



The Profit Statement

Need investors for low-income housing projects?

Section 1602 grants can help bridge the equity gap

By Robin Schmehl, Reznick Group

In today's tough economic environment, investor demand for Low-Income Housing Tax Credits (LIHTCs) is greatly diminished. As a result, developers are having difficulty raising equity for affordable housing projects.

To fill the equity gap, Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 provides grants to state housing credit agencies (HCAs) to help finance low-income housing projects. The Sec. 1602

program will allow projects for construction or acquisition and rehabilitation of affordable housing to continue where developers are unable to proceed due to lack of equity.

Time-limited opportunity

For 2009, HCAs are eligible to receive Section 1602 grants in lieu of LIHTCs under Section 42 of the Internal Revenue Code (IRC). HCAs may apply to the U.S.

continued on page 2

In This Issue

■ Need investors for low-income housing projects?	
Section 1602 grants can help bridge the equity gap	1
■ New tax law helps businesses and homebuyers	1
■ Should your succession plan include an ESOP?	3

New tax law helps businesses and homebuyers

In addition to extending unemployment benefits for millions of Americans, the Worker, Homeownership and Business Assistance Act of 2009 (WHBAA) extends and enhances tax breaks for businesses and homebuyers. If you have an unused business loss carryover from 2008 or 2009, or you're thinking about buying a home, you may benefit from the act's provisions.

Cash in your NOLs

The American Recovery and Reinvestment Act (ARRA), passed in early 2009, allowed eligible small businesses to elect to carry back a 2008 net operating loss (NOL) for three, four or five years, instead of the standard two. (To be eligible, a business must have average gross receipts of \$15 million or less for the three years ending with the loss year.) Losses carried back five years could be used to offset up to only 50% of taxable income in the fifth year. Any loss that was not absorbed could be carried forward for up to 20 years.

WHBAA extends these provisions, which originally applied only to tax years beginning or ending in 2008, to tax years beginning or ending in 2009. Businesses can choose any of those tax years — but not more than one — as the year eligible for the extended carryback period. However, WHBAA allows a business that elected to carry back a 2008 NOL under ARRA to also carry back a 2009 loss for up to five years.

Plus, WHBAA allows businesses of all sizes (not just smaller ones) to elect a three-, four- or five-year carryback. But if a business prefers to use the normal two-year carryback or to waive the carryback period entirely and carry the loss forward, that's also allowed.

If your business can take advantage of this extended NOL carryback period, you may receive a quick refund that can provide much-needed cash for operations or capital expenditures. Check with us to see whether "cashing in" your 2008 or 2009 NOLs is a good move for your business.

continued on page 2

Buy a home and save tax, too

Under the Housing and Economic Recovery Act of 2008, qualified first-time homebuyers could receive a refundable tax credit equal to 10% of the purchase price of a principal residence. This credit, which generally required repayment over a 15-year period, was set to expire July 1, 2009.

But ARRA extended the credit to purchases made before December 1, 2009, and increased the maximum credit to \$8,000 (\$4,000 for married filing separately). In addition, it generally removed the repayment obligation for qualifying purchases after December 31, 2008.

WHBAA has further extended the credit (with no repayment requirement) to purchases made before May 1, 2010 — or July 1 if a binding contract is in place before May 1 to close on the purchase before July 1. For this credit, a first-time homebuyer is someone who has had no ownership

Need investors ...

continued from page 1

Treasury for an exchange of returned or unused 2007 and 2008 LIHTCs, as well as 40% of the HCA's 2009 tax credit ceiling. Tax credits are exchanged at the rate of \$0.85 per \$1 of tax credit.

The HCA receiving the grant uses the funds to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income housing structures with or without an allocation under IRC Sec. 42. The subawards are subject to the same requirements as low-income housing credits under Sec. 42.

HCAs are required to return to the Treasury any funds not used to make subawards by December 31, 2010. However, once a subaward has been made, an HCA can continue to disburse funds for the subaward through December 31, 2011, provided the project is at least 30% complete by the end of 2010.

HCAs make subawards in the form of cash assistance which will not be required to be repaid, unless there is a recapture event with

respect to the low-income building. The cash assistance can be in the form of a loan which is non-interest bearing and nonrepayable at any time, except in the event of recapture during the 15-year compliance period.

Eligibility requirements

To be eligible for Sec. 1602 funds, the developer must first demonstrate a good-faith effort to obtain an investor for the tax credits that would have been used to finance the project. Sec. 1602 funds may be used to finance an affordable low-income rental project that receives both credit allocations and Sec. 1602 funds.

Sec. 1602 funds may also be used in a project that is substantially complete but whose owner was unable to obtain investor commitments for tax credits, provided the building was not placed in service prior to 2009 and all other requirements have been met. Sec. 1602 funds can be used to repay equity or loans that financed construction of the building or for other eligible costs.

The maximum amount of a subaward is 85% of the amount of a building's eligible basis as determined at the end of the first

year of the credit period. For this purpose, eligible basis includes any increase for buildings located in high-cost areas under Sec. 42(d)(5)(B).

Don't miss out

Although many subawards have already been made from each state HCA's initial request, many will be requesting additional funds. For example, the State of Maryland Department of Housing and Community Development intends to seek approval of an additional \$36 million as it receives returned 2008 tax credits — a move many affordable-housing developers will greatly appreciate.

But the amount of Sec. 1602 funding available in each state varies. So, if you're interested in this boon for developers of low-income housing, contact your state HCA — now, before funding runs out. Or give us a call at 410-783-7440 so we can help you take full advantage of this and other sources of funding for affordable housing projects.

Robin Schmehl is a senior audit manager at Reznick Group. She can be reached at robin.schmehl@reznickgroup.com. ■

New tax law ...

continued from page 1

interest in a principal residence in the United States during the prior three-year period.

In addition, WHBAA expands the credit to help many "long-time" homeowners step up to a larger home (or for retirees to

downsize). The maximum credit for these taxpayers is \$6,500 (\$3,250 for married filing separately).

Also, the act increases the modified adjusted gross income (MAGI) phaseout ranges for the homebuyer credit to \$225,000–\$245,000 for joint filers

(up from \$150,000–\$170,000) and \$125,000–\$145,000 for single filers (up from \$75,000–\$95,000). This increase will make more homebuyers eligible for the credit.

To qualify, the homeowner must have maintained the same principal residence for any five-consecutive-year period during the eight-year period ending on the purchase date of a subsequent principal residence. Homebuyers must be at least 18 years old, and the qualifying purchase price is limited to \$800,000.

Act before it's too late

The window for both the homebuyer credit and the extended NOL carryback is about to close. So please let us know if you have any questions about how to benefit from these tax breaks. We'd be glad to help you take advantage of WHBAA to reduce your tax liability and improve your financial situation. ■

Editorial Board

■ **Atlanta**
Kenneth E. Baggett, CPA
404-847-9447

■ **Baltimore**
William T. Riley, Jr., CPA
410-783-4900

■ **Bethesda**
Managing Editor
Kerry Balagtas
301-280-2730

■ **Charlotte**
Anthony V. Portal, CPA
704-332-9100

■ **Chicago**
John Woodbury, CPA
847-324-7612

■ **Sacramento**
Beth Mullen, CPA
916-442-9100

■ **Tysons Corner**
Ernie Sanders, CPA
703-744-6700

Should your succession plan include an ESOP?

By Kumar Singla, AVA, and Brent Solomon, CPA/ABV, CVA, CM&AA

Current economic and market conditions have made it much more difficult for owners of small and medium-size companies to sell their businesses. With the anticipated rise in future income and capital gains tax rates, many owners may feel additional pressure to sell soon but lack options to do so. Fortunately, Employee Stock Ownership Plans (ESOPs) remain a viable exit alternative and are relatively insulated from today's illiquid markets.

ESOPs are qualified retirement plans created by the Employee Retirement Income Security Act (ERISA) as a vehicle for employee ownership, shareholder liquidity and firm continuity. Although the number of ESOPs in the U.S. is around 11,500 and growing, many business owners are still unaware of an ESOP's succession planning advantages.

How an ESOP works

In a traditional ESOP transaction, the company establishes an ESOP trust and funds it with either company shares or cash to buy company shares. The ESOP trustee holds the shares in the trust's name for the benefit of the employees. The employees receive stock or cash when they retire or otherwise leave the company.

In a leveraged ESOP, which has become an increasingly popular option, a bank lends money to the ESOP with a company guarantee, or the shareholder takes a note payable in return for selling shares. The ESOP then buys stock from the company or existing shareholders. The company makes annual tax-deductible contributions to the ESOP, which in turn pays the bank or existing shareholders. Once again, employees receive stock or cash when they leave the company. The figure at right illustrates the structure of a leveraged ESOP.

Significant tax benefits

A leveraged ESOP transaction is similar in most respects to a leveraged buyout of existing shareholders, except the ESOP transaction provides significant tax advantages.

Chief among these is that the company can deduct contributions to the ESOP, including both principal and interest on loans the ESOP uses to buy company stock. The purchase of stock and corporate acquisitions using an ESOP effectively allows the transactions to be funded using pretax dollars.

Also, the seller of a business can defer capital gains taxes on the sale of C corporation stock to an ESOP through a "1042 rollover" if the ESOP owns more than 30% of outstanding company stock after the transaction. Additionally, proceeds can be invested in specially designed high quality, long-term bonds that can be used as collateral to secure borrowing, effectively giving the seller the use of substantially all proceeds, while in many cases permanently deferring income tax.

There are other tax benefits of a leveraged ESOP transaction:

- The employer of a C corporation can deduct for tax purposes reasonable cash dividends paid on ESOP-held stock and used to repay an ESOP loan.
- S corporation stock held by an ESOP is not subject to tax, and an S corporation that's 100% owned by an ESOP is exempt from paying income taxes.
- Employees are taxed only when their account balances are distributed (usually when they leave the company).

Other benefits

Perhaps the greatest benefit of an ESOP is that owners seeking to sell a majority or minority interest can receive a full or partial buyout, while the ESOP company sponsor gets favorable tax treatment on payment of debt, including a tax deduction on principal payments. Fair market value can be received for the interest being sold, and given the tax

savings the ultimate value to the seller can often exceed that of a third-party sale.

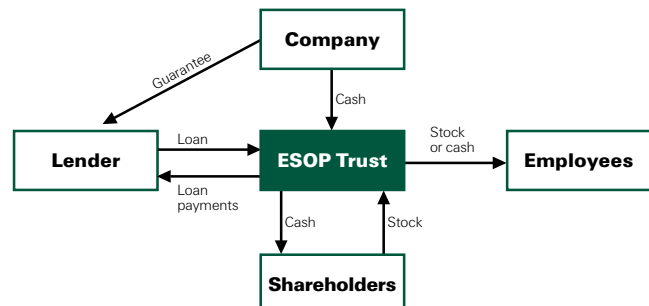
There are other advantages, too. For example:

- Flexible structures can be employed, including a sale that requires no financing at closing or is self-financed through issuance of a seller note.
- 401(k) plan assets can be used to help fund the ESOP's purchase of a company's stock.
- The existing management team usually remains in place, and ownership by employees usually boosts company performance.
- Both C corporations and S corporations can be owned by an ESOP.

Worth looking into

Whether an ESOP is right for your company depends on such factors as its growth stage, size of payroll, corporate culture, financing, and deal structure. Often, the ultimate success of an ESOP is determined by its legal, accounting and valuation advisors.

Reznick's Valuation & Transaction Advisory Group has successfully assisted numerous ESOP clients with independent valuations, feasibility studies, deal structuring, and tax consulting. We would welcome the opportunity to put our extensive ESOP experience to work for you. Please contact Kumar Singla at 301-280-2986, Kumar.Singla@reznickgroup.com, or Brent Solomon at 301-280-3660, Brent.Solomon@reznickgroup.com, and let us know how we can be of service. ■





7700 Old Georgetown Rd.
Suite 400
Bethesda, MD 20814
Tel 301-652-9100
Fax 301-652-1848

PRSRT STD
U.S. Postage
PAID
Permit No. 2446
Merrifield, VA

ADDRESS SERVICE REQUESTED

PLAN TO ATTEND

Business professionals look to Reznick Group, a respected leader in the real estate, renewable energy and affordable housing industry, to provide timely information and updates on the latest trends and opportunities in the market, as well as the business implications of key legislative issues. Our conferences and events offer significant networking and business-building opportunities with industry veterans, presentations from thought leaders, and training sessions on industry fundamentals.

The following is our preliminary schedule of 2010 events. Conference dates, topics and venues have been posted to help you plan your schedule. All dates are subject to change.

Historic Tax Credits Developers Conference, co-sponsored with IPED

March 2010
Washington, DC

Reznick Group's New Markets Tax Credit Summit

May 5 – 7, 2010
Miami, FL

Reznick Group's Renewable Energy Forum on Financing

June 2010
San Francisco, CA

Reznick Group's Real Estate Financing Conference

August 22 – 23, 2010
Atlanta, GA

Reznick Group's Renewable Energy Policy Conference

September 2010
Washington, DC

Historic Tax Credits Conference, co-sponsored with IPED

October 7 – 8, 2010
Philadelphia, PA

Real Estate Update III, co-sponsored with Nixon Peabody

November 2010
San Juan, PR

For more information, visit www.reznickgroup.com.



About Reznick Group

Reznick Group is a national leader in accounting, tax and business advisory services. We work in a broad spectrum of industries, including affordable housing, commercial real estate, emerging business and entrepreneurial enterprises, government agencies, nonprofit organizations, professional services, Real Estate Investment Trusts (REITs), renewable energy, and residential home builders.

A national leader in providing accounting, tax and business advisory services, Reznick Group serves clients in a broad spectrum of industries. Reznick Group is ranked among the top 20 public accounting firms in the country and maintains offices nationwide.

To learn more about Reznick Group's services, seminars and conferences, or to view our insights on issues that may impact your industry, visit reznickgroup.com.

UPDATE: The Fall 2009 issue of *The Profit Statement* featured an article titled "Are you a HUD property owner? — Act now to get your share of the Green Retrofit Program." Unfortunately, shortly before printing, HUD had already allocated the entire \$250 million for this program. HUD is hopeful that additional funds will be available to fund this very popular program in the future.