



March 7, 2005

The Honorable John W. Snow  
Secretary of the Treasury  
Department of the Treasury  
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*Re: Implementation of IRS Revenue Ruling 2004-82 (July 30, 2004)*

Dear Secretary Snow:

On behalf of the Housing Justice Network, a nationwide group of more than 400 attorneys representing low-income tenant families, we write to thank you for issuing IRS Revenue Ruling 2004-82. We also urge you to require state housing credit agencies administering the Low Income Housing Tax Credit (LIHTC) program to promptly implement the good cause eviction requirement recognized in the Ruling. The purpose of this program, under the jurisdiction of your Department, is to provide decent, affordable and stable housing for low-income people by providing owners with tax credits that in turn permit below-market rents. Full enforcement of the Revenue Ruling will bring greater housing stability to two million households benefitting from this vital multi-billion dollar program.

Revenue Ruling 2004-82, among other things, correctly interprets Section 42(h)(6)(b)(i) of the IRC to require every LIHTC property to have a recorded "extended low-income housing commitment" (ELIHC) that prohibits charging rents beyond LIHTC limits and evicting tenants or terminating tenancies without cause. Section 42(h)(6)(b)(ii) specifically requires that these ELIHC provisions be enforceable in state courts by current, prospective and former LIHTC tenants. Prior to the Ruling, this position had been followed by certain state housing credit agencies and appellate courts, but not by most state agencies. Even though the IRS Ruling recognizes an obligation reaching back to 1990 when Congress added the "good cause" language to Section 42, most LIHTC owners and most state agencies were either unaware of the obligation or unwilling to follow it. Revenue Ruling 2004-82 properly implements Congress' intent to extend "good cause" protection to all families and thus is extremely important to all currently unprotected LIHTC households.

To implement Section 42's legal requirement, the Ruling mandated each state credit allocator to review, by December 31, 2004, all of its existing ELIHCs to determine whether they contain an explicit "good cause eviction protection." If any ELIHC lacks such a provision, the state agency must determine that the ELIHC is invalid and the property is not in compliance, triggering a one-year cure period. Continued noncompliance jeopardizes an owner's ability to claim the credit.

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We understand that some state credit agencies have already met these requirements or are fulfilling these requirements by requiring owners to file an amendment to the ELIHC. We applaud these state agencies. Others reportedly resist compliance with the Ruling, purportedly because it would be unduly burdensome. We disagree with this contention: while there are thousands of covered LIHTC properties nationwide, each noncomplying project need only file a single simple amendment to cure. We believe that it would usually be unnecessary for owners to obtain subordination agreements from other existing security holders, such as mortgagees. Regardless, any such burdens are far outweighed by the great benefit that compliance provides to residents, as intended by Congress.

Section 42(h)(6)(b) and Revenue Ruling 2004-82 provide basic due process to millions of LIHTC families. We urge you to require state housing credit agencies to comply with these requirements. The Department's enforcement of compliance by state agencies and LIHTC owners is essential to achieve the intent of these policies.

We would welcome the opportunity to meet with your staff regarding these issues. If you have further questions, please contact James R. Grow at the National Housing Law Project at (510) 251-9400 x104.

Thank you for your assistance in this matter.

Yours sincerely,

James R. Grow  
Deputy Director