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Strategy for Buyouts of LIHTC Projects

Many of our clients have asked us what steps should be taken in order to facilitate buyouts of their Low-Income Housing Tax Credit (LIHTC) Partnerships. The process can be long and arduous, or relatively clean; each deal depends on numerous factors.

Here are some suggestions on how you can plan ahead and expedite the process:

- **Review the Limited Partnership Agreement (LPA) and the Option Agreement to determine the purchase price, and when the Option Period begins and ends:** Most General Partners (GP), but not all, are given an option to purchase the LIHTC property. Even if the GP is not given an option, the Limited Partner (LP) may be willing to consider an offer.
- **Monitor the tax basis capital account balances of the GP and the the LP:** Try to make sure the LP capital doesn't go negative; as if it does there may be exit taxes due to the LP upon sale/dissolution.
  - Request the Tax Basis Capital Account Schedule from your accountants annually so you can monitor the Tax Basis Capital Account Balances.
- **When purchasing a LIHTC Project, determine the amount due to the LP upon sale/dissolution:** Monitor the tax basis capital and work with your accountants/consultants to determine how much would be due to the LP upon buyout. Timing is very often critical when purchasing the Project as it may substantially impact the amount due to the LP upon sale.
- **Consider an early buyout:** Typically most options to purchase have a window that begins on day 1 of Year 16 (after the 15 year compliance period has expired) and usually lasts from one to three years.
  - If it is beneficial for the GP to buyout earlier than when the Option Period begins, then advise the LP that you are ready to do so. They may say no, but our experience has been that the LP often wants to get out of a project immediately after the credit delivery period has ended.
- **Ask the LP to sell their interest to the GP (or its affiliate):** From the GP's perspective, it is almost always more beneficial to purchase the LP interest, rather than purchase the land, building and other fixed assets and then dissolve the Partnership, which is typically how Option Agreements are structured. The major benefits of purchasing the LP interest by the GP include:
  - Easier transaction (e.g., less legal and accounting work)
  - The Partnership shouldn't have to re-finance mortgages (which is typically a major hurdle)
- **If the LP agrees to sell their interest to the GP (or its affiliate), try and structure the sale so it occurs on December 31st (the last day of the Partnership year-end):** This makes the transaction easier for all parties as there would be only one Partnership tax return required for the year of sale (1/1–12/31), rather than two short year returns required if the sale occurred during the course of the year.

If you have any questions or need assistance with your organization's buyout strategy or analysis, please feel free to contact our tax experts, **Steven R. Hinshaw**, Consultant/Former Partner (shinshaw@lvhj.com/415-905-5415) or **Stanley Woo**, Partner (swoo@lvhj.com/415-905-5416). To learn more about Steve and Stan, read their bios here.

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