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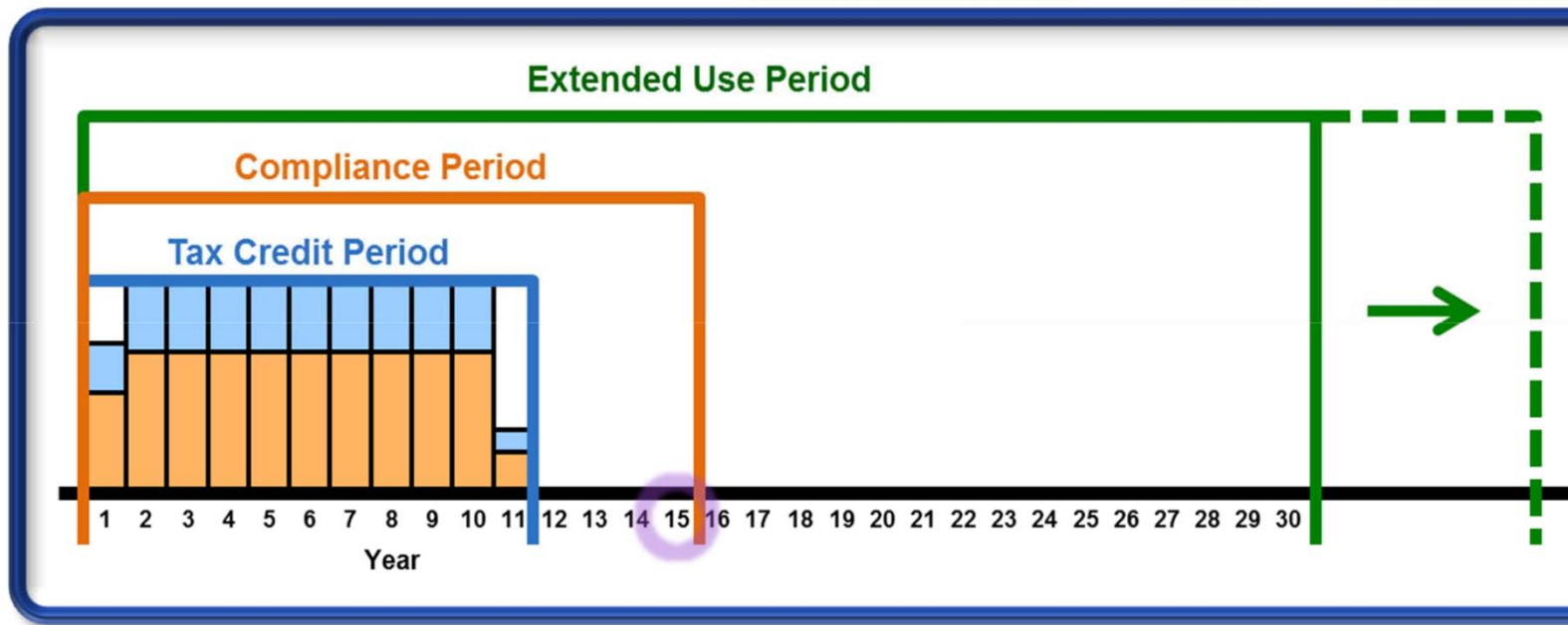
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Year 15: Recognizing That Your Investor Exit Strategy Is Just As Important As Your Price Per Credit

February 3, 2021



Measuring a Tax Credit Project Lifecycle



**Slide graphics are courtesy of Novogradac & Co.*



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Key Concept: *Exit Taxes Vs. Transfer Taxes*

<u>EXIT Taxes = Federal Tax</u>	
Capital Account	
1	\$12,000,000
2	-1000000
3	-1000000
4	-1000000
5	-1000000
6	-1000000
7	-1000000
8	-1000000
9	-1000000
10	-1000000
11	-1000000
12	-1000000
13	-1000000
14	-1000000
15	-1000000
Ending Capital Account	(\$2,000,000)
Investor Tax Rate	0.21
Exit Tax	(\$420,000)

<u>TRANSFER Taxes = State & City Tax on Value/ Consideration</u>	
Value	\$ 5,000,000.00
NY State Tax	\$ 20,000.00





Capital Accounts

(Sample Exit Tax Payments)

	Capital Account
1	\$ 10,000,000
2	\$ (1,500,000)
3	\$ (1,500,000)
4	\$ (1,500,000)
5	\$ (1,500,000)
6	\$ (1,500,000)
7	\$ (1,500,000)
8	\$ (1,500,000)
9	\$ (1,500,000)
10	\$ (1,500,000)
11	\$ (1,500,000)
12	\$ (1,500,000)
13	\$ (1,500,000)
14	\$ (1,500,000)
15	\$ (1,500,000)
Ending Capital Account	\$ (11,000,000)
<i>21% Tax Rate</i>	<i>\$ (2,310,000.00)</i>
<i>25% Tax Rate</i>	<i>\$ (2,750,000.00)</i>
<i>35% Tax Rate</i>	<i>\$ (3,850,000.00)</i>



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Right of First Refusal Considerations

Option vs Common Law Right of First Refusal

Bona Fide Offer

- Is a triggering offer needed?
- Is a third party offer needed or is a related party offer sufficient?
- Can you solicit the offer?
- Would anyone waste time doing diligence on an offer, knowing that a nonprofit will beat them?
- Is the property regularly receiving offers already?

Investor Consent

- Is the investor consent necessary to (1) market the property, (2) accept an offer to purchase the property and/or (3) to actually transfer the property.

Price

- Debt plus taxes is the minimum purchase price
- Investors usually add other items such as unpaid guarantees. Need to limit the other things which are added.

Timing

- Transfer often needs to occur in a set number of days. 90, 120 or 180. What if government approvals are needed? Transfer should be based upon a reasonable time after approvals are obtained.

Reserves

- Investors argue that the reserves are personal property owned by the ownership entity. Therefore, they should be distributed. They are not a part of the real property which is subject to the ROFR.
- Many state agencies prohibit the distribution of reserves to the investor.
- Is the operating reserve funded with developer fee?





Forced Sale Provision

(Sample)

At any time after the expiration of the Compliance Period (Year 15):
(i) the General Partners shall offer the Property for sale if requested to do so by the Investor Limited Partner, and (ii) the Investor Limited Partner shall be permitted to commence marketing the Property and obtain offers to purchase the Property.

Note: The LOI should prohibit forced sales



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Hidden Meanings

Purpose of the Company

The Company has been organized exclusively to acquire the beneficial and equitable ownership in the Land and to develop, finance, construct, own, maintain, operate and sell or otherwise dispose of the Apartment Complex **in order to obtain for the Members long-term appreciation, cash income, and tax benefits consisting of Tax Credits and tax losses over the term hereof.**



Negotiation Timeline



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For almost two decades, Darryl Austin has represented developers, lenders, investors and governmental agencies engaged in economic development and community revitalization initiatives. Darryl's particular expertise is the complex tax and organizational structuring of partnership syndicates utilized to facilitate historic and affordable housing tax credits.

Darryl has closed hundreds of projects which were financed with IRC Section 42 affordable housing and Section 47 historic tax credits and which were supported by: HUD programs including RAD, Section 221(d) (new construction), Section 223 (refinancing), Section 232 (healthcare), Section 202/811 (seniors/ disabled), and Section 8 operating subsidy; tax-exempt bond financing enhanced by Fannie and Freddie; funds provided by Federal Home Loan Bank members; and state and local funds.

Prior to joining Goldstein Hall, Darryl was an attorney at a large Washington, DC law firm, HUD, the New York State Housing Finance Agency and a large national developer.





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