

Novogradac Report on Tax Credits **Summary: August 24, 2010**

Michael J. Novogradac, CPA, updates listeners on the status of tax extenders legislation; reviews the Obama Administration's conference on federal housing finance; shares announcement regarding HUD's escrow requirement for tax credit equity; covers a proposal in Missouri to dedicate a third of the state's affordable housing resources to create housing for the mentally ill and homeless; discusses the launch of Ohio's NMTC Program; examines an Appeals Court decision in the Whitehouse Hotel case; and summarizes recent energy legislation enacted at the state level, as well as a new loan guarantee solicitation from the Department of Energy.

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TAX EXTENDERS UPDATE

Fiscal Aid for States

- As many of our listeners know, a couple of weeks ago Congress passed and President Obama signed a \$26.1 billion dollar state fiscal aid package.
- Of note in the tax extenders debate is that the bill was paid for in part by some international tax provisions that previously had been earmarked to pay for part of the tax extenders bill.
- Any tax extenders legislation will need to be revenue neutral, so passage of tax extenders upon Congress return on September 13th will depend on identifying additional tax revenue raisers.

What's Ahead for Extenders

- To that end, a couple of weeks ago, Russ Sullivan, who is the staff director of the Senate Finance Committee told members of a business-led tax credit extenders coalition that the Senate Finance Committee has identified other revenue raisers to needed to make the extenders bill revenue neutral.
- In addition, Mr. Sullivan said the Senate currently plans to consider a stand-alone version of the extenders bill with the additional revenue raisers after the Senate considers the Small Business bill that had the Senate's attention before they went on their August recess.
- As such, the updated extenders bill would be considered as a separate bill and would not be attached to the small business bill.
- We expect that the revised extenders bill will be released later this summer.
- The revised bill is expected to include all the tax extender provisions included in the Senate's most recently amended version of HR 4213.
- These provisions include:
 - the extension of the Section 1602 LIHTC cash grant program
 - extension of the New Markets Tax Credit through 2010 with \$5 billion in allocation authority and
 - AMT relief for QEIs issued between March 15, 2010 and January 1, 2012.
- Once the Finance Committee releases the revised bill we expect that lobbying activity will pick up, seeking support of 60 Senators, to avoid a filibuster, and majority support in the House of Representatives.
- We anticipate the business lobby will work to get a sign on letter in support of the tax extender bill to the Senate leadership before they convene in September.

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FUTURE OF HOUSING FINANCE

- On August 17th, the Administration held a Conference on the Future of Housing Finance.
- The conference provided a forum for public input as the Administration continues its work developing a comprehensive housing finance reform proposal for delivery to Congress by January 2011.
- During the conference, Treasury Secretary Tim Geithner said and I quote:
 - “We will not support returning Fannie and Freddie to the role they played before conservatorship, where they fought to take market share from private competitors while enjoying the privilege of government support. We will not support a return to the system where private gains are subsidized by taxpayer losses.”
- HUD Secretary Shaun Donovan, in his remarks noted that
 - “To be clear, the government's footprint in the housing market needs to be smaller than it is today - where FHA and the GSEs collectively guarantee over 90 percent of all mortgage loans.”
- After their comments, Secretary Geithner and Secretary Donovan moderated panel discussions with a diverse group of experts about the critical issues surrounding housing finance reform.
- Major panel discussions first covered Housing Finance Reform and Broader Financial Markets, and then Housing Finance Reform and Broader Housing Policy Goals.
- There were six Working Breakout Lunches that covered:
 - Key Players in a Reformed System: Role of the Private Sector and of Government
 - Delivering Access and Affordability
 - Funding Housing and the Role of Securitization
 - Aligning Private Market Incentives in the Housing Finance Chain
 - Supporting Capital for Multifamily Finance
 - Managing the Process of Transition

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LOW-INCOME HOUSING TAX CREDIT NEWS

HUD Rule Prohibits Required Escrowing of Tax Credit Equity

- Yesterday, the U.S. Department of Housing and Urban Development (HUD) released its final rule on the prohibition of the escrowing of tax credit equity.
- The rule changes HUD's previous practice of requiring that a substantial portion of the low-income housing tax credit equity be placed in escrow for potential future use over the life of the project at the time of initial endorsement.
- That requirement has had an inhibiting effect on the building of new low-income housing tax credit projects with HUD insured mortgages, and often required the use of bridge loans until the escrowed proceeds were released.
- The final rule, in accordance with a provision in the Housing and Economic Recovery Act of 2008, bars HUD from requiring the escrowing of equity from the sales of low-income housing tax credits for HUD-insured mortgages.
- In addition, the rule extends the same treatment to historic tax credits and new markets tax credits, as such this escrow requirement is also eliminated when equity is provided from these types of tax credits.
- Mortgagors will now be able to deposit cash deemed by the Federal Housing Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the project.
- Additionally, the tax credit equity need not be fully disbursed before the disbursement of mortgage proceeds.
- A copy of the notice can be found online at www.taxcredithousing.com.

State Treasurer Calls for Housing for Missourians Suffering From Mental Illness

- Last week, Missouri State Treasurer Clint Zweifel called on the Missouri Housing Development Commission to pass a multi-million dollar package to provide housing for Missourians suffering from a mental illness.
- The plan would allocate \$127 million, or 33 percent, of affordable housing resources for fiscal year 2011 to create needed housing that tackles mental illness and chronic homelessness.
- Zweifel's office says that one in four adults suffers from a mental illness each year, or about 1.1 million Missourians.
- Zweifel says his plan would create 400 specialized homes for those with mental illness.
- Zweifel's plan has been endorsed by the National Alliance on Mental Illness and Mental Health America of Eastern Missouri.

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NEW MARKETS TAX CREDIT NEWS

Ohio New Markets Tax Credit Program Opens

- Last Friday, Governor Ted Strickland and Ohio Department of Development Director Lisa Patt-McDaniel announced the opening of the first round of applications for the Ohio New Markets Tax Credit (NMTC) program.
- The Ohio New Markets Tax Credit program is one of the first state programs of its kind in the country, and leverages the successful federal New Markets Tax Credit program to attract additional investment to Ohio.
- The program is administered by the Department's Urban Development Division.
- A total of \$10 million in tax credits is available in the first round of funding.
- Only community development entities (CDEs) serving Ohio that have already received a tax credit allocation from the federal NMTC program are eligible to apply.
- The Ohio NMTC program provides a 39 percent tax credit over seven years for qualified investments in low-income community businesses.
- Applications for the Ohio New Market Tax Credit are due by September 20, 2010.
- Approved applications will be announced by October 31, 2010.

More information

- Questions about the program can be directed to Annette Stevenson, CPA, a partner in Novogradac & Company LLP's Cleveland, Ohio office, at (216) 298-9000.
- More information is also available at www.urban.development.ohio.gov.
- For a listing of state NMTC and similar programs, visit Novogradac's NMTC web site at www.newmarketscredits.com. Click on the application & allocation tab on the banner, then click on the state NMTC programs tab in the drop down menu.

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HISTORIC TAX CREDIT NEWS

Ruling Reversed in Whitehouse Hotel Case

- The historic tax credit community welcomed a ruling by the Fifth Circuit Court of Appeals ruling August 10 in which the court vacated and remanded the U.S. Tax Court ruling in *Whitehouse Hotel Limited Partnership v. Commissioner*.
- In 2008, a U.S. Tax Court ruling substantially reduced the value of a 1997 charitable contribution deduction for a façade easement conveyed on the historic Maison Blanche building from a \$7.445 million deduction down to \$1.15 million.
- The primary issue in the appeals case was the Tax Court's decision to exclude from its easement valuation the economic impact of the developer's lost development rights to build an additional six stories on top of an adjacent building, called the Kress Building.
- While the easement binds any future owner of the Maison Blanche, it did not bind a future owner of the Kress Building.
- However, the condominium regime adopted the day after the conveyance of the easement combined the two buildings in a single, indivisible unit of property, thereby assuring that the Kress Building would retain its historic height in perpetuity.
- The IRS' appraiser appraised only the Maison Blanche because the terms of the easement did not specifically address the Kress Building and, in his opinion, the easement did not restrict the aggregate number of the rooms.
- In contrast, the developer's appraisal approach included both buildings on the theory that, because the two structures were now an indivisible property based on the condominium regime, the easement impacted the value of both buildings.
- In its ruling, the Appeals Court found that the Tax Court had erred in not considering for valuation purposes that the Kress and Maison Blanche could never come under separate ownership, and that the conservation easement therefore affected the buildings' fair market value.
- The ruling is good news for developers who use façade easement donations as part of the layered sources of financing for historic rehabilitation.
- Read more about the details of the Whitehouse case and the Appeals Court decision in the September issue of the *Novogradac Journal of Tax Credits*.

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RENEWABLE ENERGY TAX CREDIT NEWS

States Enact Energy Legislation

Even though energy legislation has been slower to move than originally expected in Congress, at the state level a number of lawmakers are enacting new measures to encourage the development of renewable energy.

New Jersey

- Last week, New Jersey Governor Christie signed the Offshore Wind Economic Development Act into law.
- The bill was sponsored by Senator Stephen Sweeney and Senator Thomas Kean.
- The bipartisan measure is expected to spur economic growth in the Garden State through the development of renewable energy resources and the creation of green jobs.
- The legislation makes available financial assistance and tax credits from existing programs for qualified offshore wind projects and associated equipment manufacturers and assembling facilities.
- The bill directs the New Jersey Board of Public Utilities to develop an offshore renewable energy certificate program that calls for a percentage of electricity sold in the state to be from offshore wind energy.
- This percentage would be developed to support at least 1,100 megawatts of generation from qualified offshore wind projects.

Illinois

- Also last week, Illinois Governor Pat Quinn signed legislation that sets strengthened targets for utilities that will be purchasing more solar energy.
- House Bill 6202, sponsored by Rep. William Burns of Chicago and Sen. Don Harmon of Oak Park, amends both the Illinois Power Agency Act and the Public Utilities Act to move up the date by which Commonwealth Edison and Ameren must begin purchasing solar energy as part of the renewable energy portfolio requirement.
- The new law changes the date to 2012, which is three years earlier than the previous 2015 deadline.
- Specifically, the power industry in Illinois will now be required to purchase
 - .5 percent of its power from solar sources by June 1, 2012;
 - 1.5 percent by June 1, 2013;
 - 3 percent by June 1, 2014; and
 - 6 percent by June 1, 2015, and each year thereafter.
- House Bill 6202 takes effect immediately.

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DOE Announces New Loan Guarantee Solicitation

- On August 12, Energy Secretary Steven Chu announced a new loan guarantee solicitation for renewable energy manufacturing projects under Section 1705 of the Recovery Act.
- The solicitation seeks applications for projects that manufacture commercial technology renewable energy systems and components, such as wind turbine systems, blades or solar photovoltaic components.
- The Department of Energy says it recently implemented a number of improvements to its loan guarantee program that should help facilitate a more efficient application process.
 - For example, the department says it designed and organized the manufacturing solicitation to provide greater transparency into application requirements, evaluation processes, schedules and fees.
 - Additionally, applicants can apply to the solicitation via a newly launched, user-friendly online application portal.
- As with earlier solicitations, the manufacturing solicitation will consist of a two-step process with rolling deadlines.
 - The first part I deadline is September 30, 2010, and the first part II deadline is November 30, 2010.
 - Final part I applications are due November 30, 2010 and final part II applications are due January 31, 2011.
- Applicants are strongly encouraged to get their applications in early since projects must meet all statutory and regulatory requirements and commence construction no later than September 30, 2011.
- More information can be found online at www.energy.gov.

Renewable Energy Tax Credit Handbook

- We're just one week away from the arrival of the Renewable Energy Tax Credit Handbook.
- This new addition to Novogradac & Company's library of tax credit resources brings together the latest information, rules and regulations relating to the renewable energy tax credit industry.
- In addition, the book describes
 - the technical rules of the various tax credits,
 - financing structures used to structure renewable energy tax credit transactions, and
 - the types of business entities that can best use the tax credits.
- Learn more, or order your copy today, online at www.novoco.com/products.

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TAX CREDIT TIDBITS

Update to Rent and Income Limit Calculator ©

- The "Other Program" option on the Rent & Income Calculator© has been updated for 2010.
- This feature allows the user to calculate income and rent limits based on the HUD published area median income (AMI) at 30%, 50%, or 80% income limits.
- Users can also customize imputed persons per bedroom for rent calculations.
- Questions about the Rent and Income Limit Calculator © Other Program options can be emailed to CPAs@novoco.com.

HUD Guidance for Multifamily Mortgage Insurance Applications Involving LIHTCs

- In Housing Notice 2010-10, HUD provides additional guidance for implementing the processing change introduced in Mortgagee Letter 2008-19, titled "Streamlined Processing of Multifamily Mortgage Insurance Applications Involving Low Income Housing Tax Credits (LIHTC)."
- Mortgagee Letter 2008-19 authorizes owners associated with a MAP application for one of the FHA mortgage insurance programs listed in the notice to defer the submission of final architectural drawings and specifications until 30 days before the date scheduled for initial endorsement of the loan.
- The guidance released this month clarifies the type of MAP third-party assessments, field office review analyses and MAP lender documentation that should be completed at the firm commitment stage in lieu of what is normally required when final plans and specifications are submitted.
- A copy of this guidance can be found online at www.hudresourcecenter.com.
- Questions about the guidance can be directed to Susan Wilson, CPA, in Novogradac & Company's Austin office at (512) 340-0420.