



In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about the schedule for Congress, some upcoming deadlines and how those deadlines affect possible tax extenders. Then, he touches on an important Treasury hearing occurring today. After that, he provides updates on several items, including an important memo from the IRS, news from the National Park Service and state-level information from West Virginia and Delaware.

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GENERAL NEWS

Looming Hearings

- The House of Representatives is back in session today after the Fourth of July break.
- The Senate resumed on Monday.
- Now a few weeks remain for both houses of Congress before they take their August recess.
- Still, there are some important issues being discussed, including some expired and expiring tax provisions.
- Now a big date that's circled on the congressional calendar is Oct. 1.
- We'll get to why that matters to tax provisions in a moment.
- Oct. 1 is when the federal fiscal year for 2020 begins.
- The 2019 fiscal year ends on Sept. 30.
- Unless Congress acts by passing legislation to authorize spending for the new fiscal year, the federal government will shut down.
 - Oct. 1 is also the date that the austere budget spending caps originally enacted as part of the Budget Control Act will come back into full force.
 - If Congress does not act to pass legislation to increase the spending caps, then defense spending will need to be cut by \$71 billion and nondefense spending must be reduced by \$55 billion.
 - That from fiscal year 2019 levels.
 - Not to mention, the debt limit suspension ended on March 1 and since then, Treasury has employed extraordinary measures to ensure the federal government doesn't breach the debt limit.
 - Now according to the Congressional Budget Office, Treasury is expected to exhaust its ability to use the extraordinary measures sometime late summer.
- Now, back to what this all means for tax provisions: The Oct. 1 deadline is important because it's the most likely way for so-called tax extenders to be passed.
- Those extenders include the new markets tax credit (NMTC), the renewable energy production tax credit, or PTC, and the Section 179D and the Section 45L incentives for energy efficiency.
 - The NMTC allocation is currently authorized, but only through the 2019 funding round.
 - The PTC phases down to zero at the end of 2019 and the others are expired.
 - Now as a reminder, the Section 179D deduction is for energy-efficient improvements to commercial and multifamily buildings, and
 - The Section 45L incentive is a \$2,000-per-unit credit for energy efficient multifamily and single-family homes.
- Here's a reminder of where we are in the legislative process.
 - A House bill containing extenders passed the House Ways and Means Committee on June 20, but it isn't yet on the House schedule for a full floor vote.
 - Now that bill includes a one-year extension for the NMTC with an increase to a \$5 billion in allocation from the current \$3.5 billion level.



- The bill also includes an increase in low-income housing tax credit (LIHTC) allocations for federally declared disaster areas in California hit by the 2017 and 2018 fires.
- Now it's unclear when the full House will consider the bill, but I expect the House leadership will negotiate the provisions of the bill with their Senate counterparts sometime in the summer and early fall.
- Now this will be in anticipation of final legislation moving in September or October.
- With the need to address authorizing federal spending for the new fiscal year hanging over Congress, here's where the extenders bills come into play.
 - Now it's difficult to pass any tax extender bill as standalone legislation.
 - Most observers believe it's much more likely that extenders will be added to one of the must-pass bills.
 - Those are either the bill to raise the debt ceiling, the bill to increase the spending caps or to authorize spending for the new fiscal year, which must happen, as we noted earlier, before Oct. 1.
 - Absent a government shutdown.
- The process to get the provisions included in the must-pass legislation involves a slightly different pathway than to pass a bill.
 - The key players in the budget and spending cap bill process will be the leaders in both chambers of Congress.
 - In the House, that'll be Speaker Nancy Pelosi and House Minority Leader Kevin McCarthy.
 - In the Senate, of course that's Majority Leader Mitch McConnell and Minority Leader Chuck Schumer.
 - They'll have input from the tax committee leadership:
 - Ways and Means Committee Chairman Richard Neal and Ranking Member Kevin Brady in the House, and Senate Finance Committee Chairman Chuck Grassley and Ranking Member Ron Wyden in the Senate.
 - While the extenders legislation covers a range of tax incentives, provisions that face the toughest hurdles are the business incentives.
 - That includes the NMTC and the energy efficiency incentives that we discussed.
- Here's something to keep in mind: House Democrats asked for a large number of extenders in their current proposal, but excluded some to use as bargaining chips down the road.
 - For instance, a tax credit for accelerated depreciation for racehorses is something that Majority Leader McConnell presumably wants.
 - He, of course, represents Kentucky, and is up for re-election next year.
 - The thought is that that incentive can be included to preserve some of the others.
 - The NMTC of course has bipartisan support, so the credit is likely to be included in any provisions, although the increase in allocation authority may be a bit more tricky.
 - The renewable energy provisions face more opposition.
- As a reminder, while the House is acting first on extenders legislation this time, the Senate has often led the way on discussion of extenders.
- Don't forget, Senate Finance Committee Chairman Chuck Grassley and Ranking Member Ron Wyden introduced legislation back in February to extend 29 different incentives through the end of 2019.



- Their bill was a stripped-down version, retroactively extending the provisions through the end of this year.
- Now we'll keep an eye on these bills and keep you updated as we get closer to that Oct. 1 deadline for the must-pass bills.

OZ Hearing

- Now let's move to opportunity zones news.
- Today there is a Treasury hearing on April's proposed opportunity zones regulations.
- The hearing is taking place outside of Washington, D.C.
 - They moved it from downtown D.C. in order to have space for more attendees.
- My partner John Sciarretti is scheduled to testify on comments filed by the Opportunity Zones Working Group.
- Now I told you last week about the Working Group's comments and there's a link to those comments in today's show notes.
- I'll also send out a tweet.
- Now today's hearing continues the series of events for Treasury where they gather feedback on the second tranche of guidance.
 - Now stakeholders had 60 days to submit comments and that comment period ended July 1.
 - Then there was today's hearing.
 - Next, Treasury will evaluate the feedback and likely return with either updated proposed regulations or final regulations.
- It remains unclear whether or not there will be a third tranche of proposed regulations.
 - It's looking like there likely won't be.
- Now at the Novogradac Opportunity Zones Spring Conference back in April, Daniel Kowalski of the Treasury Department said that Treasury may issue a third tranche this year.
 - Which implied that Treasury may not.
 - And as I noted, most observers previously thought Treasury was intent on issuing a third tranche of regulations in 2019, now we think it's less likely.
- Now Treasury may release anti-abuse guidance this year, which presumably could be seen as falling short of a full tranche of regulations.
- We'll keep you updated on what's happening and next week I'll share highlights of today's hearing.
- Also, we are recording the hearing, and actually it's a live feed right now on YouTube, but it will be available for watching after the hearing ends.



Other News

- In other news, the IRS Office of Chief Counsel issued a memorandum last week addressing noncompliance of common areas in LIHTC properties.
 - The memo said that eligible basis should be reduced for noncompliance in common areas.
 - But, there are important details.
 - First, the memo made it clear that noncompliance of the common area reduces the eligible basis for the property for the year the noncompliance takes place.
 - The memo also said that the recapture amount is based on the amount of costs attributable to the entire common area, not just the noncompliant section.
 - However, the memo also said that the noncompliance of a common area should not be treated as if a low-income unit close to the common area was noncompliant.
 - Now if you have any questions on how this compliance memo affects your property, please contact a Novogradac partner near you.
 - I'll also send out a tweet linking to this memo.
- In historic preservation news, the National Park Service posted a notice in the Federal Register seeking feedback on its Historic Preservation Certification Application forms.
 - Those are the forms needed to receive historic tax credits (HTCs).
 - Now the National Park Service isn't proposing any changes, but comments are being accepted through Sept. 3.
 - There's a link to the notice, which includes how to submit comments, in today's show notes.
 - And I'll tweet out a link there as well.
- And finally, news from two states.
- First, West Virginia Gov. Jim Justice signed a bill last week that allows taxpayers in his state to exempt certain opportunity zones business income from state income tax for up to 10 years.
 - The new law applies to tax years beginning Jan. 1 of this year through years that begin before Jan. 2, 2024.
- And in Delaware, Gov. John Carney signed a spending bill that extends funding for the state HTC program by a year.
 - The Delaware state credit is now funded through the year 2025, rather than 2024.



RELATED RESOURCES

Opportunity Zones Working Group Letter on Proposed Treasury Regulations

[Opportunity Zones Working Group Letter](#)

IRS Office of Chief Counsel Memorandum

[Memo on Noncompliance of Common Areas for Purpose of LIHTC](#)

National Park Service Seeking Feedback on Applications

[National Park Service Notice on Information Collection](#)

West Virginia Opportunity Zones Legislation

[West Virginia H.B. 113 to amend state tax code for opportunity zones](#)

Delaware HTC Legislation

[Delaware S.B. 180, including extension of state HTC](#)

Novogradac Private Activity Bond and 4 Percent LIHTC Overview Webinar

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