NOVOGRADAC TAX CREDIT TUESDAY PODCAST

Summary: Aug. 20, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about the first three reports by the Senate Finance Committee's Tax Extenders Task Forces. He also shares news about recent IRS guidance on bonus depreciation (Rev. Proc. 2019-33) and on California's massive investment in affordable housing through its annual budget. He closes out with a HUD proposed rule on the disparate impact standard and the announcement of new directors for the California Tax Credit Allocation Committee and California Debt Limit Allocation Committee.

Summaries of each topic:

GENERAL

Senate Finance Committee Tax Extenders Task Force Reports

- Senate Finance Committee Chairman Chuck Grassley and Ranking Member Ron Wyden last Wednesday released the first three reports from the committee's tax extenders task forces.
- As I've mentioned in previous podcasts, the Senate Finance Committee formed several bipartisan task forces to examine temporary tax provisions that have expired or will expire between Dec. 31, 2017, and Dec. 31, 2019.
    - The task forces were asked to look at more than 40 provisions in total and to report their findings to the Senate Finance Committee as a whole.
- I'll share some highlights from the task force reports that have been submitted so far.
- There have been three task force reports that have been submitted, two of which relate to matters of concern to our podcast listeners.
- The third, on individual and excise taxes, I won't cover.
- So one of the first ones I wanted to cover, of the two, is the energy task force report.
- This task force examined 12 expired or expiring tax provisions and they received 63 comments.
- The energy task force did not include any specific recommendations in its report.
- But the group did say that stakeholders generally acknowledged that tax credits are an effective incentive for making nascent technologies competitive.
- Some highlights of the energy task force report include:
    - calls for making changes to the wind credit, such as allowing for limited tax credit transferability, as well as
    - recommendations to enact a long-term extension of the existing wind investment tax credit for offshore wind at a 30 percent credit percentage.
- Others called for making standalone energy storage eligible for investment tax credits, as well as extending the Section 45L energy efficient homes credit.
- That's the $2,000 a home credit.
- Two of the 63 comments submitted proposed eliminating temporary energy tax credits or simply allowing them to expire.
    - Again, only *two* of 63 that suggested getting rid of all temporary energy tax incentives.
- Another report was submitted by a task force on temporary cost provisions.
- This is the second report I want to cover today.
- One of the provisions examined by the cost recovery task force is the Section 179D commercial buildings energy efficiency tax deduction.
- That deduction expired at the end of 2017.
- The cost recovery task force recommended that modifications should be considered for Section 179D, such as modifications related to retrofits as well as for nonprofits.
    - The task force suggested that if the Section 179D provision is expanded for a longer term or made permanent there may be a need to have a mechanism to update energy standards at the appropriate times in the future.
- The main takeaway from the reports so far is that there is widespread support from stakeholders and Senate Finance Committee members to find long-term solutions to these temporary tax policies.

- Following that, in a press release last Wednesday, Chairman Grassley said the next steps will be to put together a legislative package based on the task force proposals and continued discussion among task force members.
- Chairman Grassley said long-term tax policy must be a top priority for Congress when members return in September from the state and district work periods.
- I'll share any relevant details from the other task force reports after they're made public.
- In the meantime, you can find the task force reports that are public, that have already been submitted, they're on the Novogradac website.
- The links are in today's show notes and I'll tweet them out as well.

Bonus Depreciation Guidance

- Let's turn to depreciation now.
- The IRS recently released guidance that allows a taxpayer to make a late depreciation election or to revoke a bonus depreciation election for certain qualified property.
  - The guidance generally relates to property acquired after Sept. 27, 2017, and placed into service during a taxable year that includes Sept. 28, 2017.
- Now this guidance does have narrow application, but its release is a good reminder that with less than five months left in the calendar year, it's important for low-income housing tax credit property owners to review their tax-planning strategies.
- The 2017 tax bill does allow 100 percent expensing of personal property and land improvements for properties placed in service after Sept. 27, 2017, and before Jan. 1, 2023.
- This expensing provision is powerful way to increase investor tax benefits, which can translate into higher tax credit equity pricing.
- This expensing provision applies to both new and used property acquired from an unrelated party, which means the acquisition of existing depreciable property is eligible to the extent that a portion of the acquisition costs is allocable to personal property and/or land improvements.
- However, you do need to keep in mind that there is a binding contract rule.
- The binding contract rule for property acquired but not placed in service as of Sept. 27, 2017, can limit the deductions.
- We see this most prevalent with clients that had signed construction contract as of Sept. 27, 2017.
- The bottom line is such property subject to this binding contract rule is not generally eligible for 100 percent expensing.
- But, personal property and land improvements not eligible for 100 percent asset expensing can be eligible for 40 percent or 30 percent expensing.
- More specifically,
  - Property acquired before Sept. 27, 2017, but placed in service in 2018, last year, is eligible for bonus depreciation up to 40 percent.
  - If the property is placed in service in 2019, bonus depreciation is still available, but at a lower rate of 30 percent.
  - And, if such property placed in service after 2019, it is no longer eligible for bonus depreciation.
- Bottom line, if you're an owner of property acquired before Sept. 28, 2017, or subject to the binding contract rule, and it's not yet placed in service, you're probably trying to

make sure you place any of your remaining property in service before the end of this year.
- In order to ensure that you're eligible for 30 percent expensing of the property placed in service.
- I encourage you to contact a Novogradac partner to review your year-end tax planning strategies to ensure you are maximizing the tax benefits from your LIHTC investments.
- Also, Scot Keller, with Novogradac's Dover, Ohio, office, wrote about end-of-year tax planning strategies for low-income housing tax credit properties for the August issue of the Novogradac Journal of Tax Credits.
- Scot's article has a section dedicated to bonus depreciation considerations.
- If you're a subscriber to the Journal, you'll have access to this article already.
- If you don't have an active subscription to the Journal yet, I encourage you to subscribe.
- I'll include a subscription link in today's show notes and tweet it out.
- The August issue of the Journal has a focus on tax planning for 2020.
    - You'll find articles on new markets tax credit compliance reporting tips for community development entities, best practices for meeting the begin-construction test for solar developments and there's much, much more in a variety of tax credit areas.
    - It's a must-read.
- I will also include a link to the bonus depreciation guidance mentioned at the beginning of this section, which was issued in Revenue Procedure 2019-33.

California Budget
- Now, for some state news.
- More specifically, news from the country's most populous state.
- California is making a huge investment in affordable housing.
- Last month, Gov. Gavin Newsom signed the 2019-2020 state budget into law.
- He followed by signing a trailer bill that contained a number of affordable housing provisions as well.
- There are too many provisions to discuss them all in this podcast.
- But here's a start.
- The headline provision for the tax credit community is that California added $500 million in state low-income housing tax credit allocation authority for next year, for 2020.
- Yes, $500 million, or half a billion dollars.
    - Now this half a billion dollars is in addition to the approximately $100 million already authorized.
    - The $500 million in additional credits must all be issued to new construction being built with tax-exempt private activity bonds and 4 percent federal credits.
    - Up to $200 million of that $500 million will be available for properties receiving assistance from a Cal HFA mixed-income program.
        - A program which funds homes for properties for residents who earn from 30 percent to 120 percent of area median income.
    - The remainder of the $500 million, which is at least $300 million, is for traditional tax-exempt bond financed new construction tax-credit housing.
- As with other states across the country, California is in a severe affordable housing crunch and this increase in tax credits is part of a massive plan to build more homes.

    - With more than $4 billion already available in private activity bond cap each year, the state is hoping to maximize that resource.
- The additional credit allocation increase is for this year only, but the legislation calls for the extra $500 million in future years if the state Legislature approves it in each year's budget.
    - The expectation is that the state Legislature will do that.
- The housing bill also made other important changes to the state housing credit.
    - A major change is that for properties that receive credits from the new, additional allocation, the applicable percentage goes from 13 percent to 30 percent.
    - This means significantly more credits are available to each property to help close development budget funding gaps.
    - The housing bill also eliminates the $75,000 annual income cap on individual use of California low-income housing tax credits.
    - Removal of this limit was designed to bring more individual investors into the market for state housing tax credits, with the goal of increasing the price per credit so we can build more housing.
    - The budget legislation also eliminated the looming sunset date for the ability to bifurcate and certificate the state low-income housing tax credits, which should also add to their value.
- California's budget includes several other significant housing provisions, including:
    - $500 million for a grant program that will fund affordable housing properties in urban infill areas,
    - $250 million for local jurisdictions to adapt their affordable housing plans,
    - $650 million to build homeless shelters and provide services for homeless residents,
    - And much more.
- As you see, the strategy in California is to maximize the use of the tax-exempt private activity bonds and the 4 percent federal credits for new construction.
    - Most of the housing provisions are designed to make sure California developers in the state use the full amount of federally available tax-exempt bonds.
    - Something that hasn't happened for many years.
- My Washington Wire column in the September issue of the Novogradac Journal of Tax Credits will include much more details on California's investment in affordable housing.
    - I will tweet a link to the column when we post it on our website in early September.
- In the meantime, if you want to know how this boost could affect your properties or your plans to develop in California, call my partners Jim Kroger or Kevin Wilson in our Walnut Creek, Calif., office.
- I'll include their contact information in today's show notes.

Other News

- Turning to other housing news, HUD published a proposed rule Monday in the Federal Register to amend the department's interpretation of the disparate impact standard under the Fair Housing Act.
  - The Fair Housing Act codified a federal prohibition against discrimination based on protected class status.
  - Disparate impact refers to practices that adversely affect a protected group, whether or not that was the intent.
  - That issue was the focus of a 2015 lawsuit, in prior podcasts, about the use of the low-income housing tax credit in Texas that was settled by the U.S. Supreme Court.
  - Concerning how to address this issue, the U.S. Supreme Court ruled that plaintiffs had to show that practices and policies resulted in a discriminatory effect, regardless of intent, they resulted in a discriminatory effect.
  - The Supreme Court, though, also ruled that if that standard is met, defendants had to prove that there were no alternatives that were less discriminatory in order for them to prevail in a lawsuit.
  - Well, HUD's proposed new rule proposes five steps that the plaintiffs must take to bring a claim.
  - HUD's proposed rule essentially raises the bar to prove disparate impact.
  - Comments are being accepted by HUD on the proposed rule through Oct. 18 of this year.
  - I'll include a link to the proposed rule, as well as a link to a blog post by Novogradac's Mark Shelburne that discusses the proposed rule, in today's show notes.
- And to wrap up, I have some more news from California.
  - The state, the Treasurer's office specifically, have announced the appointment of new directors to head the Debt Limit Allocation Committee, or CDLAC, and the Tax Credit Allocation Committee, or TCAC.
  - On the CDLAC front, Larry Flood is the new executive director of the Debt Limit Allocation Committee.
    - He was previously the director of finance for the California Housing Finance Agency or Cal FHA.
  - Judith Blackwell is the new head of the California Tax Credit Allocation Committee.
    - Judith Blackwell most recently served as the chief financial officer of the Port of Oakland.
  - The two committees, CDLAC and TCAC, head up the financing of most affordable housing in California.
  - We congratulate both of them on their appointments and we look forward to working with them to help build and renovate more affordable housing in California.

RELATED RESOURCES

Tax Extenders Task Force Reports

Energy Task Force

Individual, Excise and Other Temporary Tax Policy Task Force

Cost Recovery

Bonus Depreciation Guidance

Rev. Proc. 2019-33 Additional First-Year Depreciation

Novogradac Journal of Tax Credits

Subscription to Novogradac Journal of Tax Credits

California Budget

Contact Jim Kroger at 415-356-8016

Contact Kevin Wilson at 925-949-4252

HUD Disparate Impact

Proposed Rule: HUD's Implementation of the Fair Housing Act's Disparate Impact Standard

Novogradac LIHTC Acq/Rehab Overview Webinar

Registration Link

Novogradac Reviewing LIHTC Lower-Tier Tax Returns for Non-CPAs Webinar

Registration Link