

# Legislative Obstacles Do Not Dim Hopes for Passage of Industry Initiatives

By Michael J. Novogradac, CPA

The Senate on August 3 failed to pass legislation that would have extended through 2009 the bonus depreciation eligibility deadline for nonresidential real and residential rental property in the Gulf Opportunity Zone, and the new markets tax credit (NMTC) beyond its 2007 sunset. The bill, H.R. 5970, referred to as the 'Trifecta' bill, included permanent estate tax relief, tax extenders and increasing the minimum wage. It failed, 56-42, on a vote taken just before Congress adjourned until after Labor Day. Sixty votes were needed to advance the measure because Senate rules required a supermajority because the tax provisions exceeded the amount called for in the 2006 budget reconciliation.

The House had passed H.R. 5970, the Estate Tax and Extension of Tax Relief Act of 2006, shortly before adjourning for its August recess on July 29.

In addition to providing permanent estate tax relief and increasing the minimum wage, H.R. 5970 would have extended several popular expired or expiring tax provisions that Congress had dropped from the tax reconciliation bill it passed in May, including the NMTC, the bonus depreciation eligibility deadline and the research and development credit.

Despite the last-minute failure last month, those within the affordable housing and community development industries express cautious optimism that the bonus depreciation eligibility and NMTC extension provisions included in the measure can be passed yet this year after Congress returns from recess.

## Senate actions

Many senators, including Finance Committee Chairman Charles Grassley, R-Iowa, and Ranking Member Max Baucus, D-Mont., opposed the House's decision to attach extenders to the estate tax bill, preferring instead to include them in pension reform legislation the House and Senate had been negotiating for months.

Under a deal reached between Senate Major-

ity Leader Bill Frist, R-Tenn., and Republican leaders in the House of Representatives, expiring tax breaks, an increase the federal minimum wage and cutting the estate tax were packaged into a single bill, which the House passed easily, 230-180. Frist had taken a now or never approach to the bill. He was often quoted as saying that the bill would be the last chance this year for its component parts.

Grassley in his statement in the Senate's consideration of the Trifecta bill focused his comments on the death tax relief and the trailer bill; both matters within the jurisdiction of the Senate Finance Committee, of which Grassley is chairman

Grassley told his Senate colleagues that he supported repeal of the estate tax and that based on the vote the committee had on the motion to proceed to the death tax repeal bill, a majority of the Senate also supported it or some sort of "significant relief."

"However," he said, "a simple majority ... won't get you the result, especially when the issue is controversial. I did some checking around on the votes after the cloture motion failed [and] it became apparent to me, after conversations with members, staff and interested parties that the bar for getting the 60 votes was pretty high." Standing in the way, he added, was the vote's closeness to this fall's election, which had politicized the issue, and the opposition of the Democratic leadership

While these negotiations were going on, there was a parallel track developing. Senate Republican leadership came up with a plan that would add a death tax compromise to the pension conference. That plan also failed when a majority of conferees were not supportive of it.

Ultimately, four Democrats voted for the Trifecta legislation, Bill Nelson of Florida, Ben Nelson of Nebraska, Robert Byrd of West Virginia and Blanche Lincoln of Arkansas, and two Republicans voted against it, George Voinovich of Ohio and Lincoln

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Chafee of Rhode Island. In addition to the \$268 billion over 10 years cost of the estate tax reduction, other concerns centered on a provision that would have preempted laws in seven states that require businesses to pay tip earners the full minimum wage.

The death tax is a unique issue because, according to Grassley, to be politically palatable, the death tax proposal needs to be either in isolation or proportionate if combined with other tax proposals. "Small so-called sweeteners don't get us over the goal line," he said. "Holding up popular must-do current law tax provisions also doesn't get us there." He noted that resistance is strong now but it wouldn't last past the political season. He promised that if the Trifecta bill failed, "we'll be back. But we won't get anywhere until we're out of the political season."

Senate Minority Leader Harry Reid, D-Nev., had called for a vote on the tax extensions package as a stand alone bill but was objected to on procedural grounds. Reid said that he will not let the Senate adjourn at the end of the year until the tax extender legislation is enacted into law.

## **The LIHTC industry responds**

Action to extend the bonus depreciation eligibility deadline for nonresidential real estate and residential rental property in the Gulf Opportunity Zone is high priority for the affordable housing industry. "The GO Zone Act has provided significant resources to help with the Gulf State rebuilding efforts, however, there are areas in which some revisions are necessary to allow affordable housing development to thrive in the GO Zone," says Francine Friedman, of the Affordable Housing Tax Credit Coalition. "We are continuing to work with Congress, and particularly our supporters from the Gulf States, to improve upon the GO Zone Act provisions relating to the low-income housing tax credit.

"While [Senate Majority Leader Bill] Frist told the Senate that he would not be willing to allow subsequent consideration of the extenders or estate legislation if it did not pass before the August recess, given the need to pass certain extenders before the end of the year, we are hopeful that that position will be reconsid-

ered and extenders legislation will be passed soon after Congress reconvenes in September," Friedman added.

The ambiguity that surrounds the outlook of any new legislation has the industry wondering what the immediate future holds for the tax extenders that are vital to industry objectives.

In the meantime, NCSHA says it is working to include as many provisions of the Housing Bond and Credit modernization bill, H.R. 4873, in tax legislation this year. "An extenders bill is likely our best opportunity to enact our proposals, and such legislation could move at any time," says NCSHA. "We need many more cosponsors to demonstrate enough support to win our way into a future tax bill. HFAs and their industry partners must use the August recess period to press members of Congress to cosponsor H.R. 4873, and companion legislation that Finance Committee member Orrin Hatch, R-Utah, will introduce and work to enact this year." NCSHA says its members must make efforts to show legislators how the bill's provisions will help the Housing Bond and Credit programs respond even more effectively to their districts' and states' housing needs.

## **The NMTC industry responds**

The New Markets Tax Credit Coalition (NMTC Coalition) reports that it has made significant progress in its efforts to extend the NMTC for an additional year (through 2008). In November 2005, it succeeded in getting a one-year extension included in the Senate-passed tax reconciliation bill (S. 2020). The tax reconciliation bill that was ultimately enacted in May 2006, however, included no tax extenders. The NMTC Coalition then solicited the support of 29 Senators and 52 Representatives to weigh in with the respective chairmen of the House and Senate tax writing committees and urge them to include the NMTC extension in a tax extender package that was expected initially to be attached to the pension reform bill.

As a result of the NMTC Coalition's efforts, House Ways and Means Chairman Bill Thomas, R-Calif., ultimately included the one-year NMTC extension in the Trifecta bill, which was approved by the full

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House of Representatives by a vote of 230 to 180. “The NMTC extension therefore has been approved by both the House and the Senate in the 109th Congress,” the NMTC Coalition reports.

Despite the NMTC extension’s defeat in the Senate, the NMTC Coalition remains “hopeful that the Senate will consider the tax extender package again when it reconvenes in September.” To that end the NMTC Coalition is working with the Grassley and Baucus staffs to find another opportunity for consideration of this important legislation. ❖