

Non-Recourse Loans Kerfuffle[©]

- Nonrecourse loan agreements have “bad boy” carve outs/guarantees
- These guarantees historically ignored as:
 - “unlikely” or
 - “not determinable with reasonable certainty”
- 10/23/15 IRS Memo – “bad boy” guarantees cause loan to be recourse to the guarantor
- 3/31/16 IRS Memo – opposite result!

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- Bad Boy Guarantees (examples):
 - Failing to obtain lender's consent before obtaining subordinate financing or transfer of secured property
 - Filing a voluntary bankruptcy petition
 - Soliciting creditors to file bankruptcy petition
 - Consenting or acquiescing to or joining a bankruptcy petition
 - Consenting to the appointment of a receiver or custodian of assets
 - Admitting in writing or any legal proceeding that the borrower is insolvent

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- Why should I care?
 - Debt allocation is based on recourse v. nonrecourse status
 - Recourse debt is allocated to the partner making the guarantee
 - Nonrecourse debt allocation is based on partnership %
 - Debt allocation affects loss allocations
 - Loss allocations could impact tax credit allocations

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Cost Segregation Studies

- Widely used within the real estate industry
 - Accelerate deductions
 - Classify property using shorter life
 - Requires attention to minute details
- Used in limited circumstances (with caution) in LIHTC deals
 - Loss adjusters often don't apply
 - Positive effect on yield
 - Negative effect on capital accounts

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