NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: January 28, 2020

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac CPA, talks about plans to move forward with federal infrastructure proposals. He also talks about Sen. Tim Scott, S.C., exploring the idea of introducing legislation that would allow governors to reconsider some of their opportunity zones designations. Then he talks about a recent development in CRA reform and what to expect from the OCC and FDIC in the coming weeks. Next, he talks about state level news including a ruling from a state trial court in New York about low-income housing tax credit partnerships, and legislation from Hawaii that would make the state's low-income housing tax credit program permanent. He also discusses a private letter ruling from Colorado on partnerships pursuing the state low-income housing tax credit. Finally, he shares news of legislation introduced in Hawaii that would ensure the 35 percent renewable energy credit regardless of any future amendments to state law.

Summaries of each topic:

GENERAL NEWS

Infrastructure Proposals

- I want to kick off on the topic of infrastructure.
- The House and Senate plan to move forward on infrastructure proposals, according to Bloomberg's Daily Tax Report along with other Novogradac sources on Capitol Hill.
- House Speaker Nancy Pelosi said that she plans to unveil an infrastructure plan this week.
- And it's not too surprising that the House Ways and Means Committee is holding a tax hearing on infrastructure tomorrow, Wednesday.
- Meanwhile, Senate Majority Leader Mitch McConnell is considering a highway and transit bill that has been on hold since last summer.
- Infrastructure reform does appear to be one of the few legislative priorities in Washington for which both Republicans and Democrats seem to have an appetite.
- Legislators are especially eager to show they can address major legislation in an election year.
- Details of the proposals are still being worked out, most notably, how to pay for them.
- Many expect the challenge of finding a pay for and reason to doubt any such legislation could be enacted this year.
- But, I'll keep an eye out on what tax incentives might be able to hitch a ride on infrastructure legislation.
- Many tax incentives are naturally akin to infrastructure such that they would be able to hitch a ride.
- I'll be focused on legislation that relates to
  - the low-income housing tax credit,
  - private-activity bonds,
  - the new markets tax credit,
  - the historic tax credit,
  - renewable energy tax credits as well as
  - opportunity zones.
- Also, I encourage you to join our Federal Infrastructure Tax Credit Working Group.
- It's a great way to stay in the loop and have an effect on infrastructure proposals.
- I will send a link out on Twitter to the working group's page, so you can consider joining the Federal Infrastructure Tax Credit Working Group, and I'll also include a link to join the group in today's show notes.

Opportunity Zones Re-designation Legislation

- Let's speak for a moment about opportunity zones. Many mayors and governors have expressed a desire to reconsider their opportunity zones for well over a year.
- The reasons are varied, and include reasons as minor as scrivener errors that result in unintended zones being designated.
- The question being asked in the halls of Congress is will governors be allowed to reconsider their opportunity zones designations?
- At the moment, that is not possible.
- But, there is a chance that could change.

- Republican Sen. Tim Scott of South Carolina told a conference of mayors recently that he's exploring legislation that would allow officials to re-designate a small percentage of opportunity zones.
    - One example Sen. Scott used is a governor who inadvertently designated a military base as an opportunity zone.
- Sen. Scott is one of the key authors of opportunity zones legislation and he is talking to fellow senators about allowing governors to reconsider a certain percentage of their designations.
- As you likely recall, it was in early 2018, governors had the opportunity to nominate a certain number of census tracts for designation as opportunity zones.
- And all governors did nominate the maximum allowable number of zones.
- Those were one-time designations.
- Once an opportunity zone is designated, it remains a qualified opportunity zone for 10 years from the date of designation.
- That's the current law.
- Since those designations were made in 2018, as noted, some local officials have requested greater flexibility in revisiting certain designations in favor of other low-income areas that might have a greater need for investment. As well as to correct nomination errors.
- Of course, we will keep an eye on this potential legislation and will provide any updates in future podcasts.
- Also, we don't expect such legislation would pass as a single bill, it would have to be attached to a larger bill, and we also would expect such a change to allow some re-designations would be accompanied by other opportunity zones legislation changes, including mandatory impact reporting requirements, as well as additional anti-abuse rules.
- In the meantime, I encourage you to check out the Novogradac Opportunity Zones Mapping Tool.
- This online resource displays information on all qualified opportunity zones, as well as areas that were originally eligible for opportunity zone designation, but were not such nominated, as such, not designated.
- I'll include a link to the mapping tool in today's show notes and I'll tweet it, as well.

CRA Reform

- Next, I have an interesting and notable update on efforts to reform the Community Reinvestment Act, or CRA.
- The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation do appear willing to move forward with finalizing proposed CRA regulation changes, despite objections from the third banking regulator: the Federal Reserve.
- The OCC, FDIC and the Federal Reserve do collectively oversee CRA compliance.
- The last major revision they made to CRA regulations being made in unison in 1995.
- The fact that two of the regulators have recently stated they are willing to issue final regulations without participation from the third regulator is noteworthy and troubling.
- The OCC and FDIC, as you probably recall, officially published their proposed regulations this month, drawing criticism from Federal Reserve Governor Lael Brainard.
- Brainard said the single-metric evaluation proposed by the OCC and FDIC runs the risk of banks meeting CRA expectations primarily through a few large loans, rather than meeting identified local needs.

  - Affordable housing and community development advocates voiced similar concerns about eliminating the CRA investment test.
  - Without a motivation to meet the investment test, banks would lose an important part of their incentive to invest in affordable housing and community development.
  - By invest, I mean invest equity as opposed to lending.
  - Most low-income housing tax credit and new markets tax credit equity investment comes from banks overseen by the OCC.
  - Which means these proposed changes, if adopted in final regulations, would have a significant effect on LIHTC and NMTC activity.
- Brainard also warned against rushing into regulatory changes without proper analysis.
- She said that major CRA updates in the past happened once every few decades and that it's more important to get reform done right, rather than done quickly.
- That said, the OCC and FDIC seem intent on issuing a final rule in the coming months.
- The OCC and FDIC are accepting comments on their proposed regulations until March 9.
- Then, they expect to issue a final rule about 60 days later—no later than the end of May 2020.
- Also as a quick note: The Novogradac LIHTC, NMTC and OZ Working Groups are each planning to submit a comment letter on the proposed regulations.
  - I encourage you to join one or more of these working groups and share your insights.
- Now, back to the time frame of issuing final regulations.
- Comptroller of the Currency Joseph Otting told reporters Wednesday of last week that he does <u>not</u> expect there will be time to compromise with the Federal Reserve before the final rule is issued.
- What does this mean for banks?
- Well, each bank reports to a single federal bank regulating agency.
- But, some banks may be merged with or acquired by others.
- If merged or acquired banks operate under a different regulator, they would have different sets of CRA regulations and that would affect how transactions may proceed.
- Two sets of CRA regulations would be less than ideal for banks and community development advocates.
- You can find a list of the banks who are major tax credit investors in a Notes from Novogradac blog post, I'll send out a tweet, not only do we include the banks that are major tax credit investors, but we also include the federal regulatory agency that oversees them.
- Having two regulators for a single merged bank is certainly something that merged banks will want to avoid.
- I noted that there's been concerns expressed about the proposed regulations and they also include the financial services committee.
- To that end, Comptroller Otting will be appearing in front of the House Financial Services Committee for a hearing on the proposed rule tomorrow.
- I'll report back in next week's podcast with any insights from the hearing.
- In the meantime, you can read more about how the proposed regulations could affect affordable housing and community development in the February issue of the Novogradac Journal of Tax Credits.

- The Journal includes an article that has great insights from Buzz Roberts of the National Association of Affordable Housing Lenders as well as Gerron Levi of the National Community Reinvestment Coalition.
- I encourage you to subscribe to the Journal today if you’re not getting it already.
  - There’s a subscription link for the Journal in today’s show notes.

Other News

- Now let's turn to state news, starting with New York.
- A state trial court judge ruled that exercising an option to redeem a limited partners' interests in a low-income housing tax credit partnership did not trigger a liquidation under the partnership agreement.
  - Thus, exercising the option by redeeming interests did not require repayment of the limited partners' positive capital accounts.
  - The trial court's decision is unpublished, does not set a precedent in other jurisdictions, and is subject to appeal.
  - Yet, the ruling does offer a glimpse into how a state court might view the redemption of a limited partner's interest in a similar case.
- In other housing news, legislation was introduced in Hawaii that would make the state's low-income housing tax credit permanent.
  - The program has a current sunset date of Dec. 31, 2021.
  - The bill, S.B. 2970, would also change a previous condition that assigned any tax credits not claimed in the first five years after the property has been placed in service to the sixth year.
  - Under the legislation, they would all be claimed in five years.
- In Colorado, the Department of Revenue has issued a private letter ruling that clarifies some issues around the use of partnerships to own properties eligible for the state low-income housing tax credit.
  - The ruling affirms that a Colorado fund that is treated as a partnership for federal income tax purposes will also be treated as a partnership for Colorado income tax purposes.
  - The ruling also clarifies whether there is a limit on the number of partners in the partnership that can be allocated state credits.
    - More specifically, the question that was asked was how many taxpayers the state credit can be allocated to from one partnership.
  - The short answer is, there is no limit.
- In more news from Hawaii, state legislation was introduced that would ensure the 35 percent renewable energy investment tax credit would be available for approved projects.
  - The legislation is needed because there are also bills that have also been introduced that would end the ITC in Hawaii.
  - Thus, developers with approved projects in 2019 are justifiably concerned that the incentive could go away.
  - This bill would prevent the ITC from being rolled back retroactively.

Related Resources

Infrastructure Proposals

Federal Infrastructure Tax Credit Working Group Membership Inquiries

Novogradac NMTC Services

Email your NMTC questions to CPAs@novoco.com.

Opportunity Zones Designations

Novogradac Opportunity Zones Mapping Tool

CRA Reform

LIHTC Working Group

NMTC Working Group

OZ Working Group

Subscribe to the Novogradac Journal of Tax Credits

NY Court LIHTC Partnership Ruling

"New York State Court Rules That Exercising an Option to Redeem a Limited Partners' Interests in A LIHTC Partnership Does Not Trigger a Liquidation under the Partnership Agreement," Nixon Peabody

Hawaii LIHTC Legislation

S.B. 2970

Private Letter Ruling

Colorado PLR

Hawaii ITC Legislation

H.B. 2039

Novogradac 2020 New Markets Tax Credit Conference

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