

## IRS, Treasury to Develop Guidance for Historic Tax Credit Transactions

The Internal Revenue Service and U.S. Treasury Department have begun work on developing guidance expected to outline the conditions under which a limited partner investor in an historic rehabilitation tax credit transaction will be respected as a partner for federal tax law purposes.

The historic tax credit industry has been stymied for weeks by uncertainties about IRS-safe structures for federal historic rehabilitation tax credit transactions in the wake of court rulings including *Historic Boardwalk Hall* and ongoing IRS audits. These uncertainties have triggered a curtailment of the availability of equity commitments from some major investors for new deals. (For background on market impact, see *Tax Credit Advisor*, May 2013, p. 14.)

The precise form of the forthcoming guidance – whether a revenue procedure or something else – and its likely timing had not been determined as of May 21. It was anticipated, though, that the guidance will provide a “safe harbor” for historic tax credit transactions.

The guidance has been designated as a priority at the IRS and Treasury.

At a recent Chicago meeting, according to a published report, Treasury Attorney-Advisor Craig Gerson said the guidance project is on a “fast track” and for practitioners to expect it “sooner rather than later.”

At the same meeting, according to the published report, Curtis Wilson, IRS Associate Chief Counsel for Passthroughs & Special Industries, indicated that the guidance would address questions that have arisen since various court rulings in *Historic Boardwalk Hall*. He said the guidance would reiterate the federal government’s position in the litigation that investors with no meaningful downside risk or upside potential will not be treated as partners in a partnership for federal tax purposes. The appeals court in *Historic Boardwalk Hall* agreed with the IRS in this view and its position to disallow the allocation of federal historic tax credits to the investor.

Historic tax credit officials welcomed the comments that guidance will be forthcoming. Washington, D.C. tax attorney Jerry Breed, a partner at Bryan Cave LLP, called them “very, very helpful. The Treasury and IRS have con-

veyed the message publicly that their goal is not to shut the industry down, that their goal is to make sure that historic tax credit transactions are structured in a way that’s consistent with general tax principles and the principles that underlie the *Historic Boardwalk* case.”

The Historic Tax Credit Coalition has been leading an effort asking Treasury and IRS to issue guidance soon to spell out acceptable tax structures for historic tax credit deals. The group met with IRS and Treasury officials on May 9 and another meeting is scheduled for May 30.

In the meantime, Congress is getting involved. As of mid-May several lawmakers had sent letters to Treasury Secretary Jacob Lew asking for guidance to be issued soon and citing the chilling effect that the court rulings and industry uncertainty have had on the historic tax credit market. One letter, dated April 26 from Rep. Niki Tsongas (D-Mass.), asked for Lew’s support in getting out guidance within 60 days. A joint letter to Lew signed by multiple House and Senate members was expected soon. **TCA**

### People in the News

**Leila Ahmadifar** has joined City Real Estate Advisors, a low-income housing tax credit syndicator, as Senior Vice President, Strategic Investments. She was previously Director of LIHTC Investments for the Structured Lending and Investments Group, a business within Citigroup’s Municipal Securities Division.

U.S. Bancorp Community Development Corp. has promoted eight people to leadership positions in its tax credit business development, production, asset management, and syndications businesses. The individuals and their new positions are: **Bill Bayer**, director of syndications and new business initiatives; **Kris Switzer**, head of tax credit asset management; **Mandy Kozminske**, director of low-income housing tax credit asset management; **Ana da Silva**, director of New Markets Tax Credit and Historic Tax Credit asset management staff; **Laura Skiles**, director of Renewable Energy Tax Credit asset management; **Vihar Sheth**, head of Low-Income Housing Tax Credit business development; **Darren Van’t Hof**, head of business development for Renewable Energy Tax Credit investments; and **Dan Siegel**, director of project management for Renewable Energy Tax Credit investments. **TCA**