



June 14, 2013

Technical Director
File Reference No. EITF-13B
FASB
401 Merritt 7
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Norwalk, CT 06856-5116

Dear Technical Director:

I am writing on behalf of the Historic Tax Credit Coalition (HTCC) to respond to your request for comments on the Proposed Accounting Standards Update related to Accounting for Investments in Qualified Affordable Housing Projects. The HTCC fully supports the change in accounting standards for nonguaranteed Low-Income Housing Tax Credit (LIHTC) investments. We also strongly support expanding this change to include other tax credit programs, particularly the federal Historic Tax Credit (HTC).

The Historic Tax Credit Coalition (HTCC) is a group of historic tax credit industry representatives who have come together to help develop a consensus on ways to modernize the HTC. Its members are tax credit syndicators, corporate investors, tax attorneys, accountants, preservation consultants and real estate developers who are involved in the business of using the HTC as a financing tool to help facilitate the rehabilitation of historic properties. The HTCC's activities include research on the economic impact of the HTC, the development of legislative and regulatory proposals to promote the simplification and greater use of the HTC, and efforts to foster greater communication between the National Park Service, the Internal Revenue Service and the HTC industry. Our website can be found at www.historiccredit.com.

Our comments below are organized based on the questions posed in the EITF Exposure Document dated April 17, 2013.

Question 1: Do you agree that an entity should meet the conditions in this proposed Update in order to elect to account for the investment in a qualified affordable housing project using the effective yield method? If not, please explain why.

We agree that the criteria outlined in the proposed change accurately capture the distinction between investments made primarily for the underlying real estate economics and those made

primarily for the tax benefits associated with tax credit investments such as LIHTCs, HTCs as well as Renewable Energy and New Markets Tax Credits.

Question 2: Do you agree that the effective yield method is an appropriate method to account for investments in qualified affordable housing projects? If not, what method of accounting should be used? Please explain.

The HTCC agrees that the effective yield accounting method is an appropriate way to eliminate the “above the line, below the line” treatment of tax credit investments under the equity method of accounting. The profit and loss statement impairment for the HTC is even more severe than that for the LIHTC because the HTC is 100% earned at property placement in service rather than over a 10-year period. A significant portion of the credit investment (typically greater than 50%) must be recognized as an impairment when the investment is made. This accounting treatment is often noted by prospective investors as distortive of their pre-tax book earnings and a reason not to invest in the HTC. We also suggest the use of the “proportional amortization” approach as a way to simplify the investment write-off within the effective yield accounting method.

Question 3: Do you believe that removal of the requirement for guaranteed tax credits should change the method used to account for such investments from an effective yield method to an approach where the cost of investment is amortized in proportion to tax credits and other tax benefits received and recognized as a component of income taxes attributable to continuing operations?

No. We believe that all tax credit transactions should be judged equally with respect to the four qualifying criteria outlined in the exposure document. That would include guaranteed LIHTC transactions. Different accounting principles should not exist for tax credit investments with similar attributes. This is especially important given that in some instances different tax credits are combined in the same transaction.

Question 4: Do other types of investments made primarily for the purpose of receiving tax credits meet the conditions in this proposed Update for an entity to elect to account for the investments using the effective yield method? If so, please describe them.

The federal HTC, as amended in the Tax Reform Act of 1986, consist of a 20% credit for the rehabilitation of certified historic buildings and a 10% credit for the rehabilitation of non-historic non-residential buildings built before 1936. Both credits are governed by the provisions of Section 47 of the IRC. The 20% credit is earned when a building owner completes a certified historic rehabilitation on an income producing (depreciable) property that is listed on the National Register of Historic Places or certified to be a contributing property in a National Register District. The plans for the rehabilitation must meet the Secretary of the Interior’s Standards for the Treatment of Historic Properties (Standards) and those plans must be certified as complying with the Standards by the National Park Service prior to rehabilitation and after completion. The full amount of the HTCs is claimed on the date the property is placed in service and is subject to pro rata recapture over a 5-year compliance period. The rehabilitation must be “substantial”-- \$5,000 or 100% of the adjusted basis, whichever is greater. Tax credit recapture can be caused, among other things, by transfer of title (lender foreclosure, for instance) or

property de-certification due to loss of historic integrity, either from owner changes to character defining features or casualty loss from a natural disaster within the compliance period.

There is a 3-part application for the 20% HTC. Part 1 seeks placement of the property on the National Register of Historic Places. Part 2 has to demonstrate the compliance of building plans and specifications to the Standards. Part 3 approval certifies that the property, as completed, meets the Standards laid out in the Part 2 application. The 20% credit program is jointly administered by the National Park Service (NPS) which manages the approval process, and the Internal Revenue Service which focuses on tax credit eligibility and ongoing compliance.

The 10% rehabilitation credit for non-historic properties operates similarly to the 20% historic credit with some important differences. Because eligible properties are not historic, the National Park Service does not review the rehabilitation plan. The property owner is free to implement any plan of his/her choosing. There is no recapture penalty for architectural changes during the 5-year compliance period or risk of historic de-certification.

The HTCC believes that many transactions claiming the 20% or the 10% rehabilitation credits meet the four criteria for effective yield accounting treatment.

1. **It is probable that the tax credits allocable to the investor will be available.** HTCs are an uncapped credit that is available to the investor when the property is placed in service. As stated above, the credits are subject to final certification by the National Park Service through a Part 3 approval. The Part 3 application consists of before and after photographs to verify that the Standards outlined in the Part 2 application have been met. Investors will typically close on an HTC transaction upon receipt of an unconditional Part 2 approval. The National Park Service is very rigorous in its Part 2 and Part 3 reviews and historic property developers have learned that Part 2 requirements must be met in order to expect a Part 3 approval. In instances of a Part 3 denial, the developer has a grace period to remedy any Part 3 shortcomings and reapply for final certification.

Managing members (developers) of LLCs or limited partnerships formed to complete HTC-financed transactions typically provide completion guarantees. As a backup, investors require a larger construction contingency than new construction (8-12%) because of the potential for unforeseen conditions.

2. **The investor retains no operational influence over the investment, and substantially all of the projected benefits are from tax credits and other tax benefits.** Similar to LIHTC transactions, HTC investors are active partners in a historic rehabilitation project with the usual limitations on participation in the day-to-day operations of the LLC or limited partnership. The HTC is an investment tax credit that is allocated to partners or members of the partnership or LLC based on their respective shares of “bottom line” operating profits. The investor does receive a priority return and/or a residual cash flow split on its investment. However, the HTCC does not believe that these cash flow benefits are large enough to disqualify the HTC from compliance with the proposed standards for effective yield accounting treatment.

- 3. The investor's projected yield based solely on the cash flows from tax credits and other tax benefits (for example, tax benefits generated from the operating losses of the investment) is positive.** For many transactions, the investor return on HTC transactions is positive based solely on the cash flows from tax credits and other tax benefits. In addition to the cash return discussed above, after the 5-year compliance and recapture period, investors have traditionally used put and call options to make decisions about whether to exit or remain in an HTC transaction. Historically, investor put options in the 5-10% of the original investment amount have been typical. The market has been moving more toward fair market call options based on the value of the investor's interests after the compliance period. Without cash generated by the put or call options, the investor's projected yield is often still positive.

- 4. The investor limited partner in the affordable housing project for both legal and tax purposes, and the investor's liability, are limited to its capital investment.** Industry practice for the HTC is the same as the LIHTC. The investor member's liability is limited to its equity investment. The developer has the responsibility to complete construction and operate the property. The investor has the option, but not an obligation, to assist the managing member to pay cost overruns or operating deficits.

Question 5: Should the guidance in this proposed Update extend the effective yield method of accounting to other types of investments for which the economic benefits are realized primarily as a result of tax credits and other tax benefits? Please explain.

In addition to its position that the HTC meets the proposed requirements for effective yield accounting treatment, the HTCC believes that New Markets and Renewable Energy Credits should be eligible for effective yield accounting treatment if they meet the four criteria above.

Question 6: Do you agree that the amendments in this proposed Update should prescribe recurring disclosure objectives that would enable users of financial statements to understand the nature of investments in qualified affordable housing projects and the effect of the measurement of that investment and the related tax credits on the financial position and results of operations of the reporting entity? Alternatively, should the proposed amendments include minimum required disclosures?

We believe that the amendments in this proposed update should prescribe recurring disclosure requirements, however some of the suggested disclosure would be burdensome and do not provide meaningful information to users of financial statements.

Question 7: Do you agree that the amendments in this proposed Update should be applied using a retrospective approach? If not, please explain why.

The HTCC believes that the proposed changes should be retrospective, and early adoption should be allowed.

Question 8: Do you agree that early adoption of the proposed amendments should be

permitted? If not, please explain why.

Yes.

Question 9: The amendments in this proposed Update would apply to public and nonpublic entities. Should the proposed amendments be different for nonpublic entities? If so, please describe how and why you think they should be different.

No.

Thank you for this opportunity to comment on this proposed rule change.

Sincerely,

John Leith-Tetrault
Chairman
Historic Tax Credit Coalition