



Winding Down LIHTC Fund Partnerships - Disposition Issues

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Challenges and opportunities arise as syndicators approach the possibility of winding down their ownership interests in Low-income Housing Tax Credit (LIHTC or housing tax credit) fund partnerships. Accordingly, careful planning for year 15 dispositions of interests in housing tax credit properties is imperative – and recent legislation at the federal and state levels has changed the playing field with respect to disposition planning.

Federal Issues:

Pursuant to the removal of the recapture bonding requirement for housing tax credit properties placed in service after July 30, 2008, syndicators may be motivated to dispose of LIHTC properties prior to the end of year 15 and after all LIHTCs have been allocated. In addition, investment partnerships may be motivated to dispose of interests prior to year 15 for reasons such as tax allocation, investment yield issues or financial reporting challenges such as decreases in earnings caused by recognition of flow through losses. “The elimination of the recapture bond requirement certainly has moved up the timing of many dispositions and the current environment for dispositions of affordable housing properties is very good” says Mike Gladstone, General Counsel and Director of Capital Transactions at Boston Financial Investment Management. However, in the event of Program non-compliance, such dispositions could result in the taxpayer being required to recapture previously recognized tax credits as if the taxpayer was still a partner - thereby increasing the partner’s tax burden.

Federal Considerations:

While the risk of recapture still exists in years 12 through 15, the investment partnership may want to consider a guarantee from the remaining general partner or other purchaser of its interest to mitigate the risk of credit recapture. In doing so, the investment partnership may want to:

- Evaluate the exposure risk of credit recapture
- Be knowledgeable about the property’s compliance status prior to and during disposition
- Assess whether or not the existing guaranty is sufficient considering the property’s past and present compliance status
- Investigate HUD TPA issues, where applicable

State Issues:

There has also been a changing dynamic at the state level as more and more states search for sources of revenue and aggressively require tax payments on behalf of pass through entities disposing of interests in real estate. Given that withholding on investment dispositions is being required by more and more states, such a requirement can be problematic as syndicated fund reserves are not set up to fund state taxes. In addition, because most states only tax and require withholding on sales of property, many syndicators find it advantageous to instead explore sales of partnership interests - which are generally not

subject to state tax withholding. However, more recently, some states are expanding their tax base to subject transactions including sales of partnership interests to transfer taxes.

State Considerations:

While most states stipulate a legal sale of real property in order to assess transfer taxes, investors should be cognizant of states looking to assess transfer taxes on sales of partnership and other real estate pass-through interests. Sophisticated syndicators and investors are considering disposition planning in earlier years and are working with general partners and their tax advisors in minimizing state income, withholding, and transfer taxes. Effective disposition planning ensures the better management of investor fund reserves and an orderly winding down of low income tax credit investment partnerships. Disposition planning starts early and involves many legal and tax issues. For information on navigating LIHTC investment disposition issues, please contact Reznick Group's [Affordable Housing](#) team to assist you in preserving fund reserves and protecting LIHTCs claimed.