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LEGEND

Taxpayer =

State A =

City B =

Address C =

Area D =

Dear

This is in response to your request for a ruling dated August 12, 2008, submitted on behalf of Taxpayer. The ruling concerns the application of the new markets tax credit under § 45D(e)(2) of the Internal Revenue Code to the transaction described below.

FACTS

Taxpayer was incorporated as a State A nonprofit corporation in . Taxpayer provides health care services to residents of City B and the surrounding community. The mission of Taxpayer is “to provide comprehensive primary health care services with

excellence and dignity to our Community.” Taxpayer carries out this mission by providing a spectrum of health care services including pediatric, adult medicine, obstetrical and gynecological, pharmacy, laboratory, radiology, immunization, health education, social, dental, school-based, behavioral, case management translation and other preventative and primary care services. The services are offered days a week at service delivery sites in City B.

In , Taxpayer provided services to patients. Those patients are primarily under 200 percent of the federal poverty guidelines for income levels, and many of them are working poor with no health insurance and suffering chronic illnesses such as diabetes and heart disease. The income of all Taxpayer’s patients are verified upon registration by Taxpayer’s staff, adjusted for family size and updated annually. The income is documented in Taxpayer’s practice management system. In , of the total patients were at an income level of or less. Eighty percent of the median family income for Area D is .

Taxpayer receives an annual health center program grant from the Bureau of Primary Health Care (BPHC) at the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services. The grant supports Taxpayer’s provision of primary medical care, oral health care, behavioral health care, and ancillary health services to persons living in medically underserved areas. The grant is administered under 42 U.S.C. § 254b. It requires Taxpayer to report into a Uniform Data System (UDS) regarding, among other items, the sources of its income. The data in a UDS report from a health center are audited by HRSA. Taxpayer also uses that data to inform its financial statements, which are audited annually by an independent auditing firm. Taxpayer also receives grants from State A, as well as foundation and private grants, for specific medical conditions or procedures.

Taxpayer collects fees for services from patients who pay per a discounted fee schedule if the patient lacks health insurance. Taxpayer also collects the allowable amounts from patients’ insurance (private or public), and receives the annual health center program grant from BPHC, as stated above, which covers those amounts uncompensated due to lack of insurance coverage.

Taxpayer’s total gross income for was \$. This number includes \$ from grants and other revenues plus \$ from patient fees and insurance payments.

While Taxpayer serves over patients annually in its sites, this only represents a small portion of the residents of the area in need of health center services. Accordingly, Taxpayer determined that it must build a new clinic building to expand services to meet the community’s health care needs. Taxpayer purchased a tract of land at Address C and is ready to construct a new clinic building at that location. Taxpayer originally sought to qualify for a construction loan from a qualified community

development entity (as defined in § 45D(c)) for the clinic building assuming that Address C is located in a geographic low-income community under § 45D(e)(1). However, Address C is not in a census tract that qualifies under § 45D(e)(1). Address C is located directly across the street from a qualifying census tract under § 45D(e)(1). A map of the area shows that of the census tracts surrounding Address C's census tract, including contiguous census tracts, qualify under § 45D(e)(1). Taxpayer serves patients from all the surrounding census tracts. Taxpayer believes that, due to the health care services it provides to low-income persons, it can qualify its health care business in the new clinic building as a qualified active low-income community business (QALICB) for low-income targeted populations under § 45D(e)(2) and section 3.03(2) of Notice 2006-60, 2006-2 C.B. 82.

Taxpayer requests a ruling 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 patients to Taxpayer and amounts and contributions provided to Taxpayer on behalf of patients in the form of federal and state grants, and in-kind contributions such as reduced utility costs, building rent, labor costs, drug costs and medical supply costs. Gross income derived from Taxpayer's patients includes, but is not limited to, fees from the patients, payments from their public or private insurance, and public or private funding collected to cover the costs of health care services that remain uncompensated after patient and insurance payments are received. Specifically, the portion of a grant awarded under 42 U.S.C. § 254b that is used to cover the costs of health care services to Taxpayer's patients should be considered gross income derived from services provided to patients.

LAW AND ANALYSIS

Section 45D(a)(1) provides a new markets tax credit on certain credit allowance dates described in § 45D(a)(3) with respect to a qualified equity investment in a qualified community development entity (CDE) described in § 45D(c).

Section 45D(b)(1) provides that an equity investment in a CDE is a "qualified equity investment" if, among other requirements: (A) the investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of the cash is used by the CDE to make qualified low-income community investments; and (C) the investment is designated for purposes of § 45D by the CDE.

Section 45D(c)(1) provides that an entity is a CDE only if, among other requirements, the entity is certified by the Secretary as a CDE.

Section 45D(d)(1) provides that the term "qualified low-income community investment" (QLICI) means: (A) any capital or equity investment in, or loan to, any QALICB (as defined in § 45D(d)(2)); (B) the purchase from another CDE of any loan made by the entity that is a QLICI; (C) financial counseling and other services specified

in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities; and (D) any equity investment, or loan to, any CDE.

Under § 45D(d)(2), a QALICB is any corporation (including a non-profit corporation) or partnership if, among other requirements (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. Under § 45D(d)(3), with certain exceptions, a qualified business is any trade or business.

Section § 45D(e)(1) defines the term “low-income community” as any population census tract if (A) the poverty rate for such tract is at least 20 percent, or (B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or (B)(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Section 221 of the American Jobs Creation Act of 2004 (P.L. 108-357) amended § 45D(e)(2) to provide that the Secretary shall prescribe regulations under which one or more targeted populations (within the meaning of § 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. The regulations shall include procedures for determining which entities are QALICBs with respect to those populations.

The term “targeted populations” is defined in 12 U.S.C. 4702(20) and 12 C.F.R. 1805.201 as individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons, or (B) otherwise lack adequate access to loans or equity investments. The term “low-income” is defined in 12 U.S.C. 4702(17) and 12 C.F.R. 1805.104 to mean having an income, adjusted for family size, of not more than (A) for metropolitan areas, 80 percent of the area median family income; and (B) for non-metropolitan areas, the greater of (i) 80 percent of the area median family income; or (ii) 80 percent of the statewide nonmetropolitan area median family income.

Section 3.02 of Notice 2006-60 provides that, for purposes of § 45D(e)(2), targeted populations that will be treated as a low-income community are individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons as defined in section 3.03 of Notice 2006-60 or who are individuals who otherwise lack adequate access to loans or equity investments as defined in section 3.04 of Notice 2006-60.

Section 3.03(1) of Notice 2006-60 provides that, for purposes of § 45D(e)(2), an individual shall be considered to be low-income if the individual's family income, adjusted for family size, is not more than (A) for metropolitan areas, 80 percent of the area median family income; and (B) for non-metropolitan areas, the greater of (i) 80 percent of the area median family income; or (ii) 80 percent of the statewide nonmetropolitan area median family income.

Section 3.03(2)(a)(i) of 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 if at least 50 percent 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).

Section 4 of Notice 2006-60 provides that taxpayers may rely on Notice 2006-60 for designations made by the Secretary after October 22, 2004. Therefore, taxpayers may apply section 3.03 of Notice 2006-60 for all QLICs made on or after October 22, 2004.

CONCLUSION

Based on the information submitted and representations made, we conclude 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 Taxpayer and amounts and contributions of property or services provided to Taxpayer on behalf of low-income persons. Thus, Taxpayer's gross income under section 3.03(2)(a)(i) that is derived from sales, rentals, services, or other transactions with individuals who are low-income persons for purposes of § 45D(e)(2) include federal, state, or local grants, such as the BPHC grant under 42 U.S.C. § 254b, charitable donations, or in-kind contributions, as well as collected fees, insurance re-imburements, and other sources of income, as long as these payments and contributions are provided on behalf of low-income persons on an individual basis or as a class of individuals.

Taxpayer's total gross income in _____ was \$ _____. This number includes \$ _____ from grants and other revenues (such as interest, emergency room on call fees, case management fees, and fundraising) plus \$ _____ from patient fees and insurance payments. Nearly _____ percent of Taxpayer's gross income is derived from sources other than direct payment from patients through collected fees or public and private insurance.

Accordingly, for purposes of section 3.03(2)(a)(i) of Notice 2006-60, we rule that Taxpayer may treat the federal, state, or local grants, such as the BPHC grant under 42 U.S.C. § 254b, charitable donations, or in-kind contributions, as well as collected fees, insurance re-imburements, and other sources as gross income derived from sales, rentals, services, or other transactions with Taxpayer's patients as long as these payments and contributions are provided on behalf of patients on an individual basis or as a class of individuals.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether Taxpayer's patients qualify as low-income persons for purposes of § 45D(e)(2).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Paul F. Handleman

Paul F. Handleman
Chief, Branch 5
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)