

Novogradac Report on Tax Credits **Summary: August 17, 2010**

Michael J. Novogradac, CPA, shares an update on recent activity of the Novogradac New Markets Tax Credit working Group; discusses recently introduced renewable energy legislation and the DOE's annual wind report; reviews the state tax credit deferral recently approved by New York's legislature; talks about the highlights of IRS LIHC Newsletter #40; previews the 17th Annual Affordable Housing Tax Credit Conference; discusses provisions of the Community Recovery and Enhancement Act; and closes with tax credit tidbits.

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NOVOGRADAC NMTC WORKING GROUP UPDATE

About the NMTC Working Group

- The NMTC Working Group provides a platform for new markets tax credit industry participants to work together to resolve technical and administrative NMTC program issues.
- Each month, members of the group participate on a conference call.
- In addition, Novogradac & Company hosts an NMTC Working Group meeting at each of its national new markets tax credit conferences.
- During those calls and meetings, members participate in discussions and provide input regarding action items as agreed to as a group.

Codification of Economic Substance

- In its most recent comment letter, the NMTC Working Group requested guidance from Treasury regarding the economic substance doctrine.
- As most listeners know, the economic substance doctrine was codified in the Health Care and Education Affordability Reconciliation Act of 2010, and became effective for transactions entered into after March 30, 2010.
- In a technical explanation of the bill prepared by the Joint Committee on Taxation (JCT), footnote 344 clarified that the 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.
- This explanatory guidance was applauded by the NMTC community, as well as other tax credit communities because it recognizes Congress' legislative intent in codifying the economic substance doctrine as well as Congress' legislative intent in enacting tax credits for investment in affordable rental housing, historic properties, underserved economic areas, and renewable energy resources.
- And while the footnote is helpful, the NMTC Working Group submitted a letter on July 28th requested that the Treasury Department provide guidance expressing its agreement with the explanatory statements provided in footnote 344 and stating that it will follow the documented legislative intent included in footnote 344.
- We believe that such guidance will lessen the current risk to investors due to the uncertainties of the NMTC program because Treasury guidance would receive greater deference by a court interpreting the economic substance statute than would the JCT explanatory footnote.
- A copy of the NMTC Working Group's letter to the Treasury Department about the codification of the economic substance doctrine is available online at www.nmtcworkinggroup.com.

More information

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- The NMTC Working Group is also addressing a number of other issues affecting NMTC transactions, such as
 - changes made to the election of real estate versus non-real estate qualified active low-income community businesses (QALICB), and
 - an update for the NMTC Mapping Tools it developed to show the progress and impact of new markets tax credits on distressed communities.
- To learn more about the NMTC Working Group, I encourage you to visit www.nmtcworkinggroup.com.
- You can also read a monthly update about the group's activities in the Novogradac Journal of Tax Credits. If you're not already receiving the Journal each month, you can subscribe online at www.novoco.com/products.
- For more information about becoming a member, or if you are attending our New Markets Tax Credit Investors Conference in Chicago and would like to attend the NMTC Working Group's meeting, please send an e-mail to my partner Brad Elphick at brad.elphick@novoco.com.
- If you haven't already signed up to join us in Chicago, you can register for the event online at www.novoco.com/events or by calling (415) 356-7970.

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RENEWABLE ENERGY TAX CREDIT NEWS

More Renewable Energy Legislation

- In recent months and weeks, a plethora of renewable energy legislation has been introduced in Congress.
- On August 5th, Sen. John Kerry introduced Senate Bill 3738, the Clean Energy Technology Leadership Act of 2010.
- The bill provides tax incentives for clean energy manufacturing, renewable energy and conservation.
- Those incentives, include:
 - additional funding for the advanced energy manufacturing credit, and
 - an additional \$3.5 billion for clean renewable energy bonds.
- Sen. Kerry's inclusion of these incentives is welcomed by the tax credit community as it is further evidence of the widespread and bipartisan support that renewable energy tax incentives have in Congress.
- However, it is important to note that despite this support, the short term prospect of passage is not great for provisions like the ones introduced in Sen. Kerry's bill and similar measures.
- Most notably, the energy legislation that Senate Majority Leader Harry Reid and the Senate will consider when they reconvene next month is not expected include a section of tax provisions.

DOE Annual Wind Market Report

- Last year was another record-breaking year for U.S. wind power additions, according to the U.S. Department of Energy (DOE) released its "2009 Wind Technologies Market Report."
- The Department of Energy released the report, which provides a comprehensive overview of trends in the U.S. wind power market, on August 4.
- The report says:
 - The 10 gigawatts of capacity additions in 2009 represent a \$21 billion investment in new wind power projects.
 - Wind projects accounted for 39 percent of all new U.S. electric generating capacity in 2009.
 - Wind power capacity growth in 2009 was distributed across much of the nation, with new wind farms constructed in 28 states.
- Another key finding of the report was that a growing percentage of wind turbine equipment being used in the United States is being sourced domestically.
- This year marks the first time that the report estimates the amount of wind turbine and component imports from other countries.
- When presented as a fraction of total wind turbine equipment-related costs, the overall U.S. content is found to have increased from about 50% in 2008 to roughly 60% in 2009.

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- In its report, the Department of Energy says that market growth is spurring manufacturing investments in the United States.
 - Seven of the ten wind turbine manufacturers with the largest share of the U.S. market in 2009 have manufacturing facilities in the United States, and
 - two of the remaining three have announced plans to open U.S. facilities in the future.

On a Related Note:

- As many listeners will recall, in previous podcasts we've discussed lawmakers' increasing emphasis on moving away from dependence on foreign sources for the nation's energy needs.
- For example, Senators Charles Schumer of New York and Sherrod Brown of Ohio expressed concern last year about a Texas wind farm that applied for cash grant funding through the Section 1603 program because the wind turbines it would use would be built in China.
- Last week we learned that A-Power Energy Generation Systems Ltd, the Chinese makers of those turbines, has agreed to buy steel from U.S. producers for production of the equipment.
- Bloomberg reports that A-Power Energy Generation Systems and Shenyang Power Group anticipate buying about 50,000 tons of steel to be produced in American steel mills.
- The companies also agreed to purchase parts from American suppliers and invest in a wind turbine assembly plant in Nevada, according to the American Steelworkers union.

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HISTORIC TAX CREDIT NEWS

New York Senate Votes to Defer Rehabilitation Tax Credits

- New York State, like many states, is facing significant budgetary shortfalls and in response, lawmakers voted to defer certain state tax credit as a way to control costs.
- After extended debate, on August 3rd, the New York State Senate the final revenue bill needed to complete the New York State budget.
- In Part Y of the enacted budget, tax credits for approximately 30 state business and economic development programs will be deferred to help balance the state spending plan, including incentives for the rehabilitation of commercial properties, including the state rehabilitation tax credit.
- Specifically, New York State Rehabilitation Tax Credits earned between 2010 and 2012 exceeding \$2 million in value will be deferred on the following schedule:
 - In 2013, 50 percent of the balance of credit value over \$2 million will be available.
 - In 2014, 75 percent of the remaining balance of credit value will be available.
 - In 2015, 100 percent of the remaining balance of credit value will be available.

Carve Out Sought

- In an editorial last week, the *Buffalo News* said that deferring the credits will limit or terminate investment interest in New York State projects.
- But, the *Buffalo News* reports that state Sen. David Valesky and Assemblyman Sam Hoyt, who have championed rehabilitation tax credit, continue to seek a way to allow the tax credit program to survive the deferral plan.
- The New York Senate and Assembly will return to Albany in the coming weeks, and the Preservation League of New York State plans to continue its advocacy in hopes of securing full funding for the rehabilitation tax credit at that time.
- Supporters of the state rehabilitation tax credit hope to secure a carve-out for the program because they say the deferral program is too crippling for the rehabilitation tax credit to have any value if it stands.

To Learn More

- For a more detailed look at the situation in New York, I invite you to pick up a copy of the September issue of the Novogradac Journal of Tax Credits. John Leith-Tetrault will address the tax credit deferral in his column, History and the Hill.

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LOW-INCOME HOUSING TAX CREDIT NEWS

LIHC Newsletter # 40

- Last week Grace Robertson at the IRS released the 40th issue of the Low-Income Housing Credit Newsletter.
- The LIHC newsletter provides a forum for networking, sharing information and communicating technical knowledge and skills, guidance and assistance for developing LIHTC issues.
- It's important to note that the contents of the newsletter should not be used or cited as authority for setting or sustaining a technical position.
- The newest edition reviews auditing the applicable fraction for the first year of the credit period. That article:
 - reviews the law,
 - provides two examples,
 - lists the relevant audit techniques and
 - notes common errors that are made related to the applicable fraction computation or documentation.
- Issue #40 also includes a detailed discussion of documentation and record retention that covers
 - the IRS's guidelines for retaining records as well as
 - storing records electronically,
 - the standard of sufficiency, and
 - alternative sources of information.
- The LIHC Newsletter is distributed free of charge through e-mail. If you would like to subscribe, you can send an email to Grace Robertson at Grace.F.Robertson@irs.gov.
- Articles and ideas for future articles are welcome at that address as well.
- Copies of the LIHC Newsletter are also available online at www.taxcredithousing.com. Simply go to the LIHTC menu, and click on IRS Guidance, and then select the link to IRS LIHTC Newsletters from the menu on the left side of the page.

San Francisco Conference Preview

- Before we wrap up our LIHTC discussion for today, I wanted to remind listeners about the 17th Annual Affordable Housing Tax Credit Conference, Sep. 30-Oct. 1, in San Francisco, Calif.
- The event is shaping up to be a must-attend event for investors, lenders, developers, attorneys, accountants, consultants, agency officials, not-for-profit representatives and other affordable housing practitioners.
- Carol J. Galante, Deputy Assistant Secretary, Multifamily Housing Office of U.S. Housing and Urban Development, will speak at the Keynote Luncheon on Thursday, September 30th.
- We are also presenting two pre-conference workshops, one will cover the low-income housing tax credit basics and the second workshop will focus on investor basics.

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- These workshops are designed to complement the conference agenda and you can register for them with the conference or as a standalone one-day seminar.
- In addition, we are also presenting a two day Property Compliance Workshop that will run concurrently with the conference on Sep. 30-Oct. 1, also in San Francisco, Calif.
- More information about the 17th Annual Affordable Housing Tax Credit Conference and all the related workshops can be found online at www.novoco.com.

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OTHER NEWS

Community Recovery and Enhancement Act of 2010

- The commercial real estate sector is urging support for a package of targeted tax benefits that would provide passive activity relief and a one-time 50 percent bonus depreciation on certain invested capital.
- The Community Recovery and Enhancement Act of 2010 was introduced as H.R. 5943 on July 29th.
- Under the bill, if at least 80 percent of the invested capital is used to reduce the outstanding commercial mortgage debt, new investors would qualify for a one-time 50 percent bonus depreciation on the amount invested.
- Additionally, investors also would be allowed to deduct any losses associated with the qualifying investment without regard to the passive activity limitations under Internal Revenue Code Section 469.
- The tax incentives would apply only to qualifying investments made before 2013 and assets purchased before 2009.
- Supporters of the measure say these incentives would help increase investment in existing commercial real estate projects.
- The bill was introduced by a bipartisan trio of lawmakers from the House Ways and Means Committee: Reps. Shelley Berkley of Nevada, Joseph Crowley of New York, and Devin Nunes of California.
- This bipartisan support bodes well for the bill, but Novogradac & Company is still assessing support for the measure.

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TAX CREDIT TIDBITS

President's Economic Recovery Advisory Board

- The President's Economic Recovery Advisory Board will hold its next meeting on August 27 at 2 p.m. Eastern Time.
- The discussion will include a review of a report by the Tax Reform subcommittee.
- The report will discuss a spectrum of reform ideas relating to
 - tax simplification,
 - enforcement of existing tax laws, and
 - reform of the corporate tax system.
- The advisory board is not tasked with providing its own policy recommendations for the administration, rather its final report is expected to be an almanac of options from a broad range of viewpoints.
- The meeting will be open to the public live via audio stream at www.whitehouse.gov/live.

OCC New Community Affairs Policy Director

- Last week the Office of the Comptroller of the Currency (OCC) announced the appointment of Ted Wartell as director of community affairs policy.
- He will report to Deputy Comptroller for Community Affairs Barry Wides.
- Mr. Wartell will be responsible for helping to shape the OCC's policies concerning national bank involvement in community and economic development initiatives as well as overseeing the Community Affairs department's research and publications.
- Mr. Wartell most recently served as chief of staff for Community Lending at Fannie Mae.
- Previously he served as Director of the Office of Policy at the U.S. Small Business Administration and as a budget analyst for affordable housing programs at the U.S. Office of Management and Budget.

FHLB Des Moines Seeks Affordable Housing Advisory Council Nominations

- The Federal Home Loan Bank (FHLB) of Des Moines is now accepting nominations for its Affordable Housing Advisory Council.
- The Advisory Council is a 15-member group that meets quarterly with the bank's staff and board of directors to provide advice on ways the bank can better carry out its housing finance and community investment mission.
- By law, nominees must be a resident of Iowa, Minnesota, Missouri, North Dakota or South Dakota.
- More information about nominations for the advisory council can be found online at www.fhlbdm.com.