NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: June 25, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about how Ways and Means Committee Democrats are proposing a tax-extenders package. He also discusses the IRS updating its Opportunity Zones Frequently Asked Questions page to address Section 1231 gains invested in 2018. He then moves on to the effort by Senate Democrats to extend the renewable energy investment tax credit. Next, he talks about a report on the persistent gap between renters' wages and the cost of rental housing. After that, he outlines a proposal to create a new single-family housing tax credit. He closes out with the latest qualified equity investment issuance report from the CDFI Fund, and some news from Michigan and West Virginia and how proposed legislation could increase opportunity zones investments in those states.

Summaries of each topic:

GENERAL NEWS

IRS Updated OZ FAQS

- As first reported by Bloomberg Tax, the opportunity zones community received some welcome news just the other day.
- Specifically, the IRS provided insight through its opportunity zones FAQs page as to whether Section 1231 gains that were invested in 2018 are eligible for deferral under through investment in a qualified opportunity fund.
    - Now Section 1231 property is real or depreciable property used in a trade or business and held for more than one year.
    - It's defined in Internal Revenue Code Section 1231.
- Now the IRS said on its FAQs page that Section 1231 gains that were invested before the last day of 2018 are eligible for the deferral election.
    - Now this assumes of course that the taxpayer made the investment during the 180-day period that starts on the day the gain is realized.
    - Now the reasoning by the IRS is that the tax year affected ended before May 1 of this year.
    - Now why May 1?
    - Well, that's the date that the IRS published regulations.
    - Now under the FAQ, the deferral election on that investment is valid even though proposed regulations say that the 180-day period to invest net Section 1231 gains doesn't begin until the end of a tax year the gains are realized.
    - That would be Dec. 31, 2018, for the 2018 calendar year.
    - So the IRS is grandfathering investments made before the proposed regulations were released.
- Now the IRS did also confirm that if you make such a deferral election for 2018 Section 1231 gains, that won't impair your ability to rely on all the other aspects of the proposed regulations that were published May 1, 2019.
- Now the Novogradac Opportunity Zones Working Group does plan to ask Treasury to reconsider its regulations in this area.
- And at a minimum, the group's going to ask for a transitional rule in the regulations that's consistent with this guidance.
- I'll tweet the FAQ link and I'll include it in today's show notes.
- And if you have any questions as to how the guidance affects your opportunity fund investments, please contact a Novogradac partner near you.

Taxpayer Certainty and Disaster Tax Relief Act of 2019

- Now let's turn to proposed legislation.
- The House Ways and Means Committee last Thursday marked up and approved a tax extenders package proposed by House Democrats.
- Now the package advanced through the Ways and Means Committee on a pure party-line vote of 25 democrats to 17 Republicans.
    - Democrats yes, Republicans, no.
- Now it's unclear when the full House may consider this package.
- The package would extend more than three dozen expired and expiring tax extenders.

- Now the proposal would extend the new markets tax credit (NMTC) through 2020 and increase the allocation authority for that round from $3.5 billion to $5 billion.
- The proposal would also retroactively extend the Section 45L $2,000-a-unit efficient homes tax credit.
- Now we are Novogradac have many 2018 tax returns on extension, waiting to see if this provision is retroactively extended, such that property owners can claim the credit.
- Now one proposed way to offset the cost of the extenders package provided by the Democrats is to end the higher estate tax exemption that was enacted in 2017.
- They would propose accelerating the end of that exemption, accelerating to 2022 from 2025.
    - You may recall that the 2017 tax reform package more than doubled the size of the estate tax exemption, increasing it from $5.5 million to $11.4 million.
    - But that does expire in 2025, the Democrats proposing to accelerate that expiration to 2022 to help pay for the extenders.
- I should also note, Democratic Rep. Lloyd Doggett of Texas suggested during last week's markup that Congress should also increase the corporate tax rate from 21 percent to 22 percent to help pay for the cost of several of the Democrats' proposals.
- I also wanted to let you know that the bill also includes a disaster tax relief portion that would increase California's low-income housing tax credit (LIHTC) allocations.
- California's allocation increases would end up being the lesser of either:
    - 50 percent of the combined ceiling for 2017 and 2018, <u>or</u>
    - The aggregate amount of allocation to buildings in qualified disaster areas.
- And based upon our initial calculations, California would get about a 50 percent increase in their combined state ceiling for 2017-2018.
- Now to the extent that this provision does survive an extenders package, I would expect that it would be expanded to other states that had natural disasters in 2017 and 2018.
- I should also note that there was no revenue-raising offset proposed for this disaster tax relief portion of the bill.
- Now we do expect the legislation will face significant Republican opposition.
- Obviously in the House already and we expect that to be faced in the Senate.
- As a matter of fact, even before the extenders legislation was introduced, Ways and Means Ranking Member, Republican Kevin Brady, and Senate Finance Committee Chairman, Republican Chuck Grassley, issued a joint release calling the package a non-starter.
- Now you can find a copy of this bill, entitled the Taxpayer Certainty and Disaster Tax Relief Act of 2019, on our website.
- The link is also in today's show notes.

ITC Extension Letter

- Now let's turn from the House to the Senate.
- Senate Democrats are also pushing for tax extenders.
- In fact, a group of Senate Democrats sent a letter to Senate Finance Committee leaders asking them to prioritize extending clean energy tax incentives that are scheduled to phase down at the end of this year.
- Those provisions are:
    - the Section 48 renewable energy investment tax credit (ITC), as well as

  - the Section 25D residential renewable energy tax credit (RETC).
- now the letter said that the decrease of both credits should be delayed until there's another clean energy incentive to replace them, such as a technology-neutral incentive.
- Now the letter was signed by 20 Senate Democrats, including, notably, six presidential candidates.
- Namely:
  - Cory Booker of New Jersey,
  - Elizabeth Warren of Massachusetts,
  - Amy Klobuchar of Minnesota,
  - Kirsten Gillibrand of New York,
  - Kamala Harris of California, and
  - Michael Bennet of Colorado.
- Now as presidential campaigns ramp up, we may see issues like clean energy priorities gain much wider attention.

Out of Reach

- Let's turn now more broadly to the subject of affordability.
- The National Low-Income Housing Coalition (NLIHC) has released its 2019 Out of Reach Report.
- Now this report has been released annually for the past 30 years and it examines the gap between renters' wages and the cost of rental housing across the country.
- And if you're a regular listener to this podcast, you know I've discussed this before.
- Now NLIHC found that one in four renters have extremely low incomes and cannot afford rent.
- The central statistic of the report is the housing wage.
- The housing wage is the hourly wage that full-time workers must earn to afford fair market rent without spending more than 30 percent of their income on rent.
- Now in 2019, the federal minimum wage is $7.25.
- And the housing wage is nearly $19 an hour for a modest one-bedroom rental home or nearly $23 for a modest two-bedroom home.
- Once again, the federal minimum wage is $7.25.
- That means that someone earning minimum wage must work nearly 127 hours a week or more than three full-time minimum-wage jobs to afford a two-bedroom home at fair market rent.
- Now minimum-wage workers are not the only ones struggling to afford rent.
- The average renter's hourly wage is a $5.39 less than the national two-bedroom wage and $1.08 less than the one-bedroom housing wage.
- Now NLIHC did say that a significant increase in federal resources would help alleviate the affordable housing shortage.
- The report advocated an increase to the National Housing Trust Fund, to project-based rental assistance contracts and housing choice vouchers.
- You'll find a link to this report is in today's show notes.

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Single-Family Housing Tax Credit

- And while we're on the topic of federal resources for housing, I wanted to let you know that bipartisan legislation was recently introduced in the House to create a single-family housing tax credit.
- The bill, the Neighborhood Homes Investment Act, would create a federal income tax credit that would cover up to 35 percent of eligible development costs for owner-occupied housing.
- States would access the tax credits either:
  - Through a direct allocation of about $1 billion annually, based on population size, or
  - They could elect to convert tax-exempt private activity bonds issuance authority into tax credit authority.
- Now states would then allocate awards through a competitive process.
- Now while the Neighborhood Homes Investment Act is similar to the LIHTC in some ways, there are some important distinctions.
- The Neighborhood Homes Investment Act tax credit would be for single-family, owner-occupied homes, not rental housing.
- The Neighborhood Homes Investment Act tax credits would also be limited to census tracts with low or moderate incomes.
- Additionally, investors could claim the Neighborhood Homes Investment tax credits immediately after the home is occupied, with no recapture risk.
- Now the Neighborhood Homes Investment Act serves households with a higher income level than those eligible for the LIHTC.
  - Eligible homeowners for this proposed tax credit would be able to earn up to 140 percent of the area median income.
  - The LIHTC typically serves households earning up to 60 percent of the area median income, or a little higher if income averaging is used.
- Now the Neighborhood Homes Investment Act is sponsored by Democratic Rep. Brian Higgins of New York and Republican Mike Kelly of Pennsylvania.
- And they estimate that the new incentive would encourage private investment in 500,000 homes.
- You can learn more about the proposal on the Novogradac website.
- I'll post a link to the bill's text in today's show notes and send out a tweet.
- Also, please email cpas@novoco.com with any insights you have about this proposed legislation.

Other News

- Now, let's turn to other news, last week the CDFI Fund released its latest Qualified Equity Investment Issuance Report.
    - Now as of the report's June 19 release, the amount of NMTC allocation authority available is more than $5.5 billion.
    - Now this is up from recent reports of course due to the recent awards announcement.
    - Now through 15 allocation rounds, nearly $52 billion of qualified equity investment has been issued, the issuance being used to revitalize distressed communities.
    - I have included a link to the latest QEI Report in today's show notes.
- And turning now to opportunity zones news, I have updates from two states on bills designed to increase private investment in opportunity zones in those states.
- First, legislation was introduced earlier this month in the Michigan state Senate.
    - The bill would create a tax credit for qualified research and development expenses related to the automotive industry in opportunity zones.
    - The bill is S.B. 378 and has been referred to the Committee on Economic and Small Business Development.
- And then legislation in West Virginia would provide a state tax liability exemption for net income directly from qualified opportunity zones business in West Virginia.
- This bill passed the House last week.
    - Now if enacted, H.B. 113 would go into effect for taxable years beginning Jan. 1, 2019, and would terminate for taxable years beginning Jan. 1, 2024.
    - Now the bill has passed the House, and now moves to the Senate, where similar legislation has passed in the past.
- Now links to both bills are also in today's show notes, and I'll send out a tweet.
- On a similar note, if you'd like to learn more about current state tax credit proposals, as well as how existing incentives are driving investments in states, I encourage you to subscribe to the Novogradac Journal of Tax Credits.
- The Journal's July issue has a special theme, "State of the States: How State Incentives are Putting Community Investment on the Map."
- Now this issue includes content on:
    - state opportunity zones incentives,
    - state LIHTCs,
    - state NMTCs, and
    - state historic tax credits.
- I will include a subscription link in today's show notes, and yes, tweet it out as well.

RELATED RESOURCES

Taxpayer Certainty and Disaster Tax Relief Act of 2019

Taxpayer Certainty and Disaster Tax Relief Act of 2019 (H.R. 3301)

ITC Extension Letter

June 19, 2019, ITC Extension Letter

Out of Reach Report

Out of Reach 2019

Single-Family Housing Tax Credit

Neighborhood Homes Investment Act (H.R. 3316)

QEI Report

QEI Report (June 18, 2019)

Michigan

S.B. 378

West Virginia

H.B. 113

Novogradac Journal of Tax Credits

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LIHTC Year 15 Webinar (June 27, 2019)

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