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HISTORY AND THE HILL

Introduction of Historic Tax Credit Improvement Act Set for September

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With tax reform receding for the time being as a threat to the federal historic tax credit (HTC), there is good legislative news on the horizon. The Historic Tax Credit Improvement Act (HTCIA) is scheduled for introduction in the House of Representatives when Congress returns in September.

The bill's new Ways and Means champion is Rep. Mike Kelly, R-Pa., who has represented Pennsylvania's 3rd Congressional district since 2011. The district stretches from the northern suburbs of Pittsburgh to Erie. Kelly was born and raised in Butler, Pa., where he served as a board member of both the Butler County Housing and Redevelopment authorities.

Rep. Earl Blumenauer, D-Ore., who represents Oregon's 3rd district, will again serve as the Democratic original co-sponsor. Blumenauer is also a member of the Ways and Means Committee. His district includes the city of Portland east of the Willamette River. He is a strong livable cities advocate and has served in Congress since 1996.

Preservation advocates, including the Historic Tax Credit Coalition and the National Trust for Historic Preservation are hoping to recruit additional original Ways and Means co-sponsors before the date of introduction in the House. Proponents of the measure also expect introduction in the U.S. Senate later this fall, with Sen. Ben Cardin, D-Md., as the lead Senate Finance Committee Democratic champion. Efforts are underway to recruit a Senate Finance Republican as an original co-sponsor.

Bill Summary

The HTCIA is the successor bill to the CAPP Act that had been introduced in the last two Congresses. Some old provisions, notably the 2 percent energy-efficiency incentive, have been dropped and several new modifications have been added that would modernize the HTC and increase its economic impact.

- Sections 2 and 3 modify the previously proposed 30 percent small-deal credit by lowering the maximum transaction size to $2.5 million in qualified rehabilitation expenditures (QREs), and making the credits transferable via a tax certificate, similar to many state HTC statutes. These changes should increase the use of the federal HTC on smaller transactions in Main Street communities across the country.
- Section 4 creates a new substantial rehabilitation, or minimum property expenditure definition. The substantial rehab test would be reduced to 50 percent of adjusted basis rather than the current 100 percent.

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This provision would increase the use of the HTC on "moderate rehabilitation" projects and will hopefully increase the overall number of transactions completed each year. While QREs have returned to their pre-recession level of about $4.3 billion, the number of transactions, according to National Park Service (NPS) records, has remained relatively flat–between 750 and 850 buildings annually. The change should also increase the number of qualifying projects in areas where property values are the highest.

- Section 5 reduces the current depreciable basis adjustment from 100 percent of the credit amount to 50 percent. This provision would put the HTC in line with new markets tax credits (NMTCs) and renewable energy credits. There is no basis adjustment for the low-income housing tax credit (LIHTC). The Tax Equity and Fiscal Responsibility Act of 1982 set the HTC basis adjustment at 50 percent. It was increased to 100 percent as part of changes to Section 47 made by the Tax Reform Act of 1986.
- Section 6 would eliminate federal taxation of the proceeds of state HTCs. This change would end market uncertainty over federal tax treatment of state HTCs that began in 2011 with the U.S. Court of Appeals 4th Circuit decision in Virginia Historic Tax Credit Fund v. Commissioner. This provision would certainly be a fairer outcome for state tax payers whose incentives for historic rehabilitation are worth only 65 cents on the dollar after reductions for federal ordinary income tax.
- Section 7 proposes to make nonprofit sponsorship of HTC transactions easier by eliminating 3 of 4 "disqualified lease rules" which apply when more than 50 percent of the leasable space is rented to tax-exempt organizations and the sponsoring nonprofit developer has used the building before the certified rehabilitation. Prohibitions on a future fixed sale price back to the nonprofit, use of tax exempt bonds and the 20-year nonprofit tenant lease limitations would be removed. Only the rule against a sale and lease back of the property to the original nonprofit owner would be retained.
- Section 8 is drafted to end current NPS regulations related to Part 3 certification for buildings that are part of a functionally related site such as a mill complex. The current ability of the NPS to delay Part 3 approval on an initial phase of such projects until subsequent phases are reviewed and approved would be replaced by a rule that every building in a functionally related site would be approved individually without regard to the later treatment of other properties.

Why is this bill important?

Some might argue that the HTCIA has only a limited ability to become law, given how little tax legislation has been moving through Congress over the past years. This situation has been made worse by the effort to enact tax reform. Proposals for individual changes to certain sections of the IRC have been sidetracked in favor of a broader discussion of comprehensive tax code reform that would eliminate many tax preferences in favor of a lower overall corporate and individual tax rate. Stripping out individual provisions of the HTCIA and attaching them to other tax bills such as the extenders bill have proven difficult because changes to Section 47, which is a permanent code provision, have been deemed "not germane" to an extenders bill to address temporary tax laws.

However, a co-sponsorship campaign for the HTCIA is an opportunity for preservationists to go to the Hill to educate Congress on the importance of the HTC to the economic revitalization of central business districts. It provides the preservation community with a reason to ask for meetings with members and to set up district HTC project site visits. The bill also represents the industry's brightest ideas for improving the HTC as part of comprehensive tax reform.

"The HTC has worked as Congress intended, generating 2.4 million in jobs, $117 billion in economic activity and rehabilitating over 44,000 buildings since its inception," said Patrick Robertson, executive director of the Historic Tax Credit Coalition. "Furthermore we know this credit is catalytic leading to additional reinvestment in surrounding communities. This story of success needs to be told over and over again on the Hill by constituents who have seen these economic benefits firsthand. The HTCIA will help us get the message across."

Robertson also pointed out that, based on research conducted for the NPS by Rutgers University's Center for Urban Policy Research, this federal incentive has more than paid for itself since enactment, generating $28.6 billion in federal tax receipts from $24 billion in

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credits allocated. And roughly 75 percent of the dollars go to census tracts that are at or below 80 percent of area median income (AMI) or have poverty rates of at least 20 percent.

Advocates who want to urge their members of Congress to co-sponsor the HTCIA should go to www.historiccredit.com/take-action/write-your-representative-and-senators/ to take action. ❖

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