

MAY 13-15,

09

REZNICK GROUP'S

8th Annual New Markets Tax Credit Summit

Loews Miami Beach Hotel, Miami, FL

2009 CONFERENCE SERIES



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Pre-Conference NMTC Workshop
“Tax Credit Recapture Risk”

Philip Cornblatt
Principal, Reznick Group

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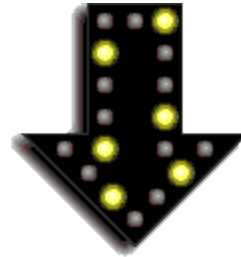
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Is Recapture Truly a Risk?



Absolutely, if Negligent.

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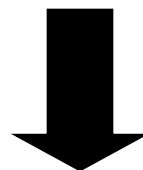
How Punitive are the Rules?

Very



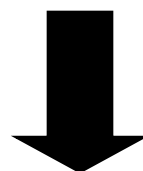
**100% recapture plus
interest rolling back
to inception**

**Have we come across potential
recapture events in real life?**



Yes

**Have we been successful
curing deficiencies?**



Yes

What events will trigger a tax credit recapture?

CDE ceases to qualify as a CDE

- A. Accountability Test (LIC representation requirements)
- B. Mission Test (primary mission directed to low-income communities/people)

CDE Redeems its Investment Triggers Recapture

Redemption Rule (Net Operating Income Safe Harbor)

- Is this an annual test or cumulative test?
- Can you live outside the Safe Harbor?
- What events typically cause a CDE to live outside safe harbor (accrued expenses including state taxes, timing of interest payments if not applying cumulative test)?

What events will trigger a tax credit recapture?

Failure of 85% Substantially All Test

- Year 1-6: 85% can include 5% loan loss reserve
- Year 7: 75% can include 5% loan loss reserve
- Reinvestment period - 12 months

A disqualified QALICB investment right out of the box triggers recapture (fails 85% test)

How can this arise (sample of occurrences)?

- in real estate a disqualified tenant
- Non-qualified financial property rule violation
- Mixed use where fail 80/20 test
- Straddle a census tract
- Company whose primary business is sale/licensing of intangibles

Cure Period Related to 85% Test

- CDE has 6 months to fix after date became aware (reasonably should have become aware).
- Can only fix one time over 7-year compliance period.
- Does not require notification to IRS, however document well in files!