

IPED HISTORIC TAX CREDIT SUMMIT

WHAT'S HOT ON THE TAX SIDE OF THE HISTORIC TAX CREDIT

June 15-17, 2021 | Virtual Conference



AT-RISK LIMITATIONS

What does the tax code say?

- IRC Section 49
- See Appendix A

Common structuring issues

- Nonqualified nonrecourse financing
 - Defined in 49(a)(1)(D)
 - Deferred developer fee
- “80% Limitation” – IRC Section 49(a)(1)(D)(ii)
 - Limitations on refinance proceeds during HTC compliance
 - IRC Section 49(b)
 - State tax credit loans

– Solutions

- “Vertical Slice” guarantee
- Mezz equity/sponsor equity vs. nonrecourse debt
- Refi after HTC compliance period
- Have someone other than the building owner be the borrower



TAX-EXEMPT USE/OWNERSHIP

What does the tax code say?

- IRC Section 47(c)(2)(B)(v) and 168(h)
- See Appendices B and C

Commons structuring issues

- Tax-exempt ownership
 - Sponsor equity from tax-exempt investors (i.e. pension funds, foreign investors and endowment funds)
 - Reduction to QREs attributable to amount of tax exempt ownership
 - Solutions
 - Taxable “Blockers” with 168(h)(6) election

– Tax exempt use

- Is a tax-exempt entity currently using or will be an end user of the historic building?
- Qualified vs. disqualified leases to tax exempt entities
- Solutions
 - Structure leases to tax exempt entities as “qualified leases”
 - Disaffiliates tax exempt entities
 - Management agreements

HTC BASIS REDUCTION REQUIREMENT IN SINGLE-TIER STRUCTURE

What does the tax code say?

- IRC Section 50(c)
- See appendix D
- Treasury Regulation 1.47-7

Common structuring issues

- HTC investor does not have tax basis to claim HTC
- Tax loss allocations away from HTC investor

Solutions

- Structure state credit proceeds as loans
- Deficit restoration obligation
- Disaffiliation of related party debt

50(D) INCOME AND QUALIFIED IMPROVEMENT PROPERTY (“QIP”)

What does the tax code say?

- IRC Section 50(d)/Pre 1990 IRC Section 48
- See Appendix E
- TCJA technical correction gave QIP 15 year class life

Common structuring issues

- QIP can be as much as 80%-85% of the rehabilitation costs of a commercial building
 - Tax equivalency payments to HTC investor because of accelerated 50d income on QIP

Solutions

- Increase percentage ownership of Master Tenant in Landlord
- Special allocations of depreciation from Landlord to Master Tenant
- 467 lease structure
- Individual tax rates vs. Corporate tax rates – perhaps tax equivalency payments aren’t a bad thing

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