

New Market Tax Credits Are Becoming Increasingly Useful to Taxpayers

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As healthcare organizations look for new and different methods of financing crucial development, new market tax credits (NMTCs) are becoming increasingly useful. Of interest to healthcare providers is a recent Internal Revenue Service private letter ruling, PLR 200910024, in which the IRS interpreted the requirement that, in order to be a Qualified Active Low-Income Community Business ("QALICB"), a healthcare facility could treat federal, state, or local grants, charitable donations, and in-kind contributions, as well as collected fees, insurance re-imbursements, and other sources as gross income derived from sales, rentals, services, or other transactions with the facilities' patients as long as the payments and contributions were provided on behalf of patients on an individual basis or as a class of individuals.

Internal Revenue Code §45D(a)(1) provides for the availability of the NMTC with respect to a qualified equity investment in a qualified community development entity (CDE). In order for an equity investment in a CDE to be considered a "qualified equity investment," the investment must be acquired, directly or indirectly through an underwriter, by the taxpayer at its original issue solely in exchange for cash, substantially all of the cash must be used by the CDE to make qualified low-income community investments and the investment must be designated as for purposes of §45D by the CDE. IRC §45D(b)(1). Section 45D(d)(1) provides that the term "qualified low-income community investment" (QLICI) means, among other things, any capital or equity investment in, or loan to, any QALICB, which is defined as any corporation (including non-profit corporations) provided that (i) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business with any low-income community, (ii) a substantial portion of the use of the tangible property of the entity (whether owned or leased) is within any low-income community, and (iii) a substantial portion of the services performed for the entity by its employees are performed in any low-income community.

Section 3.03(2)(a)(i) of IRS Notice 2006-60 provides that a QALICB for low-income targeted populations, with respect to any taxable year, is a corporation (including a nonprofit corporation) or a partnership engaged in the active conduct of a qualified business as defined in §1.45D-1(d)(5) of the Income Tax Regulations provided that at least 50 percent (50%) of the entity's total gross income for any taxable year is derived from sales, rentals, services, or other transactions with individuals who are low-income persons for purposes of § 45D(e)(2).

In PLR 200910024, the IRS considered a ruling request submitted by a hospital, the gross income of which included amounts received as interest, emergency room on call fees, case management fees, and fundraising as well as patient fees and insurance payments, which meant that a portion of the taxpayer's income was received

from sources other than direct payment from patients through collected fees or public and private insurance. The IRS noted that the term “derived from” in section 3.03(2)(a)(i) of Notice 2006-60 includes gross income derived from payments made directly by low-income persons to the taxpayer and amounts and contributions of property or services provided to the taxpayer on behalf of low-income persons. Accordingly, the taxpayer satisfied the Notice’s requirements of §45D(e)(2) with respect to its gross income which included federal, state, or local grants, such as certain federal grants, charitable donations, or in-kind contributions, as well as collected fees, insurance reimbursements, and other sources of income, as long as these payments and contributions were “provided on behalf of low-income persons on an individual basis or as a class of individuals.” The IRS did not consider whether the hospital’s services were provided to low-income persons.

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J. Patrick Beauchamp