NOVOGRADAC TAX CREDIT TUESDAY PODCAST

Summary: Oct 8, 2019

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, talks about draft forms and instructions for forms 1040 and 1099-B relating to opportunity zones, and the White House Opportunity and Revitalization Council's website for stakeholders that launched last week. Then he provides an update on when we can expect updated regulations for opportunity zones to be released, and mentions that issues concerning updated regulations have been discussed in a blog post and will be discussed in an upcoming conference. Next he shares highlights from the Novogradac 2019 Credit and Bond Financing for Affordable Housing Conference including Developments of Distinction award winners and important information from panel discussions and sessions including a case study of the average income test. After that, he discusses new model forms for state compliance agencies released by the National Council of State Housing Agencies, and upgrades in how much Freddie Mac and Fannie Mae can retain in capital reserves as a step towards moving them out of conservatorship. Then, he talks about the updated new markets tax credit application and FAQ released by the CDFI Fund, and legislation that was introduced to reinstate the Section 45L credit that expired at the end of 2017. Finally, he talks about a Wisconsin bill that was introduced to increase the tax benefit for investors in qualified opportunity funds.

Summaries of each topic:

GENERAL NEWS

Opportunity Zones Forms, Update

- Let's start with some opportunity zones news.
- The IRS last week released draft forms and draft instructions for two tax forms that relate to opportunity zones.
    - The first draft form is of Schedule D for the individual Form 1040, which covers capital gains and losses.
        - The draft includes new instructions for the disposal of a qualified opportunity fund, or QOF, investment.
        - The instructions also tell taxpayers to use Form 8997 to report dispositions of QOF investments.
        - You may recall that I talked in more depth about Form 8997 in last week's Tax Credit Tuesday podcast.
    - The other draft form is 1099-B, which addresses proceeds from broker and barter exchange transactions.
        - That form is for calendar year 2020, while the Schedule D draft is for 2019.
        - The Form 1099-B adds a box for brokers to check if they received proceeds from the sale of an interest in a QOF.
        - The instructions tell any broker who files a Form 1099-B that they also must furnish a statement to the recipient.
            - Once again, that draft is for 2020.
- The new forms aren't huge developments themselves, but they continue the steady pace of progress on implementing the opportunity zones incentive, and giving practical guidance to tax payers.
- Another more substantial development is that the White House Opportunity and Revitalization Council launched a website for stakeholders last week: www.OpportunityZones.gov.
    - The website is designed to serve as a hub of information for residents, QOFs and more.
    - The site will also include a list of action items for each agency that is part of the White House Opportunity and Revitalization Council.
    - Scott Turner, the executive director of that council, will be at our opportunity zones conference in Chicago.
    - I'll talk about that in a bit.
- The next big move is Treasury's release of updated regulations for opportunity zones.
    - That's expected in the next few weeks, although it will be longer until we actually see the updated regulations.
    - The delay is because Treasury must first send the updated regulations to the Office of Information and Regulatory Affairs, or OIRA.
    - Usually, OIRA takes 30 days to review and comment on regulations before releasing them to the public.
    - So, we're expecting the updated regulations to be released sometime around Thanksgiving, if we're fortunate.

  - With that in mind, I've written on the Notes from Novogradac blog about issues that need clarity or to be changed in the updated regulations.
  - These are issues that the Novogradac Opportunity Zones Working Group has identified and commented on to Treasury in writing.
  - There are going to be two blog posts, not one. .
    - The first covers issues that concern investors and QOFs as well as affordable housing.
    - The second blog post, which we will publish shortly, covers issues related to opportunity zones business property and opportunity zones businesses.
  - I'll share the link to the first blog post in today's show notes and tweet it out as well.
  - I'll tweet out a link to the second blog post when it's available.
- Also, let me remind you that we'll be talking about all of those issues and a lot of other items at the Novogradac 2019 Opportunity Zones Fall Conference in a few weeks.
  One of our keynote speaker will be Dan Kowalski.
  - Dan is counselor to the Secretary of Treasury, where his duties include overseeing guidelines and reporting for the opportunity zones incentive.
  - He has spoken at previous Novogradac conferences and always provides important updates and context for what's happening.
  - I expect Dan will give us a better sense for the timing of the updated regulations, as well as what else is coming from Treasury concerning opportunity zones.Dan Kowalski's Keynote will be on Friday Morning and we're fortunate to have another keynote on Thursday morning.
- As I said earlier, Scott Turner from the White House Opportunity and Revitalization Council will be at the conference.
- He's going to be providing a keynote Thursday morning.
- We will also welcome Alfonso Costa, HUD's deputy chief of staff.
- That's not all, though.
- At the conference, we will share another update about how much capital has been raised for Opportunity Funds.
  - At the time of this recording Novogradac is tracking more than 264 funds and we are working doggedly to collect information about their fundraising and investment plans to share with conference attendees.
- The conference will also feature plenty of practical discussion about how QOFs, investors, businesses and others are dealing with questions and how they are navigating the current terrain.
  - Such that they can raise money, close funds and most importantly, invest in opportunity zones.
- There's still time to register.
  - The conference is Oct. 24-25 in Chicago and I'll include a link to the conference in today's show notes.
  - I'll also tweet it out.I do encourage you to register now and make your hotel reservation.

Novogradac 2019 Credit and Bond Financing for Affordable Housing Conference

- Speaking of conferences, Novogradac hosted the Credit and Bond Financing for Affordable Housing Conference in New Orleans last week.
- I want to share some of the conference highlights.
- We opened the conference by honoring the 2019 winners of the Novogradac Journal of Tax Credits Developments of Distinction Awards.
- The awards honor excellence in affordable rental housing using the low-income housing tax credit and/or tax credit developments using HUD financing.
- The 2019 winners were:
  - Bayside Apartments in New York City, for preservation of existing public housing.
  - Mt. Baker Village Preservation in Seattle, for preservation of existing affordable rental housing.
  - Village at Westerly Creek 3 in Aurora, Colo., in the category of family housing.
  - Big Chair Lofts in Thomasville, N.C., for rural community impact.
  - Boulder Pines Community Campus in Las Vegas for metropolitan community impact.
  - And, The Orchard in Santa Ana, Calif., for the special needs category.
- Congratulations to this year's winners!
- After the awards presentation at the conference, our Washington Report panel discussed the Affordable Housing Credit Improvement Act and the bill's potential paths to enactment, at least in parts.
- As you know, the Affordable Housing Credit Improvement Act is bipartisan, bicameral legislation that would make a number of enhancements and improvements to the low-income housing tax credit.
- Two of the bill's headline provisions are:
  - A 50 percent allocation increase, and
  - A 4 percent minimum rate for the low-income housing tax credit for tax credit bonds and acquisition credits.
- By the way, Novogradac estimates that enacting the 50 percent allocation increase would finance an estimated 384,000 additional affordable homes over 10 years.
- Novogradac estimates that a 4 percent minimum credit rate would create an estimated 66,000 additional affordable homes over the next 10 years.
- As the number of congressional working days winds down in 2019, four potential vehicles for this legislation are:
  - A technical corrections bill,
  - Tax extenders bill,
  - An infrastructure bill, though not likely, or
  - Fiscal year 2020 appropriations bill and/or a continuing resolution.
- At this point, it looks like an infrastructure bill is highly unlikely to be enacted this year.
  - There would be too many details to negotiate and not enough time or appetite in Congress to do so.

- Panelists said parts or provisions of the Affordable Housing Credit Improvement Act are more likely to be included in technical corrections, tax extenders or appropriations legislation—or, even more likely, some combination of all three.
- Panelist David Gasson of Housing Advisory Group and Boston Capital said that the pressure of the upcoming election year could actually work in favor of affordable housing legislation.
    - Legislators are eager to have accomplishments they can show off before 2020.
    - Because the Affordable Housing Credit Improvement Act has bipartisan support, there's a good chance some provisions from the legislation will be attached to a must-pass legislative vehicle.
- Another session at the conference was designed for affordable housing developers interested in the opportunity zones incentive.
- My partner George Littlejohn moderated a session on tax considerations and others to bear in mind when combining affordable housing and opportunity zones.
- The consensus of the panel was that anyone interested in pairing the two incentives should start with a good real estate transaction first and *then* see if layering in the opportunity zones incentive makes sense.
- As my partner George said, the opportunity zones incentive is not going to make a bad real estate transaction good, but it can make a good real estate transaction better.
- Another session was a case study of the average income test.
- The average income set-aside was enacted under the omnibus appropriations bill in 2018.
- The set-aside allows a taxpayer to designate income limits that average to no more than 60 percent of the area median income.
    - Essentially, this gives properties an opportunity to offset lower rents with higher ones.
        - Higher income residents with lower income residents.
- With the average income test being relatively new, there are some areas of ambiguity.
- The IRS does intend to issue guidance on the new set-aside election, as indicated on the IRS priority guidance list.
- Panelists discussed what issues they'd like the IRS to clarify in guidance, such as:
    - Can an owner have the flexibility to re-designate units as their resident population and markets change?
    - If there's an instance of noncompliance, does the property's average income need to be recalculated?
- As practitioners await IRS guidance, state agencies are interpreting the legislation to develop their own policies on how they plan to monitor compliance for the average income test.
- The main takeaway from the panel was to work closely with your state agency to ensure you understand the state's compliance monitoring policies regarding the

average income test and make sure to involve an experienced consultant early in the process, and then obviously keep your investor informed.
- Overall, the conference spurred a lot of great discussions of affordable housing hot topics.
- Thank you to our attendees, co-hosts and sponsors for making the conference such a success.

NCSHA Model Forms

- In other affordable housing news, the National Council of State Housing Agencies released revamped model forms last week for low-income housing tax credit compliance monitoring.
- The idea is for state agencies that oversee the low-income housing tax credit compliance to standardize their monitoring practices.
  - Standard practices create efficiencies for owners of low-income housing tax credit properties and others involved in overseeing compliance including the states themselves.
  - Simply put, owners of properties in multiple states are better off if the compliance oversight is similar across states and compliance monitoring agencies.
  - So rather than having state-to-state variations, the NCSHA recommendation is to follow the models forms.
- The NCSHA released revamped model forms, including:
  - the owner's certification of continuing program compliance,
  - tenant income certification,
  - employment verification,
  - and four other forms.
- The revisions include changes that were necessitated:
  - by the creation and enactment of the average-income test minimum set-aside,
  - student rule exemptions, and
  - the Violence Against Women Act provisions.
- The updates also includes questions about gig-economy jobs or financing received from such things as GoFundMe.
- State housing agencies can adapt the forms to their circumstances.
- There's a link to the updated forms in today's show notes.
- I'll tweet out the link as well.
- Thanks to NCSHA for taking the lead in this matter, and releasing model forms.

Freddie, Fannie Upgrade

- In other affordable housing news, the Treasury Department and Federal Housing Finance Agency announced last week that Fannie Mae and Freddie Mac would be allowed to retain significantly more earnings.
- Both had been restricted to $3 billion in capital reserves.
  - Excesses had to be returned to Treasury.
- Now, Fannie can retain up to $25 billion and Freddie can retain up to $20 billion.

  - While it seems like an accounting issue, there's more to it.
- The $3 billion caps were put on Fannie and Freddie, jointly called government sponsored enterprises, or GSEs, when they entered government conservatorship in 2008.
  - The increases were recommended in Treasury's housing finance reform plan released in September.
  - These are significant because they are a major step toward moving the GSEs out of conservatorship.
  - The new amounts are not nearly enough capital for Fannie or Freddie to be released from conservatorship.
  - Most experts suggest that at least $100 billion each if they are to be released from conservatorship.
  - But again, this is a first step.
- For those in affordable housing, the GSEs are important.
  - Both have affordable housing goals they must meet, much of which comes through specific targets for loan purchase financing units for low-income and very-low income families, as well as small multifamily properties affordable to low-income families.
  - Both Fannie and Freddie set aside 4.2 basis points of their annual new business to fund the Housing Trust Fund and Capital Magnet Fund.
  - And each invests up to $500 million in low-income housing tax credit equity each year.
  - That's up to a total of $1 billion.
  - So when Fannie and Freddie are healthy, it's good news for affordable housing.

OTHER NEWS

- In other news, the CDFI Fund last week released an updated new markets tax credit application and FAQ document for the calendar year 2019 allocation round that is open.
  - The application includes new questions and details that will be helpful.
  - For example, the application has more information about what constitutes a qualified low-income community investment closing.
  - It also provides examples.
  - New questions addressed in the FAQ document include:
    - how the CDFI Fund calculates whether an applicant meets the qualified equity investment issuance and qualified low-income community investment thresholds, and
    - how a community development entity applicant should handle the application if it has requested a modification to its service area, but doesn't yet know the outcome.
  - As you're working through your new markets tax credit application and have questions, I'd encourage you to reach out to my partner Brad Elphick in our metro Atlanta office.
- In energy and affordable housing news, legislation was introduced in both the House and Senate last week that includes a provision to reinstate the Section 45L credit.
  - What is that credit?
  - That credit is for energy efficient homes and the legislation would increase the credit from its expired $2,000 level to $2,500.
  - The Section 45L credit expired at the end of 2017, so it's now part of the tax extenders discussion happening in Washington D.C.
  - The credit was often used by affordable housing developers, since it applies to multifamily buildings that are three stories or less.
  - The credit helped close some of the financing gaps.
- And finally, in state-level news, a bill was introduced in the Wisconsin Assembly to increase the tax benefit for investors in qualified opportunity funds that hold at least 90 percent of their assets in Wisconsin opportunity zones projects.
- It's probably more accurate to say that the funds hold at least 90 percent of their assets in Wisconsin opportunity zones business property or Wisconsin opportunity zones businesses.
  - Wisconsin already conforms to the Internal Revenue Code concerning OZs.

- But S.B. 440 would grant an additional 10 percent capital gains tax reduction for investors who hold their investment in a Wisconsin-centered qualified opportunity fund for five years.
- Investors who hold their investment in a Wisconsin qualified opportunity fund for seven years will see that benefit increase to an additional 15 percent capital gains tax reduction or gain exclusion.
- However, any federal penalty assessed to an opportunity fund for failure to meet the 90 percent test would result in an additional state civil penalty equal to 33 percent of the federal penalty.
- If you have any questions about this Wisconsin proposed incentive, contact Novogradac's Jason Watkins.
- He's in our Dover, Ohio, office.

RELATED RESOURCES

HTC Transition Rule
- Novogradac Journal of Tax Credits article: Satisfying the Historic Tax Credit Transition Rule

New IRS Opportunity Zones-Related Forms
- Draft Form 1099-B for 2020
- Draft Form 1099-B for 2020 instructions
- Draft Form 1040 (Schedule D) for 2019
- Draft Form 1040 (Schedule D) for 2019 instructions

Opportunity Zones Blog Post
- Regulation Resolution? 26 OZ Issues We're Watching (Part 1)

Novogradac 2019 Opportunity Zones Fall Conference
- Registration

2019 Novogradac Journal of Tax Credits Developments of Distinction Awards
- Winners

National Council of State Housing Agency Model Forms
- Revamped model forms

Fannie Mae, Freddie Mac Increase in Retained Capital
- Fannie Mae letter
- Freddie Mac letter

Updated CY 2019 NMTC Documents
- NMTC Application
- NMTC Application FAQ Document

New Home Energy Efficiency Act
- Text of Bill

Wisconsin OZ bill
- S.B. 440

Novogradac 2019 New Markets Tax Credit Fall Conference
- Registration link