NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: July 24, 2018

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, provides an update on the nomination of Charles Rettig as the next IRS commissioner. Then, he outlines priority guidance requests from the Opportunity Zones Working Group. After that, he discusses several bills related to affordable housing. He wraps up today's podcast with other industry headlines, including a low-income housing tax credit report, a few announcements from the CDFI Fund and news about a proposed Ohio state tax credit.

Summaries of each topic:

GENERAL NEWS

Charles Rettig Nomination

- In general news, Charles Rettig is one step closer to being confirmed as the next commissioner of the Internal Revenue Service (IRS).
- The Senate Finance Committee last Thursday voted along strict party lines 14-13 to advance his nomination to the full Senate.
- Rettig is a California tax attorney.
- And both Republicans and Democrats on the Senate Finance Committee praised Rettig's experience with the tax code.
- But, Democrats voted against Rettig's nomination to protest the IRS and Treasury's recently released guidance that limits certain tax-exempt groups from disclosing donor information.
- Democrats argued that this new guidance limiting donor information hinders transparency.
- Senate Finance Committee Ranking Member Ron Wyden said he would oppose Rettig's nomination unless Rettig commits to restoring the donor disclosure requirement.
- Senate Finance Committee Chairman Orrin Hatch on the other hand, defended Rettig, saying that Rettig was not personally involved in the new IRS guidance.
- We expect Rettig's nomination to be confirmed by the full Senate soon.
- Senate Majority Leader Mitch McConnell will schedule the full Senate to consider Rettig's nomination when he has secured enough votes for such a confirmation.
    - McConnell may try to schedule the vote Aug. 3 before the Senate leaves for recess.
- Now if confirmed, Rettig will fill the remainder of a five-year term.
- And that term ends in November 2022.
- As IRS commissioner, I would note that one of Rettig's main duties will be to lead the agency as it implements the new tax law that Republicans passed last December.

Opportunity Zones Working Group Priority Guidance Request

- Now staying with the theme of implementing the new tax law, one of the tax bill provisions that we hope the IRS will address soon with regulations and/or provisional guidance is the new opportunity zones incentive.
- Now we at Novogradac have already seen some early adopters invest in opportunity funds and start investing in opportunity zone businesses.
- However, many many potential investors, potential opportunity fund managers and potential opportunity zone businesses are still on the sidelines, awaiting more guidance from the IRS and Treasury before they move forward with this community development incentive.
- And as I mentioned last week, the Novogradac Opportunity Zones Working Group has been busy preparing an additional request to the IRS and Treasury for opportunity zones guidance.
- Now the goal is to get guidance on some fairly basic, but very impactful issues so that investors, fund managers and opportunity zone businesses can feel more confident using the incentive.
- Now the working group sent an initial guidance request letter to the IRS in March of this year, and then sent a follow-up letter last Monday.

- Now this follow-up letter focuses on 11 questions that need immediate attention and questions that we believe lend themselves to being answered expeditiously on the IRS' opportunity zones frequently-asked-questions page.
- Now the working group posed the set of questions and included proposed responses and analysis for each.
  - But it was brief.
- Now the priority guidance request follow-up letter falls into five main sections.
  - One is on gains eligible for deferral.
  - The second is the application of opportunity zones incentive to partnerships.
  - The third is the qualification of temporary cash reserves,
  - The fourth is the qualification of opportunity zone business in certain situations.
  - And fifth, the tax implications of debt.
- For example, one question that was posited, is whether ordinary gains are eligible for deferral.
- The working group proposed that the IRS confirm that gains eligible for deferral include all gains from the sale of property, including short-term and long-term gains, Section 1231 gains and ordinary gains.
  - Now there would be an exception to gains that would not be eligible.
  - And the gains that would not be eligible would be from property held for sale to customers in the ordinary course of a trader business.
- Now another question asks who is considered the "taxpayer"—a partnership or its partners—for purposes of investing in a qualified opportunity fund for gains realized by a partnership.
- Now the working group recommends that the IRS issue guidance saying that for gains realized by a partnership, the "taxpayer," for the purposes of this incentive, is either the partnership or any of the partners allocated the gain.
  - More specifically, the Working Group recommends guidance saying that the lower-tier partnership, any intervening partnerships, an upper-tier partnership or any partner in the upper-tier partnership can make the election.
- As you can hear from these examples, many fundamental questions still need to be answered about the opportunity zones incentive.
- Now as with any new initiative, governing agencies need to develop clear guidance so that the incentive can work as efficiently and effectively as possible.
- Now if you are participating in the opportunity zones incentive or you plan to, or you're thinking about it, I do encourage you to join the Novogradac Opportunity Zones Working Group.
- This group has a variety of purposes, which includes proposing solutions to technical and administrative issues.
- I'll tweet links to the working group brochure today, and to the working group's March and July requests for guidance.
- The links are also going to be in today's show notes.

Affordable Housing Task Force

- Now let's turn to affordable housing news.
- A group of nine U.S. senators last Wednesday introduced a bill to create a bipartisan task force on affordable housing.
- Under the bill, an affordable housing task force would be created that would have 18 members, including two co-chair persons.

- Now who would pick the members?
- The members would be picked by the Senate Majority Leader and the Senate Minority Leader, the Speaker of the House and the House Minority Leader.
- The four of them would choose the task force members.
- Now members would include academic researchers, field or policy experts and/or people who have relevant government housing program experience.
- The task force would evaluate and quantify the impact that lack of affordable housing has on other areas of life and life outcomes of individuals.
- Members would also look at how the affordable housing shortage affects the costs incurred by other federal, state and local programs.
- Now this task force would then report to Congress on how affordable housing can improve the effectiveness of other programs and improve people's lives.
- Now the bill is called the Task Force on the Affordable Housing Crisis Act.
- We'll provide more details on the task force if it looks like the legislation is likely to be enacted by Congress.

Renter Relief Act of 2018

- And while we're speaking of housing legislation, Democratic Sen. Kamala Harris of California, introduced a bill last week to create a refundable tax credit for renters who pay more than 30 percent of their annual gross income on rent and utilities.
- The allowable credit is limited to 150 percent of fair market rent and the applicable percentage of the credit does phase down as income increases.
- Residents living in government-subsidized housing would also be eligible to receive the tax benefit.
- Now if enacted, this bill would apply to tax years beginning in 2018.
- Now this Rent Relief Act of 2018 is cosponsored by fellow Democratic Senators.
- Namely:
  - Dianne Feinstein of California,
  - Richard Blumenthal of Connecticut, and
  - Maggie Hassan of New Hampshire.
- You may remember, similar companion legislation was introduced in the House by Rep. Joseph Crowley of New York last summer and that legislation has six cosponsors.
- Now supporters of the legislation say it would help ease rent burdens for millions of low- and moderate-income residents.
- However, I would note, this legislation is likely to have a cost of several hundred billion dollars over 10 years, and as such, is unlikely to advance, at least in this current form.

Housing Legislation

- There are though, two other housing bills that are worthy of keeping an immediate eye on, as they are more likely to pass.
- They are:
  - the Homeless Children and Youth Act of 2017 and
  - the Fostering Stable Housing Opportunities Act of 2017.
- Both these bills are scheduled for markup today in the House Financial Services Committee.
- I'll report back next week on any notable markup developments.

- Also, the Senate will consider a fiscal year 2019 minibus spending bill that includes the fiscal year 2019 Transportation-HUD and Financial Services and General Government, or FSGG, bills.
    - The Treasury Department falls under the FSGG bill.

OTHER NEWS

- Turning to other news, the Urban Institute released a report last week about the low-income housing tax credit (LIHTC).
  - This report says that the credit faces some significant challenges.
  - One of the biggest challenges is the potential of cuts to other federal housing programs that often are often paired with the LIHTC.
  - The report also calls for better tracking of the credit by HUD.
  - The report is labeled, “The Low-Income Housing Tax Credit: Past Achievements, Future Challenges.”
  - I’ve included a link to the report in today’s show notes.
- And in community development news, the CDFI Fund reminded users last week that the Community Investment Impact System, or CIIS, will be offline in August.
- Let me say that again: the CIIS system will be offline in August.
  - CIIS is being integrated into the CDFI Fund’s Awards Management Information System, or AMIS.
  - That means that award recipients in the New Markets Tax Credit (NMTC) program, CDFI Fund program and Capital Magnet Fund won’t file reports in August.
  - The CDFI Fund said that awardee reporting will be available in AMIS starting Sept. 1.
- And on a related note, related to the CDFI Fund, the CDFI Fund recently released its latest Qualified Equity Investment Issuance Report.
  - Now as of the report’s July 19 release date, the amount of NMTC allocation authority still available is about $5.4 billion.
    - But, as I’ve said in the past, much of that $5.4 billion is already soft circled.
  - I will have a link to the latest QEI Report in today’s show notes.
- Staying with CDFI Fund news, the 2018 round for the Capital Magnet Fund opened last week.
- The Capital Magnet Fund awards money to CDFIs and qualified nonprofit housing organizations.
- That money is to be used for:
  - affordable housing activities,
  - related economic development activities, and
  - development of community service facilities.
- Now the goal is to attract private capital, to leverage private capital, and bring that money into communities that are economically distressed.
- Recipients, more specifically, are required to leverage private and public funds that yield a minimum ratio of 10-to-1.
- Now the CDFI Fund will award $143 million this round.
- And there’s a two-part deadline.
- By Aug. 20, you need to file SF-424 form, and by Sept. 17, you need to file the overall application.
  - The awards will be issued sometime this winter.

- You remember, the Senate recently voted down President Trump's rescission package, and included in that legislation's proposed cuts was this round of the Capital Magnet Fund (CMF).
- Since it was already down, fortunately the CMF request can go forward.
- Now if you'd like to apply for the funds, I'd encourage you to reach out to the Novogradac office near you for assistance.
- You can also feel free to reach out directly to Novogradac's own Bob Ibanez.
    - He'd be happy to assist you as well.
- In state news, the Ohio legislature is considering a new tax credit for large-scale, mixed-use developments.
- The bill would provide a 10 percent credit for developments with costs of $50 million or more.
- The development would need to include a building that's at least 15 stories high or 350,000 square feet in size.
- Now the bill did pass the house unanimously, 91-0.
- Now the legislation is now being considered in the Senate, and we'll stay tuned and keep you posted of the progress of the bill in the Senate.

RELATED RESOURCES

Opportunity Zones Working Group

- Opportunity Zones Working Group Brochure
- Opportunity Zones Working Group Letter: Priority Guidance Request on Opportunity Zones, July 16, 2018
- Opportunity Zones Working Group: Recommendations for Guidance on Opportunity Zones, March 9, 2018

Affordable Housing Task Force Bill

- Task Force on the Affordable Housing Crisis Act

Renter Tax Credit Bill

- The Rent Relief Act of 2018

Urban Institute Report

- The Low-Income Housing Tax Credit: Past Achievements, Future Challenges

CDFI Fund Announcements

- CDFI Fund Update: Community Investment Impact System Availability
- NMTC Qualified Equity Investment Report
- Capital Magnet Fund 2018 Application Instructions

Ohio Tax Credit

- Ohio H.B. 469