NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: September 23, 2014

In this week's episode of the Tax Credit Tuesday podcast, Michael J. Novogradac, CPA, discusses a continuing resolution that will fund government operations until Dec. 11. He also notes several critical issues facing Congress, provides an update on tax extenders and reviews the Tax Technical Corrections Act of 2014. In the low-income housing tax credit segment, he discusses a couple highlights from the IRS's updated LIHTC Audit Technique Guide. In the new markets tax credit segment, he congratulates the 2014 Community Development Award Winners, and alerts listeners that Nebraska will soon begin accepting applications for its state NMTC. In the historic tax credit section, he examines the Creating Prosperity Through Preservation Act that was recently introduced in the House. Finally, in the renewable energy tax credit segment, he reports on renewable energy tax credit comments made during last week's Senate Finance Committee hearing.

Summaries of each topic:

GENERAL NEWS

Congress Passes Continuing Resolution

- In general news, last week, Congress passed a continuing resolution that will fund government operations at fiscal year 2014 levels until Dec. 11.
- This stop-gap measure will keep the government running until after the mid-term elections.
- This will allow Congress the opportunity to pass another funding package when lawmakers reconvene in mid-November.
    - Reports indicate that House Appropriations Chairman Hal Rogers and Senate Appropriations Chair Barbara Mikulski want to develop a long-term omnibus spending bill.
    - However, it's widely expected that lawmakers will pass another continuing resolution that runs until late-February or early March, when they do return in November.
- The House is slated to adjourn for the year on Dec. 12, just after the current resolution is set to expire.
- Action on a budget resolution is just one of several critical issues facing Congress in the coming months.

Critical Issues Facing Congress

- The other issues lawmakers are facing are likely to dominate the early months of the 114th session of Congress, which will start in January.
- First, the law that suspended the debt ceiling is currently slated to expire March 15. Remember the debt ceiling debates?
    - This timing is somewhat fluid, because extraordinary measures can be used to take us beyond that date.
    - And if you factor in IRS individual income tax collections in April, this deadline of the debt ceiling, through the use of extraordinary measures, could be extended potentially significantly longer, into the summer.
- Second, the legislation that sets the formula that determines the reimbursement rate for doctors under Medicare and Medicaid, more commonly referred to as the "doc fix" issue, expires on March 31.
- Third, technically Congress is required to pass a budget by April 15, but the statutory date for a budget resolution is almost always ignored.
    - The budget resolution is key, however, if the Republicans take the Senate and decide to include budget "reconciliation" instructions in the budget resolution to make it easier to pass tax and/or entitlement reforms.
- The last major issue budget issue facing Congress in the first half of 2015 is reauthorizing the Highway Trust Fund by May 31.
- It is going to make tax reform a particularly heavy lift early next year.

Tax Extenders Update

- In the meantime, there does continue to be indications that Congress will make progress on tax extenders after the November elections during the lame duck session.
- Last week the House passed the Jobs for America Act, which includes some tax extender provisions, though none related to the low-income housing tax credit, new markets tax credit or renewable energy tax credits.

    - The bill was introduced Monday by House Ways and Means Chairman Dave Camp and was passed by the House on Thursday.
- In addition to bonus depreciation, the bill would make permanent:
    - the credit for research and experimentation,
    - R&D (research and development),
    - business expensing in Section 179 of the tax code, and
    - enhanced benefits for S corporations.
- At the time of this recording, a Democratic-controlled Senate isn't expected to take up the House's jobs bill.
- However, lawmakers in both houses of Congress and on both sides of the aisle continue to indicate tax extenders will be taken up in the lame-duck session.
- There is some thought that the Senate EXPIRE Act, its two year extension of certain tax provisions, would be the main vehicle and there would be debate over what, if any, of the House permanent extensions would be incorporated into a final tax extenders package.

Technical Corrections Bill

- In related news, lawmakers last week introduced another package of tax provisions as part of a technical corrections bill.
- Ways and Means Chairman Camp and Ranking Member Sander Levin say their bill addresses the application of tax laws and clarifies Congressional intent of those laws.
    - The Senate Finance Committee approved similar legislation earlier this year.
- The most relevant section for listeners of this podcast is section 1104 of the bill, which addresses the treatment of renewable energy grants.
    - The provision clarifies that grants in lieu of energy credits under section 1603 are <u>not</u> includible in alternative minimum taxable income (including adjusted current earnings of a corporation).
    - This treatment is consistent with the effect energy tax credits themselves have on alternative minimum taxable income.
- The Tax Technical Corrections Act of 2014 was introduced as H.R. 5528 and can be found online at www.novoco.com/hottopics.
- A technical explanation of the bill prepared by the staff of the Joint Committee on Taxation is also posted there.
- For questions about the tax treatment of Section 1603 renewable energy cash grants, I encourage you to contact my partner Stephen Tracy at 415-356-8000.

LOW-INCOME HOUSING TAX CREDIT NEWS

IRS Releases Updated LIHTC Audit Technique Guide

- In low-income housing tax credit (LIHTC) news, the IRS last week released its updated LIHTC Audit Technique Guide.
- The Audit Guide provides guidance for IRS examiners in auditing LIHTC properties.
  - The guide was last updated in 1999.
- This new version reflects feedback on a draft that was released for public comment last December.
  - As you may recall, the LIHTC Working Group submitted comments on the draft guide and I'm pleased to report that many of the comments were incorporated into the revised version.
- There are numerous changes in the Audit Guide, so today I will just touch on a couple to give you a sense of the headlines.
- First, in Chapter 8, which discusses eligible basis and includable costs, the revised Guide clarifies that a deferred developer fee may be documented by a note or, more importantly, may be documented by another document.
  - The draft Guide only referred to a deferred developer fee note with regard to documenting a taxpayer's intent to pay a deferred developer fee.
  - The inclusion of "other documents" broadens the scope of documentation considered by the IRS as evidence of a taxpayer's intent to pay a deferred developer fee.
- Second, in Chapter 12, a note has been added to the section on casualty losses in federally declared disaster areas.
- This footnote clarifies that tax credits claimable by virtue of issuing taxes and bonds are also eligible for the relief.
- The casualty loss relief provided in IRS Revenue Procedure 2007-54.
  - This helps clarify the ambiguity of the language in the Revenue Procedure regarding its applicability to properties that have received credits through the volume cap.
  - This was a change recommended by the LIHTC Working Group.
- Again, these are just a couple of the many revisions made to the guide.
- The Guide was released by the IRS in tandem with IRS LIHC Newsletter #56.
  - This newsletter features a brief summary of the changes as well.
- You can find both the revised guide and the LIHC Newsletter at www.taxcredithousing.com.
- I also invite you to keep an eye out for a detailed analysis of the audit guide changes in the November issue of the Novogradac Journal of Tax Credits.
  - The LIHTC Working Group is carefully analyzing the changes and will discuss them in detail in that upcoming issue.
- In the meantime, please contact my partner Stacey Stewart in our Dover Ohio, who heads the LIHTC Working Group, with questions.
- We are always open to more members, so if you are interested in joining, give Stacey a call as well.

NEW MARKETS TAX CREDIT NEWS

2014 Community Development Award Winners

- In new markets tax credit (NMTC) news, as we rapidly approach the Oct. 1 due date for the next round of NMTC applications, I'd like to start our NMTC discussion by congratulating the winners of the 2014 Community Development Awards.
- These annual awards are presented by the Novogradac Journal of Tax Credits for exceptional achievement in community development.
- Eleven winners and honorable mentions were recognized this year in five categories:
    - Small business
    - Operating business
    - Real estate
    - Metro
    - Non-metro
- In the Small Business category, this year's winner is Tec Centro.
    - Community First Fund provided NMTC allocation to build a bilingual workforce training center in Lancaster, Pa.
- The Operating Business category winner is Recleim SC LLC, an appliance and electronics recycling center in Graniteville, South Carolina.
    - The CDEs were AMCREF Community Capital LLC and SunTrust Community Development Enterprises LLC.
- The Real Estate category winner is Triangle Plaza Hub.
    - GS New Markets Fund LLC, Low-Income Investment Fund New Markets LLC and National Community Fund I LLC provided allocation for the mixed-use commercial and community facility in the South Bronx, New York.
- For the metro category, the winner is the Broadway Marketplace at the George Washington Bridge in New York City.
    - Low Income Investment Fund, DV Community Investment LLC and GS New Markets Fund contributed allocation to revitalize the George Washington Bridge Bus Station with new retail space, a supermarket and community services.
- In the last category, the non-metro winner is Makah Dock in Neah Bay, Wash.
    - The National Development Council provided allocation to help the Makah Tribe expand its fishing industry by replacing a severely damaged fishing pier.
- Additional information about awardees and the honorable mentions in each of these categories can be found online at www.novoco.com/awards.
- Winners and honorable mentions will be recognized at a special ceremony during the Novogradac New Markets Tax Credit Conference in New Orleans next month.
- The conference will be held at the Roosevelt Hotel on Oct. 23 and 24.
- I invite you to join us.
- Register at www.novoco.com/events before Sept. 30 and you'll qualify for the early bird registration rate.

Nebraska Department of Revenue Accepting State NMTC Applications

- In state NMTC news, I have an update out of Nebraska.
- On Oct. 1, the Nebraska Department of Revenue will begin accepting applications from CDEs for the state's NMTC program, known as the New Markets Job Growth Investment Tax Credit.

- I do note though, that any application received prior to Oct. 1, 2014 will be deemed to have been received on Oct. 1, 2014.
- The state NMTC allows individuals, corporations, estates and trusts, financial institutions, and insurance companies to claim nonrefundable, nontransferable tax credits for investments in a qualified community development entity.
- The program provides a credit equal to 39 percent of the qualified investment made.
    - Like the federal NMTC, the state tax credit has a seven-year tax credit period.
    - The program operates under a $15 million annual cap with no individual transaction cap.
    - The Nebraska Department of Revenue authorizes the issuance of QEIs.
        - Because it has made larger issuances in previous rounds, the Nebraska Department of Revenue has roughly $12.4 million in QEIs available for this round.
- Application forms are available at the Nebraska Department of Revenue's website at www.revenue.nebraska.gov.
- For questions about using state NMTCs, I encourage you to contact my partner Owen Gray at 415-356-8000.

HISTORIC TAX CREDIT NEWS

CAPP Act Introduced in the House

- In historic tax credit (HTC) news, last week, Congressman Aaron Schock of Illinois, a member of the House Ways and Means Committee, and three bipartisan colleagues introduced legislation to expand and improve the HTC program.
  - The other cosponsors of the bill are
    - Earl Blumenauer of Oregon
    - Mike Kelly of Pennsylvania and
    - Ron Kind of Wisconsin.
- The package is known as the Creating American Prosperity Through Preservation, or CAPP Act.
- As listeners may know, the provisions proposed in the act are a priority for the historic preservation community.
- A similar package was introduced in the Senate in June 2013 by Sen. Ben Cardin of Maryland.
  - At the time of this recording, the Senate measure has seven cosponsors - five Democrats, one Republican and one independent.
- The measure has five primary functions:
  - It increases the HTC from 20 percent to 30 percent for projects with $5 million or less in qualified rehabilitation expenditures, thus making it easier for smaller projects to benefit from the HTC and close financing gaps,
  - It expands the 10 percent credit for the rehabilitation of non-historic buildings to include buildings that are at least 50 years old, versus the current pre-1936 provision,
  - It eliminates federal taxation on the proceeds of state HTCs transferred through partnerships and sold as state tax certificates, basically dealing with the income tax effect or lack of deduction effect of state tax credits,
  - It provides a 2 percent HTC boost for properties that make energy-efficient renovations.
  - It eases rules that limit the ability to lease HTC properties to tax-exempt and government entities.
- The proposed legislation would make the HTC easier to use and expand its impact in economically disadvantaged areas.
- Unfortunately, in light of the current political conditions in Washington, D.C., it’s relatively certain that the bill, both the Senate bill and the House version, will need to be reintroduced when the 114th session of Congress convenes in January.

RENEWABLE ENERGY TAX CREDIT NEWS

Senate Finance Committee Discusses Energy Provisions

- In renewable energy tax credit (RETC) news, I'd like to provide a few highlights from last week's Senate Finance Committee hearing about energy provisions in the nation's tax code.
- Discussion during the hearing covered everything from the environmental effects of the United States' energy consumption to how the production and investment tax credits (ITCs) could be affected by the tax reform process.
- In his opening statement, Committee Chairman Ron Wyden said that for the United States to be a leader in the energy industry, it must lead in tax reform.
    - In that context, he noted that the temporary and uncertain nature of renewable energy incentives like the ITC and the production tax credit (PTC) are harmful for the renewable energy sector.
- Dr. Gilbert Metcalf, professor of Economics at Tufts University, agreed.
- He noted boom and bust cycles caused in the wind sector by the recent two-year extensions of the PTC.
    - Dr. Metcalf told the committee that greater certainty about the PTC would smooth out investments and minimize bottlenecked manufacturing, which delays development of renewable energy.
- During his testimony, Bloomberg New Energy Finance's Ethan Zindler noted the success of the PTC.
- He also noted that while the PTC is currently expired, a language change contained in the 2013 Taxpayer Relief Act has helped to sustain the wind industry this year and will continue into 2015, you have heard about that quite a bit on our podcasts.
    - During his remarks Zindler also predicted a dip in energy production beginning in 2016 as the ITC "steps down" from a 30 percent credit to 10 percent credit.
    - As you know, that happens for property placed in service after Dec. 31, 2016.
- Zindler suggested adopting the same "placed in service" language used for the PTC could help make the decline less steep.
- He is suggesting replacing the "placed in service language" with "start of construction language".
- As long as construction has started by the end of 2016, a project would still be eligible for the 30 percent tax credit.
- Not everyone at the hearing was in favor of extending the PTC.
    - Don Nickles, former U.S. Senator and chairman and CEO of the Nickles Group LLC, said that the PTC should remain expired.
- You can watch a recording of the hearing and read the witness's testimony online at www.finance.senate.gov.