Summary: September 4, 2018

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, starts this week's podcast off with an assessment of possible timeframes when Congress might consider acting on a second round of tax reform and the possibility of executive action to index capital gains for inflation. Next, he focuses on financial institutions with a review of the opportunity for comment on ways to improve Community Reinvestment Act regulations, as well as an upcoming House Financial Services Committee hearing on the cost of multifamily housing regulations. Next, he discusses HUD news, notably news about fiscal year 2019 fair market rents. He closes out with an overview of a new Novogradac blog post that addresses common misconceptions about the low-income housing tax credit, and news about state legislation in California that could mean an increase in renewable energy property development over the next few years.

Summaries of each topic:

GENERAL NEWS

Tax Reform 2.0

- Starting with tax reform, Bloomberg Tax news is reporting that certain rank-and-file House Republicans are worried that a push to advance Tax Reform 2.0 this fall could hurt Republicans running for re-election in certain tossup states.
- Now as I've reported in previous podcasts, House Republicans have been eager to release a second round of tax cuts this fall to make last year's individual and small business tax cuts permanent.
- House GOP leaders were hoping that a push for permanent tax cuts would appeal to voters heading into the mid-term elections in November.
- However, approval ratings for the tax reform law enacted last year are lower than Republicans hoped.
- Various polls report approval ratings of about 40 percent or less.
- Now, Bloomberg Tax says that certain House Republicans are concerned that Tax Reform 2.0 might harm, not help the GOP in the upcoming election.
- And even if the House Ways and Means Committee does advance a tax bill, there's no guarantee that the full House would vote on it.
- Now a push for another round of tax cuts before November would not only be difficult to pass, but the inevitable pushback from Democrats could also be used against House Republicans trying to hold onto their seats.
- Now a couple of the GOP incumbents in tossup districts are also members of the tax-writing House Ways and Means Committee.
- Namely:
    - Carlos Curbelo of Florida and
    - Peter Roskam of Illinois, who's also chairman of the Subcommittee on Tax Policy.
- Now looking to the Senate side, Senate Republican Conference Chairman John Thune of South Dakota thinks that the odds of Congress considering tax legislation before November are poor.
- However, Sen. Thune said that a deal at the end of the year, when both sides are incentivized to negotiate, might be possible.
- But what's even more likely in the post-election lame duck session of Congress, more likely than Tax Reform 2.0, is a tax corrections bill.
- And that of course is a bill that could provide an opportunity to advance low-income housing tax credit (LIHTC), new markets tax credit (NMTC) and historic tax credit (HTC) provisions.
- As well as perhaps some technical corrections to the opportunity zones law.

Trump on Indexing Capital Gains

- Speaking of Republican tax priorities, President Donald Trump told Bloomberg last Thursday that he's considering executive action to reduce taxes on investment income by indexing capital gains to inflation.
- Here's how it would work.
    - Let's say an investor bought an asset in the year 2000 for $1 million.
    - And let's assume in 2018, the investor sold that asset for $5 million.

- Under current law, the investor would generally be taxed on the $4 million difference.
  - $5 million minus the $1 million paid in 2000.
- Now the plan that Trump's considering would adjust that base-year value of $1 million for inflation.
- So, the $1 million asset value would be adjusted to about $1.4 million in 2018.
- As such, the taxable gain would be $3.6 million, or $400,000 less than the $4 million under current rules.

- Now conservatives do support indexing capital gains to inflation, and they argue that such a move would boost the economy.
- And Treasury Secretary Steven Mnuchin has said that his department is looking into a capital gains cut if Congress doesn't take legislative action.
- Now Democrats, probably not surprised, oppose indexing capital gains to inflation and they say that Treasury does not have authority to cut capital gains on its own without Congressional action.
- Now Congress is unlikely to pass legislation to index capital gains this year.
- I should probably say they're highly unlikely to do so.
- That's because their ability to do so would need the support of some Senate Democrats.
- Now whether the Trump administration will try to index capital gains through executive action does remain to be seen.
- Now one of the tax incentives created under last year's tax bill that would be affected by a change in capital gains is the opportunity zones provisions.
- One of the key benefits of the opportunity zones incentive is the ability to temporarily defer capital gains that are re-invested in a qualified opportunity fund.
- But, there is also a provision that allows an elimination of tax on appreciation if you hold the asset for 10 years.
- Now to the extent that the basis of an asset was adjusted for inflation in order to determine your calculation of any gain on sale, then the benefits of stepping an asset up to fair market value after 10 years by investing in opportunity zones, wouldn't be nearly as great.
- And we've not done the extra calculations as to the magnitude of the potential impact on yield.
- And to the extent that it seems that this adjustment, this inflation indexing of basis per capital gains, that some sort of executive action's not going to happen, then we will run such calculaitons here at Novogradac.
- In the meantime, we'll wait and see.
- Now again, no legislative or executive actions have been enacted yet.
- And we'll keep an eye on it and report on it in future podcasts as conditions warrant.

OCC Seeks Comments on Modernizing CRA Regulations

- Next, I want to give you an update on news that I reported on in last week's podcast related to financial institutions.
- I had said last week that the Office of the Comptroller of the Currency, or the OCC, was planning to release a proposal on modernizing the Community Reinvestment Act, or CRA.
- Well, right after I recorded last week's podcast, the OCC <u>did</u> indeed publish its advanced notice of proposed rulemaking in the Federal Register.

- Now in the Federal Register notice, the OCC sought comments, or asked for comments on ways to modernize CRA regulations in order to better serve communities.
    - Now the CRA encourages insured depository institutions to meet the credit needs of their communities, including low- and moderate-income neighborhoods.
- And as many of you know, the CRA is often an important factor in LIHTC and NMTC investments.
- Developments in hot CRA markets can often command a higher price per credit than those in areas that aren't as hot for CRA markets.
    - So if you're looking for equity pricing in a hot market, it's likely to be higher than your equity pricing in a not-so-hot market.
- As such, any revisions to CRA regulations could affect both equity pricing, as well as the demand for LIHTCs and NMTCs across America, and in particular communities.
- Now the OCC's notice last week invites stakeholders to comment on topics in a variety of areas, such as:
    - increasing lending and services to people and areas most in need,
    - clarifying and expanding the types of activities eligible for CRA consideration, and
    - improving the timeliness of CRA regulatory decisions.
- The OCC said that stakeholders' comments may inform specific policy proposals or future rulemakings.
- So if you have any ideas or comments on how CRA regulations should be improved, now is the time to share them.
- Comments are due 75 days after publication of the notice in the Federal Register.
- And you can go to today's podcast show notes for the email where you can send your comments.
    - I'll also tweet out that email.
- Now there is also a link to a Notes from Novogradac blog post in today's show notes on how CRA changes could affect demand for the LIHTC and NMTC.

House Financial Services

- Now let's stay on the topic of financial services, or more specifically, the House Financial Services Committee.
- The Subcommittee on Housing and Insurance is holding a hearing this Wednesday, Sept. 5 on "The Cost of Regulation on Affordable Multifamily Development".
- The hearing's going to focus on the various federal and state and local regulations and polices that affect affordable multifamily housing development.
- Now this is going to be a one-panel hearing with four witnesses.
- The witnesses are:
    - Ms. Sue Ansel. Sue is president and chief executive officer of Gables Residential, and speaking on behalf of the National Multifamily Housing Council.
    - Also, Mr. Steven E. Lawson, chairman of The Lawson Companies, speaking on behalf of the National Association of Home Builders.
    - And we have Ms. Erika Poethig, vice president and chief innovation officer at The Urban Institute.
    - And Mr. James H. Schloemer, chief executive officer of Continental Properties Company Inc.

    - Now the hearing announcement that was sent out by the committee majority staff, noted that numerous studies suggested housing trends in the United States will dramatically change for the next 25 years as more individuals opt to rent housing rather than become homeowners.
    - Now the studies, this memo notes, suggest that this trend will accelerate for seniors, young professionals and working families.
    - Now the committee announcement also observes that recent studies suggest that multifamily housing development can be subject to a significant array of regulatory costs, including a broad range of fees, standards and other requirements that are imposed at different stages of the development and construction process.
    - Now all of our developer listeners certainly are aware of that.
- Now the stated purpose of the hearing is to identify regulatory barriers that inhibit or prevent the development of affordable housing, as well as to assess how these barriers affect the cost of building and maintaining affordable housing, and, perhaps most importantly, to offer suggestions on how such policies should change to meet future demand for such units.
- This is an important hearing and we are going to report on the outcome of the hearing in next week's podcast.

FY 2019 FMRs

- So let's stay on the topic of housing, and I want to note that HUD last Friday published fiscal year 2019 fair market rents, or FMRs.
- The new FMRs go into effect Oct. 1, that is unless HUD receives a request for re-evaluation of a specific FMR.
- HUD also responded to a Federal Register notice from May on the use of FMR surveys in calculating Renewal Funding Inflation Factors.
    - HUD plans to continue, they said, using the surveys in calculating Renewal Funding Inflation Factors.
- Now comments on the fiscal year 2019 FMRs or requests for re-evaluation must be submitted by Oct. 1.
- And if you are interested in considering a request for re-evaluation for a particular jurisdiction, I encourage you to contact my partner, Brad Weinberg, as soon as possible.
- I'll include his contact information in today's show notes, as well as tweet out a link.
- I'll also include in the show notes a link to the fiscal year 2019 FMRs.
- Now Novogradac is analyzing FMR changes, and I'll report trends in a future podcast.
- That said, my partner Thomas Stagg couldn't help but spend his Labor Day weekend analyzing these FMRs, and he does have some initial observations he wanted me to share with you.
- He noted that:
    - The FMRs for 2019 continue the trend of increasing limits.
        - FMRs increased by 2.49 percent ($23) on average.
    - Now this is slightly less than the increases in 2018, which were 3.03 percent ($26).
    - Now over 70 percent of the areas saw an increase in FMRs.
    - But while this means the overall trend was up, around 29 percent of the areas did have a decrease in rents.
    - Now in 2018 by comparison only 22 percent of areas had a decrease.
    - Metropolitan areas did tend to have better increases than non-metropolitan areas.

  - The average increase for metropolitan areas was over 3.5 percent, whereas non-metropolitan areas had an average increase of about 1.7 percent.
- Like I said, more details in a future podcast, and if you have any questions in the interim, please reach out to my partner, Thomas Stagg.

OTHER NEWS

- In other news, the Urban Institute recently released a series of reports on the LIHTC.
- Now I encourage you to read a blog post by my colleague Peter Lawrence on what the Urban Institute report got right about the LIHTC and what the report got wrong.
- Now it's important to note that I agree with much of Urban's reports, including that the LIHTC is crucial to the nation's safety net and deserves scrutiny as the largest affordable rental housing production program.
- However, there are a few misleading and inaccurate arguments that I wanted to point out.
- For example, one of the Urban Institute reports suggests that LIHTC units exacerbate poverty concentration and racial segregation.
- On the contrary, some research has shown that LIHTC properties are associated with declines in racial segregation.
- Furthermore, studies claiming a connection between increased poverty rates and the location of LIHTC developments have flawed methodologies, such as failing to distinguish new construction from acquisition-rehabilitation when evaluating poverty concentration and racial segregation.
- As always, it's important to address any misinformation, especially when it comes to important programs such as the LITHC.
- A link to Peter's blog post is in today's show notes, as well as I'll tweet it out.
- Now let's turn to state news.
- The California state legislature last week approved a bill to adopt a zero-carbon resources policy.
- Now if Gov. Jerry Brown signs the bill, 100 percent of all retail sales of electricity to California end-users and 100 percent of electricity procured to serve all state agencies must be carbon-free by Dec. 31, 2045.
- If enacted, the bill will certainly mean significantly increased interest in building more wind and solar properties.
- Now another California state bill would require the state to procure 4,250 megawatts of qualified renewable energy resources, meaning certain energy resources that are eligible for specified federal tax credits.
- That minimum must include at least 2,500 megawatts of wind and solar energy.
- Now if these renewable energy bills are enacted, we can expect a big push for wind and solar property development in California before the investment tax credit (ITC) and production tax credit (PTC) expire.

RELATED RESOURCES

OCC Modernizing CRA Regulations

Advanced Notice of Proposed Rulemaking: Reforming the Community Reinvestment Act Framework
OCC Kickstarts CRA Regulatory Reform Efforts; Could Impact LIHTC and NMTC Investment
Email comments to regs.comments@occ.treas.gov

FY 2019 FMRs

Federal Register Notice: Fiscal Year 2019 FMRs
Email Brad Weinberg at Brad.Weinberg@novoco.com

Notes from Novogradac

What a Series of New LIHTC Reports Get Right…and Wrong About Housing Tax Credits

California Energy Legislation

California Renewables Portfolio Standard Program: Emissions of Greenhouse Gases (S.B. 100)
California Renewables Portfolio Standard Program (A.B. 893)

PastForward 2018

PastForward National Preservation Conference