NOVOGRADAC TAX CREDIT TUESDAY PODCAST

Summary: October 30, 2018

In this week's Tax Credit Tuesday Podcast, Michael J. Novogradac, CPA, discusses the upcoming lame-duck session of Congress and what it could mean to tax credit communities. He then talks about some opportunity zones news, as well as recent California guidance affecting some investors in low-income housing tax credit properties. He also touches on a two Freddie Mac low-income housing tax credit impact reports and state historic tax credit updates from New Jersey and Minnesota.

Summaries of each topic:

GENERAL NEWS

Lame-Duck Session

- Election Day is one week away.
- And Congress is scheduled to return from their mid-term election recess the week after that.
- The lame-duck session of Congress could be a productive time for long-desired affordable housing, community development and historic preservation legislation.
    - Or, it could not be.
- That, of course, depends on the outcome and the tone of the election next week.
- The election results will determine how motivated lawmakers will be to pass certain legislation before the new Congress begins in 2019.
- Now Republicans have controlled the House and Senate since 2015.
- Most prognosticators expect a change.
- Many expect the Democrats to take the House, while Republicans keep control of the Senate.
    - Probably the most common view.
- Now the next likeliest outcome is probably that Democrats take both the House and the Senate.
- And a little bit less likely than that, is that the Republicans retain control of the House and the Senate.
- Now the most unlikely scenario would be that Republicans keep the House but Democrats take the Senate.
- Now, if Democrats win both chambers, they'll likely want to wait until they take control, full control, in January to pass legislation that doesn't have to pass this year.
- But that said, no matter who controls each chamber, the margin of control, I should say the margin of their majority matters very much.
- The slimmer the margin, the greater the bipartisanship.
- The larger the margins, the more brinksmanship and partisan demands.
- Now I'll share now the key bills that I'm keeping an eye on.
- There are five.
- They are
    - The Affordable Housing Credit Improvement Act,
    - The New Markets Tax Credit Extension Act,
    - The Rural Jobs Act,
    - The Historic Tax Credit Enhancement Act and
    - The Historic Tax Credit Improvement Act.
- Each of those bills has provisions that would expand and/or improve critical tax incentives.
    - Namely the low-income housing tax credit (LIHTC), the new markets tax credit (NMTC) and the historic tax credit (HTC).
- Now the most likely path forward for them is to catch a ride with major legislation.
- So, what legislative vehicles could that be?
- Well there could Tax Reform 2.0, though that doesn't seem all that likely.
- There could be a technical corrections bill for last year's tax reform bill.
    - Seems a little bit more likely, at least a handful of technical corrections.
    - There could be a tax extenders package.

    - And one area we know there will be a bill is an appropriations package to address the Dec. 7 deadline to prevent a partial government shutdown.
        - So these are four possible vehicles which could be all rolled into one, or could be rolled into two or three separate vehicles.
- Now I've written a Notes from Novogradac blog post on potential legislative moves in the lame-duck session.
    - There's s link to the blog post in today's show notes.
- Now I also want to remind you to not forget to tune in to our special mid-term election of the podcast that's going to be posted next Wednesday, Nov. 7.
    - That's the day after the election.
- In that podcast, I'll have a summary of key election results and what they could mean for specific tax incentives in the next Congress.
- And hopefully we'll know who controls the House by the time we record the podcast.
- Now we'll also have a blog post summarizing the election results and the implications for leadership of key committees.
- Now this podcast will help you get a head start on your end-of-year legislative efforts, as well as in developing strategies for next year.
- Please do tune in, and please share the podcast with your colleagues.

OZ Guidance Request

- So let's turn now to the continually hot topic of opportunity zones.
- The National Council of State Housing Agencies (NCSHA) this month requested opportunity zones guidance from the IRS.
- The letter was submitted <u>the day before</u> Treasury issued its proposed opportunity zones guidance, but the letter does ask for clarity in several <u>unaddressed</u> areas.
- NCSHA requests, they included a request for clarification that residential rental property qualifies as opportunity zones property.
- The letter also asks for confirmation that opportunity zones investments can be combined with other federal tax incentives such as the LIHTC, HTC, and NMTC.
- The NCSHA letter also sought guidance in several other areas.
- Now I've included a link to their letter in today's show notes.
    - And I'll send a tweet of it as well.
- Now I should note that the Opportunity Zones Working Group will be submitting a comment letter to the IRS on the proposed guidance and other opportunity zones questions that need additional clarification.
- Now you're invited to submit your feedback to the Opportunity Zones Working Group.
- You can also tweet your suggestions and tag me.
- My handle is @Novogradac.
- Some Twitter users have already tweeted their suggestions to me.
- One user asked whether there's an issue with inside basis.
- Now this question relates to the perplexing issues around the tax treatment of investors in opportunity funds that are taxed as partnerships.
    - No easy answers there.
- Another person asked about why redemption restrictions appear to apply to corporate qualified opportunity zones businesses but not to partnerships.
    - Which I replied on Twitter, you may have seen, that that difference derives from the statute.

- Now please let me know if you have any suggestions of your own.
- As I said, my Twitter handle is @Novogradac.
- Please tweet away.

California Banks and LIHTC

- Turning to affordable housing news, the California Department of Business Oversight issued a release, and this release clarifies a rule that's contained in state Financial Code Section 1322.
- Now why am I telling you about this?
- Well, the DBO, which is how the Department is referred to, said that it issued the release after being asked about this code section by a state-chartered bank.
- The DBO said in this release that state-chartered banks must receive approval from the DBO before they make a passive equity investment in a LIHTC development.
- The DBO said that this standard also exists for any other tax credit investment that meets the definition of "real property investment."
- Now state-chartered banks are expected to submit a letter to DBO.
- And that letter should include the general plan for the investment, and that general plan should include:
  - a description of the activities that are the focus of the investment,
  - the amount to be invested,
  - how diversified those investment activities are, and
  - the date of the initial investment.
- Now there are more than 110 state-chartered banks in California to which this rule applies.
- Now there's no indication that the DBO will particularly discourage investment in LIHTCs or other tax-credit investments in real property.
  - But this is an added step for state-chartered banks that invest in affordable housing.
- Now today's show notes include a link to California Financial Code Section 1322.
  - And I'll tweet out the link as well.
- And if you have any questions as to how this requirement could affect your LIHTC investments, please contact my partner Jim Kroger.

OTHER NEWS

- In other news, Freddie Mac published two white papers last week on how the LIHTC brings housing to underserved markets.
    - Now one of the white papers focused on rural Appalachia, the other focused on Indian areas.
    - The reports are part of Freddie Mac's Duty to Serve plan, a plan to expand opportunities in historically underserved markets.
    - Both reports highlight the importance of the housing credit in rural areas.
    - I'll provide links to both white papers in today's show notes, and send a tweet.
    - And on a short related note, the LIHTC Working Group is submitting a comment letter on Fannie Mae's proposed changes to its duty-to-serve plan.
    - Proposed changes include making more LIHTC investments in rural areas.
- In state news, legislators in New Jersey took two bills that would create a state HTC and combined them.
    - Now what preceded that?
    - Well, Gov. Phil Murphy proposed a state HTC in a speech in early October.
    - The two bills were introduced early this year, and then they were combined to mirror Murphy's proposal.
    - If enacted, the New Jersey credit would be for 25 percent of renovation costs, with a statewide cap that would begin at $15 million in 2019 and grow every year through 2022.
    - I'll keep you updated on the status of the combined legislation.
- And in other state HTC news, the Minnesota Department of Revenue last week issued guidance on its state credit.
    - Specifically, the department said that Minnesota taxpayers <u>should</u> claim the entire tax credit in the year in which their development is placed in service.
    - Now as you know, the federal HTC is now taken 4 percent per year over five years.
    - The Minnesota credit is equal to the federal credit, but the guidance says it doesn't have to be claimed that way, or isn't claimed that way.
    - It's claimed 100 percent in the year the property's placed in service.

RELATED RESOURCES

Lame Duck Session

Lame-Duck Session of Congress: Moving Parts, but Potential for Legislation, Notes from Novogradac

OZ Guidance Request

NCSHA Letter

Opportunity Zones Working Group

Opportunity Zones Working Group Page

California Banks and LIHTC

Email Jim Kroger, CPA

Freddie Mac Reports

LIHTC in Rural Middle Appalachia
LIHTC in Indian Areas

New Jersey HTC

S.B. 1740
S.B. 2031

Minnesota HTC

Minnesota HTC Guidance