NOVOGRADAC
TAX CREDIT TUESDAY
PODCAST

Summary: Oct. 1, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about the stopgap funding bill that prevented a government shutdown and will keep the government funded through Nov. 21. Then he shares highlights from the Novogradac 2019 Historic Tax Credit Conference in St. Louis, including insights from Sen. Bill Cassidy's keynote address. After that, he discusses the summary of the annual historic tax credit investment report by Rutgers University and the National Parks Service, and shares guidance updates from the IRS on the Section 199A deduction. He then shares insight on the draft IRS Form 8997 for opportunity fund investments, and news on HUD and FHA incentives for hospitals and care facilities in opportunity zones. Next, he discusses a comment letter that was submitted by a group of state economic development officials to the IRS on proposed rules for investing in qualified opportunity funds. Finally, he shares news on amendments to the Missouri state historic tax credit program.

Summaries of each topic:

GENERAL NEWS

Continuing Resolution

- Today is the first day of fiscal year 2020.
- As you've noticed, the federal government has *not* shut down.
- Before recessing for two weeks, Congress passed and the president signed a continuing resolution to keep the government funded through Nov. 21, a little more than seven weeks from now.
- The stopgap funding bill gives Congress more time to negotiate and finalize fiscal year 2020 spending bills.
- A fiscal year 2020 omnibus bill could serve as a vehicle for tax legislation.
- However, House Speaker Nancy Pelosi's announcement of an impeachment inquiry has the potential to take up the attention of Congress for much of the next couple of months, potentially making it difficult to pass significant legislation.
- I'll keep you posted in future podcast episodes on those negotiations and whether those negotiations include tax extenders or other tax incentive legislation.

HTC Conference

- I saw many of you in St. Louis last week at the Novogradac 2019 Historic Tax Credit Conference.
- Those of you who were there heard a keynote address from Sen. Bill Cassidy of Louisiana.
- Sen. Cassidy, as you know, is largely responsible for leading efforts to preserve the 20 percent federal historic tax credit during tax reform in late 2017.
    - Sen. Cassidy has long been a champion of the historic tax credit and has consistently been the leading voice in the Senate to support and promote the credit.
- He is expected to introduce the Historic Tax Credit Growth and Opportunity Act of 2019 in the Senate soon.
    - A similar bill has already introduced in the House.

- At our conference in St. Louis, Cassidy emphasized that the historic tax credit is part of a larger picture of economic growth.
  - He said the credit is crucial because it helps restore prosperity to *all* of the country.
  - Rural, urban and all geographic areas.
  - The Senator emphasized that the tax credit can especially help in areas that are struggling economically and can help make it possible for young adults to stay in the communities in which their parents live.
- He also reminded attendees of their role in communicating the importance of the credit to federal elected officials.
  - Sen. Cassidy told conference attendees to connect with members of the House and Senate and to tell them the stories of the historic, catalytic properties that were preserved and enhanced by the historic tax credit.
  - That's a good reminder for all of us in the historic tax credit world, one that was echoed several times during the conference.
  - While the credit is an indefinite part of the tax code, we need to inform elected officials about properties in their districts and states that were improved by the credit.
  - They may know of the building, but unless we tell them, they may not know the historic tax credit was a fundamental part of the development.
- As I said earlier, Cassidy said he will soon introduce the HTC-GO Act.
- We expect the Senator will be joined by the following Senators:
  - Sen. Ben Cardin, a Democrat of Maryland,
  - Sen. Susan Collins, a Republican of Maine, and
  - Sen. Maria Cantwell, a Democrat of Washington.
  - Two Democrats. Two Republicans. Bipartisan.
- Earlier at the conference, during our Washington Report session, there was a fair amount of discussion about the impact of possible impeachment hearings on tax legislation.

- That's important because the HTC-GO bill or provisions of it could still be part of legislation that includes tax provisions.
- We're nearing the end of the year and there aren't many must-pass pieces of legislation that can include tax provisions.
  - Also, the new markets tax credit is approved only through this year and that credit is often used with historic tax credits.
  - So, historic preservation advocates have a vested interest in an extension of the new markets tax credit.
- There were other significant issues discussed during the conference.
- During one panel, Brian Goeken of the National Park Service shared the latest on staffing.
  - Brian said the department in the NPS that handles historic tax credits currently has about 15 employees, however it's designed for 24.
  - In other words, they are understaffed.
  - That has led to some delay in reviews of historic tax credit applications.
  - Brian said the additional nine employees should be hired soon and that many of them will review applications.
- Brian also said that the number of Part 2 applications is down about 10 or 15 percent for this fiscal year.
  - He attributed that largely to a rush to get in applications before tax reform during the previous fiscal year.
- In an equity panel, we heard how changes in the historic tax credit have affected investors.
  - All members of our equity panel said that the tax reform change that requires the credit to be taken ratably over five years hasn't really affected the *appetite* for the credits.
  - The *prices* have been affected, but not the *appetite*.
  - However, all five speakers said that the five-year provision means investors need to be educated that their internal rate of return will be significantly less in the first year.

- Also, interestingly, none of the panel members said the Base Erosion Anti-Abuse Tax, or BEAT, has affected their investments.
- Many speakers at the conference said that the historic tax credit has survived tax reform very well.
  - There have been changes in the structure of the credit, but there seems to be a feeling that the historic preservation world has adapted well.
- I would like to thank everyone who attended the conference and again thank Sen. Cassidy for taking time to share his thoughts with us.

Rutgers/NPS Annual HTC Report

- On the topic of the historic tax credit, Rutgers University and the National Park Service last week released their annual report on the impact of the federal historic tax credit.
- According to the report, properties financed by federal historic tax credits in fiscal year 2018 created nearly 130,000 jobs and spurred $7.7 billion in rehabilitation investment.
- In the same timeframe, the National Park Service certified more than 1,000 historic rehabilitation projects, representing $6.9 billion in rehabilitation costs.
- Where are these investments going?
- About 51 percent of certified rehabilitation projects were in low- and moderate-income census tracts.
  - And 75 percent were in economically distressed areas.
- This illustrates how the historic tax credit provides significant benefits to economically underserved areas.
- It’s estimated the historic tax credit program has yielded $35.9 billion in federal tax receipts since its inception, compared to $30.8 billion allocated.
- In essence, the program more than pays for itself.

199A Safe Harbor

- Now for some guidance news.
- The IRS last week provided some clarity about the new 20 percent business income deduction, also known as the Section 199A deduction.
- Essentially, the 2017 tax reform bill created the 20 percent Section 199A deduction to lower the effective tax rate on trader business income that flows to individuals.
- As you know, the 2017 tax reform legislation dropped the C corporation tax rate from 35 percent to 21 percent.
- The 20 percent Section 199A deduction lowers the top effective tax rate on trader business income flowing to individuals from 37 percent to 29.6 percent.
- The IRS said it was aware that some taxpayers were unsure of whether an interest in rental real estate rises to the level of a trade or business for purposes of the Section 199A.
    - That's certainly a question of interest for many of our clients and listeners.
- In response to this uncertainty, Treasury and the IRS issued proposed revenue procedure in January of this year to provide a safe harbor.
- The IRS finalized that proposed revenue procedure last week.
- The IRS affirmed that mixed-use property can, indeed, be treated as a single real estate enterprise under Section 199A.
    - Triple net leases are still generally excluded from this safe harbor.
- For purposes of this revenue procedure, mixed-use property is defined as a single building with both residential and commercial units.
- The IRS outlined four conditions in the revenue procedure that must be satisfied annually in order to utilize the safe harbor:
    - First, separate books and records must be maintained to reflect income and expenses for each rental real estate enterprise.
    - Second, rental real estate enterprises that are newer than four years must have 250 hours or more of rental services performed each year.

- The third condition for the safe harbor is that the taxpayer maintain contemporaneous records of services performed.
- And fourth, the taxpayer or relevant pass-through entity must attach a statement to a timely filed tax return for each taxable year of the safe harbor.

- The revenue procedure applies to taxable years ending after Dec. 31, 2017.
- I'll include a link to the revenue procedure in today's show notes.
- If you have any questions about whether this safe harbor applies to you, please contact my partner Dirk Wallace.
- Also, the Novogradac LIHTC Working Group plans to submit a comment letter on the safe harbor.
- I'll include a link to the LIHTC Working Group homepage in today's show notes.

Other News

- In other news, the IRS last week published a draft of Form 8997.
  - Form 8997 will be used by an investor in a qualified opportunity fund to inform the IRS of the qualified opportunity fund investments and deferred gains held at the beginning and end of the current tax year.
  - The investor will also use the form to let the IRS know any capital gains deferred and invested in a qualified opportunity fund and qualified opportunity fund investments disposed of during the current tax year.
  - A link to the draft form is in today's show notes.
- Sticking with the topic of opportunity zones, HUD and the Federal Housing Administration last week announced mortgage insurance incentives for properties located in opportunity zones.
  - Incentives include:
    - priority in underwriting queues for Section 232 residential care facilities,
    - Reduced FHA mortgage insurance application fees for Section 232 and Section 242 hospitals and
    - Annual, rather than the up-front, mortgage insurance premiums for Section 232 facilities in qualified census tracts or difficult development areas under the low-income housing tax credit.
    - The notice is effective immediately for all new mortgage insurance applicants.
- Also, a group of state economic development officials submitted a comment letter to the IRS on proposed rules for investing in qualified opportunity funds.
  - The letter touches on several topics, including:
    - The substantial improvement requirement,
    - Clarification of rolled-over opportunity fund capital, and
    - Reporting requirements for opportunity funds.

- The group also asked for the opportunity to amend opportunity zones boundaries.
  - Officials want to supplement the current opportunity zones with a small number of additions or a hybrid approach.
- The letter and its recommendations will be discussed at the Novogradac 2019 Opportunity Zones Fall Conference in Chicago, Oct. 24-25.
- If you haven't registered for the event yet, I invite you to do so.
- I'll include a registration link in today's show notes.

- In state news, Missouri has amended its state historic tax credit program.
  - The Missouri Department of Economic Development made several amendments, including:
    - Updates to program definitions,
    - Clarifications on the application process,
    - Clarifications on the treatment of developer fees and general contractor requirements
    - And more.
  - The amendments become effective Nov. 30.
  - If you have any questions about using the Missouri state historic tax credit, please contact my partner Mike Kressig in our St. Louis office.

RELATED RESOURCES

HTC Report

Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2018

Section 199A Safe Harbor

Revenue Procedure 2019-38

Email Dirk Wallace

Novogradac LIHTC Working Group

Draft Form 8997

Draft Form 8997

HUD/FHA Notice

H Notice 2019-10

OZ Comment Letter

State Economic Development Officials OZ Comment Letter

Missouri HTC Amendments

Missouri Register Orders of Rulemaking, Oct. 1, 2019

Novogradac 2019 Credit and Bond Financing for Affordable Housing Conference

Register