

Alert | Tax/Public Finance



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Veterans Housing Preference Permitted Under IRC Section 42 Now Permitted Under 142

IRS issues requested guidance for consistency in preferences and occupancy restrictions requirements.

On April 3, 2019, the IRS released Revenue Procedure 2019-17, providing that the general public use requirement of section 142(d) of the Internal Revenue Code (relating to residential rental projects) permits the use of housing preferences and occupancy restrictions consistent with the provisions of the low-income housing tax credit requirements under section 42(g)(9) of the Code. This issue has become a point of interest for housing developers given a recent focus on the needs of veterans and other groups that have particular trouble locating affordable housing.

Background

State and local governments may issue tax-exempt bonds to finance exempt facilities (exempt facility bonds), including qualified residential rental projects. Many of the projects financed with such bonds are also financed to obtain low-income housing tax credits.

Treasury Regulation section 1.103-8(a)(2), which applies for Code section 142, provides that an exempt facility must serve or be available on a regular basis for general public use, or be part of a facility so used, as contrasted with similar types of facilities that are constructed for the exclusive use of a limited number of private business users. For example, an apartment building for which employees of an adjacent factory are given preference over other potential tenants is not available for use by the general public.

A residential rental unit in a building that is not for use by the general public is also not eligible for a low-income housing credit under Section 42 of the Code. Under Treasury Regulation section 1.42-9(a), a residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development. Treasury Regulation section 1.42-9(b) provides that if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for a low-income housing credit under section 42 of the Code.

A project does not fail to meet the general public use requirement of Section 42(g)(9) of the Code, however, 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. For example, there are certain federal and state programs that support housing for military veterans.

The New Guidance

Revenue Procedure 2019-17 provides that a qualified residential rental project (as defined in section 142(d) of the Code) does not fail to meet the general public use requirement applicable to exempt facilities solely because of occupancy restrictions or preferences that favor tenants described in section 42(g)(9) of the Code (for example, certain housing preferences for military veterans). Revenue Procedure 2019-17 applies to previously issued bonds, and bonds issued in the future.

Because Section 142(d) of the Code does not contain a provision similar to section 42(g)(9), this guidance from the Internal Revenue Service provides important clarification for residential rental projects financed with both tax-exempt bonds and low-income housing tax credits.

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