

Financing Affordable Housing

Good news for nonprofit organizations that are thinking about forming low income housing tax credit (LIHTC) limited partnerships or limited liability companies (LLCs) to finance affordable housing: New IRS guidance should cut the processing time for applications for tax-exempt status. The guidance also establishes standards for participation in LIHTC transactions.

With an LIHTC partnership, the nonprofit organization generally owns about 1% of the partnership and serves as general partner or managing member, which gives it control of the entity. The for-profit investors own the remainder as limited partners. Such arrangements can help nonprofits obtain funding to provide low income housing and allow investor partners to claim low income housing tax credits -- a win-win situation.

However, these partnerships are often slow to get off the ground because of delays in IRS approval of tax-exemption applications. One factor in the delay has been the IRS's general requirement that the organization submit final limited partnership or LLC documents before approval. Another has been the IRS's scrutiny of guarantees made by organizations to investors because of concerns that the guarantees might result in impermissible private benefit to the investors.

New Standards

The IRS guidance addresses these and



other IRS concerns and eases document requirements. Here is an overview of the new standards.

A description of the organization's proposed activities. This description must identify the specific proposed housing project that will be operated and explain how the project will further the organization's charitable purpose.

» Governing documents. In the absence of a final limited partnership agreement or LLC governing document, the organization can submit a written statement of the contents of the document. This statement -- and the governing document -- must say that the partnership or LLC will be operated in a manner that furthers charitable purposes, and that, in the event of conflicting obligations, charitable purposes will override any profit motives.

» A conflict of interest policy. Organizations should use the sample policy contained in the instructions for IRS Form 1023 or adopt a similar policy.

» Financial exposure. The application must include statements with respect to various matters that limit the nonprofit organization's financial exposure in the event the project does not proceed as planned:

» Environmental review. The organization must review an independent Phase I environmental report on

Telephone Excise Tax Refund



bills from specific months: one with a statement date in April 2006, when the long-distance tax was still being collected, and a second statement from September 2006, when it was no longer being assessed.

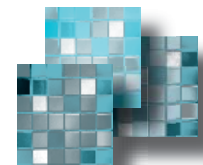
First, you calculate two percentages by taking the telecom tax listed on each bill and dividing it by the total amount owed

for that month. You then subtract the September percentage from the April percentage to determine a rough percentage of the monthly bill that was attributable to the long-distance part of the tax. The refund is then calculated by multiplying that percentage against the total phone bills for the 41 months.

It is also important to remember the refund is capped at 2 percent of the total phone expenses for businesses and tax-exempt organizations with 250 or fewer employees. But for those with more than 250, the refund is capped at 1 per cent.

The formula is an alternative to basing a refund request on the actual amount of tax paid. All taxpayers have the option of requesting a refund using the actual amount of tax paid.

Whether they use the formula or actual taxes paid, all businesses and tax-exempt organizations must use Form 8913, Credit for Federal Telephone Excise Tax Paid, to request the refund. Businesses attach this form to their regular income tax return for 2006. Tax-exempt organizations attach it to Form 990-T.



In response to five U.S. circuit court decisions, the IRS has announced it will issue refunds of federal excise taxes collected on long-distance telephone services billed to customers after February 28, 2003 and before August 1, 2006. The courts ruled that the 3% federal telephone service excise tax does not apply to long-distance service.

Fortunately, the IRS has devised some shortcuts to simplify matters.

For Individuals –

The IRS recently announced standard safe-harbor amounts that individuals may claim for their refund in lieu of claiming the refund for actual taxes paid (and having to be ready to provide the necessary back-up documentation). The standard amounts are based on the total number of exemptions claimed on the 2006 federal income tax return. The refund amounts are \$30 for an individual filing a return with one exemption, \$40 with two exemptions, \$50 with three exemptions, and \$60 with four or more exemptions.

For Businesses and Tax-Exempt Organizations –

For businesses and tax-exempt organizations, the IRS has devised a formula to simplify the calculation, but they will still have some work to do to come up with the final numbers.

The formula involves comparing two recent phone

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the proposed project before entering into a formative document.

» Construction contract. The partnership or LLC must be required to enter into a fixed-price construction contract with a bonded contractor or a contractor that provides a performance letter of credit or adequate personal guarantee.

» Operating deficit guarantee. Any such guarantee must be limited to not more than five years from the date the project first breaks even or six months of operating expenses (including debt service).

» Tax credit guarantees. Specific limits must be placed on any payment the organization is required to make in the event the tax credits generated are lower than expected.

» Right of first refusal. The nonprofit must secure a right of first refusal to acquire the project at the end of the LIHTC compliance period.

» Repurchase. If the general partner or managing member will be required to repurchase the investors' partnership or LLC interests should the project not be viable, the repurchase price may not be more than the amount of capital

contributions.

» Control. If the organization must obtain investor consent regarding certain matters that do not involve the project's day-to-day operations, consent cannot be unreasonably withheld. However, consent can be withheld if an action would be inconsistent with preserving the housing as a low income housing project.

» Removal of general partner or managing member. If the limited partners or other members have the right to remove the nonprofit general partner, it can only be for cause, as spelled out in the document, and with adequate notice.

Once final governing documents for the limited partnership or LLC are executed, they must be submitted to the IRS. If a favorable determination letter has already been granted, but the final governing documents differ greatly from the statements submitted with the exemption application, the IRS may withdraw its favorable determination.

Professional Assistance

Forming an LIHTC limited partnership or LLC is a complicated undertaking. Talk with us and your legal advisor before pursuing such an arrangement.

Time for Strategic Thinking

Strategic planning most often falls to a nonprofit's board of directors. But in a world that is rapidly changing socially and economically, strategic thinking is a valuable skill -- and an increasingly important part of the strategic planning process.

There are several questions an organization's board can pose to foster strategic thinking.

Start by looking at what's happening right now. What can we do to achieve better results?

A look at the world outside the organization will help identify important issues. What are the driving forces and trends

that affect us? Look into the future. What will the important issues be five years from now? Ten years from now?

Successful strategic planning depends on thinking about -- and preparing for -- a variety of possible future outcomes. Boards that are continually looking at how things are changing and what effect those changes will have on their organizations are better prepared to meet the challenges they face. Similarly, boards that approach strategic planning as an occasional task or are locked into a narrow, historical view of their mission may find they aren't prepared for future success.





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MOORE NEWS

Words of Wisdom for the New Year

In actual life every great enterprise begins with and takes its first forward step in faith.

-- Friedrich von Schlegel: (1772-1829) German critic, writer

However well organized the foundations of life may be, life must always be full of risks.

-- Havelock Ellis: (1859-1939) English psychologist

The most successful men in the end are those whose success is the result of steady accretion.

-- Alexander Graham Bell: (1847-1922) Scottish-US-Canadian inventor

I have no use for bodyguards, but I have a very special use for two highly trained certified public accountants.

-- Elvis Presley: (1935-1977) US singer, actor

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