NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: June 18, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, shares an update on the status of a House Democrat-led tax extenders package. Then, he has news about an opportunity zones extension bill and a decision to make opportunity zones an investment priority for the U.S. Economic Development Administration. Next, he summarizes a couple of comment letters on proposed opportunity zones regulations. He also shares the Federal Housing Finance Agency's latest report to Congress and the status of housing finance reform efforts. He closes out with state legislative news and an update on the inflation adjustment for calculating the wind production tax credit.

Summaries of each topic:

GENERAL NEWS

Tax Extenders

- Now in general news, Democrats in the House of Representatives are developing a tax extenders package.
- Bloomberg Tax and other sources report that a markup of the package could happen as soon as Thursday of this week.
- House Ways and Means Committee Democrats met last Tuesday to discuss extending expired tax incentives for up to three years.
    - Now the package would extend incentives that expired at the end of 2017 and 2018, as well as incentives that are scheduled to expire at the end of 2019.
    - Now Bloomberg reports that the current proposal extends the expired and expiring tax provisions through Dec. 31, 2020.
    - Now the bill also includes disaster tax relief, or so it's reported.
    - Included in the disaster tax relief portion of the bill is an allocation of low income housing tax credits (LIHTCs) for the 2017 and 2018 disasters.
        - This according to Mike Thompson of California, who is chairman of the House Ways and Means Subcommittee on Select Revenue Measures.
- Now the big question is how to pay for the extenders package.
- Ways and Means Committee Chairman Richard Neal told Tax Notes last week that Democrats support paying for the extenders package by changing the sunset of the expanded estate tax exemption thresholds from 2025 to 2023 so that they would revert to their pre-tax-reform level two years earlier.
- Now the package may also include increasing the corporate tax rate by 1 percentage point to help offset the cost of the extenders package.
- Chairman Neal said increasing the corporate tax rate to pay for the extenders was not discussed during the Ways and Means Democrats meeting last week.
- The other challenge for the extenders package, or at least another challenge, is getting Republican support, particularly in the Senate.
- Proposals to raise taxes to pay for the extenders will almost certainly get pushback from Republicans.
- Now it's worth noting House Ways and Means Ranking Member Kevin Brady of Texas and Senate Finance Committee Chairman Chuck Grassley of Iowa both said they would not support another temporary extenders package without making changes.
- Now Brady said that under the new tax code, some temporary incentives should be made permanent, however, others should be eliminated.
- Now I'll report in next week's podcast any updates on the tax extenders front that occur this week.

Opportunity Zones Deadline Extension Bill

- In opportunity zones news, legislation to extend a key opportunity zones incentive deadline may be introduced before the August congressional recess.
- That's the goal of the bill's sponsor, Sen. Tim Scott of South Carolina.

- Sen. Scott said that he's working out details with Sen. Cory Booker of New Jersey so they can be on the same page.
- Sens. Scott and Booker were co-sponsors of the original opportunity zones legislation that was enacted as part of tax reform back in 2017.
- They've also introduced an opportunity zones reporting bill earlier this year.
- The opportunity zones incentive is designed to drive private capital into distressed areas.
- Investors can exclude 15 percent of their originally deferred gain if their investment's held for seven years before the end of 2026.
- That means investors only have until the end of 2019 to make their investment under current tax law to get the 15 percent exclusion.
- Now investments made in 2020 only qualify for a 10 percent exclusion.
- Sen. Scott's planned bill would move that deadline from the end of 2019 to the end of 2020.
- Essentially, this would give investors a longer runway to make investments in distressed communities.
- Now it's uncertain at this point whether the planned bill will propose an extension of the 2026 inclusion date or allow the 15 percent benefit for investment periods of less than seven years.
- I will keep you posted in future podcasts on the status of the bill.

U.S. Economic Development Administration OZ Investment Priority

- Staying on the topic of opportunity zones, the U.S. Economic Development Administration announced last Wednesday that it will make opportunity zones an investment priority.
- The EDA has already invested nearly $30 million in opportunity zones.
- But, making opportunity zones an investment priority increases the number of projects that can receive EDA grants.
- EDA grants have a maximum of $3 million per award and they can help fund planning, technical assistance and infrastructure construction.
- The EDA said that its opportunity zones investments will focus on planning and implementation projects to grow businesses and create jobs in opportunity zones.
- The EDA would include investments that may not be in an opportunity zone, but will still benefit an opportunity zone.
- Now I've included a link to the EDA's investment priorities in today's show notes.

OZ Comment Letters

- Next, let's review two comment letters on the proposed opportunity zones regulations that were released in April.
- First, the National Multifamily Housing Council and National Apartment Association asked the IRS to clarify or reconsider several issues as part of the final regulations.
- One issue is the statutory requirement to more than double the basis of an acquired property within 30 months.
- The housing groups say this makes it difficult to realize opportunity zones tax benefits for rehabilitating multifamily property.

- Treasury and the IRS have proposed waiving the “double-the-basis” rule if a property has been vacant for five years or longer.
- NMHC and NAA say five years is too long to leave a property empty and that a property should be able to waive the “double-the-basis” rule if vacant for one year or longer.
- The multifamily housing groups also supported creating reporting requirements for opportunity zones participants.
- NMHC and NAA suggested that multifamily housing should have no additional reporting requirements to HUD.
- Essentially, they argue that opportunity funds invested in multifamily housing should have no additional reporting requirements if they’re not imposed on all opportunity funds.
- Now another organization that submitted a comment letter was the Environmental Protection Agency, or EPA.
- EPA requested that the IRS further clarify that opportunity zone capital may be invested in brownfield economic development.
- The EPA said that investors should be reassured that the assessment and cleanup of brownfields are eligible investments under the opportunity zones incentive.
- The EPA said that further clarification would encourage private investment in brownfields to help return contaminated sites to economic use.
- Now as you probably know, Novogradac is working on an Opportunity Zones Working Group comment letter to the IRS.
- You’re welcome to submit your comments on the proposed opportunity zones regulations to my partner John Sciarretti, who leads our Opportunity Zones Working Group.
- I’ll include his email in today’s show notes.

2018 FHFA Report to Congress

- Now let’s switch gears to the Federal Housing Finance Agency who submitted its 2018 report to Congress last week.
- The FHFA report is the first one submitted by new FHFA director Mark Calabria.
- As you know, Fannie Mae and Freddie Mac have been under conservatorship of the FHFA for nearly 11 years.
- Fannie and Freddie are required to serve three underserved markets: manufactured housing, affordable housing preservation and rural housing.
- In 2018, both Fannie and Freddie exceeded their target loan activity for all three underserved markets.
- Freddie Mac had a goal, for instance, of preserving 20,500 units of affordable housing through purchasing mortgages on LIHTC properties.
    - Freddie more than doubled that goal of 20,500 units and purchased nearly 42,000 loans on LIHTC properties.
- Now Fannie Mae also exceeded its LIHTC debt goal, purchasing 84 loans compared to its goal of 83.
- Also in the report, Calabria recommended that Congress act on housing finance reform.
- Specifically, Calabria said that to promote competition, Congress should authorize additional competitors and provide FHFA chartering authority.
- Housing finance reform continues to be a priority of this administration.

- Now Calabria on Thursday said at a Ginnie Mae summit that both administrative action and congressional action are needed to fix the housing finance system.

Other News

- In other news, the California Legislature approved a budget last week that includes a boost in the state LIHTC by $500 million.
  - That's right, $500 million.
  - Per year.
  - Now the state currently invests about $100 million a year in the LIHTC, so you see that's a huge jump.
  - The budget also includes $750 million for local governments to fight homelessness, as well as $500 million for loans to affordable housing developers.
  - Now the budget now goes to Gov. Gavin Newsom for approval.
  - Now Newsom does have line-item veto power, but he did include affordable housing provisions in his proposed budget.
  - So, the governor is expected to sign the budget and not line-item veto these provisions.
  - I'll send a tweet if and when he does sign the budget.
- Meanwhile, Nevada Gov. Steve Sisolak signed a bill last week to create a state LIHTC.
  - That makes Nevada the 18th state with a state version of the affordable housing tax credit.
  - Nevada will have an annual statewide cap of $10 million.
  - The credit has a sunset date of Jan. 1, 2030.
- Now, let's turn now to opportunity zones news.
- Both Hawaii and Arizona last week enacted legislation that conforms their state tax codes to the Internal Revenue Code.
  - This will allows the same state incentive for investing capital gains in qualified opportunity funds as investors get on their federal tax returns.
  - I should note though, the Hawaii bill allows that benefit only for investments in opportunity zones in that state.
- Meanwhile, the Connecticut Legislature passed a bill to promote opportunity zones.
      - Among the benefits of the bill is that state's going to host a series of events to promote opportunity zones.
      - The state's going to conduct a study on how to best incentivize opportunity zone investments.
      - And the state will expedite the reviews of permits for projects and developments in opportunity zones.
  - This legislation takes effect July 1.
- Now looking to North Carolina, a bill to expand and extend the state historic tax credit (HTC) did pass the state House of Representatives.
  - The bill would extend the sunset date for the state HTC by 12 years, to Jan. 1, 2032.
  - The legislation also would increase the amount of expenditures eligible for various levels of the credit.
  - The bill now is in the state Senate.
- And turning to renewable energy news, the IRS published a notice with the inflation adjustment factors to calculate the production tax credit (PTC).
  - Now as you know, that's the primary credit for wind power.

  - The credit increased from 2.4 cents per kilowatt hour to 2.5 cents for this year.

RELATED RESOURCES

EDA OZ Investment Priority

Press release: U.S. Economic Development Prioritizes Applications for Projects Located in Opportunity Zones

OZ Comment Letters

National Multifamily Housing Council and National Apartment Association

Environmental Protection Agency

Email John Sciarretti

2018 FHFA Report to Congress

Report

Nevada LIHTC Bill

Nevada S.B. 448 to create state low-income housing tax credit

OZ Legislation

Arizona H.B. 2757 to conform state to Internal Revenue Code
Hawaii S.B. 1130 to conform state to Internal Revenue Code
Connecticut S.B. 570 to promote opportunity zones in state

North Carolina HTC

North Carolina H.B. 399 to extend, expand state historic tax credit

Wind PTC Inflation Adjustment Factors

IRS Notice with 2019 inflation adjustment factor for production tax credit

Podcast Topics

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