

Novogradac Report on Tax Credits **Summary: August 3, 2010**

Michael J. Novogradac, CPA, shares breaking news about the new markets tax credit, renewable energy tax credits, low-income housing tax credits, and historic tax credits. He also discusses the Fiscal Reform Commission, FHA funding and the future of federal housing finance. Finally, he closes with several tax credit tidbits.

Summaries of each topic:

1. Congressional Update (1:21 - 6:06) Page 2-3
2. New Markets Tax Credit News (6:08 - 7:12) Page 4
3. Renewable Energy Tax Credit News (7:13 - 9:40) Pages 5-6
4. Low-Income Housing Tax Credit News (9:41 - 10:45) Page 6
5. Historic Tax Credit News (10:46 - 14:36) Pages 7-8
6. Fiscal Reform Commission (14:37 - 16:37) Page 9
7. FHA Funding Issues (16:38 - 18:00) Page 10
8. Housing Finance Reform (18:01 - 20:30) Page 11
9. Tax Credit Tidbits (20:31 - 23:24) Pages 12-13

Editorial material in this transcript is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding tax credits or any other material covered in this transcript can only be obtained from your tax advisor.

© Novogradac & Company LLP, 2010 All rights reserved.

Reproduction of this publication in whole or in part in any form without written permission from the publisher is prohibited by law. For reprint information, please send an e-mail to cpas@novoco.com.

Novogradac Report on Tax Credits

Summary: August 3, 2010

CONGRESSIONAL UPDATE

Legislative Calendar

- The House is in recess until September 14.
- The Senate is scheduled to begin their August to Labor Day recess this week.
- Upon their return, in mid September, both the House and the Senate will likely be in session for no more than 4 weeks.
- After the November elections, Congress will be back from a lame duck session.
- It is not expected the Senate will move extenders this week.

What's in Store in September

- The greatest area of focus, tax wise, will be the extension of the Bush 2001/2003 tax cuts.
- Theories abound, but one course would be the following:
 - Permanent middle class tax relief
 - Extend top tiers for one or two years
 - Extend AMT relief for 2 years
 - Return estate tax rates to '09 levels
 - These tax cuts would not be offset by revenue raisers.
- Congress will then consider the extenders, small business and energy tax bills.
- Congress could attempt pass them individually, attach one or more to the Bush tax cut extensions, or otherwise group one or more of them together.
- We will watch closely during the August recess to see which directions Senate and House leaders are heading.
- The Senate Finance Committee continues to work on crafting a bank tax, with a focus on a risk based tax.
- The House Ways & Means committee appears to be focused on an income based tax.

Housing Preservation

- On Wednesday, July 28th, the House Financial Services Committee approved H.R. 4868, the Housing Preservation and Tenant Protection Act of 2010.
- The bill was introduced by Chairman Barney Frank.
- It includes a number of provisions supported by the National Council of State Housing agencies, such as a provision eliminating the prohibition of Ginnie Mae securitization of HFA risk-sharing loans.
 - NCSHA says this amendment would facilitate the sale of bonds to fund HFA loans necessary for the development and preservation of affordable housing.

Novogradac Report on Tax Credits

Summary: August 3, 2010

- However, a number of provisions have raised concern among industry participants.
- Last week the Affordable Housing Tax Credit Coalition joined nine other industry organizations on a letter discussing their concerns about the bill.
- Chief among those concerns is the provision regarding federal first right of refusal included in Section 107 of the bill.
 - The original bill requires the owner of the property to offer HUD the opportunity to purchase the housing before entering into any agreement to sell their property.
 - The Affordable Housing Tax Credit Coalition believes that the process outlined in Section 107 would be very disruptive to the efficient allocation of low-income housing tax credits.
 - The letter says that if a buyer who has received an allocation of LIHTCs cannot proceed with the acquisition of the property in a timely manner or faces uncertainty in getting approval for the purchase, the buyer will not want to risk losing an allocation of tax credits.
 - As such, the AHTCC says it believes that the most successful approach to preservation is to provide voluntary incentives such as the program outlined in Section 106 of the same bill.
 - NCSHA reports that Chairman Frank moved the right of first refusal from HUD to state housing agencies in a manager's amendment during the markup on July 28.
 - Supporters of the federal first right of refusal provision assert that the bill does not require an owner to sell their property or prevent them from obtaining fair market value.

More Information

- For daily updates on the status of these proposals, follow me on Twitter at twitter.com/Novogradac.

Novogradac Report on Tax Credits
Summary: August 3, 2010

NEW MARKETS TAX CREDIT NEWS

Investing in American Jobs and Closing Tax Loopholes Act

- On July 28th, Ways and Means Committee Chairman Sander Levin introduced H.R. 5893, the Investing in American Jobs and Closing Tax Loopholes Act.
- The bill would allow new markets tax credit investments to be claimed against alternative minimum tax for any qualified equity investment made between March 15, 2010 and January 1, 2012.
- This provision could increase investor interest in the NMTC program by expanding the pool of potential investors to include individuals.
- It is important to note, this bill does not include the extension of the NMTC, which is already included in tax extenders bill.
- H.R. 5893 also extends the Build America Bonds program for two years.

For more information

- A copy of the bill, a summary of the legislative text and the Joint Committee of Taxation's estimated revenue effects are available at Novogradac & Company LLP's New Markets Tax Credit Resource Center, www.newmarketscredits.com.

Novogradac Report on Tax Credits **Summary: August 3, 2010**

RENEWABLE ENERGY TAX CREDIT NEWS

Senate Energy Bill

- On July 27th, Senate Democrats unveiled the text of a scaled-down energy bill called the Clean Energy Jobs and Oil Company Accountability Act, Senate Bill 3663.
- The cost of the bill would be offset by raising the Oil Spill Liability Trust Fund excise tax for oil companies and refiners.
- At the time of this recording, Senate Bill 3663, did not include any renewable energy investment or production tax credit provisions.

Wind Installations

- The American Wind Energy Association announced last week that new installations of wind power were down in the 2nd quarter of 2010.
- Specifically, they noted that only 700 megawatts of wind power installations were added in the second quarter of 2010,
 - That is a 57% drop from 2008 levels and 71% drop from 2009 levels.
- The report notes that the state of Texas installed the most new wind power in the second quarter. However, near-term activity is now concentrated in the Midwest, Northwest, and Intermountain regions.
- The report also notes that Recovery Act funding is key to bringing projects that are already in the pipeline to fruition.
- Because of the policy driver that projects must be under construction by the end of 2010 to take advantage of the Section 1603 cash grant in lieu of tax credit program, the association says a larger number of projects are being placed under construction even though market fundamentals are still challenging.
- The group says that wind power's boom-and-bust cycles not only cause layoffs but also discourage investment in new manufacturing facilities.
- The association reports that manufacturing investment also continues to lag below 2008 and 2009 levels.

Renewable Energy Tax Credit Handbook

- I am pleased to announce that the 2010 Renewable Energy Tax Credit Handbook will be released by Novogradac & Company LLP this month.
- To learn more about the newest addition to Novogradac & Company's line of tax credit resource guides, go to www.novoco.com/products or send an email to products@novoco.com.

Novogradac Report on Tax Credits
Summary: August 3, 2010

LOW-INCOME HOUSING TAX CREDIT NEWS

Treasury Reports on Recovery Act Section 1602 Funding

- On July 27th, the U.S. Department of the Treasury released a new report showing that through June 30th, state tax credit allocating authorities have awarded more than \$4.1 billion in Section 1602 cash grants.
- To date, the Treasury Department has awarded nearly \$5.5 billion in Section 1602 funds to state tax credit allocating agencies in 49 states and five U.S. territories.
- States, in turn, through June 30, 2010, have made more than 900 sub-awards totaling more than \$4.1 billion.
- State tax credit allocation authorities have leveraged these awards with financing from private investors and other federal programs to fund the construction or rehabilitation of more than 57,000 housing units.
- The report can be viewed online at www.taxcredithousing.com by clicking on Hot Topics in the News menu.

Novogradac Report on Tax Credits
Summary: August 3, 2010

HISTORIC TAX CREDIT NEWS

Virginia Historic Tax Credit Fund State Tax Credit Case

- The case is under appeal by the IRS, and over the last few weeks, several legal briefs were filed.

Background

- As many listeners may be aware, the case involves two Virginia state historic tax credit funds formed in 2001 that offered investors the opportunity to purchase an interest in the funds, claim state historic tax credits, and later exit with significant capital losses.
- Investor returns were comprised of a discounted purchase price for the Virginia state HTC and the exit tax benefits of selling partnership interests for a loss.
- The IRS argued that the partners owed \$7 million in underpayments because the investors were not true partners and that the purported allocation of credits was a "disguised sale" under Section 707 of the Internal Revenue Code.
- In December, the U.S. Tax Court ruled against the IRS, in what was considered a significant victory for the historic tax credit community.
- The IRS appeal of the decisions was widely expected.

The IRS's Position

- The IRS's appeal raises some points that should be of concern for tax credit investors.
 - For one, the IRS argues that the existence of a guaranty by the general partner of the credits is evidence that the investors are not partners because they are not subject to the full extent of partner risks.
 - For another, the IRS argues the disguised sale rule applies because the credit investors received the tax credits within two years of the time of the payment by the investors.

The Virginia Historic Tax Credit Fund's Position

- The taxpayer, the Virginia Historic Tax Credit Fund, also filed a legal brief.
 - In its brief, the fund argues in favor of treatment of the state investors as partners for federal tax purposes, and against applying the disguised sale rule urged by IRS.
 - The Fund's brief argues that the allocation of credits is not "property" as that term is used in the disguised sale rule.
 - The Fund also argues that the guaranty is not air tight because the GP may not have sufficient capital to honor all guaranteed obligations in the event of a calamitous loss of credits.

Novogradac Report on Tax Credits

Summary: August 3, 2010

What This Means for Tax Credit Transactions

- An adverse ruling by the Fourth Circuit, adopting some or all of the IRS positions, could have negative effects on many other tax credit transactions.
- We will follow the case closely and report in future podcasts as developments warrant.
- We also note an observation from attorney Harold Berk.
 - Mr. Berk points out that the IRS observed that 97% of the losses in 2001 and 2002 were allocated to the GP based on its having a 97% interest in the partnership. The IRS believed this allocation further questioned the limited partners' status as partners. The partnership agreement, though, actually provided that those losses were to be allocated in accordance with positive capital account balances, which meant that the losses should have been allocated to the limited partners, not the general partner. Apparently the accountants made an error when the returns were prepared. This error may have been one of the reasons for the IRS challenge in the first place.

More information

- Copies of both briefs filed in the appeal, as well as the December 2009 Tax Court ruling can be found online at www.historictaxcredits.com.

Novogradac Report on Tax Credits
Summary: August 3, 2010

FISCAL REFORM COMMISSION

- The National Commission on Fiscal Responsibility and Reform held its fourth meeting last week on July 28th.
- Reports from last week's meeting indicate that one of the topics was the need to crack down on tax expenditures.
- Federal tax expenditures is the broad category of the variety of available tax credits, deductions, and exemptions in the Internal Revenue Code.
- It is difficult to quantify the exact cost of tax expenditures the impact on the deficit of tax expenditures has often been estimated to be somewhere between hundreds of billions of dollars to a trillion dollars annually, depending on how they are measured.
- Two witnesses testified on the topic of tax expenditures:
 - Maya MacGuineas, president of the anti-deficit Committee for a Responsible Federal Budget, and
 - Barry Anderson, a former acting Congressional Budget Office director and former Office of Management and Budget official
- Both witnesses called for close scrutiny of tax expenditures.
- The commission faces a December 1st deadline for making recommendations to Congress.
- The commission is charged with developing recommendations to balance the budget and improve the long-term budget outlook.
- The commission is not slated to meet again until September 29th but in the meantime Congress will take its August break.
- BNA reports that Erskine Bowles, the Democratic co-chair of commission, expects this month to be key to the commission's work.
 - "We plan to work and work hard over the month of August so that we can make presentations to you all and really reach some real decisions beginning in September," Bowles said.
- The panel co-chairs asked members to submit additional questions, ideas, and even policy options to the commission's staff over the August break.

Novogradac Report on Tax Credits
Summary: August 3, 2010

FHA FUNDING ISSUES

FHA Funding Legislation

- On July 28th, the House passed legislation to keep the Federal Housing Administration (FHA) multifamily loan programs, including the FHA-HFA Risk-Sharing program, running through the end of this fiscal year.
- The bill, H.R. 5872 is called the General and Special Risk Insurance Funds Availability Act of 2010.
- H.R. 5872 was introduced by House Financial Services Committee Chairman Barney Frank as a stand-alone bill after virtually identical language was dropped from the fiscal year 2010 supplemental appropriations bill.
- H.R. 5872 would increase the FHA's fiscal year 2010 multifamily loan guarantee commitment authority from \$15 billion to \$20 billion.
- Without the increase, FHA expects its multifamily lending authority to run out by the end of August or September, according to FHA Commissioner David Stevens.
- NCSHA and other groups including the National Multi Housing Council and National Apartment Association signed a letter supporting the bill and urging Congress to enact it quickly.
- NCSHA reports there was no indication that any Senators opposed the FHA multifamily authority increase.

Novogradac Report on Tax Credits
Summary: August 3, 2010

FEDERAL HOUSING FINANCE REFORM

Future of Housing Finance

- On July 27th, the Obama Administration announced expanded opportunities for public engagement on the future of the nation's housing finance system, including Fannie Mae and Freddie Mac.
- In the months ahead, the Administration will continue to gather input from a broad cross-section of stakeholders through a variety of events.
- These events will include a major conference in Washington, D.C. on August 17.
- This conference will bring together leading academic experts, consumer and community organizations, industry groups, market participants, and other stakeholders for an open discussion about housing finance reform.
- Also last week, Treasury and HUD report that they have received more than 300 comments in response to a set of questions they issued for public comment in April.
- The questions invited public input on the future of the housing finance system.
- The Administration says these responses will help provide additional input and perspective as it moves forward to develop its comprehensive reform proposal.
- NCSHA reports that its suggestions calls on the Administration and Congress to establish a powerful commitment to affordable housing within any future housing government-sponsored enterprises (GSEs) or other secondary market entities and to build upon the productive partnerships the existing GSEs and HFAs have formed to expand housing opportunity throughout the country.
- The National Multi Housing Council also provided recommendations on the reform of the housing finance system and the transition to a new system as it relates to the multifamily sector.
- NMHC urged policymakers to undertake a deliberate, thoughtful and inclusive transition and highlighted the fact that unlike single-family lending, the GSEs' well-underwritten multifamily lending did not contribute to the housing crisis.

- In related news, last week House Financial Services Committee Chairman Barney Frank and Capital Markets, Insurance and Government Sponsored Enterprises Subcommittee Chairman Paul Kanjorski announced that the committee will continue its series of hearings on the future of housing finance in September.
- Chairman Kanjorski will conduct an oversight hearing of the GSEs, and the full committee will continue its examination of policy options for restructuring the nation's housing finance system.

Novogradac Report on Tax Credits
Summary: August 3, 2010

TAX CREDIT TIDBITS

CDFI Fund Invites Comments

- Program Annual Report including CIIS.
 - It appears that no changes are being proposed at this time and comments can be submitted through August 27th.
- Form 8874–A, the IRS Form that is used to document the notice requirement that a qualified equity investment in a CDE has been made.
 - No changes are being made to the form and comments will be accepted until September 27th.
- CDFI/CDE Project Profile Web Form
 - This voluntary collection of narrative descriptions of projects financed by allocatees is used to more fully describe and record the innovative approaches that CDEs use in revitalizing communities and serving families.
 - The comment window on this form closes September 27.

Fannie Mae Announces Semiannual Multifamily Investment Volume

- Last week Fannie Mae announced that the company, through its lender and housing partners, provided \$5.9 billion in investment to the multifamily rental housing market for the first half of 2010.
- The company reports that, despite challenged fundamentals, it is beginning to see an uptick in commitment activity and continues to manage credit risk by maintaining prudent lending standards and asset quality for new loans.
- Fannie Mae Multifamily has bolstered its MBS business since focusing its efforts on securitization and broadening the investor base in 2009.
- Today, the company provides liquidity to the multifamily market mainly through MBS issuance.
- Of the \$5.9 billion invested in the first half of this year, \$5.5 billion was delivered through MBS execution.

Freddie Mac Names New Head of Multifamily Underwriting and Credit

- On July 23rd, Freddie Mac announced the appointment of Deborah Jenkins to vice president and national head of Multifamily Underwriting and Credit.
- In this position, Ms Jenkins is responsible for managing the underwriting and credit approvals of all multifamily debt investments for Freddie Mac, and managing the underwriting and credit staff at Freddie Mac offices across the country.
- Prior to her new position, Jenkins was national underwriting & quality control director in Freddie Mac's multifamily underwriting and credit department, where she also managed and developed the underwriting process for multifamily loans eligible for securitization.

Novogradac Report on Tax Credits
Summary: August 3, 2010

- Prior to joining Freddie Mac in March 2008, she was a senior vice president and senior underwriter with Wells Fargo National Bank in Michigan.