

Client Alert



Contact Attorneys Regarding
This Matter:

Jeffrey C. Adams

404.873.7014 - direct

404.873.7015 - fax

jeffrey.adams@agg.com

James T. Rauschenberger

404.873.8738 - direct

404.873.8739 - fax

james.rauschenberger@agg.com

August 4, 2009

NEW IRS PRIVATE LETTER RULING AND INCLUSION OF OFFSITE INFRASTRUCTURE IMPROVEMENT COSTS IN LIHTC ELIGIBLE BASIS

Owners and developers of low-income housing tax credit projects that incur costs associated with offsite improvements will be pleased to learn of a recently-issued IRS Private Letter Ruling (PLR 200916007). The PLR (which can not be cited as legal precedent, but does provide significant guidance as to how the IRS will likely view the issues presented in the PLR) concludes that the costs of certain offsite infrastructure improvements can be included in the eligible basis of residential buildings that qualify for low-income housing tax credits.

In PLR 200916007, the taxpayer, who was intending to develop and operate a residential rental project that would meet the requirements of Section 42 of the Internal Revenue Code (the "Code") and qualify for low-income housing tax credits, was required by the local government to construct streets, curbs, sidewalks, drainage and utility infrastructure to support the proposed development and upon completion dedicate those improvements to the city. Upon dedication, the city would own and maintain the streets and the infrastructure that would allow for utilities to reach the project. In PLR 200916007, the IRS stated that the infrastructure improvements are indirect costs capitalizable in the basis of the residential buildings and included in the eligible basis of such buildings that otherwise qualify for low-income housing tax credits.

Practitioners have argued that such offsite improvement costs should be includable in eligible basis, especially in light of a 2002 IRS Revenue Ruling which held that impact fees paid by a taxpayer to a governmental entity for reimbursement of the additional costs and impact of a new residential development should be capitalized and allocated to the new residential buildings. The rationale was that there was sufficient similarity between impact fees and offsite improvements in relevant respects so that if impact fees were capitalized and included in eligible basis, so should costs for offsite improvements. Until the issuance of PLR 200916007 the IRS had not explicitly issued a favorable ruling of any sort on the subject and as is often the case in the tax credit world, silence by the IRS was cause for caution.

Developers that are planning future projects that will incur costs for required offsite infrastructure should now have more comfort in increasing their project's eligible basis for those costs and the amount of projected credits that may available to the project, and convincing others to accept such treatment. If you are an Owner of a project under development that is anticipating signif-

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com



Client Alert

licant costs for offsite infrastructure improvements and your project has not yet established eligible basis, or if you are an owner that previously may have been unable to convince others to include the costs of offsite improvements in eligible basis to permit you to claim the full amount of your allocated credits and would like more information as to what impact the PLR might have on your project and its credits, please contact Jeff Adams or Jim Rauschenberger, who are members of Arnall Golden Gregory LLP's Housing Finance and Community Development practice group.

Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, www.agg.com.

This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.