

Bond Case Briefs

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IRS Clarifies General Public Use Requirements for Residential Rental Projects Tax-Exempt Bonds.

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The Internal Revenue Service recently eliminated an inconsistency between the definition of “general public use” for purposes of the low-income housing tax credit (LIHTC) under §42 of the Internal Revenue Code of 1986 (the “Code”) and the definition of “general public use” for purposes of tax-exempt multifamily housing bonds under Code §142(d).

General public use of residential rental property is required by regulations for LIHTC and tax-exempt bonds as a condition of eligibility for tax benefits. Revenue Procedure 2019-17 clarifies that the LIHTC statutory provision permitting tenant group restrictions or preferences also applies for purposes of the tax-exempt bonds rules.

Specifically, Code §42(g)(9) provides that a low-income housing project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (A) with special needs, (B) who are members of a specified group under a federal program or state program or policy that supports housing for such a specified group, or (C) who are involved in artistic or literary activities.

The revenue procedure states that a §142(d) qualified residential rental project does not fail to meet the general public use requirement solely because of the above-described occupancy restrictions or preferences. The revenue procedure provides as an example certain housing preferences for military veterans.

This new policy is important to sponsors and developers of affordable housing because it broadens availability of a favored technique for structuring residential rental project financing. If a majority of a project is financed with tax-exempt multifamily housing bonds issued under Code §142(d), the property is eligible for the 4% LIHTC. The presence of the provision permitting occupancy restrictions or preferences in the LIHTC rules (added in 2008) and its absence in the tax-exempt bond rules have led bond counsel to disapprove tax-exempt bond financing of projects with such tenant restrictions or preferences. It is now possible to use tax-exempt bonds and the 4% LIHTC to finance projects with restrictions or preferences in favor of tenants such as military veterans and, depending on the state in which the project is located, teachers, police officers, farmworkers, and other groups.

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