



IRS Releases New Markets Tax Credit Audit Technique Guide

The Internal Revenue Service (IRS) released a New Markets Tax Credit Audit Technique Guide on its website on May 25, 2010. The Guide is available at the [IRS website](#).

The Guide offers a window into the IRS' thinking on many New Markets Tax Credit (NMTC) issues. The Guide's purpose is to provide IRS auditors with a brief overview of the NMTC program and to highlight audit issues at all levels of a NMTC structure. The Guide summarizes the explicit requirements in Section 45D of the Internal Revenue Code, as amended, and the regulations thereunder. Moreover, the Guide suggests audit techniques for evaluating these requirements.

As expected, the Guide addresses what constitutes true debt for federal income tax purposes. Additionally, the Guide discusses the circumstances under which an equity investment in a Community Development Entity will be treated as redeemed, resulting in recapture. The Guide also devotes a section to issues related to an exempt organization's role in the NMTC program. The Guide is silent, however, on the applicability of the economic substance doctrine recently codified in Section 7701(o) of the Code to New Markets Tax Credits transactions.

For more information on this topic, please contact your principal Squire Sanders lawyer or one of the individuals listed in this *Alert*.

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