

Part I – Digging in Deeper

Higher level concepts you need to know



NP

POSITIVE IMPACT

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Part I

LIHTC/HTC lease pass through projects

- / What are the issues to watch out for?
 - Ownership interest of the MT in the LL
 - Variable return for the HTC investor
 - Timing

Doing projects with tax exempts

- / The 4-part tax-exempt use test.
 - Which of the factors tend to apply?
 - How do we handle prior use?
 - How long a lease?
 - What about projects for museums and theaters where we hire the tax-exempt to provide services (like showing the collection or putting on plays).

Part I (con't)

Handling Cash Flow

- / Can the GP get incentive fees?
- / Can the share be based on a percentage of revenue that varies, based on steps? How many?
- / Must the development fee be paid off in 5 years?
- / How long, and in what situations, do investors get cash to pay their taxes?

Partnering with Government Agencies

- / What kinds of rights do they ask for that make you worry?
- / What is an instrumentality?
- / Do we think a govt agency can form a subsidiary to be an GP, and make a 168(h)(6) election? What do you do instead?

Part I (con't)

Capital account falling below zero in single-tier transactions

- / What do you do when first year capital goes below zero on account of tax credit basis reduction?
 - Use a DRO?
 - A qualified income offset?
 - Not worry about it?
- / Do transactions get structured as 2-tier deals to avoid this issue?

What to expect in refinance and the issues that may arise

- / At-risk issues (too Much QNR).
- / Who gets the cash in a cash out refinance?
- / Are the base master lease payments adequate to make the new debt service payment?
- / Whether the tax equity investor will participate in refinance proceeds

Thank you!



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Part II – Digging in Deeper

Higher level concepts you need to know



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POSITIVE IMPACT

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Part II

Leases, subleases and supplemental rent

- / How long does a long-term ground lease into the LL have to be to convey ownership for tax purposes?
- / At the MT level, is a lease of housing shorter (27-1/2/30 years times 80%) than the lease of a commercial facility (39/40 years times 80%)?
- / What about section 467 prepayments? How big can a prepayment be?
 - Do the projections always show the 467 computations?
 - When a lease ends early, what are the tax consequences?

Part II (con't)

Rev Proc 2014-12

- / Any issues applying it these days?
- / Are there any provisions that you give less weight to?
- / Are there reasonableness opinion issues that ever have to be addressed? Or is this just a checklist item?

50(d) income

- / Do investors ever choose single-tier deals to avoid 50(d)?
- / How precisely do they structure their share of landlord losses to offset 50(d) income?
- / Are investors asking what to do with 50(d) income when they leave? Accelerate it? Recognize it over many years?
- / Do they expect any cash to pay the tax bill?

Part II (con't)

When to bring in the investor

- / If a project never goes out of service, should the investor be in the entire time? Or by the time the "spend as much on rehab as your basis" test is passed?
- / How flexible can you be on when to start that 24-month computation? (Can you choose to start and end it do as to not have a placed-in service problem with the investor).
- / Should you just make sure that the investor is in before the project is "finished"?

Part II (con't)

Delay in getting Part III

- / Do investors agonize over not getting a timely part 3?
- / Do they extend the statute of limitations, as provided on the regulations?
- / What are the technical issues involved?

Flips after a number of years vs. reaching a targeted return

- / How is targeted return calculated?
- / What investor benefits are included in targeted return?
- / Relationship between targeted return, flip and put period.
- / Lessons learned.

Thank you!



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