Combining Solar and Housing Tax Credits

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Why Solar Energy?

- Solar energy can be used for common areas to reduce a property's operating expenses
- Many states have revised their qualified allocation plans to encourage sustainable building methods (including using solar energy)
- To the extent that using solar energy allows a reduction in tenant utility allowances, that generally allows rents to increase by an equal amount
- The cost of certain solar property may qualify for Energy Tax Credits ("Energy Credits") under Section 48 of the Code

Energy Tax Credit Basics

- Energy Credits constitute the principal federal incentive for developing and installing solar power
- Energy Credits are investment tax credits (based on the cost of the solar energy facility and not on how much electricity is produced)
- The Energy Credit is generally 30% of the cost of the “facility” (which does not include ancillary items like transmission lines and substations, but can include a reasonable development fee)
- The facility must generate electricity, heating/cooling, hot water, or fiber-optic lighting

Energy Tax Credit Basics

- Energy Credits are generally claimed by the owner of the solar facility
- The Energy Credit is generally claimed in full at the time the solar facility is "placed in service"
- Recapture possible for 5 years (credit vests 20% per year)
- Energy Credits can reduce Alternative Minimum Tax liability
- Energy Credits reduced from 30% to 10% beginning in 2017

Combing Energy and Housing Credits

- The same property can take advantage of both Energy Credits and LIHTCs
- If the solar facility is being included in the initial construction or rehabilitation of a LIHTC property, then the solar property can be included in the basis for both tax credits
- If the solar facility is being added to an existing LIHTC property, the LIHTC basis is already established, so the Energy Credit can only be claimed on the solar facility

Issues to Consider

- Not all properties are good candidates for solar energy
- Charging tenants for the use of electricity will cause the solar equipment to be reclassified as "commercial property" and prevent the solar property from qualifying for LIHTCs
- Energy Credits are allocated in accordance with an owner's profits (unlike LIHTCs, which follow depreciation)
- The placed-in-service dates for solar property and the building may be different
- Energy credits reduce LIHTC basis

Selecting Your Investor

- Not all LIHTC investors will buy energy credits
- Developers should decide whether to include solar panels during the early planning stages of a property and solicit investors who value both credits whenever possible
- Several issues with the energy credit vary from investor to investor, including the methodology used to calculate the equity, the timing of the payments, and the due diligence requirements
- Address these issues before selecting your investor to avoid any surprises

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