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Insights

IRS Provides Further 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 2021-12**, extending temporary relief from certain requirements for qualified low-income housing projects and qualified residential rental projects that was previously provided under Notice 2020-53, as reported in our **earlier alert**. In addition to extending the provisions of Notice 2020-53, Notice 2021-12 provides additional 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 and qualified residential rental projects financed with exempt facility bonds. Included in this relief is an extension of the 24-month LIHTC rehabilitation expenditure period, an extension of the 2020 placed in service deadline for low-income buildings, and a temporary suspension of the requirement for owners and operators of LIHTC projects to perform income recertifications of low-income tenants.

Under Notice 2021-12, LIHTC projects that were initially required to perform and/or satisfy the following requirements on or after April 1, 2020, and before September 20, 2021, now have until the earlier of one year from their original deadline or September 30, 2021 to perform these actions and satisfy these requirements:

- **10% Basis Test:** The 10% basis test for carryover allocations under Internal Revenue Code ("Code") §42(h)(1)(E)(ii).
- **Separate New Building Expenditure Period:** The 24-month rehabilitation expenditure period in which the required minimum amount of rehabilitation expenditures has to be incurred in order to qualify a project for treatment as a separate new building under Code §42(e)(3)(A)(ii).
- **PAB Rehabilitation Expenditure Period:** 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 §147(d).

Notice 2021-12 also provides and extends the following temporary relief for LIHTC projects:

- **Placed In Service Deadline Extension:** Extends, from December 31, 2020 to December 31, 2021, the placed in service deadline for low-income buildings pursuant to Code §42(h)(1)(E)(i).
- **Restoration Period Extension:** Extends the last day of the reasonable restoration period for any low-income building that suffered a casualty loss (that would have reduced its qualified basis for purposes of Code § 42) from April 1, 2020, to one year from the original end date, but no later than December 31, 2021. However, state housing credit agencies retain the right to impose a shorter extension, or no extension at all.

- **Correction Period Extension:** Extends by one year, but not longer than December 31, 2021, any correction period (during which a taxpayer can resolve any noncompliance issues identified by the state housing credit agency) set to expire on or after April 1, 2020, and before September 30, 2021. However, state housing credit agencies retain the right to impose a shorter extension, or no extension at all.
- **Set-Aside Requirements:** Postpones until September 30, 2021, the 12-month transition period from the issue date of the first bonds for the qualified residential rental project that ends *on or after April 1, 2020, and before September 30, 2021*, in order to satisfy the set-aside requirements under 5.02 of Rev. Proc. 2004-39 (originally postponed to December 31, 2020 under Notice 2020-53).
- **Income Certification Deadline:** Suspends, until October 1, 2021, 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.
- **COVID-19 Impact on Common Areas:** 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 September 30, 2021.
- **Qualified Basis Calculation:** Provides that for purposes of Code §42(f), if the close of the first year of the credit period with respect to a building is on or after April 1, 2020, and on or before June 30, 2021, then the qualified basis for the building for the first year of the credit period is calculated by taking into account any increase in the number of low-income units by the close of the 6-month period following the close of the first year.
- **Essential Workers Qualify:** 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 from April 1, 2020, to September 30, 2021.
- **Virtual Meetings Permitted:** Authorizes state housing credit agencies to hold qualified allocation plan meetings via teleconference hearings which are accessible to residents via a toll-free number through September 30, 2021.

If you have any questions regarding Notice 2021-12, or any other issue impacting low-income housing projects or qualified residential rental projects financed with exempt facility bonds, please contact **Scott C. Frissell**, **Kendall A. Schnurpel**, or your regular Krieg DeVault attorney.

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