



**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
Washington, D.C. 20224

December 8, 2000

Ms. Barbara Thompson  
National Council of State Housing Agencies  
444 North Capitol Street, NW  
Washington, D.C. 20001

Dear Ms. Thompson,

As a result of the recent release of five Technical Advice Memoranda (TAM) addressing items to be included in the eligible basis of Section 42 properties, our office prepared a supplemental position paper clarifying our position regarding certain land costs. We shared the paper with you, the National Council of State Housing Agencies, and the paper was subsequently distributed to the state housing agencies. Based on feedback from you and the states, we would like to follow-up with further clarification.

We would like to emphasize that the TAMs are applicable only to the taxpayer for which they were requested. Having said that, we are aware that taxpayers generally view TAMs as offering insight into the IRS' position on certain issues and often find TAMs useful in evaluating the correctness of their treatment of the same or similar issues. We decided to prepare the position paper for the land cost issues because of the general applicability to all Section 42 properties. Further, we wanted to present a generalized discussion that was not dependent on the facts presented in the TAMs. We felt this was appropriate because the positions presented in the TAMs are supported by well-established law.

The law presented in the position paper is equally applicable to all taxpayers; there is no "implementation date" and we are not planning to issue regulations or guidance that would provide a grandfather clause for existing projects. We are advising project owners that they should review their eligible basis computations to determine whether land costs were correctly characterized and appropriately included in the computation of eligible basis.

In the event that the eligible basis of the credit was incorrectly computed, taxpayers should file amended returns reflecting the correct credit amount for all years open by statute and recapturing credits as appropriate. If incorrect characterization of land costs also impacted the depreciation, amortization, or capitalization of land cost, taxpayers will need to file Form 3115, Application for Change in Accounting Method. (See Revenue Procedures 97-27 and 99-49.) Taxpayers voluntarily correcting their method of accounting for land costs can spread the adjustment prospectively over a four year

period, will not be subject to interest charges or penalties, and will receive audit protection (for this issue) in years prior to the year of change.

The states have asked for advice as to how they should resolve land cost issues for (1) projects approaching completion and preparing their final certifications to receive their Forms 8609 (their original credit allocations may have been based on the incorrect inclusion of land costs), (2) projects requesting carryover allocations, and (3) projects for which credit allocations have been requested in 2001. We will discuss each group separately.

### Projects Approaching Completion

We believe that the state agencies should complete these projects reflecting the credit amount originally allocated. To do otherwise may leave them vulnerable to civil action for breach of contract. The Service does not anticipate challenging the states' credit allocation.

We request that the state agencies alert owners submitting their final cost certifications that they should carefully consider the guidance provided in the position paper. Taxpayers are subject to future audit and must correctly determine their eligible basis and limit the credit amount accordingly when filing their tax return. Taxpayer may wish to voluntarily amend their credit allocation request to reflect a revised basis. These requests should be honored and the credit amount adjusted accordingly.

### Projects Requesting Carryover Allocations

Projects requesting carryover allocation are not affected. As stated in IRC 42(h)(1)(E), it is "10 percent of the taxpayer's reasonably expected basis in such property". The Code does not specify "eligible" basis; i.e., all costs (land and building) are included when determining whether 10% of the costs have been incurred.

### Year 2001 Credit Allocations

We expect taxpayers to correctly categorize all their costs when submitting requests for future credit allocations. We do not expect the states to alter their practices or go beyond the requirements of the new regulations to verify the nature or amount of the costs.

In conclusion, we would ask that the state agencies share the position paper with their constituency. The paper should be considered a supplement to the Audit Technique Guide and is intended to provide guidance. It should not be considered authoritative, such as the Internal Revenue Code or regulations.

Sincerely,

*Grace Robertson signed 12/8/2000*

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*William J. Healey signed 12/8/2000*

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