

**INTERNAL REVENUE SERVICE**

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RE: Low Income Housing Tax-Credit Partnerships

Dear \*\*\*\*\* and \*\*\*\*\*:

Thank you and the other members of the group who met with us in July to discuss your guidance proposal on low-income housing tax-credit partnerships. Upon further reflection of our dialogue, we have formulated several questions that we would like to have addressed. We understand from our meeting that you would like to respond to our questions. For convenience, in presenting the questions, we refer to specific sections of your proposal. Our questions are as follows.

**Guarantees and Tax-Credit Adjuster [Section 3.01(7)(a)-(d)]:** During our meeting, we asked whether the exempt organization's obligations under the guarantee and tax credit adjuster provisions could create a private benefit issue. Please discuss whether caps are November 4, 2003 feasible, and provide a description of specific caps that you believe would address the private benefit issue. Please explain how each cap would function in the context of the overall transaction. With regard to (b) (completion of construction), what costs would need to be incurred to achieve rent-up? What costs would need to be incurred to complete construction and rehabilitation, given the requirement of a fixed price construction contract with a bonded contractor? Please explain why the organization's obligation under each provision is not both subject to a reasonable cap and repayable upon sale or refinancing.

**Right of First Refusal to Purchase the Project [Section 3.01(5)]:** Would an exempt organization exercise the right of first refusal if the § 42(i)(7) price

exceeds the fair market value for the property? If so, in what circumstances? Please address the potential private benefit concern.

**Repurchase of Partners' Interests [Section 3.01(7)(e)]:** Would this obligation potentially require an organization to purchase partners' interests for more than fair market value? If so, please provide suggestions as to how this obligation might be revised to address the private benefit concern. Also, why does the organization have a repurchase obligation in the case of events (such as a failure to obtain permanent financing) that may be beyond the organization's control? Please explain why there is a special rule requiring reimbursement of investment costs as set forth in the last sentence of paragraph 3.01(7)(e).

**Potential Conflicts of Interest of Board Members [Section 3.01(4)]:** The draft safe harbor contains a reference to a written conflicts of interest policy but provides no details or requirements for the contents of that policy. Please clarify what specific requirements you would expect the policy to contain.

**Investor Consents and Removal of General Partner [Section 3.01(8),( 9)]:** Please explain the reasons for including each of the rights to consent enumerated in 3.01(8) and why each right does not involve "day to day operations." Does the reference to "affiliated entities" in (vi) refer to entities affiliated with the organization, the investors, or other transaction participants? What is the standard for removal of the organization under 3.01(9)?

**Comparison with transactions with entirely for-profit participants:** Please compare the provisions in your proposal with the provisions of a typical transaction in which all of the participants are for-profit entities (and are not wholly owned by a nonprofit entity). Which provisions typically *would* be included in a transaction involving entirely for-profit participants? Which provisions typically would *not* be included in a transaction involving entirely for-profit participants? Please explain why these differences would occur.

If you need additional information or clarification, feel free to contact me at \_\_\_\_\_ in the Chief Counsel's Office at \_\_\_\_\_. As you know, guidance on low-income housing transactions is on the guidance priorities list for 2003-4.

Thanks again for your being so generous with your time and knowledge. It is of great benefit to us.

Sincerely,

Lois G. Lerner (signed)

Lois G. Lerner  
Director, Rulings and Agreements