



June 2, 2011

CONTACT

Michael Morrison
Novogradac & Company LLP
415.356.8000
mike.morrison@novoco.com

CONTACT

Michael J. Novogradac
Novogradac & Company LLP
415.356.8000
michael.novogradac@novoco.com

FOR IMMEDIATE RELEASE

**LIHTC WORKING GROUP PROPOSES TWO ISSUES FOR TREASURY'S
PRIORITY GUIDANCE LIST**

**Industry Group Asks For Written Agreement with JCT Economic Substance
Explanation and Requests No Loss of Tax Credits for Casualty Losses**

San Francisco, Calif. — The LIHTC Working Group in a letter yesterday proposed two issues for addition to the U.S. Department of the Treasury's Priority Guidance List for 2011-2012. The Group requests that Treasury provide written guidance that it will follow the technical explanation prepared by the Joint Committee on Taxation (JCT), specifically footnote 344, regarding the codification of the economic substance doctrine in tax credit transactions and that guidance be provided as to the applicability of footnote 344 to Section 1602 of the American Recovery and Reinvestment Act of 2009 (Recovery Act). It also asks that buildings that have casualty losses in areas other than presidentially declared disaster areas will not face the loss of credits while restoring the buildings in a reasonably accepted timeframe.

Footnote 344 clarifies that codification of the economic substance doctrine is not intended to disallow tax credits in a transaction that achieves the basic purpose or plan for which the tax credit was designed by Congress. The footnote is included in the JCT's explanation of the revenue provisions of the Health Care and Education Affordability Reconciliation Act of 2010.

While applauding the guidance provided by the JCT footnote, the low-income housing tax credit (LIHTC) community continues to stress the need for Treasury to express its agreement with the footnote. "Such guidance from Treasury would receive greater deference by a court interpreting the economic substance statute," said Michael Novogradac, managing partner in the San Francisco office of Novogradac & Company LLP and the Working Group's advisor on industry and governmental affairs.

The Working Group also asks that Treasury provide guidance on whether footnote 344 can apply to Section 1602 of the Recovery Act. "We believe that transactions using subawards from grants in lieu of LIHTCs should be allowed to rely on footnote 344," said Michael Morrison, a partner in Novogradac & Company's San Francisco office, who helps lead the Working Group's efforts.

MORE

The Working Group also asks that Treasury provide guidance on whether footnote 344 can apply to Section 1602 of the Recovery Act. “We believe that transactions using subawards from grants in lieu of LIHTCs should be allowed to rely on footnote 344,” said Michael Morrison, a partner in Novogradac & Company’s San Francisco office, who helps lead the Working Group’s efforts.

The Working Group in its letter also asks Treasury to add to its priority list guidance as it pertains to a decrease in qualified basis due to a casualty loss and the potential loss of LIHTCs. “We support the relief from the actual loss of credits for the year whether or not the property suffering the casualty loss is in a presidentially declared disaster area,” said Morrison. The Working Group is basing its request on a belief that if the Treasury has the authority under Treasury Regulation 1.42-13(a) and IRC Section 42(n) to exempt casualty losses in these disaster areas it should have the authority to exempt all casualty losses.

“Because casualty losses can have a huge financial effect on a building’s cash flow and can send a building into foreclosure, the future of badly needed affordable rental housing can be at risk,” said Novogradac. “We believe that protecting the affordable rental housing is in agreement with Congress’s intent when it created the LIHTC program and the furtherance of this issue and others on the Priority Guidance List will help the LIHTC program better provide affordable housing and help increase the number of jobs in our communities.”

The LIHTC Working Group hopes to add these two issues to another they were successful in adding regarding the definition of “substantially assisted” as it pertains to the 10-year-hold rule. “We were successful in getting Treasury to add it to its 2010-2011 Priority Guidance Plan, and we hope to see guidance on that issue soon,” said Jeff Nishita, a manager in the San Francisco office of Novogradac & Company and who manages the Working Group’s activities.

For more details and a copy of the letter, please go to www.lihtcworkinggroup.com.

The LIHTC Working Group was established by Novogradac & Company LLP in 2008 to provide a platform for LIHTC industry participants to work together to resolve technical and administrative LIHTC program issues. Members meet monthly via conference call to provide input regarding pending action items as agreed to by the members of the group. Comments and suggestions are agreed to and submitted in writing directly to Treasury, the Department of Housing and Urban Development and/or various state agencies based on the group’s discussions. For more information, visit www.lihtcworkinggroup.com or email Jeff.Nishita@novoco.com.

Novogradac & Company LLP, a national certified public accounting and consulting firm headquartered in San Francisco, Calif., has consistently been named by Accounting Today and Public Accounting Report as one of the top accounting firms in the country. Inside Public Accounting named it as one of the 25 best managed accounting firms and the San Francisco Business Times recognizes it as one of only five companies that for five consecutive years has made its list of the Fastest Growing Companies in the San Francisco Bay Area. In addition to its San Francisco headquarters, the firm has offices in metro Atlanta, Ga., Washington, D.C., Detroit, Mich. and Kansas City, Mo., as well as in Austin, Texas, Boston, Mass., Dover, Columbus and Cleveland, Ohio, Portland, Ore., New York, N.Y. and Long Beach, Calif.

###