Summary: July 30, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about what the House spending and debt limit agreement could mean for tax extenders. He also discusses the Renewable Energy Extension Act and a bill to extend the Community Development Block Grant-Disaster Recovery program indefinitely. He then closes out with news on a remediation bill for properties in opportunity zones, legislation to strengthen inspection standards for HUD-subsidized properties, a HUD memo for owners and managers of multifamily properties and state-level updates on opportunity zones investments in Ohio and certain historic tax credit investments in Rhode Island.

Summaries of each topic:

GENERAL

Budget, Debt Limit Deal

- Let's start with the first step in efforts to fund the federal government by the Sept. 30 deadline.
- Last Thursday, the House of Representatives passed a two-year, $2.7 trillion bipartisan budget agreement.
- The next step is for the Senate to consider the bill this week.
- For fiscal year 2020, which begins on Oct. 1, 2019, defense spending under the agreement would be nearly $667 billion and nondefense spending would be about $622 billion.
- And then the following year, for fiscal year 2021, defense spending and nondefense spending would each be about $5 billion higher.
- Which means about $672 billion for defense spending and $627 billion in nondefense spending.
- If enacted, this agreement would prevent spending caps from going into effect.
- The spending caps were enacted as part of the Budget Control Act of 2011.
- Absent this budget agreement, the spending caps would go into effect this Oct. 1.
    - If by some set of events those 2011 spending caps were to go into effect, Congress would need to cut $71 billion from 2019 defense spending and $55 billion from 2019 nondefense spending.
- Last week, the House also agreed to suspend the debt ceiling until July 31, 2021.
- That's well past the November 2020 presidential and congressional elections.
    - Passage of the House bill to suspend the debt ceiling comes after warnings from Treasury Secretary Steven Mnuchin that Treasury could no longer employ what they called "extraordinary measures" to avoid breaching the debt limit before Congress returns in early September from its August recess.
    - The House left for recess this past Friday.
    - And, the Senate is scheduled to be out beginning this upcoming Friday.
    - Both chambers are scheduled to be back in session after Labor Day on Monday Sept. 9.
- The fiscal year 2020 nondefense spending approved by the House is, I note, about $15 billion less or below than the level House had originally assumed when the House considered and approved 10 of its 12 annual spending bills for 2020.
- Which means the final 2020 nondefense spending bills will need to be reduced, likely including the Transportation-HUD spending bill.
- The Senate, however, had put off considering its 2020 spending bills until the spending caps deal had been struck.
- Senate Appropriations Committee Chairman Richard Shelby of Alabama announced the committee will begin to draft its 2020 spending bills during the August recess so that the committee will be ready to consider them soon after returning in September.
- So what does all this deal mean for expired or expiring tax extenders?
- The House legislation did <u>not</u> include tax extenders, disappointing many who hoped, like myself, that the must-pass legislation could be a vehicle for extending expired or expiring tax provisions.
    - Expired or expiring tax provisions include the new markets tax credit, renewable energy production tax credit and energy-efficiency tax incentives.

- Among those others disappointed that the House deal did not include extenders included none other than the Chairman of the Senate Finance Committee, Sen. Charles Grassley of Iowa.
- In a Senate floor speech last week, Chairman Grassley called the budget and debt limit agreement a missed opportunity to give answers to millions of taxpayers who are waiting to finalize their 2018 taxes.
- Chairman Grassley is a leading supporter of extending expired or expiring tax provisions.
- In fact, Chairman Grassley and Senate Finance Committee Ranking Member Ron Wyden of Oregon introduced a bill early this year to extend retroactively expired tax provisions that expired at the end of 2017 and 2018.
- The bill would extend them at their current levels for 2018 and 2019.
- And as you know, the House Ways and Means Committee passed an extenders bill last month, on June 20, that extends nearly all 2017 and 2018 extenders, as well as 2019 extenders to the end of 2020.
    - Included in that Ways and Means-passed extenders bill is an extension of the new markets tax credit.
- Chairman Grassley said he hopes the Senate Finance Committee's new task forces on tax extenders can help inform long-term policy.
- The task forces are expected to submit their findings soon.
- And of course when they do, we will report on their findings in the following podcast.
- Chairman Grassley said he hopes those submissions can help the Senate Finance Committee put together an extenders package before the end of the year.
- Hopefully, before 2018 taxes are due.

Renewable Energy Extension Act

- While we are on the topic of extender legislation, last Friday bipartisan bills were introduced in both the House and Senate to extend the renewable energy investment tax credit for five years.
- This five-year extension would apply to the Section 48 business energy investment tax credit and the Section 25D tax credit for residential energy efficient property.
    - Technologies that fall under these credits include solar, fuel cells, geothermal and microturbines.
- Several provisions of the investment tax credit are currently scheduled to phase out under current law, beginning at the end of this year, at the end of 2019.
- As you likely know, if you listen to this podcast, this is the last year that both residential and commercial renewable energy can claim a full 30 percent investment tax credit.
- To be eligible for the full 30 percent investment tax credit, you must begin construction by Dec. 31, 2019.
- I'll talk more about the begin construction rule in a moment.
- After 2019, the credit steps down to 26 percent for projects that begin construction in 2020, then down to 22 percent for projects that begin construction in 2021.
- Then, beginning in 2022, the credit drops to 10 percent indefinitely.
- That's under current law.
- Proponents of extending the investment tax credit say preserving the incentive is crucial to spurring clean energy technologies and creating jobs.
- In the House, lead sponsors are:

- Ways and Means Select Revenue Measures Subcommittee Chairman Mike Thompson, a Democrat from California,
  - California Republican Paul Cook, and
  - Pennsylvania Republican Brian Fitzpatrick.
- In the Senate, Democrat Finance Committee member Catherine Cortez Masto, she's from Nevada, introduced the companion bill, along with 14 Democratic senators.
  - Cosponsors include two other members of the Senate Finance Committee:
    - Sheldon Whitehouse of Rhode Island and
    - Michael Bennet of Colorado.
- There are many renewable energy stakeholders hoping for an investment tax credit extension.
- While one might be hoping for an extension, you have to prepare for there not being an extension.
- As such, the upcoming issue of the Novogradac Journal of Tax Credits has an article on solar start-of-construction insights.
- This article is by my partner Nat Eng.
- Nat's article includes best practices on meeting the 5 percent safe harbor and physical work tests for project developers preparing conservatively for a scheduled investment tax credit phasedown.
- One of the considerations mentioned in the article is being careful about commingling safe harbored and non-safe harbored inventory.
  - Nat writes about how some developers needed to uninstall equipment to install safe-harbored equipment in connection with the Section 1603 Treasury grant.
- Another practical consideration is to exercise caution with soft costs, such as overhead and engineering and design costs.
  - A portion of soft costs are often attributable to ineligible costs and do not count toward the 5 percent safe harbor.
- I encourage you to contact Nat for any questions you may have about meeting the begin-construction requirements for the investment tax credit.
  - His email is in today's show notes.
- You can read the full article in the August issue of the Novogradac Journal of Tax Credits.
- The August issue's theme is Preparing for 2020.
- In addition to the renewable energy article, other content on preparing for 2020 includes:
  - Establishing and maintaining compliance for opportunity fund investments,
  - End-of-year tax planning considerations for low-income housing tax credit properties,
  - As well as compliance reporting tips for community development entities under the new markets tax credit incentive,
  - And there's much more.
- If you're already a subscriber to the Novogradac Journal of Tax Credits already, you'll get this content in the August issue.
- If you're not yet a subscriber, you can subscribe directly through our website.
- I'll include a subscription link in today's show notes and send out a tweet.

Reforming Disaster Recovery Act of 2019

- Another bill on the funding side, introduced in the Senate last week, would permanently authorize the Community Development Block Grant-Disaster Recovery, or CDBG-DR, program.
- CDBG-DR is administered by HUD and helps provide flexible grants to help areas recover from presidentially declared disasters, especially in low-income areas.
- The Reforming Disaster Recovery Act of 2019 would also require applicants for disaster assistance to plan a one-for-one replacement of public housing and other federally subsidized affordable rental housing.
- The bill also provides that at least 70 percent of CDBG-DR funds benefit low- and moderate-income households.
- A similar bill was introduced in the House and passed the Financial Services Committee, but the Senate version does include a few differences.
- For instance, the Senate version would create an Office of Disaster Recovery and Resilient Communities within HUD.
    - The new office would help coordinate curriculum and policy to build community resiliency, restore housing and infrastructure as well as stimulate economic revitalization for low- to moderate-income individuals after a disaster.
- I'll share any updates on the disaster recovery legislation in future podcasts.

Other News

- In other news, a bill was introduced in the House to require lead remediation on older residential properties in opportunity zones before taxpayers can receive the opportunity zones incentive.
    - Specifically, for residential property built before 1978, this bill, if passed, would require efforts to prevent lead-based paint poisoning and provide remediation.
    - The bill doesn't apply to residential properties built in 1978 or later because the use of lead-based paint in housing was banned beginning in 1978.
    - Of course, this would only be applicable if a taxpayer is substantially improving that residence in order to qualify for the opportunity zones incentive.
    - The bill is H.R. 4011.
- I also have a couple of updates relating to HUD-financed property.
    - First, a bill was introduced to strengthen inspections for HUD-subsidized property.
    - The legislation was introduced by Rep. Al Lawson of Florida.
    - The bill would create tougher standards for physical conditions of the property and provide HUD with greater enforcement authority.
    - The bill also would require HUD to work with tenants or tenant organizations to develop plans when owners aren't responsive to inspection issues.
    - And, the bill would require HUD to publish a quarterly report of properties with unsatisfactory reviews.
- In other HUD news, the Office of Multifamily Housing issued a memorandum to remind owners and managers of existing guidance regarding their obligations to residents.
    - Highlights include that:
        - owners must notify residents of planned inspections of their units,
        - owners must also make physical inspection documents available for review and comment, and
        - owners and managers must consult residents before establishing or making significant changes to house rules.
    - There's a link to the memo in today's show notes and I'll tweet it out as well.
- In state news, Ohio now has a 10 percent tax credit for investments in the state's opportunity zones.
    - This credit was part of the bill that became law when Gov. Mike DeWine signed the fiscal year 2020-2021 budget.
    - The credit is for investments in qualified opportunity funds that hold all of their invested assets in Ohio.
    - Obviously, this credit is targeted, with the goal of encouraging opportunity funds to focus exclusively on Ohio.
    - There is a $1 million cap per taxpayer and a $50 million statewide cap every two years.
    - For more information about this credit, contact our Dover Ohio office.
    - You can start by reaching out to my partner Greg Clements.
- In other state news, the sunset date for certain historic tax credits in Rhode Island received a three-year extension.
    - The credits funded through the cultural arts and economic grant program were set to expire this year.
    - Now, they are good through the end of 2022.

- Rhode Island's regular historic tax credit expires in the middle of 2023.
- For questions about the Rhode Island historic tax credit, contact my partner Tom Boccia.
- He's in our Cleveland, Ohio, office.

RELATED RESOURCES

Budget, Debt Limit Deal

Grassley on Tax Extenders Benefits, July 24, 2019

Renewable Energy Extension Act of 2019

Renewable Energy Extension Act of 2019 (House bill text)

Email Nat Eng, CPA

Novogradac Journal of Tax Credits subscription

Reforming Disaster Recovery Act of 2019

Reforming Disaster Recovery Act of 2019 (Senate bill text)

Reforming Disaster Recovery Act of 2019 (House bill text)

Bill summary

Opportunity Zone Lead Remediation Impact Act of 2019

Press release

HUD Bill

H.R. 3745, HUD Inspection Oversight Act of 2019

HUD Memo

Memo for owners and managers of HUD multifamily properties

Ohio OZ ITC

Ohio S.B. 8, opportunity zones investment tax credit, which became part of state budget

Rhode Island HTC

Rhode Island S. 980 to extend state historic tax credits funded by cultural arts and economic grant program