FEDERAL TAX CREDITS

Riker Danzig's tax attorneys have significant expertise in handling transactions involving the acquisition, construction and rehabilitation of residential rental projects that yield federal low-income housing tax credits. Commencing in 1986, investors in low-income housing projects were afforded federal tax credits which could be used to offset the investor's federal income tax liability on a dollar for dollar basis. This incentive has induced many taxpayers to invest in low-income housing projects, which provides a source of funds necessary to make such projects viable.

Low-income housing projects yield a federal low-income housing tax credit by virtue of either (i) receipt of an allocation of low-income housing tax credits from a state designated agency; or (ii) the funding of projects through tax-exempt bonds. Each year, state-designated agencies may generally allocate an amount of low-income housing credits equal to $1.75 per resident of the state. Allocations are awarded to projects by state designated agencies based on criteria that generally include (i) project location, (ii) time period that the project is required to remain a low-income housing project, (iii) tenant population and special housing needs, and (iv) project viability.

Low-income housing projects financed by tax-exempt bonds generate low-income housing tax credits without an allocation by a state designated agency and credits generated by such projects do not decrease the amount of credits that a state designated agency may allocate, provided the tax-exempt bonds issued to fund the project are within the state's annual volume cap for issuing tax-exempt bonds.

The annual amount of the low-income housing tax credits acquired as a result of state-designated agency allocation generally equals approximately (i) 9 percent of qualified costs of the project in the case of new construction or rehabilitation costs, and (ii) 4 percent of qualified costs in the case of building acquisition costs or federally subsidized projects. Further, in certain difficult development areas and qualified census tracts, the amount of qualified costs to which the credit may be applied is increased by 30 percent. If the credits are acquired through a tax-exempt bond financing, the annual amount of credits generally equals approximately 4 percent of the qualified costs financed by bond proceeds. However, if 50 percent or more of the qualified costs of a project are financed by bond proceeds, the annual credit is generally equal to approximately 4 percent of the entire qualified cost of the project (bond financed or not). Further, the full amount of the annual low-income housing tax credits may generally be taken by investors each year for 10 consecutive years.

Investors obtain numerous benefits from their participation in low-income housing projects. These benefits include:

- Utilization of the low-income housing tax credits generated from a project for 10 years.
- Utilization of losses and deductions from project operations such as depreciation, interest expense on financing, management fees, etc.
- Receipt of cash flow, if any, from project operations.
- Receipt of proceeds from any sale or refinancing of the project.
- Receipt of proceeds from the sale of its equity interest in the project (generally no earlier than 15 years subsequent to the date the project is placed in service).
- Receipt, where applicable, of Community Reinvestment Act credit for the appropriate municipality.

Developers have numerous incentives to participate in low-income housing projects including:

- Profits from constructing or rehabilitating a project.
- Receipt of developer's fees for their role in developing the project that.
- Obtaining an additional source of funds to assure project viability through the sale of low-income housing tax credits to investors.
- Utilization of unsold tax credits to offset their own federal tax liability.
- Receipt of certain incentive management fees during the time the project is operated as a low-income housing project.
- Utilization of a portion of losses and deductions from project operations such as depreciation, interest expense on financing, management fees, etc.
- Receipt of a portion of cash flow from project operations.
- Receipt of a portion of proceeds from any sale or refinancing of a project

Our tax lawyers at Riker Danzig have substantial experience providing legal services to investors and developers in connection with the development of projects utilizing low-income housing tax credits, including the following:

- Assisting in structuring the transaction.
- Drafting and negotiating all agreements relating to the project, including all organizational documents and project development and management agreements.
- Analyzing all tax issues involved in the allocation and utilization of low-income housing tax credits.
- Assisting in preparation and submission of tax credit allocation applications to state housing agencies.
- Preparing and negotiating all opinions, including the tax opinion.
- Performing certain due diligence related to the development of or investment in the project.

- Interacting with accountants and state housing credit agencies.
- Preparing and negotiating all agreements regarding debt financing, including tax-exempt bond financing where appropriate.
- Preparing term sheets for low-income housing project equity investment.
- Preparing and negotiating all agreements and documents regarding building acquisition.
- Obtaining all building approvals and permits

To learn more about the services out tax attorneys provide for personal and business tax planning, as well as business structuring and tax law representation, click here .