

## Part III - Administrative, Procedural, and Miscellaneous

### Section 45D.—New Markets Tax Credit

Notice 2003-56

#### PURPOSE

The purpose of this notice is to announce that the Treasury Department and the Internal Revenue Service will amend § 1.45D-1T(c)(3)(ii) of the temporary Income Tax Regulations to provide an additional exception permitting certain equity investments made before the receipt of a new markets tax credit allocation under § 45D(f)(2) of the Internal Revenue Code to be designated as qualified equity investments under § 45D(b)(1)(C).

#### BACKGROUND

Section 45D(a)(1) provides a new markets tax credit on certain credit allowance dates described in § 45D(a)(3) with respect to a qualified equity investment in a qualified community development entity (CDE).

Section 45D(b)(1)(C) provides that an equity investment in a CDE is a qualified equity investment only if the CDE designates the investment as a qualified equity investment.

Section 45D(c)(1) provides that an entity is a CDE only if, among other requirements, the entity is certified by the Secretary of the Treasury Department as a CDE.

Section 45D(b)(2) provides that the maximum amount of equity investments issued by a CDE that may be designated by the CDE as qualified equity investments shall not exceed the portion of the new markets tax credit limitation set forth in § 45D(f)(1) that is allocated to the CDE by the Secretary under § 45D(f)(2).

Section 1.45D-1T(c)(3)(i) provides that, except as provided in § 1.45D-1T(c)(3)(ii), an equity investment in an entity is not eligible to be designated as a qualified equity investment if it is made before the entity enters into an allocation agreement with the Secretary. An "allocation agreement" is an agreement between the Secretary and a CDE relating to a new markets tax credit allocation under § 45D(f)(2).

Section 1.45D-1T(c)(3)(ii) provides that, notwithstanding § 1.45D-1T(c)(3)(i), an equity investment in an entity is eligible to be designated as a qualified equity investment if -- (A) the equity investment is made on or after April 20, 2001; (B) the entity in which the equity investment is made is certified by the Secretary as a CDE under § 45D(c) before January 1, 2003; (C) the entity in which the equity investment is made receives notification of the credit allocation (with the actual receipt of such credit allocation contingent upon subsequently entering into an allocation agreement) from the Secretary

before January 1, 2003; and (D) the equity investment otherwise satisfies the requirements of § 45D and § 1.45D-1T.

The Secretary has delegated certain administrative functions relating to the new markets tax credit program to the Under Secretary (Domestic Finance), who in turn has delegated those functions to the Community Development Financial Institutions Fund (CDFI Fund). The delegated administrative functions include CDE certifications and new markets tax credit allocations.

Notice 2003-9, 2003-5 I.R.B. 369, announces that the Treasury Department and the Service will amend § 1.45D-1T(c)(3)(ii) to provide that, notwithstanding § 1.45D-1T(c)(3)(i), an equity investment in an entity is eligible to be designated as a qualified equity investment under § 1.45D-1T(c)(1)(iii) if -- (1) the equity investment is made on or after April 20, 2001; (2) the designation of the equity investment as a qualified equity investment is made for a credit allocation received pursuant to an allocation application submitted to the CDFI Fund no later than August 29, 2002; and (3) the equity investment otherwise satisfies the requirements of § 45D and § 1.45D-1T.

## DISCUSSION

In order to encourage equity investments in CDEs, the Treasury Department and the Service will amend § 1.45D-1T(c)(3)(ii) to provide an additional exception permitting an equity investment made on or after the date the CDFI Fund publishes a Notice of Allocation of Availability (NOAA) in the Federal Register to be designated as a qualified equity investment. Accordingly, § 1.45D-1T(c)(3)(ii) will be revised to provide that, notwithstanding § 1.45D-1T(c)(3)(i), an equity investment in an entity is eligible to be designated as a qualified equity investment under § 1.45D-1T(c)(1)(iii) if:

1. The equity investment is made on or after the date the CDFI Fund publishes a NOAA in the Federal Register;
2. The designation of the equity investment as a qualified equity investment is made for a credit allocation received pursuant to an allocation application submitted to the CDFI Fund under that NOAA; and
3. The equity investment otherwise satisfies the requirements of § 45D and § 1.45D-1T.

If the entity in which the equity investment is made does not receive an allocation under that NOAA, the equity investment will not be eligible to be designated as a qualified equity investment under future NOAAs.

The temporary regulations will be revised to incorporate the guidance set forth in this notice and Notice 2003-9. The revision to the temporary regulations reflecting the additional exception under this notice will be effective for equity investments made on or after July 18, 2003.

## DRAFTING INFORMATION

The principal author of this notice is Paul Handleman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Handleman on (202) 622-3040 (not a toll-free call).