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## MSHDA Recovery

**From:** Robert Kabbe [bkabbe@kmgprestige.com] **Sent:** Fri 4/10/2009 10:06 AM  
**To:** MSHDA Recovery  
**Cc:** Mark Perry, Yeo (E-mail); Ludwig Office, Barry (E-mail)  
**Subject:** Comments on ARRC  
**Attachments:**

To Whom It May Concern:

After reading through the draft the American Recovery & Reinvestment Act, Preliminary Implementation Plan dated March 25, 2009 I am compelled to make certain observations as they relate to the plan to "secure any TCAP or Monetized Credit investment with a mortgage loan..." I am sure there are more eloquent ways to convey my concerns but being of modest vocabulary I think in examples and find it easier to proceed in that manner.

Prior to our current economic predicament these Monetized Credit dollars would have been investment dollars from the syndication of the LIHTC. By changing the nature of this portion of the financial model it would appear you are subjecting for profit ownerships to serious income tax consequences. For instance, if these loans are to be repaid from operating income then the ownership will incur substantial income taxes on the operating income where in the past the treatment would have been a return of investment capital. Allowed annual disbursements of cash flow may properly address the tax liability if limits on cash flow are set liberally high to cover situations that might result from high rates of inflation.

However, the most likely scenario is that properties will perform in the future much like they have performed in the past. In spite of developer's and regulator's best intentions, many properties begin to get tired after 20 years and need an infusion of capital that normally comes through a sales transaction. Limited partners from early 1980 deals call constantly and ask "can you get me out of this partnership without me paying a huge tax bill". On most occasions the answer is no. Now, fast forward twenty years from now. The property is tired, is unable to pay off the Monetized Credit mortgage loan, little has been paid off on the first mortgage loan with a 35 year amortization period and low inflation has rendered the property worth not much more than the first mortgage loan balance. With no funds to pay off the Monetized Credit loan that has taken the place of equity money in past developments, the "loan" must be forgiven by the Authority which creates an unmanageable income tax liability for the selling for profit owner.

As a taxpayer, not a tax practitioner, I understand the Authority's desire to prohibit excess profitability, profitability that far exceeds the standard rewards associated with multi-family property development and ownership. I also understand the Authority's desire to leverage all possible assets to the betterment of the residents of the State of Michigan. However, unless I have missed or misunderstood a critical element of the IRS code as it relates to this draft proposal I could not encourage developers to take advantage of this potentially short sighted opportunity. At a minimum, I would hope that the tax implications of any TCAP or Monetized Credit loans receive a full discussion at the public listening session on April 13th.

Another concern is that developers are being encouraged to return their credit awards without any knowledge of their chances to compete for Monetized Credit dollars. It makes sense that these projects would be the most shovel ready to provide relief to the Michigan construction industry but there is no guarantee that MSHDA won't take an alternative route and use the Monetized Credit dollars to prop up failing MSHDA loans/properties in a manner intended to protect the MSHDA bond rating. I would like to see a full discussion of this topic at the public listening session as well.