

**The Rehabilitation of Historic Properties Credit  
and the Historic Homeownership Rehabilitation Credit**

Chapter 547 of the Laws of 2006, in part, provided for two new tax credits: the rehabilitation of historic properties credit and the historic homeownership rehabilitation credit. The credits were effective for tax years beginning on or after January 1, 2007. Chapter 239 of the Laws of 2009 made amendments to these credits for tax years beginning on or after January 1, 2010.

This memorandum describes the provisions of the credits for tax years beginning on or after January 1, 2010. For information on the provisions of the credits for tax years beginning on or after January 1, 2007, and before January 1, 2010, see TSB-M-07(3)I, *Summary of Personal Income Tax Legislative Changes Enacted in 2006* and TSB-M-07(3)C, *Summary of Corporation Tax Legislative Changes Enacted in 2006*.

**Credit for Rehabilitation of Historic Properties (Article 9-A and Article 22)**

**General**

A New York State Article 22 personal income tax credit and Article 9-A corporation franchise tax credit are allowed for the rehabilitation of certified historic structures located in New York State. The credit is not allowed under New York State Tax Law Article 9 (corporation tax), Article 32 (the franchise tax on banking corporations), or Article 33 (the franchise tax on insurance corporations).

The New York State credit is based on the federal credit allowed for the qualified rehabilitation expenditures, as defined by section 47(c)(2) of the Internal Revenue Code (IRC), related to the rehabilitation of the same certified historic structure. The tax credit is allowed in the tax year that the qualified rehabilitation is placed in service under section 167 (relating to depreciation) of the IRC.

*A certified historic structure*, for purposes of this credit, is a structure that has qualified rehabilitation expenditures as defined under section 47(c)(2) of the IRC. Under that section, *qualified rehabilitation expenditures* means any amount properly chargeable to a capital account:

- for property for which depreciation is allowable under section 168 of the IRC and which is (1) nonresidential real property, (2) residential rental property, (3) real property which has a class life of more than 12.5 years, or (4) an addition or improvement to property described in (1), (2), or (3); and
- in connection with the rehabilitation of a qualified rehabilitated building.

To claim the credit under Article 22 of the Tax Law, including any credit allowed to a shareholder of a New York S corporation, the rehabilitation project must also be in whole or in part:

- a targeted area residence within the meaning of IRC section 143(j) which is a residence in an area which is either a qualified census tract or an area of chronic economic distress, or
- located within a census tract which is identified as being at or below 100% of the state median family income in the most recent federal census.

### **Who is eligible**

This credit may be claimed by:

- an individual, estate, or trust taxable under Article 22 of the Tax Law, including an individual, estate, or trust that is a partner in a partnership (including a member of a limited liability company (LLC) that is treated as a partnership for federal income tax purposes), a shareholder of a New York S corporation, or a beneficiary of an estate or trust; or
- a corporation taxable under Article 9-A of the Tax Law, including a corporation taxable under Article 9-A that is a partner in a partnership (or a member of an LLC that is treated as a partnership for federal income tax purposes).

### **Amount of credit**

For tax years beginning on or after January 1, 2010, the amount of the credit is equal to 100% of the federal credit allowed under section 47 of the IRC for the same tax year for the same certified historic structure located in New York State. However, the total amount of New York State credit allowed cannot exceed \$5 million per structure.

Certain taxpayers may elect under section 47(d) of the IRC to claim the credit for federal purposes based on when the rehabilitation expenses are paid instead of when the historic structure is placed in service. Taxpayers that make this federal election may only claim the New York State credit in the year the historic structure is placed in service. However, the New York State credit is equal to 100% of the total federal credit, including any amount of federal credit for the same structure that was claimed in prior years, but may not exceed \$5 million per structure in the year the property is placed in service.

The credit is not transferable and must be claimed by the same taxpayer(s) that claimed the federal credit. Accordingly, the allocation of the New York State credit among partners in a partnership, members of a limited liability company, or shareholders in a New York S

corporation must follow the same allocation allowed for purposes of the federal tax credit under section 47 of the IRC.

The credit is not refundable. However, if the amount of the credit exceeds the taxpayer's tax for the year, the excess may be carried over to the following tax year or years.

### **How to claim the credit**

To claim the personal income tax credit, complete Form IT-238, *Claim for Rehabilitation of Historic Properties Credit*, and attach it to the New York State personal income tax return.

To claim the Article 9-A credit, complete Form CT-238, *Claim for Rehabilitation of Historic Properties Credit*, and attach it to the franchise tax return.

### **Recapture of credit**

If the federal credit allowed for a structure in New York State is subject to federal recapture under section 50(a) of the IRC and the taxpayer claimed a New York State credit for that structure, the taxpayer must recapture the same proportion of the credit for New York as the federal recapture for that structure.

(Tax Law sections 606(o) and 210(4))

## **Historic Homeownership Rehabilitation Credit (Article 22)**

### **General**

An individual can take a credit against his or her New York State personal income tax based on the costs he or she incurred for qualified rehabilitation expenditures with respect to the certified rehabilitation of a qualified historic home. To be eligible for the credit, the qualified historic home must be the taxpayer's residence and must be located in New York State. The credit will be administered by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP).

To qualify for the credit, the rehabilitation plan for exterior work on the qualified historic home must be certified by a local landmark commission established under section 96-a or section 119-dd of the General Municipal Law, or by OPRHP. If the rehabilitation plan includes both interior and exterior work, the expenditures must be approved by OPRHP or by a local government established under section 101(c)(1) of the National Historic Preservation Act.

If a taxpayer purchases a qualified historic home, qualified rehabilitation expenditures made by the seller are deemed to have been made by the taxpayer purchasing the property if the

purchaser meets certain conditions. (See the definition of *purchased qualified historic home* on page 5 of this memorandum.)

## Definitions

For purposes of this credit:

*Qualified historic home* means a *certified historic structure* located in New York State:

- which has been substantially rehabilitated (a building will be treated as being substantially rehabilitated where qualified rehabilitation expenditures related to the building total \$5,000 or more);
- which, or any portion of which, is owned, in whole or in part, by the taxpayer (including tenant-shareholders of a cooperative housing corporation);
- where the taxpayer resides during the tax year in which the taxpayer is allowed the credit; and
- which is in whole or in part a targeted area residence within the meaning of section 143(j) of the IRC or is located within a census tract which is identified as being at or below 100% of the state median family income in the most recent federal census.

*Certified historic structure* means any building (and its structural components) that is listed in the State or National Register of Historic Places; or is located in a state or national registered historic district and is certified as being of historic significance to the district.

*Certified rehabilitation* means any rehabilitation of a certified historic structure that has been approved and certified as being consistent with the standards established by the Commissioner of Office of Parks, Recreation and Historic Preservation (OPRHP) for rehabilitation by the OPRHP, a local government certified under section 101(c)(1) of the National Historic Preservation Act, or a local landmark commission established under section 96-a or 119-dd of the General Municipal Law. The certified rehabilitation process requires three steps:

1. an initial certification that the structure meets the definition of the term *certified historic structure*;
2. a second certification to be issued prior to construction certifying that the proposed rehabilitation work is consistent with standards established by the Commissioner of OPRHP for rehabilitation; and

3. a final certification to be issued when the construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed.

*Qualified rehabilitation expenditure* means any amount properly chargeable to a capital account:

- in connection with the certified rehabilitation of a qualified historic home, and
- for property for which depreciation would be allowable under section 168 of the Internal Revenue Code if the qualified historic home was used in a trade or business.

Qualified rehabilitation expenditures do not include the cost of acquiring any building or interest therein, any expenditure attributable to the enlargement of an existing building, or any expenditure made prior to January 1, 2007. Additionally, at least 5% of the total expenditures made in the rehabilitation process must be attributable to the exterior of the building.

In the case of a building where less than the entire building is used as the residence of the taxpayer, only the portion of the total expenditures made in the rehabilitation that are attributable to the residence of the taxpayer is treated as qualified rehabilitation expenditures.

*A purchased qualified historic home* means any qualified historic home purchased by the taxpayer if:

- the taxpayer is the first purchaser of the home following the date of the final certification step **and** the purchase occurs within five years after the final certification step;
- no credit was allowed to the seller with regard to this rehabilitation;
- the taxpayer resides in the home during the tax year in which he or she is allowed the credit; and
- the taxpayer is furnished with the necessary information (as determined by the Commissioner of Taxation and Finance) to determine the credit.

### **Amount of credit**

The amount of the credit is equal to 20% of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified home. For tax years beginning on or after January 1, 2010, the credit cannot exceed \$50,000 per taxpayer per year (\$100,000 for married taxpayers filing a joint return). However, if a taxpayer incurs qualified rehabilitation expenditures in relation to more than one residence in the same tax year, the total amount of credit claimed by a taxpayer cannot exceed \$25,000 per year (\$50,000 for married taxpayers filing a joint return).

If the residence is owned by more than one taxpayer, the amount of the credit must be divided among the owners (other than a husband and wife filing a joint return) using the following rules:

- A husband and wife filing separate returns may divide the credit equally or in any other manner as they both elect. However, the credit cannot exceed \$50,000 for either spouse.
- If a building is a residence of two or more people who are the owners (other than a husband and wife), the qualified expenditures for the residence are divided based on each taxpayer's percentage of ownership. Each taxpayer will use his or her share of the qualified expenditures to compute the credit.
- If a taxpayer holds stock as a tenant-shareholder in a cooperative housing corporation located in New York State, the taxpayer is treated as owning the house or apartment that the taxpayer is entitled to occupy as a shareholder. For purposes of computing the credit amount allowed to each shareholder, a percentage of the qualified rehabilitation expenditures for exterior work on the building containing the cooperative dwelling units is attributed to each unit within the building based on the percentage of space the unit occupies within the building. To qualify for the credit, the unit must be the residence of the taxpayer.

The credit is allowed in the tax year in which the final step of the three-step certification process is completed. The final certification constitutes proof that the expenditures related to the work are qualified rehabilitation expenditures for purposes of claiming this credit. However, for purchased qualified historic homes, the taxpayer will be treated as having made the qualified rehabilitation expenditures made by the seller of the home on the date of purchase and may claim the credit in the tax year of the purchase.

If the amount of the credit exceeds the taxpayer's tax for the year, and the taxpayer's New York adjusted gross income (in the case of a joint return, the husband's and wife's combined New York adjusted gross income) for the year does not exceed \$60,000, the excess may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund. If the taxpayer's (or the joint taxpayer's) New York adjusted gross income

for the year exceeds \$60,000 no refund is allowed, but the excess credit may be carried over and applied against the tax for the following year or years.

### **How to claim this credit**

To claim the credit, complete Form IT-237, *Claim for Historic Homeownership Rehabilitation Credit*, and attach it to the New York State personal income tax return.

### **Recapture of credit**

A recapture of the credit is required if the taxpayer no longer resides in the qualified historic home, and less than two years has passed since the later of:

- the date the final certification was issued, or
- the date the qualified historic home was purchased.

The amount of credit required to be recaptured is equal to the amount of credit claimed multiplied by a fraction, the numerator of which is 24 minus the number of months the taxpayer resided in the home and the denominator of which is 24.

(Tax Law section 606(pp))

### **Expiration and Transitional Rules for the Rehabilitation of Historic Properties Credit and the Historic Homeownership Rehabilitation Credit**

The amendments made by Chapter 239 of the Laws of 2009 expire and are deemed repealed on December 31, 2014. However, the application of the credit as described in this memorandum will continue to apply to any rehabilitation project commenced on or before December 31, 2014. A project is considered to have commenced on or before December 31, 2014, if the following has occurred prior to that date:

- an initial certification has been issued stating that the structure meets the definition of a certified historic structure, and
- a second certificate has been issued prior to construction stating that the proposed rehabilitation work is consistent with standards established by the Commissioner of Parks, Recreation and Historic Preservation.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.