



TO: Tax Credit Developers, Other Interested Parties

FROM: Randy G. Archuleta, LIHTC Administrator

DATE: December 12, 2000

RE: Low-Income Housing Tax Credit – Eligible Basis

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Following is a brief discussion regarding a recent release by the Internal Revenue Service (the “Service”) of a series of technical advice memorandums (“TAMs”) and a position paper issued by the Service on December 8, 2000 (“IRS Letter”) (see attached) analyzing the includability of various cost items in the eligible basis of constructed low-income housing tax credit projects pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”). Please be advised that the issues set forth below should be discussed with your accountant and/or attorney to determine if such issues will affect the eligible basis of your low-income housing tax credit project.

A TAM normally is issued by the National Office of the Service upon request from a field office in connection with an audit of a taxpayer. Although a TAM pertains to only that taxpayer and is not considered definite authority, the recently released TAMs can be used as guidance when structuring a low-income housing tax credit project and determining the eligible basis of such projects. The IRS Letter provides further clarification regarding the Service’s position with respect to what land costs can be included in the eligible basis computation of a low-income housing tax credit project.

Globally, the five TAMs hold that the following costs incurred directly by the project or as payment to the developer of the project are not included in eligible basis for purposes of claiming low-income housing tax credits:

- ?? land preparation costs not sufficiently associated with the building (such as general grading not tied to construction of buildings or roadways and landscaping that is not adjacent to the building);
- ?? construction loan costs, except to the extent capitalized into building costs pursuant to Section 263A of the Code (this covers only the portion of costs amortized during the construction period, and an allocation of such costs must be made between land and building items);
- ?? bond issuance costs;
- ?? local impact fees;

?? organization and syndication costs;

?? unexpended construction contingency;

?? rent-up costs; and

?? portions of developer fees allocable to land acquisition and unsubstantiated services.

Please be advised that this memorandum and attachments, thereto, are provided for informational purposes only and you should discuss what costs are includable in the eligible basis of a low-income housing project with your accountant and/or attorney.

Enclosures