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Changes Keep Coming for Long-Stable Historic Tax Credit.

For a provision that's been an enduring part of the federal tax code for 40 years, the historic tax credit (HTC) has been on a bit of a roller coaster ride the past 18 months.

Back in February 2017, optimism was abound as the Historic Tax Credit Improvement Act was introduced for the second straight session of Congress. The legislation would improve the credit and received broad congressional support. But enthusiasm slowly waned as fears over the elimination of the credit took hold (to date, the legislation hasn't made it out of committee in either the House or Senate).

The concerns about elimination of the credit were real, as last winter's landmark tax legislation threatened the continuation of the credit and ultimately eliminated the 10 percent rehabilitation credit for non-historic properties placed in service before 1936 and slightly reduced the value of the credit by expanding the period over which the credit is claimed to five years. The legislation also reduced the top corporate tax rate from 35 percent to 21 percent, potentially reducing the demand for HTCs.

A few months later came bipartisan legislation to recover much of the loss in value of the credit by eliminating the basis adjustment requirement for HTC properties. Without the requirement to reduce the basis of the property by 100 percent of the HTC, investors could increase equity pay-ins to rates similar to those seen before enactment of tax reform legislation and would bring the HTC into line with the low-income housing tax credit (LIHTC), which is also claimed over multiple years.

It's been a busy 2017 and 2018 in the HTC world, requiring significant involvement from groups supportive of the credit, spearheaded by the Historic Tax Credit Coalition (HTCC).

"Certainly on the public policy front and as far as a threat to the industry, it's been an unprecedented time," said Merrill Hoopengardner, chairwoman of the HTCC.

A History of Consistency

The HTC will commemorate its 40th year as part of the tax code Nov. 6. That's the anniversary of the day President Jimmy Carter signed the Revenue Act of 1978, adding a 10 percent rehabilitation tax credit for commercial buildings that met certain requirements. Two years earlier, President Gerald Ford had signed legislation to permit owners to receive income tax deductions for charitable contributions of interest in property for conservation purposes–the launch of a tax benefit, but not a credit.

The HTC was expanded to a three-tier credit in 1981 and then switched to a two-tier credit as part of the landmark Tax Reform Act of 1986: A 20 percent credit for certified historic buildings, a 10 percent credit for non-historic buildings placed in service before 1936, which at the time meant 50 year-old buildings.

The next 31 years saw few significant changes to the federal HTC. There were alterations, including when the HTC was given a boost to help recovery in areas hit by natural disasters in the GO Zone Act of 2005 and when the Housing and Economic Recovery Act (HERA) of 2008 allowed the HTC to be taken against a taxpayer's alternative minimum tax (AMT) and added a new LIHTC qualified allocation plan selection criterion for historic properties.

Then came a series of real–and potential–changes.

HTC Improvement Act

On Feb. 16, 2017–44 days after the start of the 115th Congress–Sens. Ben Cardin, D-Md., and Susan Collins, R-Maine, and Reps. Mike Kelley, R-Pa., and Earl Blumenauer, D-Ore., introduced legislation to make significant enhancements to the HTC: The Historic Tax Credit Improvement Act of 2017.

With support from such organizations as the HTCC, similar legislation was introduced in the 114th Congress and in the 113th and 112th Congress under a different title: the Creating American Prosperity through Preservation (CAPP) Act.

Provisions in the Historic Tax Credit Improvement Act of 2017 include:

- an increase in the HTC for certain small projects,
- to allow credit transfers for certain small projects,
- to lower the expenditure threshold to qualify for the HTC from 100 percent to 50 percent of the adjusted basis,
- to reduce the depreciable basis adjustment for HTC property, and
- to modify certain tax-exempt property rules.

After the legislation was assigned to committees, it continued to pick up sponsors–by July of this year, the legislation had 82 co-sponsors in the House (43 Republicans, 39 Democrats) and 13 in the Senate (four Republicans, nine Democrats). Fourteen of the House co-sponsors are on the Ways and Means Committee, but the bill remains in committee.

Tax Reform: Major Shake-up

While the HTC Improvement Act was gaining co-sponsors, a more threatening piece of legislation was framed: H.R. 1, the Tax Cuts and Jobs Act of 2017.

The original version of the tax legislation passed by the House of Representatives repealed both the HTC and the 10 percent non-historic credit, causing consternation in the historic preservation community and igniting negotiations in the Senate to save it. Initially, Senate legislation preserved the HTC, but reduced it to 10 percent. Then an amendment by Sen. Bill Cassidy, R-La., saved the day by preserving the 20 percent credit, while making it allowable ratably over five years, beginning with the year the property is placed in service.

It was a victory, but at a cost: the loss of the 10 percent non-historic credit and the ability to claim the entire 20 percent HTC at the time property is placed in service.

It didn't take long for legislators to begin working on legislation to offset some of the lost value.

Historic Tax Enhancement Act of 2018

With encouragement from the HTCC and other historic preservation advocates, the Historic Tax Enhancement Act of 2018 was introduced in both houses of Congress in June, with bipartisan sponsorship (Republican Sens. Bill Cassidy and Collins, Democratic Sen. Cardin; Republican Rep.

Darin LaHood and Democratic Rep. Blumenauer). By early July, there was another co-sponsor in the Senate, six more in the House.

The focus of the legislation is to eliminate the basis adjustment requirement, which would allow the tax credit to reclaim much of the value lost due to the necessity of taking the credit ratably over five years. With the basis adjustment requirement eliminated, the HTC would have the same policy as the LIHTC.

In the wake of tax reform, Novogradac research indicated how much the value of HTC equity would be affected if the basis adjustment were eliminated. It would move from a range of 77-84 cents with basis adjustment to 82-97 cents without it. That would put it in line with the value of the credit before tax reform was passed.

The legislation was introduced by some of strongest supporters of the HTC in Congress and the press release announcing the bill heralded the success of the HTC program in the states and districts for each of the co-sponsors.

The HTC Enhancement Act is a logical next step for the HTC after tax reform, although it's no lock to pass. However, a logical opportunity for both pieces of legislation to pass will be the final months of the 115th Congress–the so-called lame-duck session.

The final weeks of a congressional session have historically been good to the tax credit community: that's when we got permanency for the 9 percent floor for the LIHTC and extensions of the new markets tax credit, the production tax credit and the Section 1603 cash grant program; as well as GO Zone boosts for the HTC, NMTC and LIHTC over the past decade. This year–with tax extenders and technical corrections both on the table–there is a chance for the historic preservation community to get the two major pieces of HTC legislation passed.

"We're cautiously optimistic that we'll be in the mix –if there's a mix to be gotten into," Hoopengardner said. "Particularly with the Historic Tax Credit Enhancement Act."

For those seeking a powerful argument to promote the HTC legislation, there's an obvious answer: the economic success of the program.

Powerful for Renovation, Economy

The HTC is a proven economic engine, encouraging development, creating jobs and resulting in a net financial gain for the federal government.

This year's annual report by the U.S. Department of the Interior's National Park Service (NPS) said the HTC has leveraged nearly $90 billion in private investment in rehabilitating historic properties since 1976. More than 43,000 properties completed renovation with help from the credit over the years.

Another report–put out each year by the NPS and Rutgers University–is even more impressive. Last year's Annual Report on the Economic Impact of the Federal Historic Tax Credit said that federal HTC-assisted rehabilitation has created an inflation-adjusted total of $131.8 billion in expenditures, 2.5 million jobs and almost $30 billion in federal taxes since 1978. The fiscal year 2016 totals included the creation of $1.1 billion in federal taxes.

That's an important figure for those in the HTC world: The HTC creates not only jobs and expenditures, but increases federal tax income. For instance, the NPS-Rutgers report says the historic cost of the credits to the federal government in inflation-adjusted 2016 dollars is $25.2

billion, while it brought in $29.8 billion in federal tax receipts. That's a net $4.6 billion gain due to the HTC over the history of the program.

The HTC is a revenue-generator.

As the historic preservation community recovers from last year's rescue of the credit and pushes for both the Historic Tax Credit Improvement Act and the Historic Tax Credit Enhancement Act, members will gather Sept. 27-28 at the Novogradac 2018 Historic Tax Credit Conference in Nashville. Among other topics, we will discuss how to advocate for the two major pieces of legislation.

The past 18 months have been a time of change for the federal HTC, but one thing that hasn't changed: the federal HTC is good for history and good for the federal budget. Passage of both major pieces of legislation would make it more so.

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