



# Putting Real Estate To Good Use:

Current Issues with Obtaining  
Conservation Easement Deductions  
and Rehabilitation Tax Credits

**Panelists:**

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To Donate Conservation  
Easements and Rehabilitate  
Historic Buildings

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# Agenda

- ¢ Qualified Conservation Easements
- ¢ Rehabilitation Tax Credit



# Incentives for Conservation Easement Contributions

- ⌘ Exception to the general rule denying deductions for contributions of partial interests in real property
- ⌘ Deduction amount granted for “fair market value” at the property’s “highest and best” use (for LTCG property)
- ⌘ No basis limitation on deduction



# Conservation Easement Donation Terminology

- ⌘ Qualified Conservation Contribution
- ⌘ Highest and Best Use
- ⌘ Before and After Method



# Selected Conservation Easement Requirements

## ☪ Technical

- | Qualified Real Property Interest
- | Donated to a Qualified Organization
- | Exclusively for conservation purposes

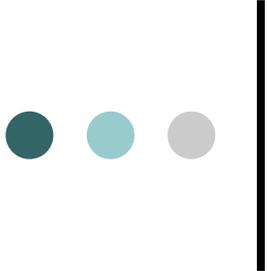
## ☪ Administrative

- | Qualified Contemporaneous Appraisal
- | Filing Fee and Mandatory Requirements (façade easements)



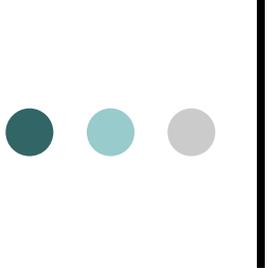
# Favored IRS Easement Challenges

- ⌘ Valuation
- ⌘ Perpetuity
- ⌘ Administrative Failures



# Conservation Deduction and Rehabilitation Credits

- ⌘ Charitable Deduction reduced by previously allowed Rehabilitation credits
- ⌘ Reduction equals
  - | the taxpayer's aggregate rehabilitation credits for the 5 preceding taxable years with respect to any building which is a part of such contribution
  - | to the fair market value of the building on the contribution.



# Incentive to Rehabilitate Historic and Old Structures

- ⌘ Tax Credit = 20% X qualified rehabilitation expenditures (“QRE”) for a historic building (10% for an old building)
- ⌘ Credit is earned by the owner of the “qualified rehabilitated building” at the time that it is “placed in service” (or by the lessee of the building if the owner has elected to “pass through” the credit to the lessee - §50(d)(5))



# Rehabilitation Tax Credit Terminology

- ¢ Qualified Rehabilitated Building
- ¢ Substantial Rehabilitation
- ¢ Qualified Rehabilitation Expenditures (QREs)



# Qualified Rehabilitated Building

- ⌘ Building is substantially rehabilitated
- ⌘ Building placed in service before beginning of rehabilitation
- ⌘ For old buildings certain % of walls remain in place
- ⌘ Building is depreciable



# Substantial Rehabilitation

- ☉ QRE's for a 24 month (60 month for phased rehabs) period selected by the taxpayer which ends in the taxable year that the project is placed in service exceed the greater of (a) \$5,000 and (b) the adjusted basis of the building at the beginning of the 24(60) month period (or the beginning of the holding period if later)



# QREs

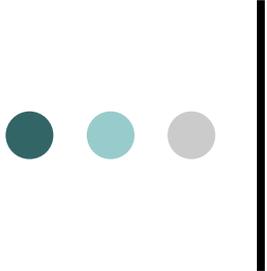
- ⌘ Amount chargeable to capital account for nonresidential real property, residential rental property or real property with a class life of more than 12.5 years
- ⌘ For a certified historic structure the Secretary of the Interior must certify that the rehab was consistent with the historic character of the property or the historic district in which it is located



# QREs

QREs do not include:

- ⌘ cost of acquisition of a structure or cost of enlargement
- ⌘ any expenditure unless straight line depreciation is used
- ⌘ any expenditure with respect to the rehab allocable to the portion of a building which is tax exempt use property (using a greater than 50% factor for the portion of the property leased to tax exempt entities under disqualified leases)

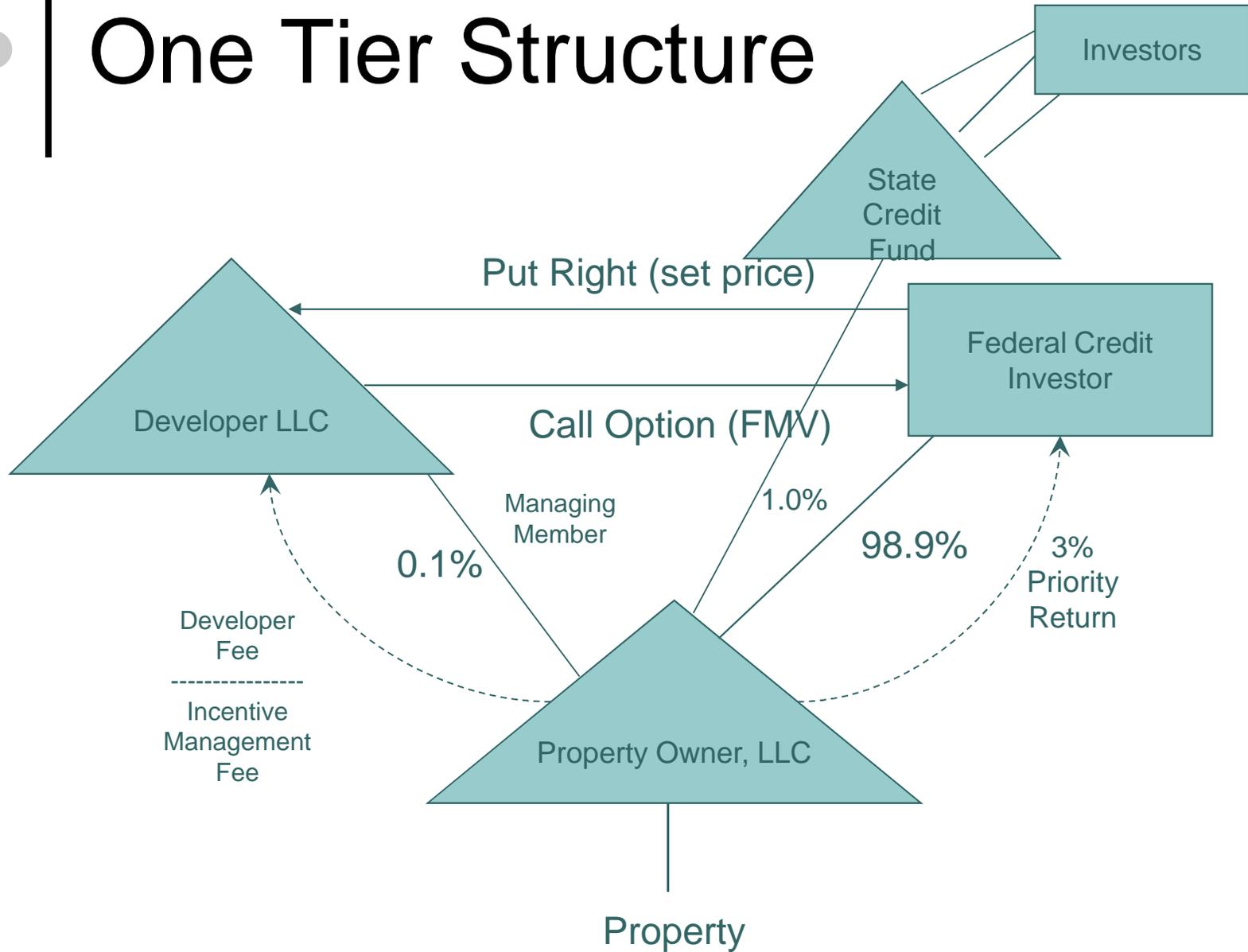


# Favored IRS Audit Challenges

- ⌘ Amount of QREs
- ⌘ Tax exempt use property issues
- ⌘ Ownership issues
  - | *Historic Boardwalk Hall LLC et al. v. Commissioner*, 136 T.C. No. 1 (2011)
  - | *Virginia Historic Tax Credit Fund 2001 LP v. Commissioner*, Nos. 10-1333, 10-1334, 10-1336, 2011 WL 1127056 (4<sup>th</sup> Cir. March 29, 2011)

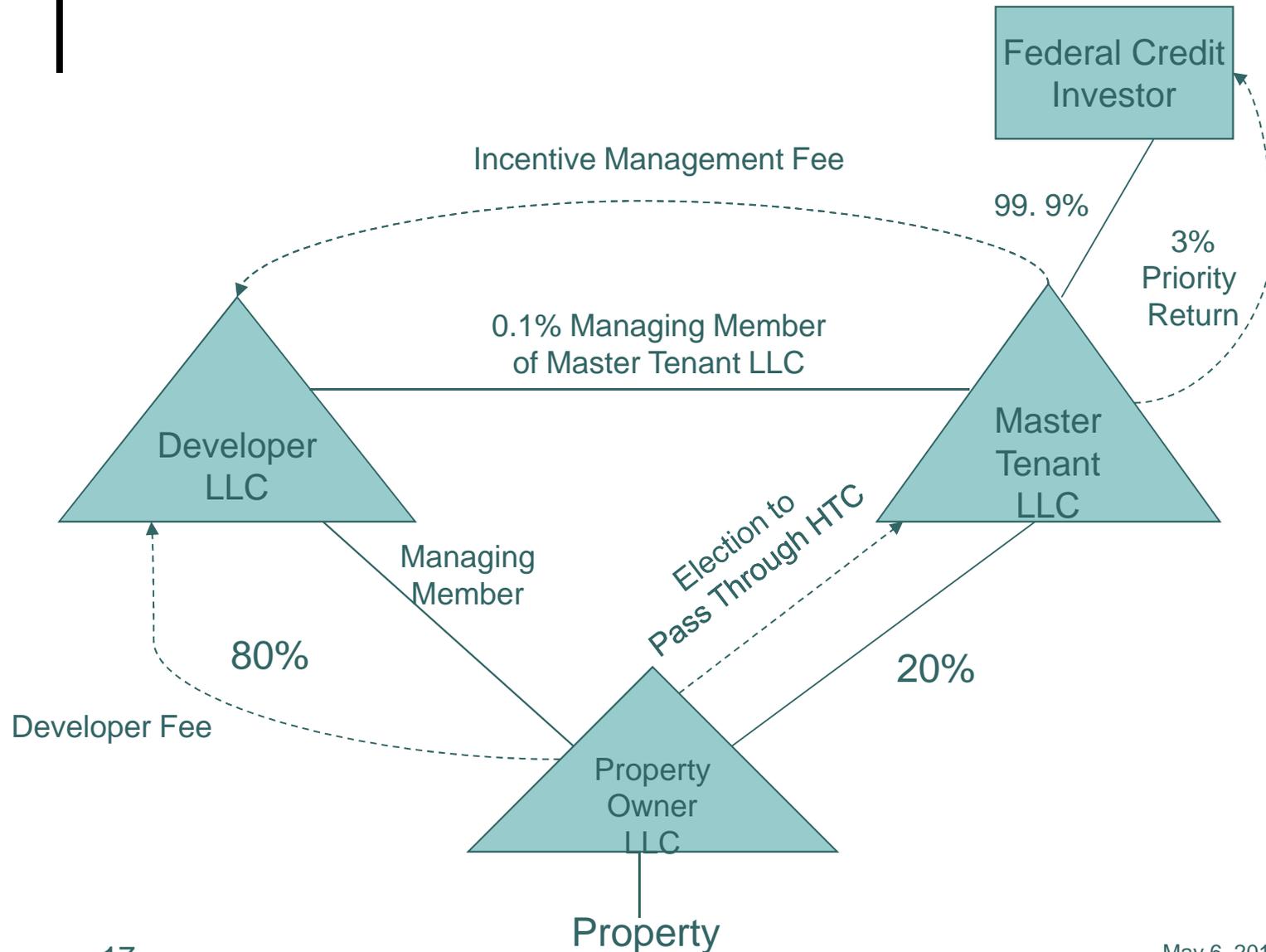


# One Tier Structure





# Two Tier Structure





# Questions?

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