TSB-A-21(1)I Income Tax November 23, 2021

STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from ("Petitioner") asking whether the Rehabilitation of Historic Properties Credit cap applies on a per structure basis or a per application basis. We conclude that the Rehabilitation of Historic Properties Credit cap applies on a per structure basis.

Facts

Petitioner is a partnership that will own a project that contains several functionallyrelated historical structures. Each structure is, or will be, a certified historic structure by virtue of its listing on the National Register of Historic Places, individually or as a contributing part of a historic district. Since all of the structures are historically functionally-related, they must be submitted on one application and assigned one project number by the State Historic Preservation Office and the National Park Service.

Analysis

The Rehabilitation of Historic Properties Credit is available to taxpayers for expenses related to the rehabilitation of certified historic structures in New York State. The issue here is whether the requirement to file all structures under one application causes the tax credit cap to be applied on a per application basis or on a per structure basis. One application may consist of multiple buildings and structures. Tax Law § 606(00)(1)(A) states:

For taxable years beginning on or after January first, two thousand ten and before January first, two thousand twentyfive, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer with respect to a certified historic structure under internal revenue code section 47(c)(3), determined without regard to ratably allocating the credit over a five-year period as required by subsection (a) of such section 47, with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars.

The New York State Rehabilitation of Historic Properties Credit is based on the Federal rehabilitation credit, IRC § 47. IRC § 47 (a) allows a taxpayer to claim a credit for a qualified rehabilitation building, which is defined as "any building (and its structural components) if— (i) such building has been substantially rehabilitated, (ii) such building was placed in service before the beginning of the rehabilitation, (iii) such building is a certified historic structure, and (iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building." IRC § 47 (c)(1).

As Tax Law § 606(00)(1)(A) specifically calculates the credit as 100% of the amount of the federal credit allowed for a certified historic structure, the credit is applied on a per structure basis, as that structure is defined for purposes of the federal credit. The fact that multiple structures are required to be submitted on one application is irrelevant.

DATED: November 23, 2021

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.