# TAX CREDIT PROPERTY "NON - RENEWALS"

# CONCISE SYLLOGISM / LOGICAL CONSTRUCT

## PROPOSED CONCLUSION

**Congress intended to require 26 U.S.C. § 42 Low Income Housing Tax Credit Act ("tax credit") landlords to renew each tenant's lease unless the landlord can prove that the landlord has "good cause" to terminate the tenancy.**

## PROPOSITIONS OF FACT

**1.** 26 U.S.C. § 42(h)(6)(E)(ii)(I)[1] provides, as to tax credit landlords :

> *(ii) Eviction, etc. of existing low-income tenants not permitted. The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination--*
>
> > *(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or . . .*

**2.** The statute for federal rental housing vouchers, prior to 1998 provided:

> *the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause . . . .*
>
> 42 U.S.C. § 1437f(o)(7)(C).

**3.** Prior to 1998 federal courts of appeal had interpreted the voucher statute language cited in # 2 above to construe the word "terminate" to include non-renewal of

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1. This law was enacted in 1986. The "good cause" prohibition was first added to subparagraph (E)(ii) as part of the Revenue Reconciliation Act of 1989. Pub. L. No. 101-239, § 7108, 103 Stat. 2106, 2309-10 (1989). In 1989 the phrase "and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)" was added to section 42(h)(6)(B)(i). Pub. L. No. 101-508, § 11, 701, 104 Stat. 1388, 1388-506 (1990). The law was re-enacted with unrelated amendments again in and then re-enacted in 1998, 2000, 2002, 2004, 2007, and 2009. Thus, Congress considered these provisions ***after*** the 1998 amendment regarding tenant-based Section 8 housing vouchers.

leases. _____ v. _____ (4th Cir. 198__). That is, all landlords whose tenants received the federal housing vouchers were required to renew the leases of their voucher-holding tenants *unless* the landlord could prove a "serious or repeated" violation of the lease, a violation of "Federal, State, or local law" or for "other good cause."

**4.** In 1998, Congress amended 42 U.S.C. § 1437f(o)(7)(C) to insert the words, "during the term of the lease" before the provision cited in Proposition # 2 above, such that the entire statutory provision provided:

*the owner shall not terminate the tenancy* ***during the term of the lease*** *except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause . . . .*

Emphasis added.

**5.** Congress after 1998 did not change the language of 26 U.S.C. § 42(H)(6)(e)(ii)(I).

**6.** 26 U.S.C. § 42 (and, indeed, all of 26 U.S.C.) is administered by the U.S. Treasury Department, Internal Revenue Service (IRS).

**7.** In the year 2004, the IRS issued a formal Revenue Ruling, 2004-82 that provides, in pertinent part as to the statute in question:

*Q-5. Must the extended low-income housing commitment prohibit the actions described in subclauses (I) and (II) of s 42(h)(6)(E)(ii) only for the 3- year period described in s 42(h)(6)(E)(ii)?*

*A-5. No. Section 42(h)(6)(B)(i) requires that an extended low-income housing commitment include a prohibition during the extended use period against*

*(1) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit (no-cause eviction protection) . . .*

* * *

*When Congress amended s 42(h)(6)(B)(i) to add the language emphasized above, s 42(h)(6)(E)(ii) was already part of s 42. As a result, Congress must have intended the amendment to s 42(h)(6)(B)(i) to add an additional requirement beyond what was contained in s 42(h)(6)(E)(ii), which already prohibited the actions described in that section for the 3 years following the termination of the extended use period. Because the requirements of s 42(h)(6)(B)(i) otherwise apply for the extended use period, Congress must have intended the addition of the prohibition against the actions described in subclauses (I) and (II) of s 42(h)(6)(E)(ii) to apply throughout the extended use period.*

***If** it is determined by the end of a taxable year that a taxpayer's extended low-income housing commitment for a building does not meet the requirements for an extended low-income housing commitment under s 42(h)(6)(B) **(for example, it does not provide no-cause eviction protection for the tenants of low-income units throughout the extended use period), the low-income housing credit is not allowable with respect to the building for the taxable year, or any prior taxable year. . . .***

Emphasis added.

## INFERENCE

**By Congress not changing 26 U.S.C.§ 42 to add the words it added to 42 U.S.C. § 1437f — either after 1998 or after 2004, Congress intended/intends to require tax credit landlords to renew each tenant's lease unless the landlord can prove that the landlord has "good cause" to terminate the tenancy.**

## EVIDENTIARY PREMISE

**It is more likely than not that Congress considered and rejected the limiting words of "during the term of the lease".[2]**

2. Under the well established principles of statutory construction, Congress is presumed to have considered existing laws when adopting/re-adopting 26 U.S.C. § 42, and to have intentionally omitted the limiting words. To reach the opposite conclusion would require a construction of 42 U.S.C. § 1437f that renders the words "during the term of the lease" meaningless, which would violate another well established principle of statutory construction.