"Everything you always wanted to know about Historic Tax Credits*

*But were afraid to ask"

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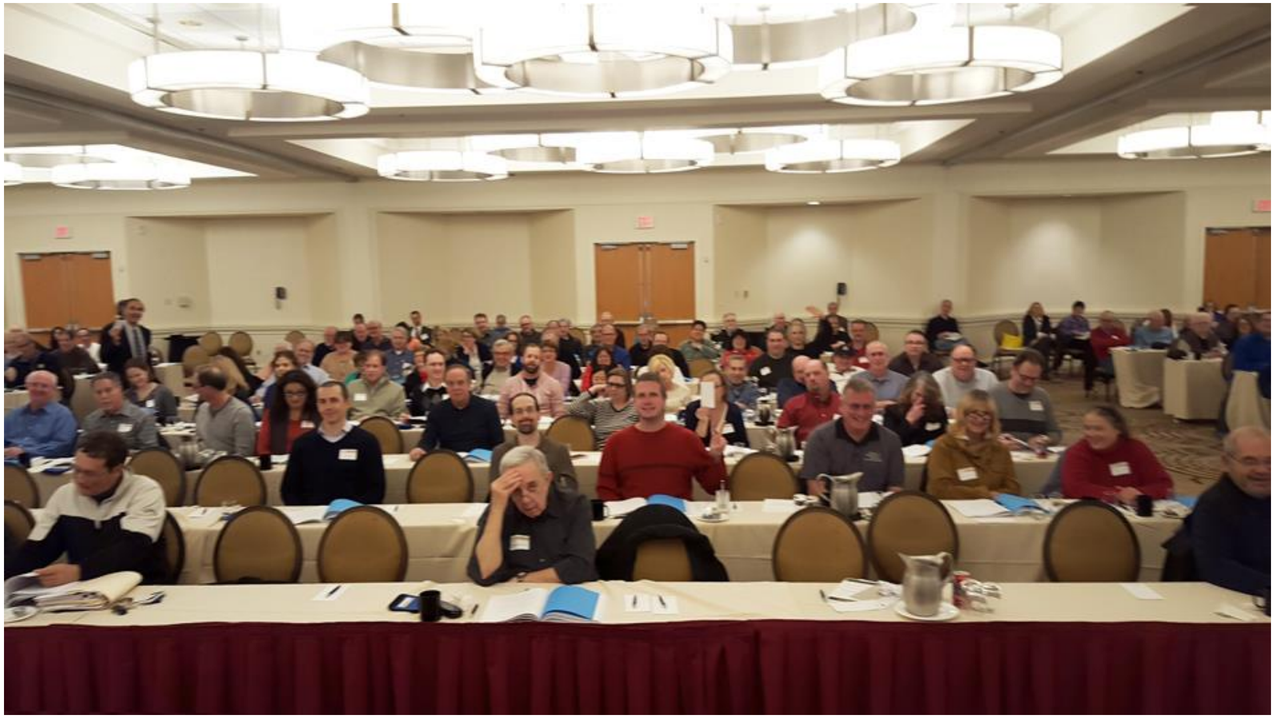
Last year . . .



In General

1. Not a tax deduction, a reduction in amount of tax owed, dollar for dollar.
2. Tax credit can be carried forward 20 years and back 1 year.
3. Available when rehabbed property is placed in service.
4. Five year holding period.
5. Must be a building; bridges, dams and vehicles are not subject to tax credit.

Bad . . .

Good . . .

Historic Tax Credits Come in Two Flavors

1. 10%
2. 20%

Main Eligibility Factors for 10% Credit

1. Not listed on National Register of Historic Places. https://www.nps.gov/nr/research
2. Can't be in a Registered Historic District unless Part 1 application has determined that Building does not contribute to district.
3. Can't be used for residential purposes – not even rental.
4. Internal/external wall retention requirements.
5. No formal review process.
6. Building constructed prior to 1936.

Main Eligibility Factors for 20% Credit

1. Historic
2. Substantial Rehabilitation Test
3. Secretary of Interior's Standards for Rehabilitation https://www.nps.gov/tps/standards/rehabilitation/rehab/stand
4. Income Producing

Main Eligibility Factors for 20% Credit

1. Historic
   A. Listed on National Register of Historic Places
      -or-
   B. Determined to contribute to historic significance of a listed historic district

Main Eligibility Factors for 20%

2. Substantial Rehabilitation Test

   Cost of project must exceed greater of:

   A. $5,000

   -or-

   B. Building's Adjusted Basis

Calculated over 2 years
(or 5 years if it is a multiple-phase project)

Adjusted Basis

Purchase Price – Cost of Land – Depreciation + Capital Improvements

Purchase Price	$200,000.00
- Land Cost (no buildings)	$ 50,000.00
- Depreciation	$ 25,000.00
+ Capital Improvements	$ 25,000.00
Adjusted Basis:	$150,000.00

Qualified Expenses

- Walls
- Partitions
- Floors
- Ceilings
- Paneling
- Tile
- Windows
- Doors
- HVAC
- Plumbing
- Stairs
- Sprinkler systems
- Fire escapes
- Some soft costs (if added to the basis of the property)

Not Qualified Expenses

- Acquisition costs
- Appliances
- Decks (if not part of original building
- Demolition costs
- Enlargement costs which expand the total volume of the building
- Work done to facilities related to a building such as a parking lot or sidewalk or landscaping

Main Eligibility Factors for 20%

3. Secretary of the Interior's Standards for Rehabilitation
   A. Part 2 of the Historic Preservation Certification Application
   B. 10 Principles www.NPS.Gov/tps/standards/rehab/stand.htm

Main Eligibility Factors for 20%

4. Income Producing:

No personal residences (bed and breakfast or rental property is ok)

The Selling of Historic Tax Credits

1. Market developed for investors to "acquire" tax credits.
2. Investors would require fixed return in addition to residual cash flow.
3. Developers provided guaranties to protect against failure of tax credit structure.
4. Capital invested at completion or after completion of project.
5. "Put" prices fixed for investors at a percent of their capital contribution.
6. Developer would get "call" right at FMV of investor's interest.

Pigs Get Fat, Hogs Get Slaughtered - Historic Boardwalk Hall Case

Historic Boardwalk Hall

Key Factors According to Court of Appeals

1. Offering memorandum said deal was for "sale of historic tax credits".
2. Pitney Bowes conditioned its contributions on the project completed work sufficient to generate tax credits.
3. NJSEA provided both a completion guaranty and tax benefits guaranty.
4. No residual cash flow predicted.
5. Put and call options backed up with investment contract.

Gridlock

Safe Harbor of Revenue Procedure 2014-12

FLIPS: Aside from a gymnastics move, what are they?

The Flip

Investor
99%

1% Principal

After 5 years

(the holding period)

Investor
5%

95%
Principal

99% of Tax Credits Go to Investor

Safe Harbor - Timing of Capital Contributions

A. Investor must contribute 20% of its total investment prior to the building being placed in service.
B. At least 75% of expected total investment must be fixed by time building placed in service.
C. 75% amount can be contingent upon certain milestones, as long as 20% has already been contributed.

Safe Harbor - Guaranties

1. Must be "unfunded".
2. Cannot guarantee investor's ability to claim tax credits.
3. Cannot guarantee investor will receive partnership distributions in exchange for investment.
4. No indemnity for investor's cost if IRS challenges tax credits.
5. Permissible Guaranties:
   a. Covering acts or omissions that would cause the partnership to fail to qualify for tax credits.
   b. Covering the performance of acts necessary to claim tax credits.
   c. Environmental indemnities, completion guaranties, operating deficit guaranties.

Safe Harbor -Puts and Calls

1. The partnership and the developer cannot have a “call” right to purchase interest of investor.
2. Investor can have “put” right so long as purchase price does not exceed FMV at the time the right is exercised.
3. Investor cannot abandon its interest.

THE END