

HAWKINS ADVISORY

GENERAL PUBLIC USE REQUIREMENT FOR QUALIFIED RESIDENTIAL RENTAL PROJECTS

On April 3, 2019, the Internal Revenue Service released Revenue Procedure 2019-17 (the “Revenue Procedure”). This Revenue Procedure provides guidance on the general public use requirement for qualified residential rental projects financed with tax-exempt bonds under section 142(d) of the Internal Revenue Code (the “Code”). The Revenue Procedure coordinates the general public use requirement for qualified residential rental projects financed with tax-exempt bonds with the general public use requirement under Code section 42(g)(9) applicable to the Code section 42 low-income housing tax credit.

Low-income housing tax credits under section 42 and exempt facility bonds issued under section 142(d) are often used together to finance residential rental projects. As enacted by the Housing and Economic Recovery Act of 2008 (“HERA”), Code section 42(g)(9) provides that a project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (i) with special needs, (ii) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group (*e.g.*, such programs that support housing for military veterans), or (iii) who are involved in artistic or literary activities. No corresponding provision existed in respect of projects financed with the proceeds of tax-exempt bonds issued pursuant to section 142(d). Over the past several months, questions have been raised as to whether a project that meets the general public use requirement for purposes of section 42(g)(9) and the low-income housing tax credit also satisfies the general public use requirement applicable to qualified residential rental projects under section 142(d).

The Revenue Procedure concludes that, for purposes of Code section 142(d), a qualified residential rental project does not fail to meet the general public use requirement applicable to exempt facilities solely because of specified occupancy restrictions or preferences that favor tenants designated in Code section 42(g)(9). The Revenue Procedure only applies to exempt facility bonds that finance qualified residential rental projects under section 142(d).

The Revenue Procedure applies to bonds sold before, on, or after April 3, 2019. A copy of the Revenue Procedure can be found at the following web address:

<https://www.irs.gov/pub/irs-drop/rp-19-17.pdf>

Please contact a member of the Hawkins Delafield & Wood LLP Tax Department or Housing Group if you have any questions about this Revenue Procedure.

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