NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: March 26, 2013

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac, CPA, alerts listeners to the passage of a six-month continuing resolution for fiscal year 2013, proposed changes in Community Reinvestment Act credit for investments and a request for comment from the Internal Revenue Service on its 2013-2014 Guidance Priority List. In new markets tax credit news, he reminds listeners of the upcoming NMTC allocation and the Novogradac Spring New Markets Tax Credit Conference. In historic tax credit news, the National Park Service has released eight actions to improve and expand the HTC program. In low-income housing tax credit news, he tells listeners about a grandfathering of rural areas that allows those areas to access U.S. Department of Agriculture funding. In renewable energy tax credit news, he alerts listeners to several proposals to repeal energy tax incentives.

Summaries of each topic:

GENERAL NEWS

Congress Passes Six-Month Continuing Resolution

- Last week, Congress approved and sent to the White House a continuing resolution that will keep federal agencies funded through September.
- The measure replaces the previous continuing resolution and covers the last six months of this fiscal year.
- Federal agencies, including HUD, that do not have their fiscal year 2013 funding bill included in the continuing resolution will be funded for the remainder of the fiscal year at FY 2012 levels.
- The continuing resolution did not cancel the $85 billion in sequestration cuts that went into effect earlier this month.
- Although a new funding bill for HUD was not included, the resolution does include provisions, known as anomalies, to alter funding for a few HUD programs.
- Nonetheless, those programs are still subject to a 5 percent cut under sequestration.
- On a positive note, the continuing resolution also included a provision related to rural housing that will be welcome news to affordable housing owners and developers. I will discuss that provision in our low-income housing tax credit section.

Proposed Changes for CRA Credit for Investments

- Last week the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation released a notice and request for comment regarding proposed updates to their Interagency Questions and Answers regarding Community Reinvestment.
- The updates address several community development issues, including the treatment of community development activities outside an institution's assessment areas and investment in nationwide funds.
- As most listeners know, many financial institutions invest in low-income housing, new markets, historic and renewable energy tax credits, in part, to generate CRA investment test credit.
- However, this has led to differential pricing depending on whether an institution believes it will receive CRA consideration for its investment.
- In part, the proposed revisions would essentially move from a test of demonstrating an institution has already "adequately addressed" needs in its assessment area(s), to one of demonstrating that an investment is not "in lieu of, or to the detriment of," activities in an institution's assessment areas.
- This rule certainly is progress, but the degree of progress will be highly dependent on how the change in the rule is further interpreted and implemented.
- The proposed revisions also address how financial institutions receive CRA consideration if they invest in nationwide funds.
- The proposal would continue to state that there may be several ways to demonstrate that an institution's investment in a nationwide fund meets its geographic requirements.
- The proposal would no longer suggest that written documentation by the fund demonstrating earmarking, side letters, or pro-rata allocations may be provided at an institution's option.
- Reaffirmation of the benefits of investments in nationwide funds is certainly a plus.

- The removal of side letters, though, may actually discourage some institutions from investing in nationwide funds for fear that there is insufficient overlap with its assessment areas, and a concern as to how the degree of CRA consideration will be determined.
- Comments on the proposed questions and answers are due on or before May 17, 2013.
- I've posted a much more detailed discussion of the proposed changes on my blog, which I invite you to read for more information.
- You can find it at novogradac.wordpress.com.

IRS Invites Suggestions for Guidance Plan

- Last week the IRS invited public comment on recommendations for items that should be included on the 2013-2014 Guidance Priority List.
    - The Treasury Department's Office of Tax Policy and the IRS use the Guidance Priority List each year to identify and prioritize the tax issues that should be addressed through published administrative guidance such as regulations, revenue rulings, notices and others.
- The 2013-2014 Guidance Priority List will establish the guidance that the Treasury Department and the IRS intend to prioritize from July 1, 2013, through June 30, 2014.
- The LIHTC Working Group, NMTC Working Group and Renewable Energy Working Group will be submitting suggestions in response to this invitation.
- If you have thoughts or suggestions that you'd like to share with the working groups, please contact my partners; Stacey Stewart manages the LIHTC Working Group, Tony Grappone manages the Renewable Energy Working Group and Brad Elphick manages the NMTC Working Group.
- We look forward to hearing from you.

NEW MARKETS TAX CREDIT NEWS

Allocation Awards Countdown Begins

- As many new markets tax credits professionals are painfully aware, next week we enter the month of April, which is when the CDFI Fund has said it plans to announce the next round of tax credit allocation authority.
- At this time, we don't have any more specific timeline to predict, but stay tuned to future podcasts and be sure you're signed up for our free Industry Alert email service to ensure you hear about the announcements as soon as we know more.
- And, in the meantime, I invite you to register for the Novogradac Spring New Markets Tax Credit Conference, June 6 and 7 in Washington, D.C.
- In addition to providing an information packed schedule of panel discussions, the event will be the ideal time and place to network with allocatees and investors.
- You can register online at www.novoco.com/events.

HISTORIC TAX CREDIT NEWS

National Park Service Recommends Eight Actions to Improve, Expand Historic Tax Credit Program

- Last week Interior Secretary Ken Salazar announced the results of a National Park Service program review to expand use of the federal historic preservation tax incentives program.
- Regular listeners may recall that in late January, Secretary Salazar announced that he had requested that the National Park Service conduct an internal review of the tax incentives program by March 1.
- The Park Service's resulting report contains eight recommended actions
    1. The Park Service will offer a series of webinars in support of the tax incentives program.
    2. The Park Service will partner with the White House Council on Strong Cities, Strong Communities and the Department of Housing and Urban Development on the tax incentives program as part of the Strong Cities, Strong Communities Initiative.
    3. The Park Service will meet with the Treasury Department and the Internal Revenue Service to discuss issues related to tax policies that may restrict appropriate usage of the historic tax credit.
    4. The Park Service will form a historic tax credit interagency group with the Treasury Department, IRS, HUD and others to better coordinate, as necessary, on issues related to the historic tax credit.
    5. The Park Service will look for additional opportunities to strengthen its partnerships with state historic preservation offices, local communities and the Main Street program and promote the historic tax credit in economically depressed areas, particularly through the Certified Local Government Program.
    6. The Park Service, in consultation with state historic preservation offices, historic preservation partners and other stakeholders, will re-examine and revise as appropriate its interpretation of the Secretary of the Interior's Standards for Rehabilitation with the goal of identifying additional opportunities to provide greater clarification and/or flexibility in addressing especially challenging projects.
    7. The Park Service, in consultation with the IRS, state historic preservation offices, historic preservation partners and other stakeholders, will re-examine and revise as appropriate its policy, and possibly regulations, regarding the review of rehabilitation work within large, functionally-related multiple- building complexes in single ownership.
    8. The Park Service, in consultation with state historic preservation offices, historic preservation partners, and stakeholder representatives, will re-examine and revise as appropriate the following policies and administrative guidance improving the preliminary consultation process and reducing review times for routine project amendments
- Several of these recommendations sound promising for historic tax credit development, particularly if they achieve the intended results of increasing the ease of use of the incentives.
- The Park Service reports that a number of the recommendations could be implemented immediately.

- On the other hand, some of the recommendations involve further consultation with the respective federal agencies, state historic preservation officers, and other preservation partners and stakeholder representatives before final implementation.
- It's also worth mentioning that in its report, the National Park Service noted that additional incentives, either at the federal or state/local levels, may be necessary in economically depressed areas.
    - The report says "In areas where the federal tax credit has been increased for a period following a natural disaster, and in areas with a new or expanded state or local tax credit, federal tax credit application activity has typically increased. In areas where a state or local tax credit has been eliminated or its use restricted, federal application activity has typically decreased."
- A copy of the report can be found online at www.historictaxcredits.com.

LOW-INCOME HOUSING TAX CREDIT NEWS

Rural Housing Provision Passed in Continuing Resolution

- As promised, our first topic in the housing discussion relates to the recently passed continuing resolution.
- Regular listeners may recall that earlier this year the LIHTC Working Group, in letter to the Internal Revenue Service requested guidance on questions regarding the potential loss of rural status for affordable housing properties whose income is determined using the national nonmetropolitan median income.
- On Sept. 30, 2012, a “grandfather” clause, which had been renewed multiple times since 1983, expired.
- That expiration left numerous properties in areas that were previously qualified under the “grandfathering” clause facing a sudden loss of their rural status and benefits of said status.
- This loss would affect future development of LIHTC properties as well as access to loans and other sources of funding for new and existing properties
- This would greatly reduce the feasibility of rural properties.
- In addition to the loss of access to USDA sources of financing, affordable housing properties financed with 9 percent low-income housing tax credits in affected areas would also lose the ability use the national nonmetropolitan median income in the determination of Section 42 rent and income limits.
- This would make it significantly more difficult to provide affordable housing in rural areas.
- In the continuing resolution passed last week, a provision was included which reads, quote,
    - “Notwithstanding any other provision of law, any area eligible for rural housing programs of the Rural Housing Service on Sept. 30, 2012, shall remain eligible for such programs until Sept. 30, 2013.”
- While this development is only a temporary solution, it is cause for relief in the short term and it is an encouraging sign that a longer term solution could be attained in future legislation.
- If you have questions about this issue, or how it might affect your rural affordable housing property, please contact Thomas Stagg in our Seattle office.

RENEWABLE ENERGY TAX CREDIT NEWS

Lawmakers to Consider Repeal of Energy Tax Incentives

- Last week Sen. Ron Wyden called for broad reform of energy tax policy that could eliminate long-standing incentives for the oil and gas industry.
    - Sen. Wyden is the chairman of the Senate Energy and Natural Resources and also serves on the Senate Finance Committee, which is expected to work on comprehensive tax reform this year.
- In remarks to reporters following an event held by the Edison Electric Institute, Senator Widen suggested making energy tax incentives technology-neutral and more equal among other energy sources should be goals for energy tax reform.
- He said that could require reexamining many oil and gas incentives, which unlike renewable energy incentives, are permanent provisions in the tax code.
- Conversely, also last week, Sen. Lamar Alexander sponsored a budget amendment that would repeal the recently passed, one-year extension of the renewable energy production tax credit or PTC.
- The PTC repeal was proposed to help pay for the repeal of an excise tax on medical devices.
- Sen. Alexander’s office says that if the amendment had passed, it would have repealed both tax provisions without increasing the federal debt.
- While neither of these approaches is expected to gain traction any time soon, it is important to monitor these kinds of proposals in light of the constant march toward tax reform.