NOVOGRADAC TAX CREDIT TUESDAY PODCAST

Summary: December 3, 2013

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac, CPA, shares information about the Nov. 13 Budget Conference Committee meeting. In new markets tax credit news, he has information about a series of Capacity Building Initiative workshops and an update on the New Markets Tax Credit Military Installation Act of 2013. In historic tax credit news, he shares the results of a study of public schools in Virginia that could benefit from a change to the prior use rule and the results of a review of New York's tax credits. In low-income housing tax credit news, he discusses a report from Enterprise and the Urban Land Institute that studies the cost of affordable housing development and suggests ways to contain those costs. In renewable energy tax credit news, he discusses a report from the National Renewable Energy Laboratory about challenges master limited partnerships and real estate investment trusts face when financing renewable energy assets and a request for comments on Internal Revenue Service Form 8835.

Summaries of each topic:

GENERAL NEWS

Budget Conference Committee Meeting

- In general news, I have an update on the Budget Conference Committee.
- The full committee met for a second time on Nov. 13.
- The committee heard from Congressional Budget Office Director Doug Elmendorf
- They heard about the CBO's budget and economic outlook.
- Elmendorf presented short-term and long-term challenges to the committee.
- He said that the long-term challenges could be addressed by reducing future deficits.
- However, the recent sharp reduction in deficits, he said, has exacerbated the short-term challenges.
- Elmendorf also took questions from committee members.
- In a blog post about his talk, he mentioned that even if the committee is unable to find a long-term budget solution that reducing uncertainty about fiscal policy, even if it is only for next year, would be a positive step.
- Many committee members also released statements about the proceedings.
- Those statements made several suggestions for how to reduce spending or increase revenue.
    - Sen. Angus King from Maine advanced a budget plan that included cutting the corporate tax rate from 35 percent to 32.5 percent.
- Lawmakers not on the budget committee have also been voicing their opinions on the budget negotiations.
- Here are just a couple of the letters the committee has received lately.
    - On Nov. 18, House Appropriations Chairman Hal Rogers and all 12 Chairs of the Appropriations Subcommittees sent a letter to Sen. Patty Murray and Rep. Paul Ryan asking them to come to an agreement on topline spending bills by Thanksgiving.
    - Obviously, that recommendation wasn't followed.
    - Rep. Niki Tsongas also sent a letter stating her budget priorities.
- Overall, the Nov. 13 meeting didn't result in much visible progress.
- However, reports from numerous sources, public and private, suggest that Rep Ryan and Senator Murray are getting close to a small-scale two-year deal.
- Big picture, it is looking like some easing of the sequester through budget savings in other areas, and potentially new fees, but no new taxes, which would mean no addressing of extenders.
- I invite you to stay tuned for future updates.
- If you want more details, earlier today, I tweeted a link to an excellent summary of the current status, written by Politico's Manu Raju and Jake Sherman.

NEW MARKETS TAX CREDIT NEWS

CDFI Fund Releases Capacity Building Initiative Workshop Schedule

- In new markets tax credit news, I have an update on a Capacity Building Initiative that the Community Development Financial Institutions Fund launched earlier this year.
- The CDFI Fund is providing training and technical assistance to CDFIs through the Capacity Building Initiative.
- The CDFI Fund has partnered with the Opportunity Finance Network and others to provide the training.
- The goal of the series is to build the CDFIs' capacity to successfully finance and provide services to community health centers in underserved communities.
- One of the primary components of the series will be the Foundations in Financing Community Health Centers workshops.
- Beginning January 2014, there will be six free two-day training sessions for certified CDFIs.
- The workshops will focus on topics such as:
  - health care trends defining the community health center landscape and community health center operational structures;
  - the primary credit needs of, and the various sources of capital available to, community health centers; and
  - underwriting community health centers.
- The training sessions will run in 2014 on:
  - Jan. 23 and 24 in San Francisco, Calif.;
  - March 5 and 6 in Atlanta, Ga.;
  - May 1 and 2 in Boston, Mass.; and on
  - May 21 and 22 in Chicago, Ill.
- The CDFI Fund was still finalizing two additional training dates and locations.
- The CDFI Fund said it will post information on those two sessions on its website as soon as they are finalized.
- The CDFI Fund will also conduct an informational webinar on Dec. 11, 2013.
- That webinar will provide more information about the Capacity Building Initiative training.
- To register for the informational webinar and for these training series go to www.cdfifund.gov.

New Cosponsors for NMTC Military Base Closure Bill

- In other new markets tax credit news, we have a quick update on new markets tax credit military base legislation introduced last month.
- Two new cosponsors have signed on to support H.R. 3439 or the New Markets Tax Credit Military Installation Act of 2013.
- Rep. Mike Thompson, a Democrat from California, introduced the bill in October.

- Reps. Julia Brownley and Sam Farr, both Democrats from California, signed on as cosponsors in November.
- Rep. Ralph Hall, a Republican from Texas, signed on as the first co-sponsor in October, which makes the bill bipartisan.
- If passed, H.R. 3439 would direct as much as $100 million of new markets tax credit allocation to investments in communities affected by military base realignments or closures.
- The bill was referred to the House Committee on Ways and Means.
- You can find a copy of it at www.newmarketscredits.com.

HISTORIC TAX CREDIT NEWS

Virginia Schools and Prior Use Study

- In historic tax credit news, I have an update on Virginia Gov. Bob McDonnell's campaign to eliminate the federal historic tax credit's so-called "prior use rule."
- In the Sept. 10 Tax Credit Tuesday podcast, I mentioned that the governor had issued a statement in support of eliminating the prior use rule so that the historic tax credit could be used to renovate public schools.
    - For those of you who may not know, the prior use rule prohibits tax-exempt entities from renovating buildings and then continuing to use them for the same purpose as before renovations.
    - This means that a public school renovated with historic tax credit equity could not function as a public school after the renovations.
- Legislation has been introduced to eliminate this rule.
- And industry stakeholders have often voiced support for the rule change.
- Unfortunately, none of the legislation has made it into the tax code.
- In an effort to change that, Gov. McDonnell last month released a report showing just how many school buildings could benefit from the historic tax credit if the rule was changed.
- The report examined 2,030 of Virginia's public school buildings and facilities.
    - That includes schools in every one of the state's 132 school divisions.
- It includes information about
    - the original construction date,
    - when each school was last renovated;
    - if it is eligible for listing on the National Register of Historic Places; and
    - the estimated cost of renovations.
- Of the more than 2,000 buildings studied, 817 had an original construction date of more than 50 years ago.
    - The oldest building is an elementary school that dates to 1837.
    - Of the buildings that are at least 50 years old, more than 100 have not been renovated in the last 50 years.
    - Most of the schools need several million dollars in renovations.
- An additional 410 schools were originally constructed between 40 and 50 years ago.
- That's a total of 1,227 buildings, or more than 60 percent, of existing buildings.
- Those school buildings have a total student capacity of 842,481.
- That's a lot of students who could benefit from the historic tax credit.
- You can find a copy of the report at the Historic Tax Credit Resource Center.
- At the time of this recording, legislation had not been introduced to address the issue and Gov. McDonnell had not said what his next step might be in advocating for the change.
- We will update you on any developments in future podcasts and via our breaking news page at www.historictaxcredits.com.

New York Tax Credit Review

- In state level tax credit news, I'd like to share some information from New York.
- State lawmakers have been examining some of the state's tax credits, including the historic tax credit and low-income housing tax credit.

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- In the past couple of months, a commission launched by Gov. Andrew Cuomo in 2012 delivered a report on the state's business tax credits.
- Additionally, an unpublished addendum to that report came to light.
- New York Senate Republicans also released a tax credit report.
- Most of the media attention has gone to the state's brownfield tax credit and film tax credit programs, but the reports also covered the historic tax credit and low-income housing tax credit.
- The governor's commission suggested that the state include a periodic review of the costs and benefits of the state tax credit programs.
- And the addendum suggested that sunset dates be incorporated into all tax credit programs.
- The report addendum and Senate Republicans' report also discussed the historic tax credit and housing tax credit programs.
- The addendum said that the low-income housing tax credit would cost the state $11 million in 2013.
- The historic tax credit was set to cost the state $15 million in 2013.
- Those were nothing compared to the $503 million that the brownfield tax credit was expected to cost the state in 2013.
- The Senate found that stakeholders would like the low-income housing tax credit be made refundable and
    - Be bifurcatable from the federal low-income housing tax credit.
- They also asked that the historic tax credit be made refundable as of Jan. 1, 2014, instead of the scheduled date of Jan. 1, 2015.
- This is just a snapshot of information from the reports.
- I like to share this type of information because it provides a picture of how states are using their tax credit programs.
- The reports from New York, for example, show that the historic tax credit and low-income housing tax credit programs are a tiny portion of the tax credits issued by the state.
- Yet, the value of these two programs is great.
- They preserve New York's heritage and housing, and generate revenue at little cost to taxpayers.
- Many states have historic tax credits that provide similar benefits.
- You can find additional information about those states' programs, as well as New York's, online at www.historictaxcredits.com.
- And at our Affordable Housing Resource Center.

LOW-INCOME HOUSING TAX CREDIT NEWS

Bending the Cost Curve on Affordable Rental Development

- In low-income housing tax credit news, I'd like to share with you a new report on the cost of affordable rental housing development.
- The report, called "Bending the Cost Curve on Affordable Rental Development: Understanding the Drivers of Cost," has been released by Enterprise and the Urban Land Institute Terwilliger Center for Housing.
- The report is the first in a series about the costs associated with developing affordable rental housing.
- It examines what drives the cost of development and preservation of affordable housing rental housing and provides recommendations to address challenges.
- Researchers spoke with more than 100 developers, financiers and policymakers in 10 markets.
- The partners held round table discussions in five markets, including
  - Chicago,
  - Denver,
  - Los Angeles,
  - New York City, and
  - San Francisco.
- And interviewed affordable housing stakeholders in
  - Boston,
  - Houston,
  - Minneapolis,
  - Pittsburgh, and
  - Seattle.
- In "Understanding the Drivers of Cost," researchers examined how regulatory barriers combine with financing obstacles to make affordable rental development more difficult and expensive.
- They also identified several categories of recommendations to address these issues.
- In general, researchers found that there are drivers of cost throughout the development process and that they are intertwined.
- Any effort to address cost will involve collaboration between many parties.
- The researchers recommended six actions to address costs.
  1. Streamline and consolidate deal assembly and approval processes.
  2. Remove barriers to reducing construction costs and mitigate delays.
  3. Shorten deal assembly and development timelines.
  4. Improve and align incentives.
  5. Increase the flexibility of existing sources and create new financial products.
  6. Support the sharing of information about cost-control measures and best practices.
- Enterprise said that the full report, which will include detailed recommendations and market-based case studies, will be released in January 2014.
- You can find a copy of the report online at www.taxcredithousing.com.
- We'll also post the full report when it becomes available early next year.

Upcoming 2014 Rent and Income Limits Webinar

- I'd also like to mention a webinar that Novogradac will be hosting this month.

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- On Wednesday, Dec. 11, Novogradac will be hosting a webinar on the 2014 rent and income limits.
- The hourlong webinar will
    - cover how the changing income limits will affect projects with layered financing,
    - provide an overview of the new enhanced rent and income limits calculator and
    - include maps illustrating the changes in income limits from 2013 to 2014.
- Now, a word of caution, the webinar is dependent upon the U.S. Department of Housing and Urban Development releasing the 2014 rent and income limits by this Friday, Dec. 6.
- If HUD does not publish the numbers by Friday, which is quite likely, then the webinar will postponed eight days to Thursday, Dec. 19.
- In either case, those who attend the webinar will have access to recording for one year, so if you can't attend the live event, you can still access the webinar at your convenience.
- You can find out more about the webinar at www.novoco.com/events.

RENEWABLE ENERGY TAX CREDIT NEWS

NREL Report Examines Renewable Energy Financing Opportunities, Challenges for MLPs and REITs

- In renewable energy tax credit news, I begin with a report from the National Renewable Energy Laboratory, or NREL.
- NREL recently released a report titled, "Master Limited Partnerships and Real Estate Investment Trusts: Opportunities and Potential Complications for Renewable Energy."
- The report discusses challenges master limited partnerships, or MLPs, and real estate investment trusts, or REITs, face when financing renewable energy assets.
- According to the report these challenges include:
    - effectively using the U.S. federal income tax incentives;
    - structuring the investments in simple enough manner to be able to aggregate a large number of small assets; and
    - attracting and retaining investors.
- The report examines the current MLP and REIT markets and some proposed rule changes as well as possible investor responses to renewable energy REITs or MLPs.
- Before we talk about potential rule changes with REITs, I want to make sure listeners understand the investment mechanisms.
- A REIT is a mechanism that raises significant funds from the public and invests them into real estate.
    - The key is that REITs are generally tax-exempt and cannot pass on tax credits, so they have difficulty benefiting from tax credits.
    - Therefore, to allow wider investments in renewables, Congress would have to modify the basic REIT asset eligibility rules, as well as provide a mechanism for monetizing the accompanying tax credits.
- According to the report, efforts are being made to expand the definitions of qualified assets and income to include renewable energy.
- For an MLP, the fundamental benefit is that it's not a corporation that is taxed at the entity level and it's not a REIT, which is a corporation that is allowed a dividends distributed deduction, rather it is a pass-through entity that doesn't pay tax at the entity level.
- MLPs can be publicly traded like corporate stock, which generally allows investors to move in and out of MLPs easily.
- According to the report, MLPs could be used in renewable energy transactions if:
    - the definition of "qualified income" was changed to include income derived from energy technologies that qualify under the production tax credit and investment tax credit,
- To review the report, please visit www.energytaxcredits.com.
- To learn more about MLPs and REITs and their possible future role in the renewable energy sector, I recommend reading Forrest Milder's article in the September 2013 issue of the Journal of Tax Credits.
- If you're not a subscriber, check out www.novoco.com/products for information about becoming a subscriber.

IRS Requests Information Collection on Form 8835, Renewable Electricity Production Credit

- In other renewable energy tax credit news, the Internal Revenue Service is soliciting comments concerning Form 8835 and the renewable electricity production credit.
- Form 8835 is the form used to claim the renewable electricity, refined coal and Indian coal production credit.
- The IRS uses the form as a means to ensure that the credit is computed properly.
- No changes have been made to the form at this time.
- Written comments should be received on or before Jan. 21, 2014.
- To read the form and learn more about the renewable electricity production credit, go to www.energytaxcredits.com.