

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	July 29, 2013
	Agenda Item No.	28
	Roll Call No.	<u>13-1207</u>
	Communication No.	<u>13-405</u>
	Submitted by:	Scott E. Sanders, Finance Director

AGENDA HEADING:

Approving Submittal of Voluntary Closing Agreement Program Request – Luther Park Apartments, Inc. Housing Revenue Bonds.

SYNOPSIS:

The City of Des Moines served as the conduit issuer of two (2) series of bonds for which the proceeds were made available to Luther Park Apartments, Inc. The City of Des Moines had no obligation to make debt service payments on these bonds. Luther Park Apartments, Inc. recently lost their tax-exempt status due to Internal Revenue Service rules regarding the filing of annual reports. In order to reinstate their tax-exempt status Luther Park Apartments, Inc. is pursuing a voluntary agreement with the Internal Revenue Service. By rule, the City of Des Moines would need to agree to the request. There is no financial cost or impact on credit ratings to the City of Des Moines by participation in this voluntary agreement.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

The City of Des Moines, Iowa previously served as issuer for the Senior Housing Revenue Bonds (Luther Park Apartments, Inc. Project), Series 2004 originally issued in the amount of \$5,090,000 and the Multifamily Housing Revenue and Refunding Bonds (Luther Park Apartments, Inc. Project), Series 2007A originally issued in the amount of \$3,635,000 (together, the “Bonds”). The proceeds of the Bonds were used by Luther Park Apartments, Inc. (the “Organization”) for various projects.

The Organization received a notice dated February 13, 2012, from the Internal Revenue Service (IRS) that its tax-exempt status under § 501(c)(3) had been automatically revoked pursuant to Internal Revenue Code §6033(j)(1) for failure to file required information returns for three (3) consecutive years and the revocation was effective as of May 15, 2011.

Initially, the Organization believed that the February 13, 2012, revocation notice was the result of a clerical error or oversight by the government, as the Parent had timely filed all Forms 990 prepared by its Certified Public Accounting firm for more than 20 years. Following numerous unsuccessful attempts to determine the government’s rationale for the revocations and to rectify them, the Organization enlisted the assistance of the IRS Taxpayer Advocate’s office to help resolve the situation and finally on May 22, 2013, the Organization was finally informed that the Employer Identification Number reported on the Forms 990 filed by the Parent is for use by the Parent only, and that the Parent impermissibly filed the returns in question on a consolidated basis.

Since the tax-exempt status of the Bonds is based upon the status of the Bonds as “qualified 501(c)(3) bonds,” the loss of the Corporation’s Section 501(c)(3) status has the potential for adversely affecting the tax exempt status of the Bonds. To date, the IRS has not questioned the continued tax exempt status of the Bonds. The Organization is taking steps to reinstate its 501(c)(3) status and to make the reinstatement retroactive to the date it was revoked. The Organization also intends to enter into the IRS Voluntary Closing Agreement Program (“VCAP”) in order to maintain the tax exempt status on the bonds in the event that the IRS determines that the bonds are no longer tax exempt.

In order to enter a VCAP request, the City of Des Moines, Iowa must take part in the application process and sign the application. The application serves as a request to enter into a Closing Agreement with the IRS. There is a potential for the Organization to have to pay a settlement amount in order to enter into a Closing Agreement with the IRS. There is also a potential that the IRS will require that the bonds be refunded and that the Organization would need to issue additional bonds in order to refund the Bonds, possibly using the City of Des Moines, Iowa to act as issuer.

PREVIOUS COUNCIL ACTION(S):

Date: March 26, 2007

Roll Call Number: [07-585](#)

Action: [On](#) Issuance of the Multifamily Housing Revenue and Refunding Bonds (Luther Park Apartments Inc. Project), not to exceed \$4,250,000. ([Council Communication No. 07-150](#)) Moved by Mahaffey to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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