ROGERS LEWIS
ROGERS LEWIS JACKSON MANN & QUINN, LLC

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GUIDANCE PROVIDED BY IRS.GOV-FAQs

(www.irs.gov (small business self-employment/tax aspects)

1. Who can claim a rehabilitation tax credit?

The rehabilitation tax credit is available to the person(s) and/or the entity who holds title to the property.

2. How can property owned by a tax-exempt entity utilize rehabilitation tax credits?

The rehabilitation tax credit would be of no use to a tax-exempt entity. However, in many instances, tax-exempt entities are involved in rehabilitation projects by forming a limited partnership and maintaining a minority ownership interest as a general partner. In these situations, the limited partners would be entitled to the rehabilitation tax credit and the tax-exempt entity is able to ensure that their organizational goals are being met.

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19. Can a taxpayer claim the rehabilitation tax credit on property that is leased by a tax-exempt entity, i.e. a governmental agency or a non-profit organization?

Yes, taxpayers can lease their property to a tax-exempt entity provided the lease does not result in a "disqualified lease" as defined in Internal Revenue Code Section 168(h)(1). A disqualified lease occurs when:

1. Part or all of the property was financed directly or indirectly by an obligation in which the interest is tax exempt under Internal Revenue Code Section 103(a) and such entity (or related entity) participated in the financing,
2. Under the lease there is a fixed or determinable purchase price or an option to buy,
3. The lease term is in excess of 20 years, or
4. The lease occurs after a sale or lease of the property and the lessee used the property before the sale or lease. See Internal Revenue Code 168(h)(1)(B)(ii).

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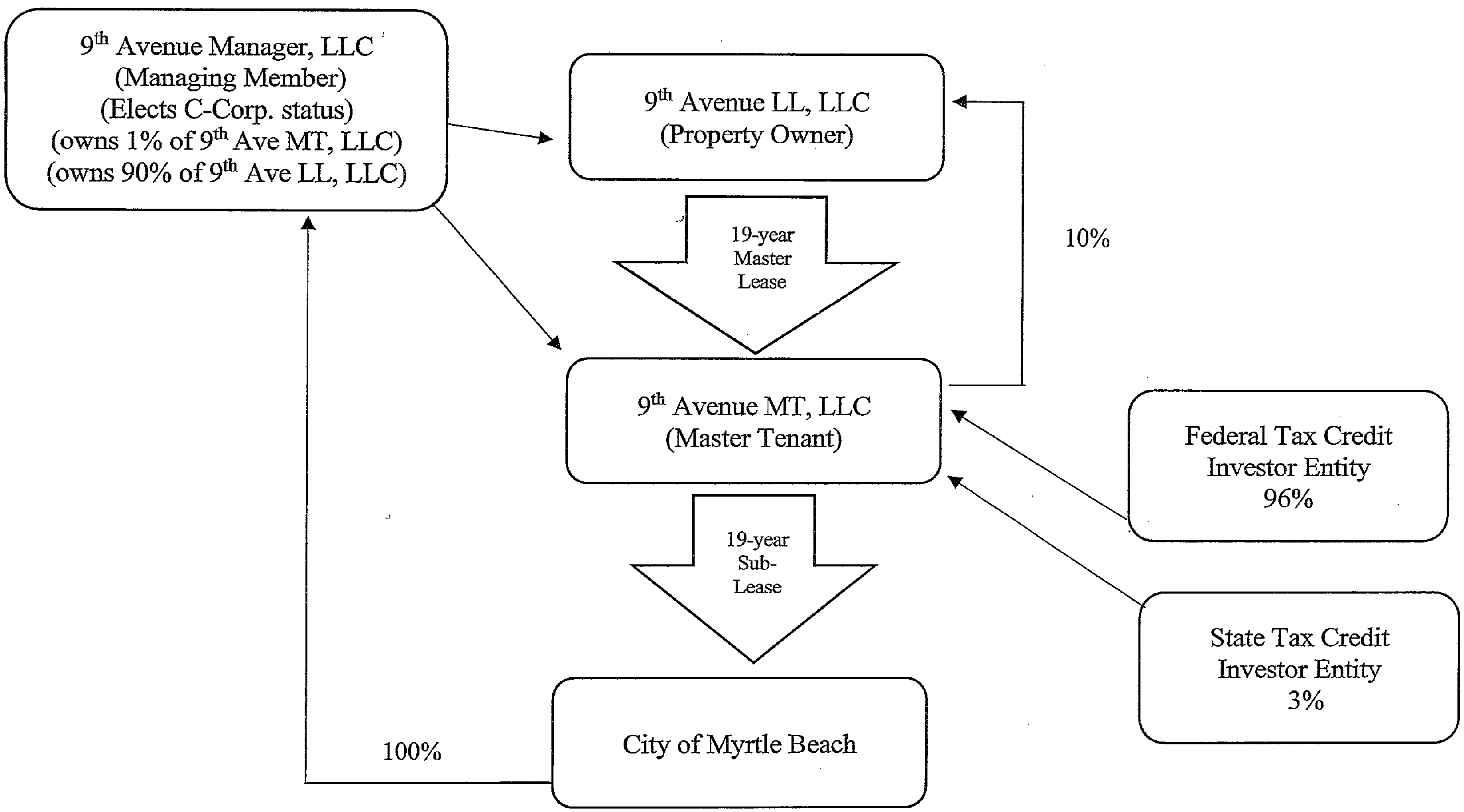
23. Can the rehabilitation tax credit be bought and sold?

The rehabilitation tax credit, by itself, cannot be bought or sold. The rehabilitation tax credit is only available to the person or entity who holds title to the property. There can be no transfer of the credit without the requisite ownership. Syndication through limited partnerships is allowed and is a common tool to bring investors into rehabilitation projects.

Treasury Regulation 1.48-12(b)(2)(B)(vii) does allow the transfer of qualified rehabilitation expenditures to a new owner provided the previous owner did not place the property in service.

ORGANIZATIONAL CHART

9th Avenue Assemblage, Myrtle Beach, SC



Notes on the structure:

1. The City will own 100% of 9th Avenue Manager, LLC. In order to comply with the tax credit rules, that entity will elect to be treated as a taxable corporation.
2. 9th Avenue Manager, LLC will own 1% of 9th Avenue MT, LLC, the Master Tenant. The remaining 99% will be owned by the tax credit investors during the 5-year recapture period.
3. 9th Avenue Manager, LLC will own 90% of 9th Avenue LL, LLC, which will own the property. The other 10% will be owned by 9th Avenue MT, LLC, the Master Tenant entity, in order to allow the tax credit equity from the tax credit investors to flow to the property owner entity, which will use the funds for the property redevelopment.
4. 9th Avenue LL, LLC, the property owner, will Master Lease the property to 9th Avenue MT, LLC, and will elect to pass the federal tax credits to 9th Avenue MT, LLC, 99% of which will then pass to the federal tax credit investor. The state tax credits will be allocated from 9th Avenue LL, LLC to 9th Avenue MT, LLC, and then allocated to the state tax credit investor, pursuant to the operating agreements that will be put in place at closing.
5. 9th Avenue MT, LLC will sublease the property to the City of Myrtle Beach.

Notes on unraveling the non-profit tax credit structure. The Put/Call Option:

1. The Federal Tax Credit Investor`s Membership interest will “flip” down to 5% five (5) years after the project is placed in service (Certificate of Occupancy date), and the City will have an opportunity to purchase the Federal Tax Credit Investor`s interest for 5% of the Federal Investor`s capital contribution.
2. The State Tax Credit Investor`s Membership Interest can be redeemed for a nominal purchase price 3 years after the project is placed in service. That buy-out amount is set at the beginning of the project when the State investor is brought in as Member. Usually 2.5% or less.