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Surf's Up: A Victorious Tax Reform Wave Ride

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A rogue wave is one of nature's most unstoppable forces. It comes with little or no warning and devastates anything in its path.

When I'm anxious, this is what manifests in my dreams. I see the water receding and the wave building on the horizon. Then I figure out how to survive. Run? Dive through it? Wake up?

Just months ago, the tax reform rogue wave was a light of day legitimate threat. Due to the all-hands-on-deck effort from all corners of the industry, however, federal historic tax credit (HTC) supporters saw it on the horizon, recognized its strength and set to work to learn to surf.

Discovery and Preparation

Since 1981, the federal HTC program has promoted economic revitalization of local communities, especially in our nation's urban core, along Main Streets and in rural areas. The program has revitalized more than 43,000 historic buildings by leveraging more than \$144 billion in private investment, creating 2.5 million jobs and generating \$116 billion in income nationwide.

Despite the success of the HTC program, Congress had plans for a meaningful tax reform focused on lowering the corporate rate and eliminating tax preferences. This threat began to emerge with specific focus in 2014, when then-Ways and Means Committee Chairman David Camp, R-Mich., proposed a reformed tax code that would eliminate many credits and deductions, including the HTC. In 2016 and 2017, as Republicans retained majorities in both the House and Senate and took control of the White House, tax reform became a top priority with the intention of implementing the first significant overhaul of the federal tax code since 1986. Incidentally, 1986 was the last major reform to the HTC, solidifying it in the form we have known over the past three decades. As the Republican plan came into focus, it was increasingly clear that the HTC was still included in the list of "special interest credits and deductions" targeted by Congress for elimination.

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This solidified the need to work swiftly and diligently to rapidly increase support and significantly advance the cause by gaining congressional supporters to advocate for the HTC. It was critical to deploy a multilayered advocacy campaign to preserve the federal government’s most significant commitment to historic preservation. The HTC campaign collaborated to mobilize an unprecedented group of advocates from the preservation, development and investment communities to raise the profile of the credit in Congress through meetings on the Hill, site visits in districts and sustained calls and letters from constituents back home.

Results and Reflection

The tax reform wave crested quickly. Within only three weeks beginning Nov. 2, versions of the reform packages were released by the House and Senate that fully eliminated the HTC (House) or reduced the credit amount by half (Senate). Few amendments were made and the final version of the Tax Cuts and Jobs Act (H.R. 1) was signed into law Dec. 22 , 2017, by President Donald Trump. In essence, the general political tide was coming against us. It was critical that members of Congress knew that this credit mattered to their constituents and would take action on the credit’s behalf.

Now that the water has receded, how did we fare? While the 10 percent credit for the rehabilitation of nonhistoric pre-1936 buildings was eliminated, the 20 percent HTC was retained as a permanent credit. Following a several-year transition period, it has been modified so the credit will be taken over a five-year period. This change is estimated to reduce the cost of the credit (as scored by the Joint Committee on Taxation) by more

than \$2 billion over the congressionally prescribed 10-year federal budget window.

This “savings” to Treasury is expected to come at a cost to the industry as the delay in credit delivery is expected to reduce the present value of the credit. The potential reduction in credit pricing will, however, be partially offset by other changes to the tax code that will provide a partial positive counterbalance. The lowered corporate tax rate, for example, will reduce the impact of the so-called Section 50(d) income in master lease transactions, which will provide

some pricing benefit. In addition, state tax credit pricing may increase in a number of states, once changes to the state tax deductions take effect.

This is a significant win for the industry, considering the small footprint the industry has in the larger tax code, as well as the speed, duration and breadth of the recent tax reform wave that significantly lowered corporate tax rates and fundamentally reduced or eliminated corporate tax incentives.

The industry foresaw the impending tax reform fight, was able to source its skills from the best advocacy teams and was constantly adaptable to the political climate. Partnerships among the National Trust for Historic Preservation, the Historic Tax Credit Coalition and industry thought leaders relied on strength in organization to address these issues and were successful.

Whether it was meetings with members of Congress, lobby visits with staff, lobby day organizing, grassroots advocacy, project identification, presentations, letter



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writing, encouraging the support of mayors, addressing technical questions, speaker panels, map development, in-district outreach/development or organizing site visits, someone in the industry filled in effectively as needed.

The statistical tracking of the industry's impact is impressive. In just over a year, more than 600 formal Capitol Hill visits were made, 73 site visits were organized across the nation, more than 40 group sign-on letters from industry organizations and political leaders were developed and delivered and nearly 1 billion media impressions were earned.

Thousands of advocates asked their members of Congress to preserve the HTC in the final tax package and their voices were heard. Longstanding Congressional supporters of the HTC such as Sens. Ben Cardin, D-Md., and Susan Collins, R-Maine, and Reps. Mike Kelly, R-Pa., and Earl Blumenauer, D-Ore., sponsored the Historic Tax Credit Improvement Act (HTCIA). These champions worked with Rep. Mike Turner, R-Ohio, chairman of the Historic Preservation Caucus, to encourage colleagues who are known preservation supporters, such as Reps. David McKinley, R-W.Va., and Rod Blum, R-Iowa, to protect the HTC. They were joined by new supporters such as Sen. Bill Cassidy, R-La., and Reps. Bruce Westerman, R-Ark., and Brad Wenstrup, R-Ohio, to champion efforts in the Senate and the House to retain the credit. These and dozens of other members wrote individual letters and signed letters to Republican leadership requesting retention of the HTC. Other members such as Rep. Tom Garrett, R-Va., spoke about the value of the HTC on the House floor at critical junctures when the House and Senate leadership began reconciling the competing versions of the tax bills.

In the Senate, Sens. Chuck Grassley, R-Iowa, Pat Roberts, R-Kan., Johnny Isakson, R-Ga., and Tim Scott, R-S.C., and Rob Portman, R-Ohio, vocalized

public support for Sen. Cassidy's amendment to retain the HTC as it was considered by the Senate Finance Committee. During committee deliberation, Portman spoke up in detail about his intention to support Sen. Cassidy's efforts. In addition to Cassidy, Sen. Roy Blunt, R-Mo., voiced support of the HTC on the Senate floor during the tax reform debate.

Sighting Ahead and Keys to Success

Congressional partnerships raised the profile of the HTC on the Hill, which directly contributed to the success of the national advocacy campaign and sets the stage for continued advocacy. Perseverance in the long-term goal—to keep the HTC permanent—was imperative to riding out the tax-reform rogue wave. As the industry moves forward to improve and enhance the credit further, we can mobilize these efforts around some of our lessons learned.

The industry's focus for the balance of this year will be on restoring as much value to the credit as possible, gaining clarity on technical issues and looking for opportunities to expand the credit beyond the current scope.

First, the industry is working with a group of stakeholders to prepare legislation that would eliminate the basis adjustment from the HTC. It is believed that this change, which is much more politically viable than going back to a one-year credit, will restore significant value to HTC transactions all over the country. A change like this would need to happen in a large tax legislative package toward the end of the year that, if it advances, will require bipartisan support, leaving a better opportunity for fixes like this to advance.

Technical corrections and clarifications will follow a different path. To the extent that we need statutory technical corrections, those will take a legislative path. An example of a possible technical correction is amending or eliminating the recapture provisions to

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match the new five-year credit. Technical clarifications will come in consultation with the joint Committee on Taxation or the Department of Treasury. Some examples of these would be clarifying how qualified improvement property (QIP) interacts with qualified rehabilitation expenses or how taxpayers should claim the credit “ratably” over the new five-year credit period.

Setting our sights further out, we will also build on our 2017 success and work toward enacting provision of the Historic tax Credit Improvement Act, such as the small-deal enhancements or changing the disqualified lease rules, should the opportunity present itself. One example of such an opportunity would be if Congress moves a large infrastructure package. Enhancements to the HTC are relatively inexpensive, use existing infrastructure and allow the reuse of properties that are not being well used. If Congress moves to

such a package, we will work hard to include these enhancements.

Many community-transforming, catalytic projects can only be achieved through pro-growth federal tax credits such as the HTC. In order to accomplish any of the goals listed above, the HTC community will need to remain vigilant and engaged, continuing to share the virtues of the program with federal legislators and make sure the story is told widely. Increased efforts are needed to improve the credit this year to ensure this market-driven incentive is remains a powerful tool for revitalization across the country. I encourage you to join us in this effort. ❖

Keep in touch with Merrill at mhoopengardner@ntcic.com. (She doesn't actually know how to surf but NTCIC's board of directors has signed her up for lessons in California in June.)

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