

# Our Speakers

Digging in Deeper—Higher Level Concepts You Need to Know



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# Digging in Deeper– Higher level concepts you need to know

## **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



# Digging in Deeper– Higher level concepts you need to know

## Doing projects with tax exempts

/ The 4-part tax-exempt use test – tax exempt debt with user “participating;” fixed or determinable price option; lease term in excess of 20 years; property was used by the tax-exempt and now there is a sale by or lease from the tax-exempt. Remember the exemption for up to 50% of the property.

- 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)? Service contract vs. lease issues.



# Digging in Deeper– Higher level concepts you need to know

## 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?



# Digging in Deeper– Higher level concepts you need to know

## Partnering with government agencies

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



# Digging in Deeper– Higher level concepts you need to know

## 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 deficit restoration agreement ("DRO")?
  - A qualified income offset? (it provides an allocation of income where a partner unexpectedly receives an adjustment, allocation, or distribution described in the 1.704 regulations)
  - Not worry about it?
- / Do transactions get structured as 2-tier deals to avoid this issue?



# Digging in Deeper– Higher level concepts you need to know

## What to expect in refinance and the issues that may arise

- / At-risk issues (too much qualified nonrecourse debt)
- / 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



# Digging in Deeper– Higher level concepts you need to know

## SNDA's, “Super” SNDA's and Standstill Agreements

- / What are they?
- / Why do investors want them?
- / Why aren't lenders enthusiastic about providing them?
- / What about states with rapid foreclosure processes?



# Digging in Deeper– Higher level concepts you need to know

## 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 it okay to have a shorter lease for housing (27-1/2/30 years times 80%) than the lease of a commercial facility (39/40 years times 80%)?
- / Reasonableness concerns when base or supplemental rent payments are partially sourced from non-property-related operations (e.g., where a master tenant has extended a loan to the landlord entity and supplemental lease payments include cash flows derived from loan repayments)
- / What about section 467 prepayments? How big can a prepayment be?
  - Do the projections always show the 467 computations?
  - Consider Section 470 (applies to prepayments by tax-exempts; allows range of 20% to 50%)
  - When a lease ends early, what are the tax consequences?



# Digging in Deeper– Higher level concepts you need to know

## Rev Proc 2014-12

/ Any issues applying it these days?

/ Are there any provisions that you give less weight to?

/ Reasonableness opinions

- What fees and arrangements are being opined on? What are the more obscure ones and what makes them challenging?
- What is the he approach to determining “reasonableness” for these various fees and arrangements?
- What are you seeing for metrics (i.e. amount, percentage) on Developer Fees that pass as “reasonable” based on recent experience?



# Digging in Deeper– Higher level concepts you need to know

## 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 investors expect any cash to pay the tax bill?



# Digging in Deeper– Higher level concepts you need to know

## When to bring in the investor

- / If a project never goes out of service, should the investor:
  - be in the entire time? or
  - be in by the time the "spend as much on rehab as your basis" test is passed?
  - be in before the project is "finished"?
- / 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).



# Digging in Deeper– Higher level concepts you need to know

## 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.



# Digging in Deeper– Higher level concepts you need to know

## Delay in getting Part 3

- / 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?



# Thank you

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