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Insights

IRS Provides Temporary Relief for LIHTC Projects Due to COVID-19

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In response to the ongoing COVID-19 pandemic, the IRS recently released Notice 2020-53 to provide temporary relief for state housing credit agencies, bond issuers, owners and operators from time-sensitive requirements for qualified low-income housing tax credit ("LIHTC") projects under Section 42 of the Internal Revenue Code (the "Code") and qualified residential rental projects financed with exempt facility bonds under Section 142(d) and 147(d) of the Code.

LIHTC projects that were initially required to perform and/or satisfy the following requirements on or after April 1, 2020, and before December 31, 2020, now have until December 31, 2020 to perform these actions and satisfy these requirements:

- The 10% basis test for carryover allocations under Code §§42(h)(1)(E)(ii).
- The 24-month minimum rehabilitation expenditure period in which the requisite amount of rehabilitation expenditures has to be incurred in order to qualify for treatment as a separate new building under Code §42(e)(3)(A)(ii).
- The deadline to restore by reconstruction or replacement any low-income building that has suffered a casualty loss for purposes of Code §42(j)(4)(E).
- The reasonable restoration period for any low-income building that, due to a prior major disaster, suffered a casualty loss that would have reduced its qualified basis for purposes of section 8.02 of Rev. Proc. 2014-49.
- The 12-month transition period from the issue date of the first bonds for the qualified residential rental project to satisfy the set-aside requirements under 5.02 of Rev. Proc. 2004-39.
- The 2-year rehabilitation expenditure period for a private activity bond to be classified as a qualified bond for a qualified residential rental project under Code §142(d)(2).

Notice 2020-53 also provides the following temporary relief for LIHTC projects:

- Suspends, until after December 31, 2020, the requirement for low-income building owners to perform income recertifications of each low-income tenant and the requirement for state housing credit agencies to complete compliance monitoring inspections or reviews under Treasury Reg. §1.42-5.

- Suspends the requirement for owners to reduce the eligible basis of a qualified low-income building for any amenity or common area that is temporarily unavailable or closed as a result of COVID-19 between April 1, 2020 to December 31, 2020.
- Authorizes state housing credit agencies, issuers, owners, and operators of low-income housing projects to treat medical personnel and other “essential workers” (as defined by state or local governments) who provide services during the COVID-19 pandemic as Displaced Individuals (as defined in Rev. Proc. 2014-49 and 2014-50). This means owners and operators may provide these individuals with emergency housing pursuant to the provisions of the applicable revenue procedure.

If you have any questions regarding Notice 2020-53, or any other issue impacting low-income housing projects or qualified residential rental projects financed with exempt facility bonds, please contact **Kendall A. Schnurpel**, **Scott C. Frissell**, or your regular Krieg DeVault attorney.