Previewing 2023 and Novogradac Working Groups

The coming year is set up to be a significant one for regulatory guidance and community development tax incentives. In this week's podcast, Michael Novogradac, CPA, and Peter Lawrence, Novogradac's director of public policy and government relations, discuss the coming year and look at the key issues for Novogradac's seven tax incentive working groups. They look at the key emphasis for each group and discuss the value of being part of the working groups. They wrap up with a look at some crosscutting provisions that affect multiple community development tax incentives.

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Transcript

Introduction

[00:00:10] **Michael Novogradac, CPA:** Hello, I'm Michael Novogradac and this is Tax Credit Tuesday. This is the January 10th, 2023, podcast. Welcome to our first podcast of 2023. We at Novogradac hope that you had an enjoyable holiday season and that your 2023 is off to a great start. Today's podcast functions as a preview of sorts for the year ahead for many of the legislative and regulatory guidance issues that we follow here on the podcast.

The midterm elections in November resulted in a divided Congress with the Democratic Party controlling the Senate and the Republican Party holding a narrow advantage in the House of Representatives. That combination makes it less likely that we'll see significant tax legislation in 2023, although the lack of a tax title in the year-end legislation does open the door a bit for that. Of course, there was plenty of drama last week as Republicans struggled to name a Speaker of the House, going through 15 rounds of voting, kind of like a prize fight, and finally electing Kevin McCarthy. The election of Kevin McCarthy as Speaker paved the way for the Republican Steering Committee to select the chairs of some key committees, most of interest to this podcast, the Ways and Means Committee, and that selection just happened moments ago, but I'll let our guest reveal the results in the event you haven't heard them yet.

However, that's not the topic of today's podcast. If you are interested in the legislative possibilities, we'll discussing many of the ramifications and possibilities tomorrow, that would be Wednesday morning, at the Novogradac 2023 Affordable Housing Developer's Conference in Fort Lauderdale, Florida and then the following week I'm going to lead a panel will discuss the same issues at Novogradac's 23rd Annual New Markets Tax Credit Conference in San Diego. Now, I will share the links to each of those conferences in today's show notes, but by the time you hear this podcast, it's likely it'll be too late if not already planning to join us in Florida, but you will still have time to join us in San Diego.

Suffice it to say there are many community development tax incentive bills that will need to be reintroduced this year, but perhaps even more significantly, there will be an enhanced focus on regulatory guidance in 2023, and that's an area in which we at Novogradac are very engaged through our various working groups and that's going to be the focus of the today's podcast. My column in the January issue of the Novogradac Journal of Tax Credits also addresses many of the regulatory issues that will be in spotlight this year.

Now here at Novogradac, we have several working groups, seven to be exact, that cover a wide range of tax incentives or issues. We have a Low-Income Housing Tax Credit Working Group, as well as groups addressing the new markets tax credit, renewable energy tax credits, the opportunity zones incentive and the proposed neighborhood homes tax credit. In addition to those groups, we have a working group for Generally Accepted Accounting Principles or GAAP accounting issues, and another on low-income housing tax credit income limits. Each group was formed to give members of that community an opportunity to meet, share challenges and to get updates on what's happening in the legislative front. Perhaps more importantly, the working groups give members a chance to join their voices together on regulatory guidance, as well as to provide a dissenting voice.

By the way, if there are issues where you believe our working groups should be seeking new or clarifying regulatory guidance, please email those ideas to cpas@novoco.com.

Now, joining me today to discuss the agenda for the working groups for 2023 is Peter Lawrence. Peter is Novogradac's director of public policy and government relations, and Peter has frequently joined me on the podcast to discuss legislation and what's happening in Washington, D.C. If you're a frequent listener to this podcast, you've heard Peter many times, most recently to discuss the results of November's election. Now, Peter works at our Washington, D.C. office. No surprise there. He does have his finger on the pulse of Congress and the rest of the federal government when it comes to a broad swath of issues in which Novogradac is involved. Most significant for today's podcast, Peter is involved in all of our working groups and helps provide updates for each of them concerning what's happening legislatively, as well as regulatorily. His report to the monthly working groups meetings is considered a key highlight for many of the working group members.

Now today we're going to look at the purpose of our working groups, but then we're going to dive into each of the groups and look at what their main areas of focus will be in 2023. As Peter and I discuss these issues, you'll gain an understanding of what's happening regarding regulatory guidance, and you'll also see how joining our working groups would add value to what you're doing. If you're ready, let's get started.

Peter, welcome back to Tax Credit Tuesday.

[00:05:21] **Peter Lawrence:** Thanks, Mike. It's always a privilege to be here.

Why Regulatory Guidance is Big in 2023

[00:05:24] **Michael Novogradac, CPA:** Well, I hope you're having a Happy New Year. Now that we have a speaker elected and the steering committee has selected a Ways and Means Committee chairman, there'll be a lot more that we can talk about with the greater degree of specificity. Now that said, today's podcast is focused on our various working groups and their plans regarding regulatory guidance efforts in 2023. Our working groups have always focused on seeking regulatory guidance in areas that we believe it's needed and our members think it's needed, as well as commenting on existing guidance as requested. But 2023 does seem to be shaping up to be a particularly important year on the regulatory front. And I thought it'd be useful if you started off by sharing with our listeners why we at

Novogradac think that 2023 will have a greater emphasis on regulations and regulatory guidance as opposed to legislative achievements.

[00:06:21] **Peter Lawrence:** That's a great question. And of course, the working groups, although our sweet spot has always been the regulatory efforts, we of course also very much follow the key legislative items and we work in partnership with a lot of the policy coalitions that are focused in our practice areas. But this Congress, and we've seen with the first week of the Congress being in operation, how challenging an environment it will be for legislation with a divided Congress and with the House having such a narrow majority, it's going to be very difficult to get legislation through the House and the Democratic Senate, Republican House, a Democratic Senate and to the president's desk. I will say that given the results from the year-end legislating, where a significant tax title was left out of the final fiscal year 2023 omnibus spending legislation, despite the best efforts of many including us, that those issues that were left undone at year end will be reconsidered this year. But it's going to be a challenge to get agreement. The same challenges that existed as part of the year-end negotiations are going to be ever-present for this Congress. And, given the challenges with the debt limit, which is going to be a need to be addressed one way or another sometime this year, it's not looking a terribly great year for legislation. So, while the bills will still be reintroduced, we'll still seek co-sponsorship and those are activities are always important, the chances of getting enacted tax legislation through Congress and with the president's signature is going to be very challenging.

[00:08:23] **Michael Novogradac, CPA:** So please share who the new Ways and Means chair is going to be.

[00:08:29] **Peter Lawrence:** Yes. Just moments ago, we saw that Rep. Jason Smith from southeastern Missouri has been selected by the House Republican Steering Committee to be the next Ways and Means chair. And of course, this has to be ratified by the full Republican Conference, but that's pretty, that's a very likely circumstance so I think we're reasonably confident that Jason Smith will be the chair, and that's great news for the tax credits. He was a co-sponsor of all three of the major tax legislation bills that we've been following: the Affordable Housing Credit Improvement Act, the New Markets Tax Credit Extension Act, the Historic Tax Credit Growth and Opportunity Act and he's also, while not necessarily a co-sponsor, he is a big supporter of the opportunity zones incentive. So, we have someone who's a great champion, certainly, a stronger supporter than the previous top Republican of Ways and Means, Kevin Brady. And we're looking forward very much to working with him and his team this upcoming year.

Chances of a Tax Bill in 2023

[00:09:35] **Michael Novogradac, CPA:** So you mentioned there wasn't a notable tax title at the end of last year. So that means a lot of tax provisions that had expired at the beginning of the year didn't get extended and those that expired at the end of 2022 didn't get extended. So, what do you think the likelihood is of getting some type of tax bill in 2023, and both give consideration to the timing. Do you think it's more likely that there'll be a big push to get something done in the next couple of months? And/or do you think there'll be a big effort at the end of the year thinking that maybe if raising the debt ceiling is sometime in the middle of the year, that's probably not a good time for major tax bill? Maybe you could share your thoughts there.

[00:10:21] **Peter Lawrence:** Right. So, we don't know precisely when Congress is going to have to deal with the debt limit. The debt limit was reset back at the end of 2019, or sorry, excuse me, at the end of 2021, at $31.4 trillion. And it's never an exact science exactly when Treasury will hit that limit and even when they do, they're able to use what's called extraordinary measures, a variety of accounting maneuvers to make sure that Treasury never goes over that limit. But at some point in the year, probably I would say in the second half of the year, we don't know for sure, but more likely to be the second half of the year, Treasury will run out of that ability and that will force there to be some sort of resolution.

And we know from the challenges that Kevin McCarthy had, this upcoming week, one of the key issues was to extract some concessions in exchange for approving any increase in the debt limit. And that is going to be a very challenging negotiation for the Congress and the administration to have to deal with. So, that is what we think will be the main issue and Ways and Means does have jurisdiction over the debt limit. I think it's more likely there will be an effort as often the case at the year-end, given that tax policy is often dealt with on a calendar-year basis. There's often always a push at the end of the year on tax legislation and given that we're now having the 2021 extenders as well as the 2022 extenders left unaddressed, I imagine there'll be an effort. It's not unprecedented for Congress to pass retroactive extensions of tax extenders. So, it certainly is not possible, but I mean that it's very conceivable it could be retroactive, but it will be, still a challenge again to get the agreement because Republicans and Senate Democrats do have different priorities and striking a deal may be a challenge.

[00:12:31] **Michael Novogradac, CPA:** So, thank you for that. I mean I do want to focus on working groups and the regulatory issues so we can move on from the legislative front. I just wanted to have you kind of set the stage for a why there's such an enhanced focus on regulatory guidance. Now there are specific issues related to each of the working groups that there are going to be moving forward with, but there's also some cross-cutting issues that affect many of our working groups. So, I thought we'd start with specific issues for each working group and then once we get through that, we can then talk about some of the cross-cutting issues. Let's start with at least the currently largest, in terms of annual tax benefits, and that's the low-income housing tax credit. So, we'll start with our low-income housing tax credit working group and what it's focused on for 2023. So, if you could share that with our listeners and I will note for our listeners that the low-income housing tax credit working group is ably led by my partner Dirk Wallace out of our Dover, Ohio, office. So, Peter, please share what some of the key regulatory guidance issues are for that working group.

Low-Income Housing Tax Credit Working Group

[00:13:35] **Peter Lawrence:** Sure. So, there's a lot I think could happen for the LIHTC Working Group. But you know, one of the main issues as those of you have been listening to the podcast over the past few months, last fall Treasury did issue the final regulations on the average income test, which was a great advance for on the regulatory front, given this important new income set aside option that now all low-income housing tax credit stakeholders will be able to use. But I think attention now shifts to implementing that guidance with each of the states and I think there were already have been lots of thinking going on. What the best practices are and how states can help facilitate the adoption and make it simpler and more straightforward for stakeholders to follow. And so we will be working on those best practices and we'll be of course, working with the National Council of State Housing Agencies, as we did all the way through the process and urging Treasury to adopt final regulations on what these best practices should be and really look forward.

[00:14:49] **Michael Novogradac, CPA:** I would also note with respect to the average income final guidance, is that the initial guidance a couple years ago wasn't very favorable. So, at some level, getting the final guidance released in such better shape is a sign of success that the working group was able to have along with other industry stakeholders. And now we're, as you pointed out, trying to get there's still some nuances that we want to clarify, but it definitely is substantially better place than it was two years ago. And now it's at a place where many investors are comfortable investing in developments that are electing the average income set aside.

[00:15:29] **Peter Lawrence:** Absolutely. Yes. That so that work goes on, but also another major priority is guidance related to all the various Inflation Reduction Act provisions that affect the low-income housing tax credit. As many of your listeners know, as we've covered in this podcast, there are $270 billion worth of expansions of renewable energy and some of those impact the housing credit. So for example, you now no longer need to reduce low-income housing tax credit basis by the amount of your renewable energy investment tax credit or the Section 45L new energy-efficient home tax credit. And there's also a bonus for the investment tax credit when used in conjunction with affordable housing. So, I think there's going to be a lot of guidance coming out of Treasury implementing this bonus for affordable housing. Also, all the various elements of the Inflation Reduction Act. And I suspect, the Low-Income Housing Tax Credit Working Group will be involved with commenting along with our Renewable Energy Working Group, which we'll talk about some more on advising how best to implement that. So those are some of the two main priorities, but I won't mention there's a third one that's not quite as high, but as it is going to be something that we also are going to be focused on, and that is this year the National Council of State Housing Agencies is expected to release an update on its recommended practices, which address a wide range of different state policies with respect to the low-income housing tax credit. One of the key focuses on this rewrite will be on preservation. And so, I believe the working group will be also very much engaged with responding to NCSHA's recommended practices and hopefully getting some industry input as the NCSHA adopts this update.

[00:17:33] **Michael Novogradac, CPA:** Thank you for that. That is important work by the National Council of State Housing Agencies. I will also note, as we've had a number of podcasts on the affordable housing provisions included in the Inflation Reduction Act related to renewable energy or clean energy, and we will provide a link to those prior podcasts in our show notes if you're interested in going back and listening to some of those. So let's move on to–

[00:17:56] **Peter Lawrence:** Actually we have a session at our upcoming conference talking about this and we also have a blog post coming up too. So, I think we've got lots of resources for those you were interested in those intersections.

Renewable Energy Working Group

[00:18:07] **Michael Novogradac, CPA:** Yes. Thank you for that. And if there's other questions that you have, just email cpas@novoco.com. We can help direct you to the links on our website, because as you point out Peter, we have lots of resources.

So, let's move on to the Renewable Energy Working Group, which maybe has more in its plate than any other group. Not maybe. It definitely does. The Renewable Energy Working Group has so much on their plate that we really can't do full justice as we talk about the areas where we'll be seeking regulatory guidance. As Peter noted, billions and billions of dollars were approved in future tax benefits associated with renewable and clean energy last summer, so this working group has a lot to do in 2023. I will note the Renewable Energy Working Group is led by my partners Steven Tracy, Tony Grappone and Nat Eng. Those of you that work in the renewable energy space certainly know one or more of those names because they work on a lot of transactions in renewable energy. But maybe Peter, you could do a brief review of some of the main concerns and just know if you're a listener, this is not exhaustive. I'd encourage you to join the Renewable Energy Tax Credit Working Group to get more detail on the specific issues of concern to you.

[00:19:21] **Peter Lawrence:** Absolutely. Yeah. We could do a whole podcast.

[00:19:24] **Michael Novogradac, CPA:** And have done which I'll link to.

[00:19:27] **Peter Lawrence:** And we're going to be very active. The renewable energy group were already were active. There were, nine comment letters that Treasury requested toward the end of last year and we suspect there's going to be much more in the upcoming year. I will just say that a couple of things we are looking at, we've just one of the pieces of guidance that Treasury recently released was on the labor provisions, prevailing wages and apprenticeship, but there's still, I think, some more details on that guidance that will come out. But those of you who are concerned about that, the 60-day clock has started and later this month will come to the end. So yeah, if your renewable energy facility hasn't started construction by Jan. 28, you're going to have to start adhering to them. So, you can get more details on them by joining the Renewable Energy Working Group. But there's a lot of other things.

There's the new option of the direct pay and transfer, we expect guidance from Treasury on this very new option. It opens up a whole new set of transactions involving renewable energy and that is going to be a very key focus. There's going to be, I think, discussion on the various accounting issues associated with IRA provisions, discussing trends and structuring issues we're going to be focused on. And, as other issues emerge, we're likely to continue to respond to requests for information from Treasury on IRA. So really, lots of work. If you're involved in renewable energy in any way, shape or form, you really should be a part of the Renewable Energy Working Group.

[00:21:18] **Michael Novogradac, CPA:** One of the underappreciated benefits of many of the working groups is the ability to discuss with other members, other stakeholders, their interpretation of various items, their common practices and the rest. And certainly in the area of renewable energy with all the provisions included in the Inflation Reduction Act, beyond the questions around commenting on regulatory guidance and the rest with transferability, refundability, the apprenticeship rule, prevailing wage and other issues, just getting on a phone call and being able to hear what others are doing and how they're addressing it and how they're interpreting various provisions so you can travel within the herd, if you will, is really an immense value and that's something that the New Markets Tax Credit Working Group did a great job of in the early days of the new market tax credit when so many issues were unknown. At the end of the day, you can't get guidance from Treasury dealing with every possible fact pattern. So, there is a benefit of being on a call and being able to share some of your questions and or some of your interpretations to see if others are agreeing with it. And it's also, even if you're not aware of issues, being on the call, you might become aware of issues. It's always better to be aware of an issue in advance. So there's a lot of reasons particularly to be participating with the Renewable Energy Tax Credit Working Group, given all the new statutory provisions and correspondingly the need for guidance in developing common interpretations.

New Markets Tax Credit Working Group

So let's, move on. I realize we're going kind of swiftly here, but we do have seven working groups and I do want to give adequate amount of time to each one. So next I wanted to talk about was the New Markets Tax Credit Working Group and that is led by my partner Brad Elphick. Brad's been a guest on Tax Credit Tuesday many times and that group is very involved with both the Treasury tax guidance for the new market tax credit, as well as the CDFI Fund that administers the new market tax credit. So, Peter, if you could highlight please, some of the key regulatory issues that New Markets Tax Credit Working Group will be focused on for 2023.

[00:23:28] **Peter Lawrence:** Absolutely. I know many of the new markets stakeholders are really focused in the application round that is due toward the end of the month and looking forward, we are hoping to work with the CDFI Fund to make the application allocation process more transparent on a known schedule. Hopefully, maybe get it more onto the calendar year. We are getting off the schedule a little bit in that the allocation application for 2022 is closing in 2023 and obviously we would rather have the round open in the year that we have it and the idea of potentially at least getting close to making awards within the calendar year. So the working group has offered a solution to CDFI Fund and try to get back more on schedule we also are looking toward addressing the technical issues that come with that additional guidance, along with the application came some more new FAQs on compliance. We obviously work with the CDFI Fund on providing recommendations along that type of guidance. In 2022 we did address COVID-related issues such as the 36-month lookback provision and extensions. So, we're going to continue to work with the Fund on these type of issues.

[00:24:50] **Michael Novogradac, CPA:** I'd also note with respect to the New Markets Tax Credit Working Group, in addition to your discussing what's happening legislatively and regulatorily, on every monthly call and all the other work that we do, which is typical of working groups, the New Markets Tax Credit Working Group also has Bob Ibanez, former program manager at the CDFI Fund for the new markets tax credit give an update administratively as to what's new over the last month. But I know that's a feature for that working group that many members find very helpful.

Opportunity Zones Working Group

Now let's move on to opportunity zones. The Opportunity Zones Working Group was our first working group founded before the actual incentive became law. It's not our last one, which I'll talk about in a moment, but it was formed in late 2017 and it's been involved in analyzing, interpreting and understanding the role of opportunity zones and incentivizing investment in low-income communities, which includes providing feedback to Treasury and in developing common practices for members. Once again, there are a lot of issues that you need to get guidance from Treasury on, there are a lot of issues that you can't get guidance from Treasury on that you have to develop an interpretation and you want to travel within the herd to the extent that you can, to create some safety of being within a herd. And that group is led by my partner, John Sciarretti. He leads that group and he is ably assisted by Jason Watkins, in terms of those monthly meetings. And John, by the way, will be a guest on the podcast in a few weeks. So Peter, if you could share some of the priorities for the Opportunity Zones Working Group in 2023.

[00:26:30] **Peter Lawrence:** Sure. So we're going to continue discussions with Treasury for regulatory guidance on the working capital safe harbor and the written plans and schedules for qualified opportunity fund de-certification in the circumstances, whether it's involuntary, and we're going to continue to analyze the reintroduced opportunity zones legislation, which we expect to happen sometime in the next couple of months. And then we're also getting a little bit further down the line at what would be Opportunity Zones 2.0, like, have a wide group of stakeholders identify what are the common possible improvements to see incentive for new legislation. That is something that is always an ongoing effort that we do to try to make the incentive work better in a broader set of communities and of course, we also continue to do various technical research initiatives to develop industry-wide recommended practices. I do think that what if we do have tax legislation this Congress, which we'll see again uncertain what the circumstances are, but I do think there that if there is a vehicle for that, the opportunity zone legislation certainly will be a candidate in this divided Congress, as a bipartisan, bicameral initiative. So, we'll look at continuing to work with the stakeholders on that.

Neighborhood Homes Tax Credit Working Group

[00:27:59] **Michael Novogradac, CPA:** Thank you for that. And certainly when you think about the reporting requirements, it seems like that should be a layup. And I realize nothing's a layup in Congress, but if there's a tax bill, it seems like that and more would likely be included in a legislation that makes its way through Congress on a bipartisan basis to the president's desk. And in introducing the Opportunity Zones Working Group, I noted that it was the first working group that we formed before the incentive became law. And there is another working group, which you hope they'll say someday was formed before it became law, because right now it's not in the statute yet. And that of course is the Neighborhood Homes Tax Credit Working Group and that group is led by Dirk Wallace, who I mentioned earlier, is also the leader of the Low-Income Housing Tax Credit Working Group. The Neighborhood Homes Tax Credit is a tax credit for single-family housing, owner-occupied. So, it's similar to the low-income housing tax credit, only it's, single-family homes versus rental housing. The Neighborhood Homes Tax Credit Working Group has a number of priorities for the year and it doesn't get involved in sort of direct lobbying, but a lot of the interpretive sorts of issues that would be critical to its success, once enacted. So Peter, if you could share some of the goals of the Neighborhood Homes Tax Credit Working Group.

[00:29:19] **Peter Lawrence:** Absolutely. And I know it always seems it's a little challenging given that it's not enacted yet, but there's so much to be done to help, lift it up once it is enacted. That I think it really there's a benefit to being on the ground floor, so to speak, on this, to make sure that we avoid, foot faults and problems as we're doing the final stages of legislation. We're a valuable technical resource to the leaders of the coalition pushing for the neighborhood homes. It does share a lot of attributes with the low-income housing tax credit and that it would be administered by the states. You have a population-based allocation and a qualified allocation plan for the competition for the credits.

Of course there are some important differences too, given the differing nature of how single-family housing meant for homeownership was financed, as opposed to multi-family housing. But we're, the Neighborhood Homes Tax Credit Working Group is a bunch of stakeholders who have got the skillset to sort of address both the commonalities to leverage what we get from the low-income housing tax credit toward this other challenge and I will, again, I know we talked a little already about this a little bit, but if there is an opportunity for tax legislation on housing this Congress, I almost see neighborhood homes and the low-income housing tax credit as being viewed as a package deal. The administration strongly believes that both are important and are pushing for both the supporters, the main leaders in Congress, are there's a lot of overlap between LIHTC and neighborhood homes, in particular. I see you've got someone like Sen. Ben Cardin and Sen. Todd Young being co-sponsors and leaders of both. So I think we're likely, if there is any housing tax legislation at all this Congress, there's a decent chance and we given that you cannot have any ability to claim a tax credit until states have developed qualified allocation plan, having that early work, is going to be really crucial.

So the working group is going to be focused on creating recommend practices for the state housing agencies on how to allocate the credit, drafting those. We have a template that states will be able to use to help draft those and we're also interested in stress testing the statute as we are in an increasing interest rate environment and as in construction costs are also increasing to make sure that the credit can be used in a variety of circumstances.

[00:32:08] **Michael Novogradac, CPA:** Yeah, and I couldn't agree with you more. I definitely believe the Opportunity Zones Working Group was really helpful before the legislation was enacted to help stakeholders understand how it would work and to the extent that there were some technical issues that needed to be addressed, that they could be addressed, early before the statute was enacted. And the same thing happened is applicable with the Neighborhood Homes. If you work in a low-income housing community, if you're a strong proponent of home ownership, this is an opportunity to sort of weigh in and see how it was being projected to operate. And if there's little tweaks or such to improve its effectiveness, it's a great vehicle to weigh in and it's good for all parties involved.

GAAP Working Group

Now there are two more working groups that we have. They're the GAAP Working Group and the Income Limits Working Group. So the GAAP Working Group is Generally Accepted Accounting Principles. So that's the working group that's deals with how public companies, how those that are publicly reporting their earnings report, their investments in various tax credits. Obviously, a large portion of the investors in various tax credits are public companies. Public companies are very focused on how an investment in a tax credit will affect their public facing financials. And the GAAP Working Group is designed to address that question and to sort of better ensure that an investment in a tax credit is appropriately reported on a public company's public facing financials. The GAAP Working Group is led by my partner, Brad Elphick. That's Brad of New Market Tax Credit Working Group fame. And I should note the Income Limits Working Group is led by the well-known income limits expert, my partner Thomas Stagg. But maybe we can start with the GAAP Working Group, Peter, and you could share what its key focus is in the near term.

[00:29:19] **Peter Lawrence:** Absolutely. And there was a tremendous advancement in tax credit accounting through the course of this last year in that proportional amortization guidance is likely was developed and advanced and will likely be finalized this year to extend that proportional amortization treatment from the low-income housing tax credit, which the Financial Accounting Standards Board granted in 2014, to other tax credits. And the key, of course, eligibility criteria that need to be followed in order to receive this treatment. I think the GAAP Working group was crucial in working with FASB in its Emerging Issues Task Force on some of these policy issues and I think helped make the proposal better and we’re going to continue to focus on it as we get to sort of the final implementation stages. Also, there's going to be, I think a focus on discussing and developing ways to mitigate the consolidation issue that arises as part of this guidance. I know we're kind of giving you a preview of the cross-cutting issues here for a moment, but the GAAP Working Group has been a leader in addressing the accounting as aspects of the global minimum tax. In particular, the other Pillar Two, a component of the global minimum tax as well as the new corporate minimum book tax that was established in the Inflation Reduction Act. So, we can talk a little bit about that more in a moment, but the GAAP Working Group has been one of the leaders on those issues.

[00:35:49] **Michael Novogradac, CPA:** Yeah, it's a good overview. Peter, whenever I think of the GAAP Working Group, I always think of it being like the band getting back together again, because the band got together many moons ago to help push forward the proportional amortization concept for the low-income housing tax credit. And when that happened, back in 2014, there was an effort to expand it to all credits, but at the end of the day, it was limited to just the low-income housing tax credit. It was always a question of why can't we expand it to other credits? And then the band got back together again, led by Brad Elphick, to try to expand the eligibility of other credits for amortization. And it does look like in many cases, new markets tax credits will be eligible for proportional amortization but based upon some issues like the consolidation question, not as many new markets tax credits might be eligible as initially expected and other credits may not qualify, given the fairly restrictive eligibility criteria. So certainly one of the focuses of the GAAP Working Group, once we think we successfully get through th, change to where it's not limited just to low-income housing tax credits that we then revisit some of the eligibility criteria so the accounting can be applicable to a broader range of tax credit transactions. And as you noted, there's also other GAAP accounting issues. And I would like to encourage our listeners, if beyond proportional amortization, there's GAAP accounting issues that you're sort of facing that you think some clarification is needed, if you think there at least needs to be industry common practice, recommended practice or the like, please do reach out to my partner, Brad Elphick. Or you could also just send an email to cpas@novoco.com.

Income Limits Working Group

Now let's turn to the Income Limits Working Group. My partner Thomas Stagg was on the last podcast of 2022 talking about the HUD income limits for 2023 and he talked about the role of the Income Limits Working Group plays there. And just to maybe set the stage for listeners who aren't quite as familiar, HUD every year releases income limits and those income limits determine the eligibility criteria for tenants and low-income housing tax credit and many private-activity bond-financed rental properties, as well as indirectly calculating the rent limits, the amount that the maximum amount that owners can charge, tenants that are living in low-income housing tax credit properties and because of a variety of calculation issues and data collection issues, the last couple of years have been particularly challenging in terms of trying to understand what the income limits are going to lead to in terms of rent limits for tax credit properties. And it's something that was formed based upon some gaps in, data collection, not by any fault of someone, it was just the inability to collect data information during the height of COVID. And now there's just a series of ancillary and continuing evolving issues. So now Novogradac Income Limits Working Groups is focused on 2023, 2024 and it seems like there's, as you dig down into these head income limits, there's always more to analyze and more to comment on with that as kind of a background. Peter , I apologize, that was a lengthy introduction, but if you could focus on in the near-term priorities for the Income Limits Working Group.

[00:39:22] **Peter Lawrence:** Absolutely, Mike. And, this is, I think going to be an ongoing, key issue, that our Income Limits Working Group members have always feel is important that we remain engaged with HUD, as they set up and consider the various policy implications of positions they've taken. But we will, as Thomas talked about it in that podcast, we are expecting the 2023 income limits to come out a little later than we're, used to, May 15th. But the benefit of course is that it is incorporating more recent, 2021 American Community Survey data into that and it's a year sooner than typically HUD has done in the past. We will continue to work with HUD as they start to consider a 2024 income limits methodology, including is this one new adoption something that's going to be ongoing, that HUD will use, or will they revert to their old methodology now that the pandemic is sort of slowly receding, and, the impacts on data collection are no longer as acute. The other thing we are focused on is how the 2023 income limit cap will be calculated. And you, we recall in 2022, HUD came up with a total new methodology so we continue those conversations with HUD to try to identify the best policy here. And then of course, we all continue to monitor the HUD announcements and policies they've taken on other issues that impact income limits, like fair market rents, which do impact the high housing cost adjustments and any changes in cause methodology in that area too So, we keep a robust set of communication channels with the HUD officials that are involved in all of these policies determinations. And we're definitely going to continue that into 2023.

[00:41:18] **Michael Novogradac, CPA:** And this is one of our working groups where I look at it and think to myself, if you're an owner or an investor in a portfolio of LIHTC properties, And particularly if you're investing in newly developed properties or properties under development, and that's sort of your focus, this is a working group where you can better understand what your rent limits are likely to be over the next couple of years, as well as have an opportunity to understand some of the methodological changes that HUD is making at various times and understand the impact that'll have on your portfolio in terms of property, cash flows and the rest. And I think there is a tendency, and I myself, early in my LIHTC career tended to think of this as kind of a given. And there's a certain way you calculate it and that was sort of set in stone. And then the moment you start to do any sort of research, you quickly realize it's a complex set of calculations that a large portion of it is consistent or nearly all of it's consistent year to year. Periodically, there are major changes that can have dramatic effects. And every year there can be tweaks and items of that nature in those calculations. And the sooner you know about this, the sooner you can be addressing it as you're managing a set of properties. And it has, like I said, it has the greatest impact when you have properties under development or you're considering developing because obviously one of the critical underwriting criteria is what the rents are going to be, as well as where the likely percentage increases in rents over time. So it's definitely a, a pretty important, working group.

Crosscutting Issues

So I'll end it at that and then move on to the crosscutting sorts of issues. We've talked about the various working groups that we have and there more targeted items. There's obviously overlap even with what we've talked about before. Income limits is a LIHTC concept. It's just pretty very targeted kind of subset of issues that are, there's a lot of work there. So a separate working group beyond the low-income housing tax credit working group was needed and we've already mentioned a couple of, or at least one of the issues that is cross-cutting in cross-cutting the sense that they affect broadly different tax incentives. So, Peter, maybe you could share some of the cross-cutting issues that involve multiple working groups. And maybe you can start with the global minimum tax since you've already touched upon that.

[00:43:38] **Peter Lawrence:** Yes, absolutely. And for just a quick recap why, what that is for those who may not be very familiar, back in October of 2021, the U.S., along with over 135 other nations signed a global minimum tax agreement, that had what's called Pillar One, which essentially decides how taxes are to be determined and allocated across multinational corporations, with Pillar Two, the various elements trying to establish at least a 15%, minimum tax for large multinational corporations. The interesting part of this whole exercise is that it's almost predicated on having an enforcement mechanism outside of tax legislation in that the, if states, if, for example, Germany adopts the Pillar Two, it could affect investor behavior in the U.S. even if there isn't accompanying tax legislation in the U.S. So, I think with the leadership of Brad Elphick, we have worked on the issue and developed an interpretation of the Pillar Two rules that hopefully will provide a pathway for tax credit equity not to be a part of this calculation and not be affected. But, it's not clear yet whether the OECD will adopt this interpretation as it sort of releases, implementing guidance for Pillar Two. And we're going to continue to work with Treasury and with allies across all the various tax credits because it would certainly, it does affect broadly, could potentially affect broadly all the community development tax credits, on that. And I also just quickly note that there are some similarities with the corporate minimum book tax, but there are also some emphasis too. Do you have a comment, Mike?

[00:45:32] **Michael Novogradac, CPA:** Yeah, I did want to share before we jump into the one of the other crosscutting items, you kind of hinted at, mentioned the corporate minimum tax on book income. I just want to say with respect to the global minimum tax, that we do have this interpretation and we'll provide a link to it in the show notes. And I do think it's the better reading of the existing rules that would implement Pillar Two. But as Peter and many listeners know there isn't universal agreement among all countries that is the proper interpretation. And we're definitely hopeful that can become the interpretation. But if it's not that interpretation, then there might be, perhaps there'll be some modification to it, and it'll generally be applicable, but not universally applicable. So I just encourage listeners to stay tuned to that. And this is one of those issues where it could have no effect, because the global minimum tax could never get introduced or it could have a dramatic effect because it could.

You could result in a large number of multinational companies being adversely affected by the global minimum tax such that they would stop investing in tax credits, in the U.S. And that would be irrespective of any legislation in the U.S., would just be, as you put it out, Peter, just because enough other countries introduced this concept, there'd be a detrimental effect on the benefits of tax credit investments. So there's definitely more work to be done here and I just encourage the listeners to stay tuned and aware of the issue.

[00:47:01] **Peter Lawrence:** Absolutely. And I, know, again, there are some shared concepts with the minimum book tax that we're also going to be following as a cross-cutting issue But there are differences and then I think one of the key course ones are that we, that is legislation that was enacted as part of Inflation Reduction Act, it does explicitly have an adjustment for the low-income housing tax credit and other community development tax credits. Plus, the minimum, the book income is adjusted by tax benefits such as accelerated depreciation. So, certainly, there's a clear pathway of understanding how community development tax incentives may sort of navigate the minimum book tax, as opposed to the global minimum tax, where we're still sort of waiting that implementation guidance from OECD.

I will say one last sort of crosscutting issue that will be a focus of the working groups is the Community Reinvestment Act. As some of you may recall, the federal banking regulatory agencies did release proposed regulations for reforming the Community Reinvestment Act regulations and, that would be the first significant rewrite of the regulations that would be implemented since 1995. We do expect those final regulations to be released sometime, potentially in the first quarter, could be delayed a little bit, but that is the target, and while they were better than the set of regulations that just the OCC released in 2020, there are some concerns as well. And we're hopeful we're working to try to convince the federal banking regulators to make changes in the final regulations to address community development tax credits and make sure that the CRA continues to be an important incentive for tax credit investors.

[00:49:04] **Michael Novogradac, CPA:** Thank you for that because that is a critical cross-cutting issue. And certainly there are others, but there's only so much time in this podcast. And I do want to move on to get a little more details on the working groups. I mentioned earlier that most of the working groups meet once a month. Some meet more often depending upon the issues. And if you're a listener and you're thinking which working group do I think has recently been meeting more often than once a month, you'd probably say, well, which is the one that had billions and billions of dollars enacted as part of a tax bill last year, which of course is renewable energy and clean energy tax credit. So that Renewable Energy Tax Credit Working Group has been particularly active of late dealing with a whole variety of issues. For a while, their meeting monthly wasn't often enough. But Peter, maybe you could talk about some of the benefits of being a working group member beyond having these monthly calls where you give a legislative update. And then we discuss a variety of guidance issues and a variety of recommended practices, as well as have guest speakers in the rest.

[00:50:11] **Peter Lawrence:** Yeah, really, we run the gamut. There's a lot of different elements that we keep working members apprised of. We track all sorts of research that's happening in the areas we talk about and whenever there is comment letters, we come up with a consensus proposal and one of the great benefits I think, of the working group is that the positions are not reflected in any one company, but come across a cross-section. And we know that Treasury in the past is really appreciated that it's having a common voice where we could reflect a consensus position really helps Treasury make policy decisions and having it not appear or benefiting one sector or another among stakeholders, but rather something that benefits the practice as a whole and having that group voice, I think is really helpful. Especially when you're standing up you know that all those billions of dollars that were authorized in the Inflation Reduction Act. I think that's one way and the Renewable Energy Working Group certainly did meet more frequently. We were actually meeting on a weekly basis, in fact, even more frequently than weekly at some point. So, really that's the agenda is driven by what the policy needs are and we want to make of course sure that we're as relevant and timely as possible as Treasury and other federal agencies are coming up with key regulations and guidance. And we often do a lot of analytical work too. And one of the signature items I think, Novogradac has been known for on a low-income housing tax credit are our unit financing estimates and that's been a key working group for ongoing project and, without the valuable support we get from the working group membership, we wouldn't be able to do those sort of things. So there's a whole slew of benefits you get as being a part of the working group, and we certainly encourage you to consider becoming a member.

[00:52:19] **Michael Novogradac, CPA:** And you mentioned our comment letters. One of the things I find the most useful with respect to the comment letters and having a large number of members in the various working groups is we can have an idea and really filter it and fine tune it and be as exact as possible in terms and as specific as possible with the recommendation. And it helps working group members avoid unexpected consequences and it makes the recommendation really actionable by Treasury and they'll know that it's been thought through by a large number of parties. So it definitely ends up being more refined than if any one of us just individually came up with an idea, because everyone can read the same words and come up with different interpretations. So, we could basically be refining the words to avoid. I really appreciate the work group members and what they're able to provide. And in addition to work group members being able to make suggestions about what a recommendation should be, what a common practice should be and the rest, they also can say, no, don't make that recommendation. And that voice sometimes is more important because one person might see a particular recommendation in a certain light, in a certain type of structure, whereas in another type of structure it has, other adverse effects. So, that's really useful. So thank you Peter. As our listeners can definitely tell, you are a great resource in all these areas and you're obviously a very real significant value to the working groups. So thank you for all your contributions to the working groups. I like to say that our working groups are rarely surprised by things that happen in Washington, D.C. thanks to your monthly advice and guidance. I say rarely surprised because Washington does still surprise. But, even if they end up being surprised once, they are surprised by what happened to Washington, D.C., then the next call comes up and you can explain some of the background. Then you kind of can better understand why things went the way that they went. So thank you Peter, for filling us in on the priorities or at least some of the priorities for 2023. There's a lot more priorities that we didn't have time to cover in the course of the podcast. Please do, Peter, stick around to the end of the podcast for Off-Mike section.

Preview

So looking ahead to next week, we're going to resume our, “So You Want to Be a LIHTC Developer,” series. Next week's episode is going to focus on what low-income housing tax credit developers should know about Form 8609. Now, many of you know that Form 8609 is the IRS form that documents the credit allocating agency–normally a state, but could be a city allocating agency's–allocation of the low-income housing tax credit for 9%. It's technically an allocation for 4% bonds, it's still the document that states the amount that a developer or partnership is able to claim in low-income housing tax credits and this allocation of the credits is done by the allocating agency on Part 1 of the form. And then Part 2 of the form 860 is where the taxpayer has to complete various certifications and make various elections. And there are a lot of traps for the unwary in the form 8609. And every few weeks it seems there's a private letter ruling that gets issued where a taxpayer has made the wrong election and then as a consequence, they had to go in and apply to the IRS to correct the incorrect election. And there's a lot of costs and timing associated with that, so you obviously that's something to be avoided.

So next week, my partner Craig Staswick is going to join me and he'll discuss the developer's responsibilities in filling out form 8609, and he will discuss how the form 8609 can affect credit delivery. So in addition to developers wanting to listen in to the podcast, I definitely encourage investors as well. Many syndicators and investors actually want to review the 8609 before it gets submitted just to ensure all the proper elections are getting made, or at least the elections that they're expected to be made, get made.

Off-Mike Section

So with that, we now reach our Off-Mike section, where I have the pleasure of asking our guests some off-topic questions to seek their advice and words of wisdom. So let me start, Peter, I only have two questions for you. Often, I have three, but I'll limit you to two. I appreciate you joining me on the podcast a little bit longer than normal, but we've covered a lot of very important matters.

I'm always asking guests about time management and the rest. I'm always very focused on productivity, so I was wondering if you could share what lessons you've learned during your career concerning how to best manage your time. Realizing that best isn't exactly easy to define what best is.

[00:57:23] **Peter Lawrence:** Fair enough. And, whenever we do have a beginning of a new year, that always prompts us to rethink how we've done things, reflect on how 2022 went, what worked well, what perhaps did not work well and I think one of my resolutions for 2023 and to better manage my time is not focus so much on email.

More have focused on meetings, working with key partners and one of the great ways of doing that is to go to conferences and we've got our first two conferences of the year. I appreciate the opportunity getting out of the Washington D.C. bubble and meeting folks from all around the country and hearing what their particular priorities and issues are. And so I think that's just managing, you really need to decide what is most value from your time and try to cut out a lot of the stuff that can help, that may fill it, fill your week with stuff, but don't necessarily advance what you really want to try and achieve any one particular week, any one particular month or any one particular year. And I always realize my key goals is we want to advance positive regulations, guidance and legislation focusing our tax practice areas. And we do that, working in concert with key partners and can easily get distracted in email with the latest controversy or issues don't really matter and so that's one of my key ways of helping.

[00:59:01] **Michael Novogradac, CPA:** Well, I really like you focusing on email because that's definitely a weakness for me in terms of email and getting lost in your inbox. Not so much because there's so many items, but just the incoming and there's all these different quotes, "Keep the eye on the prize," "Are you really doing something that's going to effectuate change or accomplishment in the way that you're seeking?" And you can get caught up in email where you're confusing activity with achievement or activity with progress because you can definitely be very active there. And I also think of, the whole four quadrants. Call them Stephen Covey or Eisenhower or the others. You got the what's important but not urgent, you know what's important but not urgent; what's not important, not urgent; and what's urgent, but not important. And it seems like so much of email fits in that urgent but not important category, and you can end up getting distracted by that category and not dealing with what's urgent and important or what's not urgent, but important. So it's definitely something that is always a focus of mine and as you develop more refined ways of addressing that, I'll look forward to hearing them from you.

[01:00:14] **Peter Lawrence:** Absolutely.

[01:00:15] **Michael Novogradac, CPA:** The podcast has been about working groups. And our working groups are by definition in involving working with multiple people. Multiple people end up coming together to achieve outcomes, so what tips do you have on working well in groups?

[01:00:31] **Peter Lawrence:** One of the things I always think is so important is that you listen well. I think because sometimes people have, whenever they come to meet together, they have a particular goal they have in mind and they express it and I think sometimes people don't listen to how everyone else responds as carefully as one should, because often people, no one wants, well, not no one, I shouldn't say that. Few people are gadflies and very outspoken. So sometimes you have to really listen carefully to hear the nuances in people's differing positions and you know that listening is a real important skill. It's very easy to sort of talk, your position and think that maybe other people support it, but listening how people respond is something I know I constantly need to continue to work on and make sure that, am I hearing all the various different perspectives on this issue? Because often there are multiple valid perspectives and being able to hear them and come up with policies that help address all those different perspectives, I think is always going to be a very important challenge. And one of the things that the working group is there to help facilitate. so I always do appreciate that opportunity and hearing stakeholders participate in our working groups.

[01:01:58] **Michael Novogradac, CPA:** I really appreciate that as well. I sound like a broken record of saying I really appreciate what you're saying, but that's one, the whole listening. I mean, there's the adage of, you're given two years and one mouth and all the rest, get the right balance. But I know for myself, I'm always challenged to listen and not be formulated what I'm going to say next. And even like when you were answering the question, I just generally will lapse into what's my follow up as opposed to just sitting back there and saying, let's listen to what's being said and then have your follow up. Because all the time I'm thinking about what I'm going to say next, I'm not listening. And I know that's something that I struggle with and I'm certainly always try to focus on to say OK, what is it that, like in this situation here, it was like, what is Peter saying versus what am I going to follow up with? So I can't stress enough that my agreement with you in terms of listening more and listening better. And it kind of goes back to what I remember my children in school, they were saying, well start by repeating back, this is what I think I heard. And obviously that can be a challenge and a large groups and all the rest, so you everyone can't just be saying, this is what I think I heard and things of that nature. But, having that kind of approach definitely is helpful. At least in your mind, be thinking to yourself, what is it that I'm hearing as opposed to what is it that I want to say next?

[01:03:25] **Peter Lawrence:** Yeah. It's something I know I need to continue to work on because you do have a perspective and you do have and often you, you may think someone is going take a particular position until you listen to them carefully and discover the nuances and what they're trying to communicate. So, I know I need to continue to work on that, to make sure I'm hearing all the various different perspectives on an issue and so that's one of my goals for 2023.

[01:03:55] **Michael Novogradac, CPA:** I would just say one of my other approaches is to be thinking about, rather than come back with a comment, is to follow up with a question. Because you're thinking about what am I going to ask about their view? And you're not thinking about what you're going, you're thinking about how to learn more about their view. So that's, another tip that I find useful. So thank you again, Peter. Thank you for joining me on the first podcast of 2023.

[01:04:27] **Peter Lawrence:** It's a great privilege.

[01:04:29] **Michael Novogradac, CPA:** And to our listeners, I'm Mike Novogradac. Thanks for listening.

Additional Resources

Email

Peter Lawrence

More information

Conferences

Novogradac 2023 Affordable Housing Developers Conference

Novogradac 23rd Annual New Markets Tax Credit Conference

Working Groups

Low-Income Housing Tax Credit Working Group

Neighborhood Homes Tax Credit Working Group

New Markets Tax Credit Working Group

Renewable Energy Tax Credits Working Group

Opportunity Zones Working Group

GAAP Working Group

Income Limits Working Group

Global Minimum Tax White Paper

Pillar Two and Tax Credit Equity Investments

Previous Podcasts on Inflation Reduction Act

Oct. 25, 2022: RETC Working Group Updates and the Inflation Reduction Act

Aug. 30, 2022: What the Inflation Reduction Act Means for Affordable Housing

Aug. 23, 2022: The Inflation Reduction Act and What it Means to Renewable Energy and Beyond