Massachusetts Housing Investment Corporation

21 Custom House St., 8th Floor
Boston, MA 02110
Tel: (617) 850-1000

To: General Partners, Managing Members, Project Accountants, and Management Agents

From: Scott Backman, Director of Asset Management
Daniel Dennis & Co., Certified Public Accountants
Kevin P. Martin & Associates, P.C.

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RE: Tax Cuts and Jobs Act (TCJA) impact on LIHTC Projects – 2018 Tax & Audit Reporting Year

The Tax Cuts and Jobs Act (TCJA) contains many provisions that impact Low Income Housing Tax Credit (LIHTC) developments. The following are some key items to note and MHIC's corresponding guidance. If you would like to discuss any of these matters, please don't hesitate to contact us.

1. ***Business Interest Expense Limitation***

   Interest expense is limited to 30% of adjusted taxable income. In most cases this would significantly limit deductible interest for LIHTC entities. Most LIHTC entities should make the irrevocable election to be treated as a "real property trade or business" under Section 467(c)(7)(C) thereby opting out of the business interest limitation. However, by making election the entity can no longer use MACRS 27.5-year depreciation, rather the Alternative Depreciation System (ADS) is required. Under ADS, residential real property placed in service prior to 12/22/2017, (TCJA) enactment, is depreciated over 40 years. Residential real property placed in service after 12/22/2017 is depreciated over 30 years (under TCJA). This treatment is not explicit in recent IRS regulations; however, this issue is subject to technical correction and may change in the future.

   MHIC's position is that project entities should elect to be treated as a real property trade or business.

2. Repeal of Technical Terminations

TCJA repealed the technical termination provisions of Code Section 708(b)(1)(B) for years beginning after December 31, 2017. This will avoid having to restart depreciation and file short year returns when there is a transfer of partnership interest greater than 50%.

3. Bonus Depreciation

TCJA amended Code Section 168(k) to provide for 100% expensing of qualified property placed in service after 9/27/17 and before 1/1/23. Qualified property is depreciable property having a recovery period of 20 years or less. Qualified property also includes property previously placed in service by other taxpayers.

MHIC's position is that project entities should elect out of bonus depreciation, unless the deal was underwritten as such.

4. Income Averaging

The Consolidated Appropriations Act of 2018 created a new LIHTC occupancy set aside option known as income averaging. Previously tax payers chose between two options; the 20/50 test or the 40/60 test in order to meet minimum set aside requirements. This new income averaging option is somewhat complex and as with any new/complex LIHTC matter should be entered into only after full knowledge of its requirements and consequences has been acquired.

In the preparation of the 8609's, the income averaging election must be first discussed with and approved by MHIC.