



In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, discusses affordable housing legislation recently introduced in Congress: the Middle-Income Housing Tax Credit Act of 2018 and the Rent Relief Act of 2018. Then, he discusses the new Section 199A deduction created under the 2017 tax reform legislation. After that, he shares other headlines that include efforts to overhaul the Community Reinvestment Act, an interim rule that could result in lower interest rates on housing bond debt and a new report on the importance of the renewable energy production tax credit for growing wind power capacity.

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GENERAL NEWS

Middle-Income Housing Tax Credit Act of 2018

- In affordable housing news, last week Sen. Ron Wyden, Democrat of Oregon, introduced a bill to create a middle-income housing tax credit.
- Cleverly, it's named the Middle-Income Housing Tax Credit Act of 2018.
- Now the credit is designed to mirror the low-income housing tax credit (LIHTC).
 - Under the bill, each state would generally receive \$1 in tax credits for every person in the state, with a minimum allocation amount of \$1.14 million per state.
 - For rural areas, the per-capita allocation would be \$1.05.
 - Now as a point of reference, the LIHTC per capita amount is \$2.70, thanks in part, to the 12.5 percent increase that Sen. Maria Cantwell of Washington, took the lead on.
 - Now the middle-income housing tax credit would be allocated by state agencies in a competition among developers, once again, similar to the LIHTC.
 - The credit rate?
 - Well the credit rate would be determined in a manner designed to have a present value of 50 percent of qualifying costs.
 - However, the credit rate would never be less than five percent.
 - Essentially a five percent floor on the credit percentage.
- Now to qualify for the credit, at least 60 percent of the units in a rental property would need to be leased to families within incomes at or below 100 percent of the area median gross income.
- And any unused middle income housing tax credit allocation from a particular calendar year could be carried over to the state's LIHTC ceiling for the following year, after which if it still wasn't used, it would go the national pool.
- Now the principal goal of the middle-income housing tax credit, or what's referred to as, MIHTC, is to serve families in need of affordable housing who do not qualify for LIHTC-financed homes.
- That would be families earning more than the allowable income levels of LIHTC properties, generally 50 percent or 60 percent of area median income (AMI), the difference between that and 100 percent AMI level.
- Now that banned between 50 and 60 percent AMI and 100 percent AMI.
- I want to emphasize though, that the program is designed to be complementary, not competitive with the LIHTC.
- Now to emphasize this, the legislation itself includes language that mirrors the LIHTC and praises the LIHTC.
- The language notes that the LIHTC has been remarkably successful.
- Now as you may know, Sen. Wyden is the ranking member of the tax-writing Senate Finance Committee, and should the Democrats take control of the Senate in the fall, he would almost most certainly become the chairman of the Senate Finance Committee, giving extra weight to bills that he introduces.
- You may also know that Sen. Wyden is a longtime supporter of the LIHTC, as well as he did introduced a similar MIHTC bill in 2016.
- Now Sen. Wyden is also an original cosponsor of a current bill that would expand and enhance the LIHTC.
 - And you know what that bill is.



- It's the Affordable Housing Credit Improvement Act of 2017.
- That's legislation spearheaded by Sen. Wyden's colleagues on the Senate Finance Committee: Committee Chairman Orrin Hatch and Sen. Maria Cantwell.
- You can find the text of Sen. Wyden's bill and a fact sheet provided by Sen. Wyden's office in today's show notes.
- Also, I'll also tweet out the link to the bill and a brief summary of the bill.

Rent Relief Act of 2018

- Now Sen. Wyden's middle-income housing tax credit bill is a supply side effort to address the shortage of affordable rental housing.
- Now on the demand side, we have the Rent Relief Act of 2018.
- That bill was recently introduced in the House by Rep. Scott Peters of San Diego, Calif., and it would create a refundable renters' tax credit.
- Basically a demand side solution to affordable rental housing issues.
- Now the credit would be available to taxpayers who spend more than 30 percent of their gross income on rent and utilities.
- For taxpayers with gross incomes at or below \$25,000, the refundable tax credit would equal 100 percent of the amount they pay in rent and utilities that exceeds 30 percent of their gross income.
- Every dollar in excess of 30 percent of their gross income, they would get back as a refundable tax credit.
- Now this rent refundability percentage does decline as a renter's income rises.
- Taxpayers with incomes over 100,000 would not be eligible for a credit.
 - Less than \$25,000, or at or below \$25,000, 100 percent.
 - Over \$100,000 no credit.
 - And a variable credit percentage in 20 percent increments if you have incomes in between.
- Now households living in government-subsidized rental housing, they also would be eligible for a credit.
- If they pay more than 30 percent of their income on rent and utilities, they would be able to claim one month's rent as a refundable tax credit.
 - Basically one-twelfth of their annual rent paid.
- Now there is a limit on the amount of rent that would be eligible for a tax credit.
- The bill only applies to amounts paid in rent up to 150 percent or one-and-a-half times the fair market rent.
- Now this bill is the House companion legislation to a Senate version that was introduced by Kamala Harris of California earlier this year.
- I'll tweet out a link to the bill today.
- Now also, I'll talk more about the latest in affordable housing efforts in my Washington Report panel coming up at the Novogradac 2018 Credit and Bond Financing Affordable Housing Conference.
- That event isn't all that many weeks away.
- It's going to be held in New Orleans, Oct. 4-5.
- Now I'll invite you to join us and I'll post the registration link in today's show notes.
- And tweet out a link to that as well.



Section 199A Deduction

- Next, I'd like to discuss a new tax deduction – I guess it's not all that new, it's the guidance that's new – that could benefit some of our listeners and clients.
- I'm talking about the Section 199A deduction.
- And it's not that new because it was created under last year's tax reform legislation, and applies for the years 2018 through 2025.
- Now this income tax deduction is for up to 20 percent of qualified business income that's generated by certain non-corporate taxpayers, generally individuals.
- So the big question is what kind of income qualifies for the deduction?
- Now qualified income that can qualify can come from:
 - sole proprietorships,
 - S corporations,
 - partnerships,
 - trusts and estates,
 - dividends from investments in real estate investment trusts,
 - qualified cooperatives,
 - and income from publicly traded partnerships.
- What doesn't qualify?
- Well the deduction doesn't apply to income earned by C corporations.
- The deduction is only available for qualified trades or businesses, which means there are non-qualified trades or businesses.
 - There are limitations.
- Now the limit on qualified trade or business income is further limited by the amount of wages or depreciable assets held by the business.
- More specifically, this is the accountant in me, the limit is the lesser of 20 percent of qualified business income, the general deduction, or the greater of:
 - 50 percent of wages paid in connection with those trades or businesses, or
 - 25 percent of wages paid plus 2.5 percent of the unadjusted tax basis of depreciable business assets determined immediately after acquisition.
- So in essence you get this 20 percent deduction or, but that 20 percent deduction, I should say, is limited to, can't exceed 50 percent of wages paid, or 25 percent of wages paid plus 2.5 percent of the basis end-year assets.
- Now there are other limitations as to types of trades or businesses that are eligible.
- Or said differently, "specified service businesses" are not eligible for the deduction.
- And this is an area that is getting lots of attention.
 - For example, a specified service business includes law and accounting firms, health care providers, financial services and brokerage services, and consulting firms.
- Now there is a minor exception.
- Income from specified businesses can qualify for the deduction if the taxable income of the taxpayer is less than \$157,500 or double that if they're filing a joint return.
- Which means if you had two lawyers that are married and they're filing a joint return, then if their combined taxable income is less than \$315,000, then they could qualify for the deduction.
- Now what is this deduction about and why was it created?



- Well one reason that this provision was created in the 2017 tax bill was to bring the individual income tax rate on trade or business income closer to the lowered C corporation rate.
- As you know, tax reform brought the top effective corporate tax rate down from 35 percent to 21 percent.
- This 199A deduction gives individual taxpayers a chance to reduce their own income tax rate on trade or business income.
 - For example, the highest marginal tax bracket for individuals was reduced in the tax bill from 39.6 percent down to 37 percent.
- The 199A deduction could reduce the effectiveness of those income tax rates, or the effective tax rate of 37 percent, down to 29.6 percent.
- Now as I mentioned, the tax deduction is for tax years 2018 through 2025.
- That means taxpayers should review whether they qualify for the deduction for 2018.
- Now comes the purpose of talking about this now.
- The IRS has issued six proposed regulations so far.
 - And those regulations include guidance on:
 - the definition of qualified business income,
 - permissible ways to aggregate business activity, as well as
 - reporting requirements by partnerships with individual owners.
- Now that's a significantly high number of proposed regulations considering the tax law passed so recently and the guidance is nearly 200 pages long.
- Now these are proposed regulations.
- They're not yet finalized, but they're good indicators as to which direction the IRS is headed.
- So we at Novogradac are still digesting the proposed rules, as is the rest of the tax advising community.
- And we're also focused on how these rules, proposed rules, would affect our typical clients.
- Of particular note is the definition of specified service business.
- Specified service businesses are generally ineligible for the 20 percent deduction as noted above, or earlier.
- And as such, our developer clients want to know if their fee income will be eligible for the deduction.
- Now as with many provisions in the recently enacted tax law, the answer to this question is not clear.
- I ask that you look for additional guidance from Novogradac in the coming weeks on this, as well as other tax issues.
- Now if you can't wait, and in the interim, you can reach out to a Novogradac partner near you to discuss our current thinking on the matter.
- And if you don't know who that is, I'd encourage you to reach out to my partner Tom Boman in our St. Louis office.
- You can also read more about the 199A deduction, as well as other tax reform provisions in the 2018 Novogradac Tax Reform Resource Guide.
- This guide is available for sale on the Novogradac website and if you're a Novogradac client already, it's free for you.



OTHER NEWS

- Turning to other news, I have a brief update on the latest efforts to overhaul the Community Reinvestment Act, or CRA.
 - The Office of the Comptroller of the Currency, or OCC, is the regulator of national and commercial banks.
 - Now the OCC is expected to ask the public for input on CRA regulatory changes.
 - That request is expected to come this week.
 - Maybe today, maybe already by the time this podcast publishes.
 - Comptroller of the Currency Joseph Otting has been vocal about his intentions to overhaul CRA regulations, regulations that require banks to serve low- and moderate-income communities in which they operate.
 - The OCC oversees the CRA in partnership with the Federal Reserve and the Federal Deposit Insurance Corporation, or FDIC.
 - Now the Wall Street Journal reports that Otting has tried to work with the other two banking regulators on updating how they implement CRA, but there's been trouble getting consensus.
 - Thus, Otting is directing the OCC to move forward alone, with its own plan.
 - The first step of the plan is to structure a series of questions to stakeholders on Otting's priorities.
 - An OCC spokesman said that the OCC hopes the Federal Reserve and FDIC will eventually join a formal rule proposal.
 - I'll keep you posted on the OCC's progress with a CRA plan in future podcasts.
 - And I'll also tweet out once this advanced notice of proposed rulemaking is released.
- Now one matter that the three banking regulating agencies have agreed on is an interim rule that they released last week that will likely increase the bank appetite for private activity bonds.
 - The Federal Reserve, FDIC and OCC issued the interim rule in response to legislation that became law in May.
 - The three agencies must now treat a municipal obligation as a high-quality liquid asset if it is considered liquid *and is also* readily marketable and investment grade.
 - That allows banks to hold private activity bonds as high-quality liquid assets, which will increase the appetite for them.
 - And if the appetite goes up for banks' demand for these bonds, that should lower interest rates on housing bond debt.
- And speaking of housing, an interesting affordable housing bill is on the desk of Gov. Jerry Brown in California.
 - The bill would allow the creation of thousands of affordable homes at and around stations for Bay Area Rapid Transit, the mass transit train system in the San Francisco Bay Area commonly referred to as BART.
 - That legislation would require BART board of directors to establish guidelines for transit-oriented development for their land and require cities to update their zoning to be consistent with the guidelines.
 - Now it's expected that there would be, for instance, an effort to consolidate existing parking into structures and use some of the vast surface parking lots for affordable housing.



- Now there's another California affordable housing bill that was passed by the assembly and is being considered by the senate.
 - That bill would allow the state department of housing and community development to adjust its interest rates on loans that are combined with federal LIHTCs.
 - That would help make affordable housing development more feasible.
- Now the state Senate meets through Friday.
- And any bill that passes must be signed or vetoed by the governor by the end of September.
 - And if the governor doesn't act, then the legislation would become law.
- Wrapping up our Other News section, the Department of Energy recently released a report on wind power and specific references that show the importance of the production tax credit (PTC).
 - The report said federal wind power capacity grew by more than 7,000 megawatts in 2017 and said that that increase was largely driven by the looming phasedown of the PTC.
 - In other words, developers are launching projects to maximize the percentage credit they'll get.
 - The report predicted that annual wind power will continue to grow at a rapid clip for the next several years before the rate begins to decline.
 - This is due to the progressive reduction in the PTC under current tax law.
 - I've included a link to that report in today's show notes.
 - The report is titled the 2017 Wind Technologies Market Report.



RELATED RESOURCES

Middle-Income Housing Tax Credit Act of 2018

Middle-Income Housing Tax Credit Act of 2018
Bill Summary

Rent Relief Act of 2018

Rent Relief Act of 2018

Section 199A Deduction

2018 Novogradac Tax Reform Resource Guide
Email Tom Boman, CPA

Banking Agencies Interim Rule

Interim Rule: Liquidity Coverage Ratio Rule: Treatment of Certain Municipal Obligations as High-Quality Liquid Assets

California Housing Bills

California AB 2562, Relating to the multifamily housing program

California AB 2923, Relating to Bay Area Rapid Transit (BART) transit-oriented development

Department of Energy Report

2017 Wind Technologies Market Report