From: Hollar, Jennifer
Sent: Wednesday, April 11, 2012 9:41 PM
To: MacLean, Alex
CC: Mesner, Susan; MoultonPowden, Pat; Miller, Lawrence; Richards, Alyson; Peterson, Mary; Mackay, Noelle
Subject: Position on New Market Tax Credit Proposal for Misc Tax?
Attachments: non res NMTC summary.docx; NMTC exemption to VT nonresident withholding draft language.docx

Alex,

Do we have a position on the new market tax credit provision being sought by Housing Vermont?

They are testifying in Finance tomorrow. They would like our support of an exemption to the withholding requirement for New Market Tax Credits, similar to the one in place for low income housing tax credits. They want to get it in the misc tax bill.

Noelle and I will be in there, too, on the downtown tax credits, and two mobile home tax provisions. We'll probably be asked if the admin supports.

This is a late proposal on HVT's part. We haven't had a chance to consult with Tax. ACCD is inclined to support. More info below.

Jen

Summary

HVT is looking for our support of a change in the state tax law to exempt out-of-state NMTC investors from withholding requirements. Apparently, there is no tax liability and the investors are eventually repaid, but having the money withheld is a barrier to investors (and an administrative hassle).

This came up with the CCV project in Rutland last year. HVT went to Tax, but the Dept said it would require a legislative fix. They had to do a work around to make the project work. (Essentially, the developer ended up fronting the amount of the withholding.)

HVT is now putting together a similar deal in St. Albans. The same investor (US Bank) has raised the withholding question as a barrier. That, and the news of the new $35 million NMTC allocation, has put the issue back on HVT's radar. And they are seeking a fix before the session adjourns.

There is currently an exemption from the requirement for out-of-state investors in low income housing tax credit deals. HVT is proposing a similar exemption (attached) for NMTCs. No revenue impact (because there is no eventual liability.)

And backround from HVT

Jen, thanks for talking with me about the NMTC withholding issue.

Attached is a summary which describes our request and provides draft legislation.

Here are the key points:

- Housing Vermont utilizes the federal New Markets Tax Credit (NMTC) program to bring economic development investments to low income communities in Vermont. Projects include a new campus for Laraway Youth Services in Johnson, expansion of the WEIDMANN Technology plant in St. Johnsbury, and a new building for the Community College of Vermont in Rutland.
- Investors are attracted by the federal tax benefits they receive. Any diminution in the tax advantages makes the deals less attractive and reduces the investments we can raise, or in extreme cases, could result in the investor looking elsewhere for a deal.
- Our first NMTC allocation was $30 million. Last month Housing Vermont was successful in a very competitive round and received an additional allocation of $35 million.
- The largest investor nationally in NMTCs is US Bank. US Bank also invested in our NMTC financing of the creation of a new building for the Community College of Vermont in downtown Rutland.
- Our concern lies with the Vermont Department of Taxes' withholding of income taxes for an investor in our New Markets Tax Credits. The issue is that non-resident investors-like US Bank--are subject to tax withholdings under 32 V.S.A. §5920. By submitting a withholding that make take up to 22 months to recover, the NMTC investor is diluting the value of its tax-advantaged investment.
- We do not have this problem in Low Income Housing Tax Credit deals because 32 V.S.A. §5920 creates an exemption for affordable housing projects. We would like to extend that exemption to NMTC deals.

We appreciate that it is late in the session; however, the new NMTC allocation substantially raises the stakes. We look forward to exploring the issue with you and the administration.

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Change to Income Tax Withholdings for Non-Resident Investors in New Markets Tax Credits in Low Income Communities

Background

The New Markets Tax Credit Program (NMTC) was established by Congress in 2000 to spur investments in business and real estate projects located in low-income communities. The NMTC Program attracts investment capital to low-income communities by permitting individual and corporate investors to receive a tax credit against their Federal income tax return in exchange for making equity investments in specialized financial institutions called Community Development Entities (CDEs). The NMTC Program is governed by Internal Revenue Code section 45D.

Housing Vermont is a private, nonprofit development company founded in 1988 to produce permanently affordable rental housing for Vermonters through partnerships with communities and the private sector. In 2008, a subsidiary of Housing Vermont, Vermont Rural Ventures, Inc., a federally recognized CDE, was awarded federal New Markets Tax Credits of $30 million. In February 2012 a second award of $35 million was made to Vermont Rural Ventures. Vermont Rural Ventures is the only Vermont entity to be awarded tax credits through this program.

Throughout the last few years, Vermont Rural Ventures has been successful in attracting new sources of investment for NMTC projects. One such investor is US Bancorp Community Development Corporation (USBCDC) which is domiciled in St. Louis, Missouri. USBCDC has closed one transaction in Vermont and is interested in additional investments with Vermont Rural Ventures.

Problem

The common method for using these tax credits is for the investor to form a single purpose investment fund, typically in the form of an LLC. This investment fund invests in the CDE in order to obtain the tax credits. US Bancorp is the largest investor of NMTC in the country. However, it does not do business nor have an office in Vermont. This makes it and its Missouri-domiciled subsidiaries "Non-Residents" for Vermont tax purposes.

We have been advised that these non-resident investors would be subject to tax withholdings under 32 V.S.A. §5920. USBCDC has raised this as a concern to making future investments with Vermont Rural Ventures. <u>The issue is that by submitting a withholding that may take up to 22 months to recover, the NMTC investor is diluting the value of its tax-advantaged investment. The diminished value is reflected in less investment in the business which benefits low income communities.</u>

US Bancorp and other NMTC investors are usually well established financial institutions which are quite different from the businesses which are the usual targets of tax withholding legislation. US Bancorp has advised us that it already files taxes in all 50 states.

Proposed Solution

The Vermont Department of Taxes reports that it does not have the ability to grant an exception under current statute. Legislation is needed to grant an exemption. There already exists a parallel exemption in 32 V.S.A. §5920 for affordable housing projects. We request an exemption for New Markets Tax Credit projects.

Vermont Rural Ventures views this program as a highly effective economic tool in the most needed areas of the State. The allowance of this exemption will help secure additional capital from the nation's largest NMTC investor as well as other potential investors that may not be domiciled in Vermont.

32 V.S.A. § 5920. Returns and mandatory payments
Subsection (f):

(f) Subsection (c) of this section shall not apply to a partnership or limited liability company engaged solely in the business of operating one or more affordable housing projects in this state, provided such partnership or limited liability company shall notify its nonresident partners or nonresident members of their obligation under subchapter 6 of this chapter to file Vermont personal income tax returns and under subchapter 2 of this chapter to pay a tax on income earned from such investment; instruct each nonresident partner or nonresident member to pay such tax; and in addition to filing copies of all schedules K-1 with its partnership or limited liability company return shall file with the commissioner segregated duplicate copies of all nonresident schedules K-1. In this subsection, "affordable housing project" means a rental residential development that is intended primarily to benefit low income Vermont residents throughout the period of the investment and that is subject to one or more of the following:

(1) A housing subsidy covenant that has been granted to the Vermont housing and conservation board;
(2) A regulatory agreement or LIHTC housing subsidy covenant that has been granted to the Vermont housing finance agency;
(3) A housing assistance payment contract with the United States Department of Housing and Urban Development pursuant to 24 C.F.R. Part 883; or
(4) A regulatory agreement that has been granted to the Farmers Home Administration of the United States Department of Agriculture.

Proposed:
Add a new subsection (g) to this section of statute.

<u>Subsection (g):</u>

<u>Subsection (c) of this section shall not apply to a partnership or limited liability company engaged solely in the business of operating one or more Federal New Market Tax Credit projects in this state, provided such partnership or limited liability company shall notify its nonresident partners or nonresident members of their obligation under subchapter 6 of this chapter to file Vermont personal income tax returns and under subchapter 2 of this chapter to pay a tax on income earned from such investment; instruct each nonresident partner or nonresident member to pay such tax; and in addition to filing copies of all schedules K-1 with its partnership or limited liability company return shall file with the commissioner segregated duplicate copies of all nonresident schedules K-1. In this subsection, "Federal New Markets Tax Credit project" means a business that is intended primarily to benefit low income Vermont residents throughout the period of the investment and that is subject to the following:</u>

<u>(1) Has been determined by the United States Department of the Treasury to be a Community Development Entity;</u>
<u>(2) Has been awarded an allocation of Federal New Markets Tax Credits under Section 45D of the Internal Revenue Code; and</u>
<u>(3) Is a partnership or limited liability corporation which is a pass-through of the Federal New Markets Tax Credits to the non-resident investor.</u>