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FOR IMMEDIATE RELEASE

NMTC WORKING GROUP ASKS TREASURY FOR GUIDANCE
Industry Practitioners Seek Answers in Structuring NMTC Transactions

Atlanta — The economic substance doctrine is now part of the Internal Revenue Code and members of the NMTC Working Group have requested that the U.S. Department of the Treasury provide guidance on its interpretation of the codification. Specifically, the NMTC Working Group requested that Treasury provide guidance regarding whether it will follow the Joint Committee on Taxation’s technical explanation that the codification of the economic substance doctrine is not intended to disallow tax credits in a transaction that achieves its basic purpose or plan for which Congress designed the tax credit.

“We have requested that Treasury provide guidance that it will follow the documented legislative intent included in the Joint Committee on Taxation’s report,” said Brad Elphick, a partner in the Atlanta office of Novogradac & Company LLP, who heads up the NMTC Working Group’s efforts. In short, footnote 344 of the report says that if the tax credit benefits realized from a transaction are consistent with the congressional purpose or plan for which Congress designed the tax credits, then Treasury should not disallow those tax credits for investments that undertake the type of activity that the credit was intended to encourage.

“If Treasury follows the legislative intent, it would seem that such tax credit transactions would not be subjected to an economic substance analysis that would frustrate the purpose for which the tax credits were created for in the first place,” said Michael Novogradac, managing partner in the San Francisco office of Novogradac & Company LLP and the NMTC Working Group’s advisor on industry and governmental affairs.

The low-income housing credit (section 42), new markets tax credits (section 45D), rehabilitation tax credit (section 47) and production and energy tax credits (sections 45 and 48) were enacted to provide incentives for investment in affordable rental housing, underserved economic areas, historic properties and renewable energy resources. “We applaud the explanatory guidance provided by the Joint Committee on Taxation’s footnote since it recognizes and is consistent with Congress’ legislative intent in codifying the economic substance doctrine as well as Congress’ legislative intent in enacting tax credits that provide incentives for these types of investments,” Elphick said.

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In requesting the guidance, the NMTC Working Group hopes to clarify tax guidance for the NMTC program to ensure its ongoing success and expansion in bringing capital to underserved communities. “We believe that case law and historical Treasury guidance are generally consistent with the interpretation provided in footnote 344 but we also believe that industry participants and practitioners can rely more readily on written guidance expressing Treasury’s agreement with the explanatory statements provided in footnote 344,” Novogradac said.

For more information on the NMTC Working Group, its goals and membership, and to view the letter the NMTC Working Group sent to the CDFI Fund, please go to www.nmtcworkinggroup.com.

The NMTC Working Group was established by Novogradac & Company LLP to provide a platform for NMTC industry participants to work together to resolve technical and administrative New Markets Tax Credit program issues. Each month, members of the group participate in a conference call. Members participate in discussions and provide input regarding pending action items as agreed to by the members of the group. Novogradac & Company LLP also hosts a NMTC Working Group meeting at a scheduled time at each of its national NMTC conferences. Comments and suggestions are agreed to and submitted in writing directly to the IRS and the CDFI Fund based upon the group discussions.

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