NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: June 2, 2020

In this week's Tax Credit Tuesday podcast, Michael J. Novogradac, CPA shares an update about two extended continuity safe harbors for renewable energy investment tax credit and production tax credit properties affected by the COVID-19 pandemic. Then, he discusses an announcement from Treasury and the Small Business Administration to set aside funding from the Paycheck Protection program for CDFIs. Next, he talks about the Paycheck Protection Program Flexibility Act of 2020, legislation passed by the House that would provide substantial changes to the Paycheck Protection Program. He then talks about a letter sent from Reps. Terri Sewell and Tom Reed to the IRS requesting temporary suspension of debt modification rules for community development entities. He wraps up by discussing the 2020 funding round for the Capital Magnet Fund.

Summaries of each topic:

1. General News (1:26-9:02)
   a. Notice 2020-41: ITC, PTC Safe Harbor Guidance (1:26-4:21)
   b. Paycheck Protection Program Updates (4:22-6:02)
   c. The Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010) (6:03-9:02)
2. Other News (9:03-15:19)
   a. Reps. Terri Sewell and Tom Reed Seek Relief Guidance for CDEs (9:03-11:42)
   b. CDFI Fund Announces Opening of 2020 Capital Magnet Fund (11:43-15:19)
3. Additional Resources

GENERAL NEWS

ITC, PTC Safe Harbor Guidance

The IRS issued some long-awaited guidance last week for both investment tax credit and production tax credit properties.

Specifically, the IRS extended <u>two</u> continuity safe harbors for these incentives. The extension was to address delays caused by the COVID-19 pandemic. These extensions apply to a wide variety of renewable energy properties, including: solar, wind, biomass, hydropower and more.

The first extension is a one-year extension of the four-year continuity safe harbor for properties that began construction in 2016 or 2017. Those are properties that were required to be placed in service in 2020 or 2021 to be eligible to claim tax credits. Now they get an extra year. The IRS did say in the guidance that due to industry-wide delays in the supply chain, any of those projects placed in service within five years will be deemed to have automatically satisfied the continuity safe harbor.

The second extension is of the 3½-month period to satisfy the 5 percent beginning-of-construction safe harbor. This safe harbor applies to taxpayers who start construction by incurring at least 5 percent of their project costs. These taxpayers can treat services or property as provided so long as they make payment and reasonably expect the property or services to be received within 3½ months of the payment.

The IRS guidance said that taxpayers will satisfy the safe harbor if they made payments for services or properties after Sept. 16, 2019, and reasonably expected at the time to receive them within 3½ months.

To meet the safe harbor now they must receive the services or properties by Oct. 15 of <u>this</u> year. This means properties could receive services or properties as much as 12½ months after payments were made and still satisfy the safe harbor.

While taxpayers only needed the "reasonable expectation" of delivery under the 3 ½ month rule, there was some concern of what the IRS would consider "reasonable" amidst pandemic-induced delays. This safe harbor provides relief to renewable energy developers and investors that were concerned with this risk.Again, the deadline is Oct. 15 of this year to meet that standard. Developers must make sure to get delivery of safe-harbored equipment by that date.

Please, call a Novogradac office near you to help if you need assistance in understanding and satisfying the safe-harbor requirements.

Also, Novogradac is planning a webinar that will discuss these safe harbor guidelines later this month. I'll have more information for you when the date is finalized. It should be soon.

Also, be sure you have a current subscription to the Novogradac Journal of Tax Credits. The June issue of the Journal includes an insightful column by Forrest Milder of Nixon Peabody. In the column, Forrest discusses discusses the opportunities and challenges for the renewable energy tax credit world during the pandemic. I'll include a link to subscribe to Journal in today's show notes and I'll tweet out a link as well.

Paycheck Protection Program Updates

In good news for community development, Treasury and the Small Business Administration last week announced that $10 billion of the second round of funding under the Paycheck Protection Program will be set aside for community development financial institutions, or CDFIs.

Congress created the PPP in March as part of a larger economic relief response to the COVID-19 pandemic. The PPP is a forgivable loan program designed to help business owners keep their workers employed during the COVID-19 pandemic and to help businesses survive the crisis. PPP loans are eligible for forgiveness if the borrower uses the loan for payroll and other eligible expenses. The amount of the PPP loan eligible for forgiveness can diminish where the number of full-time-equivalent employees or wages are reduced.

Treasury says that by dedicating $10 billion to CDFI lenders, this will help ensure the PPP reaches all communities in need during the COVID-19 pandemic. CDFIs, as you may know, are already playing a very active role in disbursing PPP funds. Creation of this $10 billion set-aside will help encourage even more PPP lending into low-income and underserved communities.

Here are some facts. As of May 23, CDFIs have approved more than $7 billion in PPP loans. Of that $7 billion, $3.2 billion is from the second round of funding for the PPP. With the new $10 billion set-aside of Round 2 funding, which means that there's about $6.8 billion is still available under the CDFI set-aside.

For assistance applying for a PPP loan or for help documenting your businesses' need for a loan, please contact Novogradac's Megan Murphy. I've included her contact information in today's show notes.

Paycheck Protection Program Flexibility Act of 2020

Staying on the topic of PPP, House members last Thursday approved legislation to provide more time and flexibility for businesses with PPP loans. The bill is entitled the Paycheck Protection Program Flexibility Act of 2020. Its bill number is H.R. 7010. The House bill does not change the calculation for the maximum amount of PPP loan that can be taken out, but the bill does propose several substantial changes to the PPP.

First, the bill would extend the covered expense forgiveness period from eight weeks to 24 weeks. This would mean that businesses would have 24 weeks instead of just eight to use proceeds from their PPP loan and still qualify for forgiveness. Businesses that received their PPP loan disbursements in early April are now approaching the end of their eight-week covered period, so they are particularly interested in this extensionextension.

The House proposal would also lower the percentage of a PPP loan that must be used for payroll expenses—lowering that payroll percentage from 75 percent of the loan amount to 60 percent. Lowering the payroll threshold means business will have the flexibility to use more of their PPP funding for non-payroll expenses, such as rent, mortgage interest and utilities.

The PPP Flexibility Act would also: Extend the minimum repayment period from 2 to 5 years for future borrowers, it would allow payroll tax deferment for PPP loan recipients and would extend the rehiring deadline from June 30 to Dec 31. The bill would also provide exceptions to certain loan forgiveness reductions where employees are not available or where complying with federal requirements or guidance prevents the business from returning to its pre-February 15 employment levels. The legislation would change the current six-month payment deferral period to deferral until the date on which the SBA remits the forgiveness to the lender, as long as a borrower applies for the forgiveness within 10 months of their covered period.

As you can see, there are a lot of deadlines you have to be monitoring here, so good external advice is helpful.

The bill passed with overwhelming bipartisan support in the House. The vote was 417-1 and now heads to the Senate. The PPP has broad support in both chambers of Congress. Bipartisan and bicameral support.

The Senate has its own version of a bill to amend the PPP. Majority Leader McConnell did say yesterday that the Senate would be taking up the PPP bill. I will monitor both PPP bills for any significant updates and will share those updates in future podcast episodes, as well as tweet them out.

In the meantime, Novogradac is going to host a live webinar with the latest news and guidance on PPP. Once again, like the renewable energy webinar, I'll going to details and the date of the webinar as soon as we finalize them. We're still working on pulling together our speakers and finding a date that works most optimally for our all of our speakers and for the future webinar attendees.

Other News

Now I'd like to turn to some other news, specifically some new markets tax credit news.

Specifically, Reps. Terri Sewell of Alabama, a Democrat, and Tom Reed of New York, a Republican, sent a letter to the IRS last Friday, seeking relief for community development entities or CDEs affected by COVID-19.

Current tax regulations pose challenges to CDEs that simply want to provide debt relief to struggling low-income community business borrowers. In the tax world –providing debt relief often is considered a debt modification. And debt modifications of NMTC subsidized loans can lead to significant transaction costs and future noncompliance.

These costs are incurred because significant debt modifications are treated in the tax world as a taxable exchange. A taxable exchange could mean taxable gain for the businesses, the borrowers, as well as a taxable loss for the CDE. Furthermore, the CDE itself may need to re-determine if the business borrower continues to qualify as an eligible NMTC qualifying business.

To address these challenges, Reps. Sewell and Reed requested that the IRS temporarily suspend the application of the debt modification rules so that CDEs can provide debt relief to low-income community business borrowers. This request to temporarily suspend the application of the debt modification rules would be particularly helpful, obviously, during the current pandemic. However, the debt modification rules are a concern any time CDEs consider providing debt modifications to their business borrowers.

Rep. Sewell and Reed's request may sound familiar to you. That's because it'sit'ssimilar to guidance requested by the NMTC Working Group in April. If you're not a member of the NMTC Working Group yet, consider joining us. I'll include a link to the working group home page in today's show notes.

To learn more about what solutions make sense for your particular new markets tax credit transaction, please contact my partner Brad Elphick. I'll include his contact information in today's show notes.

We also have a webinar on new markets tax credits basics that's being held this Friday. The webinar starts at 9 a.m. Pacific time.

More broadly, you can learn about solutions to challenges facing the new markets tax credit community during the pandemic by registering for the Novogradac 2020 New Markets Tax Credit Virtual Conference. Our virtual conference is going to be held on July 23. Be sure to register by this Sunday, June 7, to get an early-bird discount on registration. I'll include a link to the registration page in today's show notes and tweet it out as well.

Next, I have an exciting announcement from the CDFI Fund. It was expected, but we were also waiting for it.

Last week, the CDFI Fund announced the opening of the fiscal year 2020 application round for the Capital Magnet Fund, or the CMF. The CMF offers competitively awarded grants to CDFIs and nonprofit housing organizations to help finance affordable housing solutions as well as economic development activities. CMF funding comes in a variety of mechanisms and strategies, such as risk-sharing loans and revolving loan funds.

This year, the CDFI Fund expects to award up to $173.8 million in CMF grants.

If you're interested in applying for CMF funding under the 2020 round, here are some dates you'll want to circle on your calendar and remember. The first critical deadline is June 26 at 11:59 p.m. eastern time. This is the deadline to submit the SF-424 form This form can be submitted through grants.gov and must be submitted by the deadline if you intend to apply for a grant.

The deadline for the CMF application materials is about one month later, July 27 at 5 p.m. eastern time. Those materials can be submitted through the CDFI Fund's Award Management Information System, or AMIS. If you don't have an AMIS account yet, there's another deadline. You'll need to create one by July 2.

The CDFI Fund did outline a few priorities for the 2020 CMF funding round that you should note.

The CDFI Fund is going to prioritize applications where at least 20 percent of affordable housing units target low- or very-low income families. The 20 percent threshold applies to both rental and owned affordable housing.

A second priority for the CDFI Fund will be applications that propose to use the CMF award to leverage private capital to finance and/or support affordable housing and economic development activities.

And finally, the CDFI Fund will prioritize applicants serving geographically diverse areas of economic distress, including both metropolitan areas and underserved rural areas. This geographic priority includes applications that serve states or territories that were not served by recipients of the past two CMF rounds. Areas not served by the past two CMF rounds are Alaska, North Dakota, South Carolina and all the U.S. territories, except for Puerto Rico.

On a related note, we do expect the 2019 new markets tax credit allocation awards to be announced sometime this summer. And the current year 2020 application round to open shortly thereafter.

Remember that you generally cannot combine financing from new markets tax credits and CMF funding on the same project. There is one exception, however, is when the funds are used to finance two separate phases of the same development. For example: predevelopment costs vs. construction and rehabilitation costs.

So potentially, a new markets tax credit allocation could finance the acquisition of a development, whereas a CMF grant could be used to finance the site work or preconstruction of the same development.

If you have questions about how this rule might apply to you or if you have questions about the CMF application more generally, I encourage you to reach out to my colleagues Brent Parker or Bob Ibanez. I'll include their contact information in today's show notes.

We at Novogradac are dedicated to giving our customers the most up-to-date and relevant information. To that end, we are seeking feedback from you, our listeners. We want to know whether or not you may be interested in attending a Novogradac webinar on the CMF application. I'll include a link to the quick survey in today's show notes and tweet it out as well. Please take a moment and let us know.

Related Resources

Renewable Energy Safe Harbor

Notice 2020-41

Subscribe to the Novogradac Journal of Tax Credits

Paycheck Protection Program Set-Aside for CDFIs

Small Business Administration and Treasury Department Announce $10 Billion for CDFIs to Participate in the Paycheck Protection Program

Email Megan Murphy

Paycheck Protection Program Flexibility Act 2020

Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010)

Sewell, Reed Letter

Sewell, Reed Letter Requesting Relief from Certain Provisions Impacting the NMTC

Novogradac NMTC Information

Novogradac 2020 New Markets Tax Credit Virtual Conference

NMTC 101: The Basics Online Workshop

Novogradac NMTC Working Group

Capital Magnet Fund

NOFA for FY 2020 Capital Magnet Fund

Contact Bob Ibanez

Contact Brent Parker

Novogradac CMF Webinar Survey

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Opportunity Zone Events

Novogradac 2020 Opportunity Zones Virtual Conference

OZ Pre-Conference Workshops