dillon Taylor and Michael J. Torruella Costa, Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Dillon Taylor or Michael J. Torruella Costa at (202) 317-4137 (not a toll-free number).