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415 788-6336

Los Angeles

213 627-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP

RESIDENT MANAGERS IN LIHTC PROPERTIES—FULL-TIME STATUS NOT REQUIRED

The Internal Revenue Service ("IRS") has addressed concerns regarding requirements for an onsite Resident Manager's unit to be included in the eligible basis of Low-Income Housing Tax Credit properties (the "Eligible Basis").

In previous informal guidance during a conference attended by the Chief of the Compliance Section of the California Tax Credit Allocation Committee ("TCAC"), an IRS Analyst had stated that a manager's unit must be occupied by a "full-time employee" in order to be includable in Eligible Basis. In a position consistent with that advice, TCAC has provided guidance in its compliance training sessions for California LIHTC that followed that same standard. This included the concept that the Resident Manager or Resident Maintenance Person could not provide their management or maintenance services to any property other than the one in which they live.

The TCAC position has caused concern because many Resident Managers are not full-time employees, and full-time employment is not necessarily justified by the needs of a particular development, especially since California law requires an onsite manager's unit for a property with 16 units or more.

Formal IRS Guidance includes a 1992 Revenue Ruling that approved inclusion of a Resident Manager's unit in Eligible Basis. In that example, the Resident Manager was a full-time employee, although the analysis did not consider the full-time status as a factor in determining eligibility. The Treasury Regulations provide that the Resident Manager's unit can be included as part of the "residential rental property" includable in

Eligible Basis if it is functionally related and subordinate to the rental units and is reasonably required for the project. Resident Manager's units are cited in the Treasury Regulations as an example of property that can be considered as residential property, without any mention of the need for such units to be occupied by a full-time employee.

After a series of communications with the IRS and discussion among its staff, the IRS has recently provided the following guidance to our office and has copied the TCAC compliance staff:

For a unit to be considered a "facility reasonably required for the project," the Manager/Maintenance personnel must:

1. Be providing services for the project that could not be properly provided unless the employee resides on the project premises. The employee must not live offsite and must occupy the unit.
2. The employee does not need to be working full time on the premises. Using a unit to provide services *in addition* to housing is not a qualified use of a unit, nor should such a unit be considered a "Manager Unit" because site personnel are not living in the unit.
3. Whether such a unit is reasonably required for the project will turn on the facts and circumstances of that case. The character and size of the project are relevant in determining whether any property, including an employee-occupied unit, is functionally related and subordinate to the project.

We expect that ongoing discussions may provide further clarification and we will share the results as they develop.

At a basic level, the revised guidance—which will not be published separately but will be incorporated into IRS materials—will allow California LIHTC property owners to comply with State law requirements for onsite management without having to provide full-

time employment at the project site in order to include the Resident Manager's unit in Eligible Basis.

To the extent there are questions regarding the applicability of the IRS guidance in a particular instance, please feel free to contact Erica Williams Orcharton, M David Kroot, Katrine Shelton, or any other attorney at Goldfarb & Lipman.

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