



## Community Development and Affordable Housing **ALERT**

November 2008

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### IRS Clarifies Applicability of 9 Percent Floor for Non-Federally Subsidized New Buildings

On November 13, 2008 the Internal Revenue Service (the Service) issued IRS Notice 2008-106 (the Notice) clarifying the applicability of the 9-percent applicable percentage floor for non-federally subsidized new buildings that are placed in service after July 30, 2008 and before December 31, 2013 (the Applicable Placed in Service Dates) when an irrevocable applicable percentage election by a taxpayer was made on or before July 30, 2008.

The Notice advises that the Service has determined that the 9 percent applicable percentage rate under §42(b)(2) of the Internal Revenue Code, as amended by the Act, applies to a building that meets the requirements of §42(b)(2) even if the taxpayer made a prior binding election under former §42(b)(2)(A)(ii) with respect to the building on or before July 30, 2008, provided that:

- The building is placed in service during the Applicable Placed in Service Dates;
- The building is not federally subsidized (i.e., the building is not financed with tax-exempt bonds); and
- The low income housing tax credit dollar amount allocated to a project does not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low income housing tax credit project throughout the credit period.

For further information on this Notice or other legal issues related to low-income housing tax credits, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

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The contents of this update are only a general summary of the Act and are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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