CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

New York State and Federal Historic Rehabilitation Tax Credits

Co-Sponsor:

Preservation League of New York State
www.PreserveNYS.org

CHW
Cannon Heyman & Weiss, LLP
Law Practice Concentrating in Affordable Housing and Community Development Law

New York State and Federal Historic Rehabilitation Tax Credits

New York State Assembly member Sam Hoyt
www.assembly.state.ny.us/mem/?ad=144

New York State Senator David Valesky
www.nysenate.gov/senator/david-j-valesky

Preservation Buffalo Niagara
www.preservationbuffaloiagara.org

National Trust for Historic Preservation
www.PreservationNation.org

CHW
Cannon Heyman & Weiss, LLP
Law Practice Concentrating in Affordable Housing and Community Development Law

New York State and Federal Historic Rehabilitation Tax Credits

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

www.chwattys.com

New York State and Federal Historic Rehabilitation Tax Credits

Questions during the webinar can be emailed to amccrady@chwattys.com and will be answered as time permits at the end of the program.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit
   i. Internal Revenue Code Section 47 / NY Tax Law 606(oo)
      a. Eligibility for NYS Credit generally made by reference to eligibility for Federal Credit (with a few exceptions).
   ii. 20% tax credit for rehabilitations of historic buildings
   iii. Dollar-for-dollar reduction of federal income tax liability
      a. Passive activity loss rules can limit use of credit if taxpayer is not a widely held C-Corp.
   iv. Calculated as a percentage of the eligible qualified rehabilitation expenses (QRE's)
   v. Applies to buildings:
      a. listed in the National Register of Historic Places
      b. eligible for listing on the National Register or
      c. located in a National Register historic district

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit (cont.)

vi. Unused credit can be carried back one year and forward for 20 years.

vii. IRS has authority to determine tax policy and monitor compliance.

viii. National Park Service (NPS), a division of the U.S. Department of the Interior certifies the rehabilitation

ix. Each state’s Historic Preservation office (part of NY Parks Department) reviews /recommends to NPS

x. May apply for the historic rehabilitation tax credit before, during or after a rehabilitation project.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit (cont.)

xi. Historic Preservation Certificate Application - three parts:

1. Part 1 - Evaluation of Significance
   a. A building is eligible if:
      i. Building contributes to an historic district or
      ii. Building itself is historically significant
   b. A preliminary determination of significance can be obtained to allow rehabilitation to commence pending nomination process

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xi. Historic Preservation Certificate Application - three parts: (cont.)

2. Part 2 - Description of Rehabilitation
   a. approval of construction plans
   b. NPS evaluates for compliance with The Secretary of the Interior's Standards for Rehabilitation.
   c. the analysis of current architectural and historical features of the building
   d. description of the proposed work to be undertaken
   e. we recommend that Part 2 be filed before any work is started

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xi. Historic Preservation Certificate Application - three parts: (cont.)

3. Part 3 - Certification of Completed Work
    a. After the rehabilitation is completed, the owner submits the Request for Certification of Completed Work.
    b. NPS evaluates the completed work against the work described in the Part 2
    c. Takes approximately 45 days from submission
    d. Can immediately claim 100% of the historic credits
        i. When building is placed in service (See Treasury Regulation 1.46-3(d)) so long as Substantial Rehab test is met.
        ii. 20% of the qualified rehabilitation expenditures
        iii. Per accountant cost certification

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xi. Historic Preservation Certificate Application - three parts: (cont.)

4. Application Process:
   a. Owner submits the application to the SHPO
   b. SHPO reviews the application and forwards it to the NPS
   c. NPS reviews the rehabilitation project for conformance and issues a decision.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xii. Two other tests to qualify for historic rehabilitation tax credits:

1. "Income Producing"

   a. must be income-producing property - office, retail, industrial, hotel and/or rental residential housing (i.e., a depreciable building)
   b. Owner-occupied residences are not depreciable, and do not qualify for federal rehabilitation tax credits.
   c. Residential rental use is considered to be income-producing.

CHW
Cannon Heyman & Weiss, LLP
Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xii. Two other tests to qualify for historic rehabilitation tax credits: (cont.)

2. Substantial Rehabilitation
   a. rehabilitation must be "substantial" to qualify for any tax credits.
   b. a building is substantially rehabilitated if QRE's during a 24-month period (or 60-month, if phased project is specified prior to the start of rehabilitation) selected by the taxpayer exceed the greater of
      i. $5,000 or
      ii. the adjusted basis of the building and its structural components, determined as of the beginning of the first day of the 24-month period (or 60-month) or the holding period of the building, whichever is later.

CHW
Cannon Heyman & Weiss, LLP
Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xii. Two other tests to qualify for historic rehabilitation tax credits:
2. Substantial Rehabilitation (cont.)

c. The adjusted basis is defined as the purchase price, minus the cost of the land minus any depreciation already claimed plus previously incurred rehabilitation costs.

d. No tax credits can be taken until the substantial rehabilitation test is satisfied.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

Historic Tax Credit Substantial Rehabilitation Test

Project Cost Assumptions

Acquisition Cost	$500,000	($100,000 allocated for land)
QREs	$2,500,000	
non-QRE	$500,000	
Total	$3,500,000	

Adjusted Basis of Building Calculation

Purchase Price - Land Cost – Depreciation +Incurred Rehab Costs = Adjusted Basis in Building

$500,000 (Acq. Cost)- $100,000 (Land Cost) - $0 (Depreciation) + $0 (I.R.C.)= $400,000 (Adj. Basis)

Substantial Rehabiltiation Test

QREs = $2,500,000 QREs Greater Than Adj. Basis = **Pass**

Adj. Basis = $400,000

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit (cont.)

xiii. Qualified Rehabilitation Expenditures (QRE's)

1. The rehabilitation tax credit is 20% of the qualified rehabilitation expenditures incurred before and during, but not after, the taxable year in which the property is placed in service.
2. Rehabilitation expenditures must be "capital" in nature and "depreciable" as real property to qualify for a rehabilitation tax credit.
3. This includes almost all hard and soft construction costs

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xiii. Qualified Rehabilitation Expenditures (QRE's) (cont.)

4. Architect's fees, engineering fees, legal fees, consulting fees, reasonable developer fees, construction management costs and construction period interest and taxes and any other fees paid that would normally be charged to a capital account are allowable as part of the qualified rehabilitation expenditures.
5. Building and land acquisition costs are not considered qualified rehabilitation expenses.
6. The cost of new construction beyond the "shell" of the existing building, such as expenditures attributable to landscaping, parking lots, site work and building enlargements, are not considered qualified rehabilitation expenses.
7. The costs of personal property and furnishings are typically not considered qualified rehabilitation expenses.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit (cont.)

xiv. Recapture

Historic rehabilitation tax credits claimed may be subject to prorated recapture by the IRS if within five years of completion of the rehabilitation:

a. if a rehab property is disposed of or foreclosed,
b. if a rehab property is destroyed by casualty
c. if ownership is transferred
d. if the facade is changed or
e. If the property loses its status as income-producing

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

b. 10% Rehabilitation Tax Credit (cont.)

i. Internal Revenue Code Section 47 also offers a 10% tax credit

ii. for rehabilitations of non-historic, non-residential income producing pre-1936 buildings

1. building must NOT be listed in the National Register
2. building must NOT be located in a Registered Historic District (or if so, has been determined to be a "non-contributing structure")
3. Building was placed in service before 1936 and has not been moved since
4. Properties must be income-producing (i.e., a depreciable building)
5. Building is used for non residential rental purposes

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

b. 10% Rehabilitation Tax Credit (cont.)

iii. calculated as a percentage of qualified rehabilitation expenses.

iv. requires only a single IRS tax form submission without any other federal or state involvement.

v. Must satisfy the substantial rehabilitation test

vi. Must satisfy the following internal and external wall retention tests:

1. 50% or more of the existing external walls are retained in place as external walls,
2. 75% or more of the existing external walls are retained in place as internal or external walls, and
3. 75% or more of the existing internal structural framework is retained in place.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

II. NYS Commercial Historic Tax Credit

a. Legislation sponsored by Assembly Member Sam Hoyt and State Senator David Valesky was signed by Governor Paterson into law on July 28, 2009.

b. Expands incentives and programmatic features of NYS Rehabilitation Tax Credit Programs established in 2006.

c. Increases allowed state credit to 100% of federal credit value (equivalent to 20% of qualified rehabilitation costs) up to a maximum of $5,000,000 in credit with respect to a qualified historic structure.

d. Unused credit may be carried forward indefinitely.

e. Rehabilitations placed in service after January 1, 2010 qualify

II. NYS Commercial Historic Tax Credit

f. Rehabilitation must be located in a census tract with a median family income of at or below 100% of the statewide median income **or** a targeted area residence in whole or in part within the meaning of IRC 143(j).

g. Does **NOT** make the credit transferable within business partnerships.

h. Sunsets December 31, 2014.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

II. NYS Commercial Historic Tax Credit

i. Miscellaneous NY State Tax Credit Issues

a. Are rehabilitations currently under construction eligible for the expanded NYS historic credit?

b. Where a building partially falls outside of census tract boundaries, is the building still eligible for expanded NYS historic credit?

c. Qualifying census tract issues:
   - (i) When do 2010 census tract changes take effect?
   - (ii) What if a project starts in a qualifying census tract as of 2010 and completes work in a census tract that is no longer qualified as of 3/2011?
   - (iii) Census tract based on 143(j) will be updated annually
   - (iv) Which state agency defines “chronically distressed areas” for NYS? Is the definition in use?

III. NYS Residential Historic Tax Credit

a. Rehabilitation credit allowed equal to 20% of QRE's with respect to a qualified historic home under NY Tax Law 606(pp).

b. "qualified historic home" means a certified historic structure located in NY which
   - has been substantially rehabilitated,
   - which is owned by the taxpayer,
   - in which the taxpayer resides, and
   - is located in a census tract with a median family income of at or below 100% of the statewide median income **or** a targeted area residence in whole or in part within the meaning of IRC 143(j).

c. Application and certification process similar to commercial credit, i.e. part 1, 2 and 3 process.

d. Generally, NY SHPO must approve rehabilitation although the law permits such approval by a certified local government or by a local landmark commission in certain circumstances.

III. NYS Residential Historic Tax Credit

e. Residential credit may not exceed $50,000 but if taxpayer has QRE's with respect to more than one residence in the same tax year, credit may not exceed $25,000 total.

f. Residential credit is refundable for taxpayers with less than $60,000 in gross income for such year.

g. QREs for the residential credit generally defined similar as the commercial credit.

h. QREs do not include any expenditure in connection with a qualified rehabilitated home unless at least 5% of the total expenditures are allocable to the exterior of the building.

III. NYS Residential Historic Tax Credit

i. If only a portion of the building is used as taxpayer residence than only QREs allocable to such portion are eligible for credit.

j. Building must be substantially rehabilitated which means that QREs with respect to such building are at least $5,000.

k. A taxpayer shall be treated as having made QREs with respect to a purchased qualified historic home.

l. Purchased qualified historic home is one where

- taxpayer is first purchaser of a
- home that receives part III certification of a rehabilitation
- within five years of such certification, and
- the taxpayer resides in such home and
- the prior owner has not claimed the tax credits with respect to the rehabilitation.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

III. NYS Residential Historic Tax Credit

m. Miscellaneous NY Residential Historic Tax Credit Issues

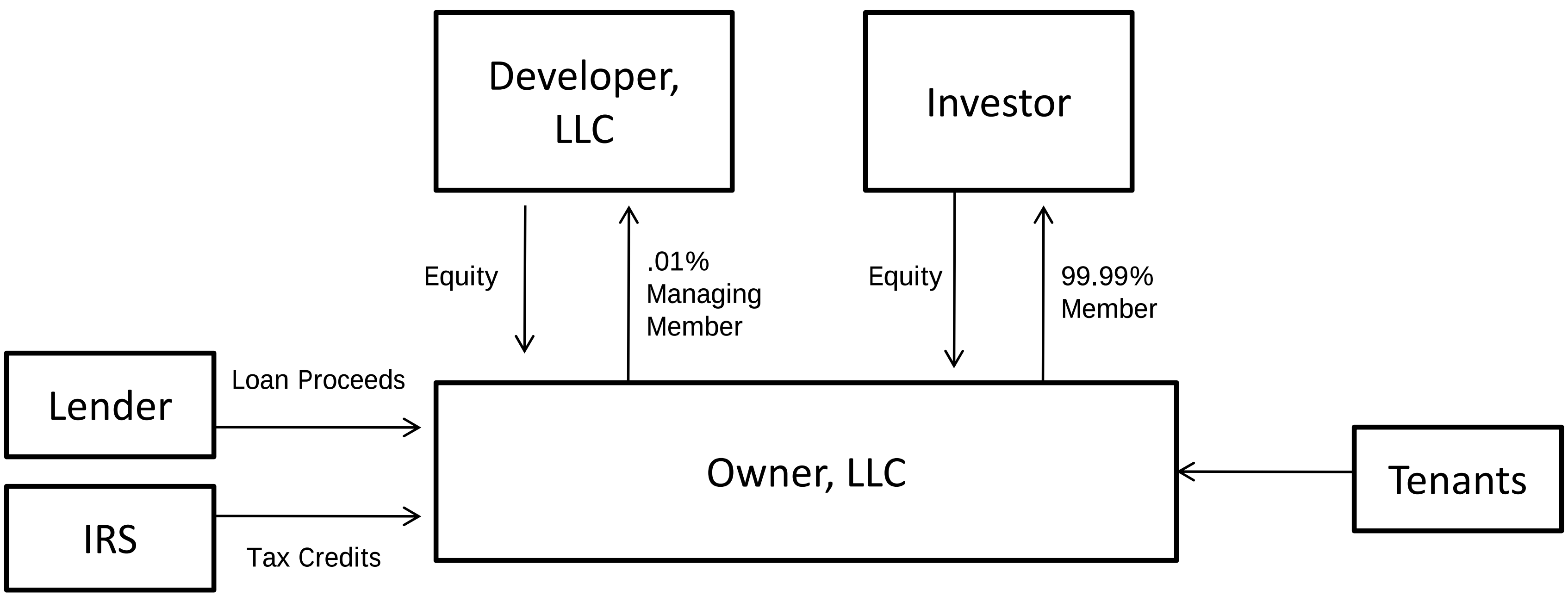
1. Certified Local Government's ("CLGs") will have the option of undertaking direct program administration.
2. Can a homeowner begin approval and rehabilitation process now but submit receipts for certification after January 1, 2010?
3. Where a building partially falls outside of census tract boundaries, is the building still eligible for expanded NYS historic credit?
4. Qualifying census tract issues:
   - (i) When do 2010 census tract changes take effect?
   - (ii) What if a project starts in a qualifying census tract as of 2010 and completes work in a census tract that is no longer qualified as of 3/2011?
   - (iii) Census tract based on 143(j) will be updated annually
   - (iv) Which state agency defines "chronically distressed areas" for NYS? Is the definition in use?

IV. Syndication

a. Market remains strong for HTCs
b. Watch for preferred return that reduces the net raise
c. Smaller rehabilitations may experience difficulty getting favorable pricing
d. NY HTCs cannot be bifurcated

IV. Syndication

e. Simple Syndication Structure



IV. Syndication

f. Equity Raise

Historic Tax Credit Basic Example of Equity Raise

Project Cost Assumptions

Acquisition Cost	$500,000	($100,000 allocated for land)
QREs	$2,500,000	
non-QRE	$500,000	
Total	$3,500,000	

Price Per Credit Assumptions

Federal Credit = $0.90

State Credit - $0.50

Credit Calculation

QREs x Credit Rate = Allowable Historic Tax Credit

$2,500,000 (QRE) x 20% (Credit Rate) = $500,000 (Allowable Credit)

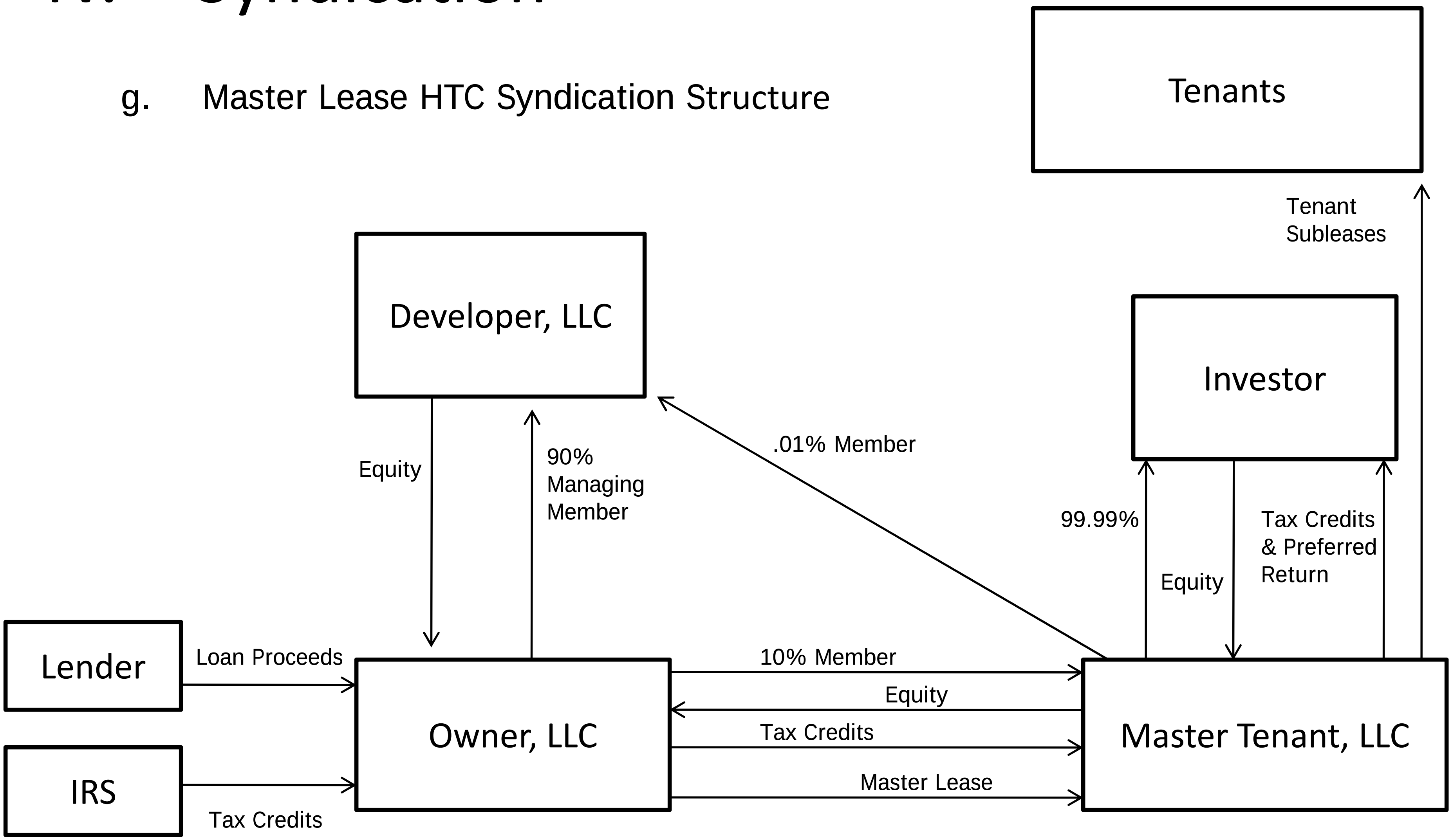
Equity Yield

Allowable Credit x Price Per Credit = Equity Raise

$500,000 x $0.90 =	$450,000	Federal Credit Yield
$500,000 x $0.50 =	$250,000	State Credit Yield
Total Equity Raise	$700,000	

IV. Syndication

g. Master Lease HTC Syndication Structure



CHW
Cannon Heyman & Weiss, LLP
Law Practice Concentrating in Affordable Housing and Community Development Law

V. Combining Historic Tax Credits with Other Incentives

a. NMTC

b. LIHTC

i. Must be 20% (10% is not available for residential rental)

ii. The taxpayer must reduce the amount of eligible basis for the low income housing tax credit by the amount of rehabilitation tax credit allowed.

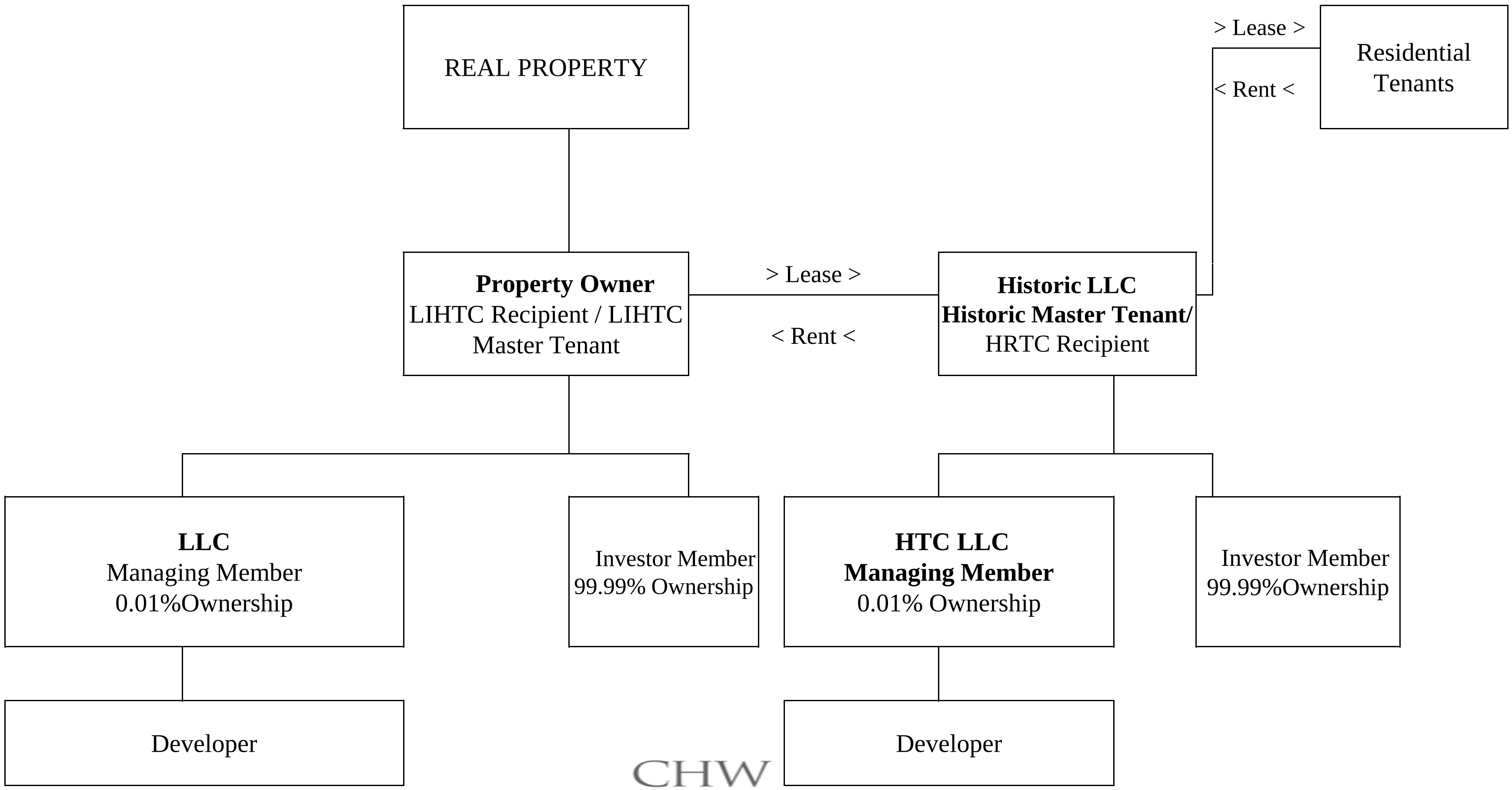
iii. Alternatively use Master Lease

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

V. Combining Historic Tax Credits with Other Incentives



CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

V. Combining Historic Tax Credits with Other Incentives

b. LIHTC (cont.)

iv. Housing Bill (July 30, 2008)

1. Housing and Economic Recovery Act of 2008 (H.R. 3221)

2. Now, HTC and LIHTC offset AMT

3. In awarding LIHTC, States must now give points in their QAP for Historic Rehab properties

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

Presented by: Steven J. Weiss
sweiss@chwattys.com
(716) 856-1700 ext. 308

Tim M. Favaro
tfavaro@chwattys.com
(716) 856-1700 ext. 314

Stephen L. Yonaty
syonaty@chwattys.com
(716) 856-1700 ext. 316