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Affordable Housing Association Requests Guidance on Low-Income Housing Tax Credit.

Kris Cook of the National Affordable Housing Management Association, responding to a request (Notice 2013-22) for items to include on the 2013-2014 priority guidance list, has asked the IRS to address issues relating to the low-income housing tax credit, including the utility allowance submetering rule and the treatment of casualty losses.

May 1, 2013

Internal Revenue Service

Attn: CC:PA:LPD:PR

(Notice 2013-22)

Room 5203

P.O. Box 7604

Ben Franklin Station

Washington, D.C. 20044

Re: Notice 2013-22 Recommendations for 2013-2014 Guidance Priority List

Thank you for this opportunity to submit recommendations for the 2013-2014 Guidance Priority List on behalf of the National Affordable Housing Management Association (NAHMA). NAHMA members manage and provide quality affordable housing to more than two million Americans with very low to moderate incomes. Presidents and executives of property management companies, owners of affordable rental housing, public agencies and national organizations involved in affordable housing, and providers of supplies and services to the affordable housing industry make up the membership of NAHMA. In addition, NAHMA serves as the national voice in Washington for 19 regional, state and local affordable housing management associations (AHMAs) nationwide. NAHMA's comments will focus on two important matters related to the Section 42 Low Income Housing Tax Credit (LIHTC) program, namely the utility allowance submetering rule and treatment of casualty losses.

Utility Allowances (UA) Submetering

On August 7, 2012, the Internal Revenue Service (IRS) — Treasury Department issued the “Utility Allowances Submetering Notice of Proposed Rulemaking and Notice of Public Hearing” [REG-136491-09], RIN 1545-BI91. NAHMA respectfully requests that IRS-Treasury add finalization of this rule, with certain changes, to its 2013-2014 Guidance Priority List.

Before releasing the final rule, NAHMA strongly urges IRS-Treasury to revise its interpretation of State housing agencies' authority to disapprove UA estimation methods permitted under current

policies. Under the section, “Summary of Comments on Notice 2009-44 and Explanation of Provisions,” the August 7 Notice states:

“A commentator asked whether State housing agencies are allowed to disapprove of certain methods for determining utility allowances listed in § 1.42-10(b)(4)(ii). Existing rules address the role of the State housing agencies in determining utility allowances. Thus, depending on the particular method under § 1.42-10(b)(4)(ii), State housing agencies may require certain information before a method can be used, or they may disapprove of a method.”

NAHMA stands by the position articulated by nine national organizations which represent property owners and managers, developers and lenders who participate in the LIHTC program. The joint industry comments, submitted on October 4, 2012, stated:

“We disagree with the general implication of this language that State housing agencies may arbitrarily choose to disapprove any method described in the regulation. . . .”

“As written, the language in the August 7, 2012, proposed rule would give State housing agencies authority to ignore the intent of the existing regulation, which is to recognize accurate estimates that encourage energy efficiency and are based on reliable methods that are easily verifiable. We are concerned that agencies may impose less accurate methods for calculating utility allowances on an arbitrary basis. We recommend that the IRS direct State housing agencies to review the data and information provided by project sponsors and make a determination based on the facts of the individual project submission. Applicants for LIHTC credits should be encouraged to engage with the State housing agency to determine what, if any, issues or concerns the approving agency may have.”

NAHMA urges IRS-Treasury to issue a final rule that reaffirms LIHTC property owners’ options for selecting an appropriate UA estimation method available under current IRS policies.

Section 42 Low Income Housing Tax Credit Buildings Damaged by Casualty Events

NAHMA respectfully requests that IRS-Treasury include harmonization of casualty loss policies for LIHTC properties on its 2013-2014 Guidance Priority List.

Under current policies, casualties are treated differently depending on whether they are the result of a presidentially declared disaster. As described in Revenue Procedure 2007-54, a taxpayer can continue to claim the credits for casualty events in presidentially declared disaster areas. Low Income Housing Tax Credits will not be subject to recapture or loss of credit if the building’s qualified basis is restored within a reasonable restoration period — which may not exceed 24 months after the end of the calendar year in which the president issued a major disaster declaration for the area where the building is located. However, properties that suffer casualty losses outside of these declared disaster areas operate under different terms. Internal Revenue Code 42(j)(4)(E) provides relief from recapture of previously earned credits if the building is restored by reconstruction or replacement within a reasonable time.

However, it does not provide authority for claiming the credit during the time that the building is being restored.

As stated by the IRS, the credit is determined at the close of the taxable year under IRC § 42(c)(1). Credit is determined on a monthly basis only for the first year of the credit period under IRC § 42(f)(2)(A), and for additions to qualified basis under IRC § 42(f)(3)(B). Otherwise, there is no authority to disallowing credits on a monthly basis. Owners of buildings in presidentially declared disaster areas will not lose credits if the building is not placed back in service by the end of the year.

However, owners of buildings not in a declared disaster area will lose credits for the year if their units are not back online by December 31. This means an owner could have a unit that was in compliance for the entire year, but have a fire in December that is not restored by December 31, and the owner would not be eligible to take credits for the entire year. If this is not done on December 31, then credits cannot be claimed for the entire year, no matter if the units were in compliance every other day of the calendar year.

NAHMA urges IRS-Treasury to apply the same casualty loss policies across the board. Properties should be able to continue to take the credits during the restoration period, regardless of whether or not the property is in a presidentially declared disaster area. It is reasonable, however, for IRS to establish criteria for owners to demonstrate they took prompt action to begin the restoration process following the casualty event when the loss occurs outside of a presidentially declared disaster area.

Thank you again for the opportunity to offer these recommendations for the Guidance Priority List.

Sincerely,

Kris Cook, CAE

Executive Director

National Affordable Housing

Management Association

Washington, DC