

Date Issued: December 11, 2013
Georgia Letter Ruling: LR IT-2013-02
Topic: Low-Income Housing Tax Credit

This letter is in response to your letter requesting a ruling regarding Taxpayer 1 and Georgia's Low-Income Housing Tax Credit, O.C.G.A. § 48-7-29.6.

Facts As Presented by the Taxpayer

Your letter to the Department states: "Applicant is a <deleted text> authorized to do business in the State of Georgia ('Georgia'). <deleted text>. Applicant is also able to make certain, transferable state tax credits available to investors through <its wholly owned subsidiary>, Taxpayer 2, <deleted text>. Since that time, Taxpayer 2 has invested in or participated as syndicator in a number of Georgia tax credit programs.

"Applicant has entered into a series of agreements pursuant to which Applicant has become or will become the tax credit investor in certain limited partnerships, each of which is organized to own a "qualified Georgia project," as such term is defined in the Georgia Housing Credit Program (Ga. Code Ann. § 48-7-29.6) and as more specifically identified below.

Transaction 1

1. The qualified Georgia project is known as <Project 1> and is located in <deleted text>, Georgia.
2. The legal name of the limited partnership owning <Project 1> is Project Partnership 1.
3. As authorized by the Georgia Department of Community Affairs (the 'DCA'), <Project 1> is projected to receive an allocation of federal low-income housing tax credits (the 'Federal Credits') under section 42 of the Internal Revenue Code of 1986, as amended (the 'Code') in the amount of approximately <dollar amount> annually during the applicable 10-year credit period.
4. <Project 1> is also projected to receive an allocation of Georgia low-income housing tax credits under Ga. Code Ann. § 48-7-29.6 (the 'State Credits') in the amount of approximately <dollar amount> annually during the applicable 10-year credit period.
5. Pursuant to <Project Partnership 1's> limited partnership agreement (<Project Agreement 1?>), the Applicant owns a <deleted text>% interest in <Project Partnership 1> and will be entitled to <deleted text>% of the annual allocation of Federal Credits generated by <Project 1>.
6. Also pursuant to <Project Agreement 1>, a wholly-owned subsidiary of Applicant, Taxpayer 3, a <non-Georgia> limited liability company formed for this purpose (the 'State Investor'), owns a <deleted text>% interest in <Project Partnership 1> and is entitled to <deleted text> of the annual allocations of State Credits generated by <Project 1>. Applicant is the manager and sole member of State Investor.

Transaction 2

1. The qualified Georgia project is known as <Project 2> and is located in <deleted text>, Georgia.
2. The legal name of the limited partnership that will own <Project 2> is anticipated to be <Project Partnership 2>.
3. As authorized by the DCA, <Project 2> is projected to receive an allocation of Federal Credits under section 42 of the Code in the amount of approximately <dollar amount> annually during the applicable 10-year credit period.
4. <Project 2> is also projected to receive an allocation of State Credits in the amount of approximately <dollar amount> annually during the applicable 10-year credit period.

5. Pursuant to <Project Partnership 2's> limited partnership agreement (<Project Agreement 2>), the Applicant is to own a <deleted text>% interest in <Project Partnership 2> and will be entitled to <deleted text>% of the annual allocation of Federal Credits generated by <Project 2>.

6. Also pursuant to <Project Agreement 2>, State Investor is to own a <deleted text>% interest in <Project Partnership 2> and is entitled to <deleted text>% of the annual allocations of State Credits generated by <Project 2>.

“For purposes of the rulings requested herein, <Project 2> and <Project 1> are collectively referred to as the ‘Project’, <Project Partnership 2> and <Project Partnership 1> are collectively referred to as the ‘Project Partnership’ and <Project Agreement 2> and <Project Agreement 1> are collectively referred to as the ‘Project Agreement’.

“Although Applicant and/or some of its other affiliates will be able to use the State Credits allocated by the Project to the State Investor (that will be transferred by the State Investor to Applicant or their other affiliates) to offset their Georgia income tax liabilities, Applicant may have an opportunity to transfer the State Credits for either <Project 1> or <Project 2> to one or more unrelated purchasers with Georgia income tax or insurance premium tax liabilities (a ‘Purchaser’). This would provide Applicant with additional capacity to invest in other projects generating additional Georgia income tax credits.”

Your letter further states: “The parties. The following parties are involved in or related to the Transactions.

1. Applicant: Taxpayer 1.
2. State Investor: Taxpayer 3, a <non-Georgia> limited liability company.
3. Purchaser(s): Undetermined at this time.

Applicant is the only taxpayer requesting a private letter ruling. Applicant makes no representations for, or on behalf of, either Project Partnership or any other parties to the Transaction.”

Issue

1. Whether a State Investor may be admitted to Project Partnership at any time before the end of the taxable year in which the project is placed in service? Your letter states the following regarding this issue: “State Investor will be eligible for an allocation of all or a portion of the State Credits generated by the Project provided that State Investor is admitted as a member of the Project Partnership before the end of the taxable year in which the Project is placed in service (and may be admitted to the Project Partnership after the date on which the Project is placed in service as long as such admission takes place before the end of the taxable year of the placed in service date, as determined by the taxable year end of the Project Partnership).”

2. Whether Purchasers may be admitted to State Investor at any time before the end of the taxable year to which state credits relate? Your letter states the following regarding this issue: “State Investor may admit a Purchaser as a member of State Investor at any time, and may amend its operating agreement to provide for the allocation of all or part of the remaining, unutilized State Credits to such Purchaser, provided the Purchaser is admitted to State Investor before the end of the taxable year of State Investor to which such allocation of State Credits pertains. In other words, a Purchaser intending to utilize State Credits for the 2014 taxable year must be admitted to State Investor at any time before the end of the State Investor’s 2014 taxable year.”

3. Whether State Investor may allocate state credits generated by a project to multiple Purchasers? Your letter states the following regarding this issue: “[s]ame facts as in ruling request #2 above except that in the following year, State Investor may admit a new Purchaser in the same manner for the purpose of allocating such following year’s State Credits to such new Purchaser, and may allocate a portion of the State Credits generated in such following year to the new Purchaser and the remaining portion of State Credits generated in that year to the original Purchaser.

The following examples illustrate the requested rulings in Nos. 1, 2, and 3:

Example 1.

Project Partnership and State Investor are each calendar year taxpayers for Federal and Georgia income tax purposes. On <deleted text>, 2013, Project Partnership places the Project in service. On <deleted text>, 2013, State Investor is admitted as a member of Project Partnership, after the Project is placed in service but before the end of the Project Partnership's taxable year. State Investor may be allocated State Credits generated for 2013 by the Project Partnership. On <deleted text>, 2014, Purchaser 1 is admitted as a member of State Investor. Purchaser 1 is allocated all or a portion of the State Credits generated by the Project Partnership for the 2014 taxable year of the Project Partnership, and which State Credits are allocated first to State Investor and subsequently to Purchaser 1. On <deleted text>, 2015, Purchaser 2 is admitted as a member of State Investor. Purchaser 2 may be allocated all or a portion of the State Credits generated by the Project Partnership for 2015 in the same manner.

Example 2.

Same facts as in Example 1 except that Purchaser 2 is allocated <deleted text>% of the State Credits generated for 2015 and Purchaser 1 is allocated the remaining <deleted text>% of the State Credits for 2015."

4. Whether the allocation of state credits to Purchaser is treated as a sale for Georgia income tax purposes? Your letter states the following regarding this issue: "State Investor intends to treat the admission of a Purchaser as a new member in the following manner:

a. capital investment - in exchange for admission, the Purchaser would pay a nominal amount for its capital interest in State Investor which would entitle the Purchaser to receive an allocation of a specific amount of State Credits; and

b. sale of State Credits - the Purchaser would provide to State Investor a payment reflecting the fair market value of the State Credits.

Applicant proposes to treat the transaction described in (4.a.) as [a] capital contribution for the membership interest in State Investor and the transaction described in (4.b.) as, in substance, a taxable sale of the State Credits to the Purchaser. State Investor would recognize 100% of the gain from the sale of the State Credits for federal and Georgia income tax purposes, and the Purchaser would receive basis both in its capital contributed to State Investor and in the State Credits, each reflecting its fair market value. Applicant proposes to treat the transactions described in this request in this manner because Applicant believes it is likely that the Internal Revenue Service ("IRS") would not recognize the members of State Investor as partners in a partnership [for] federal income tax purposes and would likely treat these transactions as "disguised sales" for federal income tax purposes under the holding of *Virginia Historic Tax Credit Fund 2001 LLC, et. Al, v. Commissioner of Internal Revenue*, (Ct. App. 4th Cir, Docket Nos. 10-1333, 10-1334 and 10-1336, March 29, 2011) (the "*Virginia Case*"). Applicant desires certainty in its treatment of the Transactions for both federal income tax purposes and Georgia income tax purposes."

5. Whether the transfer by applicant of <deleted text>% of State Investor interest to Purchaser is treated as a sale of state credits? Your letter states the following regarding this issue: "[i]f Applicant transfers its entire interest in State Investor to one Purchaser, Applicant proposes to treat such a transaction as a sale of the State Credits to such Purchaser, again, to reflect the substance of the transaction in the following manner:

a. State Investor would admit an unrelated Purchaser as a member of State Investor, for a nominal contribution to State Investor's capital, and would amend its operating agreement to provide that <deleted text>% of the State Credits would be allocated to Purchaser; and

b. because both Applicant and Purchaser would be members of State Investor, Applicant would then sell to such Purchaser Applicant's remaining interest in State Investor, which interest would include the fair market

value of the aggregate amount of State Credits allocated to the State Investor from the Project Partnership over the entire 10-year credit period for an agreed-upon purchase price.

Applicant proposes to treat the first transaction as [a] capital contribution for the membership interest in State Investor and the second transaction as, in substance, a taxable sale of the State Credits to the Purchaser. State Investor would recognize 100% of the gain from the sale of the State Credits (i.e., the sale of the Applicant's remaining interest in State Investor) for federal and Georgia income tax purposes, and the Purchaser would receive basis both in its capital contributed to State Investor and in the State Credits, each reflecting its fair market value. Applicant proposes to treat the transactions in this manner because Applicant believes that the IRS would not recognize the members of State Investor as partners in a partnership or would treat these transactions as "disguised sales" anyway. Applicant desires certainty in its treatment of these transactions. See the Virginia Case, above."

Analysis

O.C.G.A. § 48-7-29.6(b)(1) provides that:

"(b)(1) A state tax credit against the tax imposed by this article, to be termed the Georgia housing tax credit, shall be allowed with respect to each qualified Georgia project placed in service after January 1, 2001. The amount of such credit shall, when combined with the total amount of credits authorized under Code Section 33-1-18, in no event exceed an amount equal to the federal housing tax credit allowed with respect to such qualified Georgia project."

O.C.G.A. § 48-7-29.6(b)(4) provides that:

"(b)(4) The tax credit allowed under this Code section, and any recaptured tax credit, shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project."

Georgia Housing & Finance Authority Carryover Allocation of 2007 Housing Credit Authority Addendum Georgia Housing Tax Credit provides in part:

"In a joint effort to facilitate the effective and efficient use of the GHTC, DCA, DOR and OCI have determined and wish to make public the following points:

- There is no State minimum percentage of a general partner or limited partner's interest in the ownership entity, as long as the partner would be recognized under federal tax law."

Ruling for Issue #1

O.C.G.A. § 48-7-29.6 provides an income tax credit for taxpayers owning developments receiving the federal low-income housing tax credit that are placed in service on or after January 1, 2001. O.C.G.A. § 48-7-29.6(b)(4) specifies that the credit shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project. There is no state minimum percentage of a general partner or limited partner's interest in the ownership entity, as long as the partner would be recognized under federal tax law.

Based on the facts stated herein, it is the opinion of this Department that if all requirements of the low-income housing tax credit are satisfied and State Investor is admitted to Project Partnership before the end of Project Partnership's taxable year then State Investor will be eligible for allocation of all or a portion of the state tax credits generated by Project Partnership as long as State Investor is considered a partner under federal law.

Ruling for Issue #2

Since State Investor is receiving the credit from an ownership entity, Project Partnership, then a member (Purchaser), who is admitted to State Investor as a member under applicable state limited liability company law or a partner under applicable state partnership law, may be admitted to State Investor at any time before the end of State Investor's taxable year, even if they only become a member as of the last day of State Investor's taxable year, and receive the credit for the taxable year to which the credits relate. The credit may be allocated as provided by O.C.G.A. § 48-7-29.6(b)(4).

Ruling for Issue #3

Since State Investor is receiving the credit from an ownership entity, Project Partnership, then multiple members (Purchasers), who are admitted to State Investor as members under applicable state limited liability company law or as partners under applicable state partnership law, may be admitted to State Investor at any time before the end of State Investor's taxable year, even if they only become a member as of the last day of State Investor's taxable year, and receive the credit for the taxable year to which the credits relate. The credit may be allocated as provided by O.C.G.A. § 48-7-29.6(b)(4).

Ruling for Issue #4

The Department's treatment would depend on federal treatment and action by the Internal Revenue Service; therefore the Department cannot specify how the sale would be treated. However, even if it is treated as a sale, the rulings provided for issues #2 and 3 would not be affected.

Ruling for Issue #5

The Department's treatment would depend on federal treatment and action by the Internal Revenue Service; therefore the Department cannot specify how the sale would be treated. However, even if it is treated as a sale, the rulings provided for issues #2 and 3 would not be affected.

The opinions expressed in this ruling are based upon the information contained in your request and are limited to the specific transactions and taxpayer in question. A ruling has no precedential value except to the person to whom the ruling was issued and then only for the specific transaction addressed in the ruling. Should the circumstances regarding this transaction change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes and rules upon which this advice is based may subject similar future transactions to a different tax treatment than those expressed in this response.

Note: See related Georgia Letter Ruling No IT-2014-01 below.

Date Issued: March 17, 2014
Georgia Letter Ruling: LR IT-2014-01
Topic: Low-Income Housing Tax Credit

This letter is in response to your letter requesting clarification of Georgia Letter Ruling No. IT-2013-02 regarding Taxpayer 1 and Georgia's Low-Income Housing Tax Credit, O.C.G.A. § 48-7-29.6.

Facts As Presented by the Taxpayer

Your letter to the Department states: “**Request for Clarification of Ruling #2:** Please confirm that, under Ruling #2, as long as State Investor is a partner of the project owner (the ‘Project Partnership’) for federal income tax purposes, and State Investor is allocated all or a portion of the State Credits generated by the Project Partnership, a Purchaser may be admitted to State Investor under applicable State limited liability company law or State limited partnership law and may be allocated all or a portion of the State Credits from State Investor. Please also confirm that, under Ruling #2, as long as State Investor qualifies as a partner of Project Partnership for federal income tax purposes, the Purchaser (or member of the State Investor) is not required to be treated as a partner of State Investor for federal income tax purposes, and is not required to maintain its interest in State Investor for State law purposes for any minimum period of time.

The following modification to Example 1 of our Ruling Request illustrates the requested clarification:

- State Investor qualifies as a partner for federal and State income tax purposes and is entitled to receive an allocation of <deleted text>% of the State Credits generated by the Project Partnership for the 2014-2023 calendar years.
- Purchaser 1 is properly admitted under State law to State Investor on <deleted text>, 2014.
- Purchaser 1 is allocated all or a portion of the State Credits generated by the Project Partnership for the 2014 taxable year of the Project Partnership.
- 2014 State Credits are allocated: first, by Project Partnership to State Investor and subsequently, by State Investor to Purchaser 1.
- Purchaser 1 claims such State Credits on its 2014 Georgia income tax return that is filed on April 15, 2015.
- As noted above, for federal and State income tax purposes, State Investor qualifies as a partner of Project Partnership.
- For federal income tax purposes, Purchaser 1 does not qualify as a partner of State Investor, but Purchaser 1 does qualify as owning an interest in State Investor under State law, that entitles Purchaser 1 to receive an allocation of the State Credits. That is, for federal income tax purposes, the allocation of State Credits from State Investor to Purchaser 1, which is recognized for State law purposes, is treated as a taxable sale of the State Credits from State Investor to Purchaser 1 for State income tax purposes.
- The allocation of the 2014 State Credits to State Investor will be recognized for federal and State income tax purposes.
- State Investor will recognize gain on the “sale” of the 2014 State Credits when Purchaser 1 purchases from the State Investor the 2014 State Credits in 2014.
- Purchaser 1 will recognize gain (i.e. the difference between the purchase price and the face value of the State Credits allocated) when it files its returns for 2014 and uses the State Credits to pay its State income tax liability for 2014 in 2015. Purchaser 1 will report that short-term capital gain on its 2015 federal and State income tax returns.

- Purchaser 1 exits the State Investor on <deleted text>, 2015, and will be entitled to claim on its 2015 federal and State income tax returns, a short-term capital loss equal to the payment it made to State Investor with respect to the 2014 State Credits on <deleted text>, 2014.

Accordingly, Applicant requests clarification that provided State Investor qualifies as a partner of Project Partnership for federal income tax purposes, it is sufficient, for purposes of subsequently allocating the State Credits to Purchaser 1, that Purchaser 1 be validly admitted as a member or partner of State Investor under State law but Purchaser 1 is not required to be treated as a partner for federal income tax purposes or to maintain such interest in State Investor for any minimum period of time under State law.

Request for Clarification of Ruling #3: Under Ruling #3, State Investor may allocate all or a portion of the State Credits to more than one Purchaser either on a year-by-year basis (i.e., Purchaser 1 is allocated <deleted text>% of the State Credits for 2014 by State Investor, Purchaser 2 is allocated <deleted text>% of the State Credits for 2015 by State Investor, provided that each is validly admitted as a member of State Investor at the time of allocation under State law) or on a split-year basis (i.e., as in Example 2 of the Ruling Request, Purchaser 1 is allocated <deleted text>% of the State Credits for 2015 and Purchaser 2 is allocated the remaining <deleted text>% of the State Credits for 2015, provided that each is validly admitted as a member of State Investor at the time of allocation under State law).

Applicant requests clarification that as long as State Investor qualifies as a partner for federal income tax purposes of Project Partnership, it is sufficient for purposes of subsequently allocating State Credits to Purchaser 1 and/or Purchaser 2 under facts presented in Example 2 of the Ruling Request, that Purchaser 1 and Purchaser 2 are validly admitted as members of State Investor under State law and are not required to be treated as partners for federal income tax purposes or to maintain their interests in State Investor for any minimum period of time under State law.”

Issue

See the above request for clarification regarding Rulings #2 and 3 from Georgia Letter Ruling No. IT-2013-02.

Analysis

O.C.G.A. § 48-7-29.6(b)(1) provides that:

“(b)(1) A state tax credit against the tax imposed by this article, to be termed the Georgia housing tax credit, shall be allowed with respect to each qualified Georgia project placed in service after January 1, 2001. The amount of such credit shall, when combined with the total amount of credits authorized under Code Section 33-1-18, in no event exceed an amount equal to the federal housing tax credit allowed with respect to such qualified Georgia project.”

O.C.G.A. § 48-7-29.6(b)(4) provides that:

“(b)(4) The tax credit allowed under this Code section, and any recaptured tax credit, shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project.”

Georgia Housing & Finance Authority Carryover Allocation of 2007 Housing Credit Authority Addendum Georgia Housing Tax Credit provides in part:

“In a joint effort to facilitate the effective and efficient use of the GHTC, DCA, DOR and OCI have determined and wish to make public the following points:

- There is no State minimum percentage of a general partner or limited partner’s interest in the ownership entity, as long as the partner would be recognized under federal tax law.”

Clarification of Ruling on Issue #2 (from Georgia Letter Ruling No. IT-2013-02)

O.C.G.A. § 48-7-29.6 provides an income tax credit for taxpayers owning developments receiving the federal low-income housing tax credit that are placed in service on or after January 1, 2001. O.C.G.A. § 48-7-29.6(b)(4) specifies that the credit shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project. There is no state minimum percentage of a general partner or limited partner's interest in the ownership entity, as long as the partner would be recognized under federal tax law.

Based on the facts stated herein and the facts in Georgia Letter Ruling No. IT-2013-02, it is the opinion of this Department that yes, under Ruling #2, as long as State Investor is a partner of the project owner (the "Project Partnership") for federal income tax purposes, and State Investor is allocated all or a portion of the State Credits generated by the Project Partnership, a Purchaser may be admitted to State Investor under applicable State limited liability company law or State limited partnership law and may be allocated all or a portion of the State Credits from State Investor, so long as the Purchaser is a member or partner under State law at the time of the allocation. And yes, under Ruling #2, as long as State Investor qualifies as a partner of Project Partnership for federal income tax purposes, the Purchaser (or member of the State Investor) is not required to be treated as a partner of State Investor for federal income tax purposes, and is not required to maintain its interest in State Investor for State law purposes for any minimum period of time.

Clarification on Ruling for Issue #3 (from Georgia Letter Ruling No. IT-2013-02)

Yes, as long as State Investor qualifies as a partner for federal income tax purposes of Project Partnership, it is sufficient for purposes of subsequently allocating State Credits to Purchaser 1 and/or Purchaser 2 under facts presented in Example 2 of the Ruling Request, that Purchaser 1 and Purchaser 2 are validly admitted as members of State Investor under State law and are not required to be treated as partners for federal income tax purposes or to maintain their interests in State Investor for any minimum period of time under State law, so long as Purchaser 1 and/or Purchaser 2 are a member or partner under State law at the time of the allocation.

The opinions expressed in this ruling are based upon the information contained in your request and are limited to the specific transactions and taxpayer in question. A ruling has no precedential value except to the person to whom the ruling was issued and then only for the specific transaction addressed in the ruling. Should the circumstances regarding this transaction change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes and rules upon which this advice is based may subject similar future transactions to a different tax treatment than those expressed in this response.