Novogradac Report on Tax Credits
Summary: December 21, 2010

Michael J. Novogradac, CPA, summarizes what was included in the final tax extenders packaged approved by Congress last week. Then he shares information from two reports about the new markets tax credit program, including projections for job creation based on the new two year extension of the credit. Next, he discusses a memo released by the California Debt Limit Allocation Committee that addresses concerns that were raised by a recent IRS Notice regarding tax-exempt bond issuance. Then he previews some of the historic tax credit content in this month's issue of the Novogradac Journal of Tax Credits. And finally, he shares an announcement regarding public land that the government has deemed to be best suited for solar development in the West.

Summaries of each topic:

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GENERAL TAX CREDIT NEWS

Congress Extends Some Expiring Tax Provisions

- As most listeners already know, on Wednesday, December 15, the Senate passed the tax extenders bill by a vote of 81-19.
- The bill then went to the House, where after a brief procedural delay, it was approved on December 16 by a vote of 277-148.
- The package was signed by the president on Friday, December 17.
- The bill extends current tax rates for all income levels, extend unemployment insurance benefits and temporarily reduce Social Security taxes.
- The package also includes a one year extension through 2011 of the Section 1603 grant in lieu of energy tax credit program.
  - This is welcome news to the renewable energy community, which has projected that the extension could create 45,000 jobs in 2011.
- The bill extends the new markets tax credit for two years as well (2010 and 2011) at a level of $3.5 billion each year.
  - Community development professionals have been hoping for this extension all year and while they were excited to see the extension, they were also disappointed that the extension was not at the higher level of $5.0 billion.
  - The Community Development Financial Institutions Fund is expected to make an announcement in January of the successful applicants in the 2010 application round.
  - CDFI Fund Director Donna Gambrell is scheduled to speak at our New Markets Tax Credit conference next month in San Diego, so I encourage you to register for the event if you haven't already signed up to join us. Details are available at www.novoco.com/events.
- The tax extenders package also extended the increase in the rehabilitation tax credit for property placed in service through the end of 2011 in the Gulf Opportunity (GO) Zone.
  - This is good news for the historic preservation work that is still being done to help the area recover from Hurricane Katrina.
  - In his History and the Hill column, John Leith-Tetrault will examine what this extension will mean for the GO Zone. That column will appear in the January 2011 issue of the Novogradac Journal of Tax Credits.
- The bill also includes an extension for one year through 2011 of the placed in service date for GO Zone low-income housing tax credit properties, and an extension for one year through 2011 of bonus depreciation for GO Zone property.
  - Prior to the final Senate vote, Senator Mary Landrieu secured a promise from Senate Finance Committee Chairman Max Baucus and Republican Whip Jon Kyl to further extend the placed in

service deadline for GO Zone LIHTC properties to January 1, 2013 in a tax technical corrections bill early next year.

- The final bill passed by Congress does **not**, that's right does not, include
    - an extension of the Section 1602 LIHTC cash grant exchange program,
    - additional funding for the Section 48C advanced energy manufacturing tax credit,
    - an extension of the Build America Bonds program,
    - a provision to allow the NMTC to offset the alternative minimum tax (AMT), nor
    - any funding for the National Housing Trust Fund.
- The bill did include 100 percent expensing for property placed in service after September 2010 and before the end of next year and then 58 percent expensing thereafter. For more details go to our website at www.taxcredithousing.com.
- Tune in next week to hear what lies ahead for the provisions that were not passed in the tax extenders bill, as well as other legislative priorities for the low-income housing tax credit, new markets tax credit, renewable energy tax credit and historic tax credit in 2011.

NEW MARKETS TAX CREDIT NEWS

NMTC Coalition 10th Anniversary Report

- Last week the New Markets Tax Credit Coalition released a report about the new markets tax credit program that found that, since its inception, the program has brought $49.7 billion and 500,000 jobs to distressed communities throughout the nation.
- The report was based on an examination of 4,000 New Markets transactions, dating back to 2003.
- According to the coalition's analysis, the new markets tax credit has leveraged $8 of private investment for every dollar of cost to the federal government, thereby costing taxpayers less than $12,000 per job created or retained.
- The Coalition projects that the two year extension of the tax credit that was passed last week will bring at least $25 billion in investment and 270,000 jobs to targeted distressed areas.
- Based on the same research the Coalition estimates that the two year extension of the NMTC will result in the creation or retention of 270,000 jobs, at a cost to the government of less than $7,000 per job.
- The extension is also expected to leverage $18 billion in financing from other public and private sources at an actual cost to taxpayers of only $1.8 billion over 10 years, based on Joint Tax Committee estimates.
- A copy of the report can be found online at www.newmarketscredits.com.
- More information about the NMTC Coalition can be found online at www.nmtccoalition.org.

Urban Institute Releases Report on NMTC

- Also last week, the Urban Institute posted a report called "A Literature Review to Inform Evaluation of the New Markets Tax Credit Program."
- The 114-page report reviews literature on community and economic development programs, including the new markets tax credit, to identify key evaluation concepts, questions, methods and measures, as well as to highlight significant challenges inherent in evaluating these programs.
- The report was created in preparation for designing an evaluation of new markets tax credits.
- The Community Development Financial Institutions (CDFI) Fund contracted with the Urban Institute to complete an evaluation of the NMTC program by 2011.
- The evaluation is supposed to address the fundamental question of whether the program is, in fact, doing what was intended.
- The evaluation is also supposed to inform important policy-relevant questions, such as
    - How, and in what manner, is the program affecting the flow of new private capital to low-income communities?

    - With what rates and terms are businesses or organizations in those communities obtaining capital?
    - Where, in what timeframe, and how is the capital invested to achieve community revitalization objectives?
    - What outcomes are associated with those investments?
    - How efficient are NMTCs with respect to these outcomes?
- In 2007, the Urban Institute did an exploratory study that was the first step in this design process for evaluating the outcomes of the NMTC program on a more extensive scale.
- The 2007 study examined a sample of five NMTC projects that utilized tax credits allocated early in the program's history.
- The resulting report described the characteristics, evolution, financial arrangements, and anticipated community impacts of those projects.
- In addition, that study allowed the Urban Institute to explore the strengths and limitations of using in-depth, semi-structured telephone interviews as a means for gathering process and outcome information about NMTC-supported projects.
- According to the CDFI Fund, a similar approach—based upon interviews with key project actors and stakeholders—will be used as one means for generating data for the more comprehensive evaluation of the NMTC program to be completed in 2011.
- A copy of the report can be found online at www.newmarketscredits.com.

LOW-INCOME HOUSING TAX CREDIT NEWS

CDLAC Responds to Questions about Recent IRS Guidance

- Last week the California Debt Limit Allocation Committee (CDLAC) issued a memo regarding Internal Revenue Service Notice 2010-81.
- As listeners may recall, IRS Notice 2010-81 provides guidance on the determination of when governmental bonds (including private activity bonds) are considered "issued" for the purposes of calculating their interest tax exemption or federal interest subsidy eligibility.
- We discussed the notice in the Tax Credit Tuesday podcast on December 7th. To hear a full discussion about the notice, you can download the December 7th podcast from the archives at www.novoco.com/podcast.
- Essentially, while the ruling addressed the Build America Bonds program, it has much broader implications for low-income housing tax credit financed projects using a draw-down bond structure.
- Some industry experts believe the ruling raised a question about whether or not state bond volume cap may be lost with respect to the "undrawn" portion of any draw-down bonds.
- Part of the uncertainty and concern is whether IRS Notice 2010-81 will affect the administrative approach taken by state housing agencies, such as CDLAC.
- Which brings us back to the memo released last week.
- In the memo dated December 15, CDLAC says that various bond counsels had advised the agency that for private placement issuances employing a draw-down funding structure, qualified initial draws will no longer constitute a full issuance of bonds nor will a qualified initial draw fulfill a statutory deadline to issue for IRS purposes.
- CDLAC said it is currently in the process of reaching out to the IRS for additional guidance related to this matter.
- The CDLAC memo notes that IRS Notice 201-81 offers no effective date, and thus appears to take effect immediately; potentially impacting the tax status of numerous in-progress and soon-to-close bond issuances nationwide.
- However, CDLAC notes that the IRS has indicated that they may provide some additional guidance on how such transactions will be treated under the notice requirements.
- In the meantime, CDLAC's memo says that it is vitally important that any 2010 applicant who believes that the recent changes brought about by the IRS notice may negatively impact a past bond issuance contact the CDLAC office to discuss the situation.
- Depending on the nature of the transaction and the timing of the additional IRS guidance, CDLAC says it may be necessary to supplant the loss of expiring 2010 or prior year allocation not already used in a qualified draw(s) this calendar year.

- As written, the current IRS notice may necessitate revisions to both the CDLAC regulations and application requirements for all future private placement transactions.
- The memo advises interested parties to visit the CDLAC web site and/or subscribe to the CDLAC e-mail distribution list to receive additional information as it becomes available.
- Novogradac & Company will also continue to monitor this matter and we'll post updates online at www.taxcredithousing.com and discuss them in future podcasts and in the Novogradac Journal of Tax Credits.

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HISTORIC TAX CREDIT NEWS

Journal of Tax Credits Preview

- As many listeners are aware, when a developer uses historic tax credits to renovate a building, the National Park Service has final say on all site improvements.
- This includes any changes to the building itself, as well as those to the surrounding grounds.
- Exterior additions to historic buildings can include floors added to the top of a building, a new structure connected to the side or rear of the building, or even a new free standing structure or parking lot.
- Although exterior additions do not count as qualified rehabilitation expenses for historic tax credit purposes, a poorly designed addition can cost a developer his or her tax credits.
- An article in this month's issue of the Novogradac Journal of Tax Credits, offers tips for how developers can work with the NPS to create a building addition that serves a modern purpose without disrupting the site's historic character.
- Although the Park Service reviews proposed additions on a case by case basis, the park service does provide basic guidelines for developers.
- In August, the Park Service issued a revised version of Preservation Brief 14, "New Exterior Additions to Historic Buildings: Preservation Concerns."
- The 16-page brief serves as a general guide for developers interested in adding to a historic building's exterior.
- In the article, we explore the Park Service's brief, as well as some tips from experienced historic developers and advisors.
- The article is featured as a complimentary preview of the December 2010 issue of the Journal of Tax Credits, and it can be found online at www.novoco.com/journal.
- If you have questions about historic tax credits, please call my partner Tom Boccia at (216)298-9000 or my partner Charlie Rhuda at (617)330-1920.

RENEWABLE ENERGY TAX CREDIT NEWS

DOI Releases Joint Draft Environmental Study Identifies Public Lands Best Suited for Solar Development in the West

- On December 16, Secretary of the Interior Ken Salazar and Secretary of Energy Steven Chu announced a comprehensive environmental analysis that has identified proposed 'solar energy zones' on public lands in six western states most suitable for environmentally sound, utility-scale solar energy production.
- The detailed study, known as the Draft Solar Programmatic Environmental Impact Statement, was compiled over the past two years as part of efforts to create a framework for developing renewable energy.
- Secretary Salazar said the analysis will help renewable energy companies and federal agencies focus development on areas of public lands that are best suited for large-scale solar development.
- He said the process will help stakeholders site solar projects in the "right places," and reduce conflicts and delays at later stages of the development process.
- The Draft Solar Programmatic Environmental Impact Statement (PEIS) assessed the environmental, social, and economic impacts associated with solar energy development on Bureau of Land Management (BLM) administered areas in Arizona, California, Colorado, Nevada, New Mexico, and Utah.
- More information can be found online at www.doi.gov.

Report Suggests the U.S. Clean Power Sector Could Attract $342 Billion By 2020

- The United States could attract $342 billion in clean power project investments over the next decade, according to a report released last week by The Pew Charitable Trusts.
- The Pew report found that the United States is among the three G-20 members with the most to gain by implementing strong clean energy policies.
- The report is called, "Global Clean Power: A $2.3 Trillion Opportunity."
- It examined projected private investment in wind, solar, biomass/energy from waste, small hydro, geothermal and marine energy projects.
- The underlying data for the report were compiled by Bloomberg New Energy Finance.
- The report modeled three policy scenarios to determine future growth through 2020:
    1. Business-as-usual: projections that assume no change from current policies;
    2. Copenhagen: projections that assume policies are adopted to implement the pledges made at the 2009 international climate negotiations in Copenhagen and;

3. Enhanced clean energy: projections that assumed maximized policies designed to stimulate increased investment and capacity additions are enacted.

- In the U.S., total attracted clean power project investment is projected to be:
  - $245 billion by 2020 under the Business-as-usual model
  - $259 billion by 2020 under the Copenhagen model, and
  - $342 billion by 2020 under the Enhanced clean energy model
- The entire report, including country profiles, interactive graphics and video can be found online at www.PewEnvironment.org/CleanEnergy.