Part III - Administrative, Procedural, and Miscellaneous

Section 45D New Markets Tax Credit

Notice 2002-64

PURPOSE

This notice provides guidance to taxpayers on federal tax benefits that do not limit the availability of the new markets tax credit under § 45D of the Internal Revenue Code.

BACKGROUND

Section 45D(a)(1) allows a new markets tax credit on a credit allowance date (as defined in § 45D(a)(3)) to a taxpayer who holds a qualified equity investment in a qualified community development entity (CDE), as defined in § 45D(c).

Section 45D(b)(1) provides that an equity investment in a CDE is a “qualified equity investment” only if, among other things, the CDE uses substantially all of the proceeds of the investment to make qualified low-income community investments.

Section 45D(d) provides that the term “qualified low-income community investment” means (A) any capital or equity investment in, or loan to, any qualified active low-income community business, (B) the purchase from another CDE of any loan made by the entity which is a qualified low-income community investment, (C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, or residents of, low-income communities, and (D) any equity investment in, or loan to, any CDE.

Section 45D(i)(1) authorizes the Secretary to prescribe regulations as may be appropriate to carry out § 45D including regulations that limit the new markets tax credit for investments that are directly or indirectly subsidized by other federal tax benefits (including the low-income housing credit under § 42 and the exclusion from gross income under § 103).

On December 26, 2001, the Treasury Department and the Internal Revenue Service published temporary regulations in the **Federal Register** (66 Fed. Reg. 66307). The text of the temporary regulations does not provide guidance as to what federal tax benefits limit the availability of the new markets tax credit.

DISCUSSION

Until further guidance is provided, the availability of federal tax benefits, other than § 42, does not limit the availability of the new markets tax credit. The Treasury Department and the Service are studying how § 42 may limit the availability of the new markets tax credit.

Federal tax benefits that do not limit the availability of the new markets tax credit include, for example: (1) the rehabilitation credit under § 47; (2) all depreciation deductions under §§ 167 and 168, including the additional first-year depreciation for certain property acquired after September 10, 2001, and before September 11, 2004, under § 168(k), and the expense deduction for certain depreciable property under § 179; and (3) all tax benefits relating to certain designated areas such as empowerment zones and enterprise communities under §§ 1391 through 1397D, the District of Columbia Enterprise Zone under §§ 1400 through 1400B, renewal communities under §§ 1400E through 1400J, and the New York Liberty Zone under § 1400L.

Taxpayers may rely on this notice prior to the issuance of further guidance. In the future, the Secretary may issue guidance that limits the new markets tax credit for investments which are directly or indirectly subsidized by other federal tax benefits.

DRAFTING INFORMATION

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