

Amendments to the Rehabilitation of Historic Properties Credit and the Historic Homeownership Rehabilitation Credit

Chapter 472 of the Laws of 2010 made various amendments to the enhanced versions of the rehabilitation of historic properties credit and the historic homeownership rehabilitation credit that were enacted by Chapter 239 of the Laws of 2009. In addition, the new law changes the amount of credit allowable for tax years beginning on or after January 1, 2015, due to the expiration of the enhanced credits. Other than the changes described below, all the information in TSB-M-10(2)C, (3)I, *The Rehabilitation of Historic Properties Credit and the Historic Homeownership Rehabilitation Credit*, remains valid.

Credit for rehabilitation of historic properties (Articles 9-A, 22, 32, and 33)

Credit available to corporations subject to franchise tax under Article 32 and Article 33. The credit for rehabilitation of historic properties is now available to banking corporations subject to tax under Article 32 and insurance corporations subject to tax under Article 33 for tax years beginning on or after January 1, 2010. The credit was previously only available to general business corporations subject to tax under Article 9-A and personal income taxpayers subject to tax under Article 22. Banking corporations and insurance corporations are subject to the same computational rules that apply to Article 9-A taxpayers.

Special rules for partners and S corporation shareholders. The new law provides that if a taxpayer is a partner in a partnership or a shareholder of a New York S corporation, the maximum credit amount will be applied at the level of the partnership or New York S corporation that incurred the rehabilitation expenses. The maximum credit amount is \$5 million per structure for tax years beginning on or after January 1, 2010, and before January 1, 2015, and \$100,000 per structure for tax years beginning on or after January 1, 2015. Accordingly, the aggregate credit amount allowed to all partners or shareholders of each partnership or New York S corporation that is claiming the credit cannot exceed the maximum credit amount that is applicable in that tax year.

Location of rehabilitation project. The new law added language to Articles 9-A, 32, and 33 to specify where the rehabilitation project must be located to be eligible for the credit for tax years beginning on or after January 1, 2010. This language had originally been added only to Article 22 and therefore applied only to personal income taxpayers.

Accordingly, to claim the credit under Articles 9-A, 22, 32, or 33 of the Tax Law, including any credit allowed to a partner in a partnership or 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) that is a residence in an area that is either a qualified census tract or an area of chronic economic distress, or

- located within a census tract that is identified as being at or below 100% of the state median family income in the most recent federal census.

Credit limitation. Under the new law, the credit may not reduce the tax due below a specified limit for Articles 9-A, 32, or 33 for tax years beginning on or after January 1, 2010. The following limitations apply:

- For Article 9-A taxpayers, the credit cannot reduce the tax due to less than the higher of the minimum taxable income base under section 210.1(c) or the fixed dollar minimum tax under section 210.1(d).
- For Article 32 taxpayers, the credit cannot reduce the tax due below the fixed minimum tax under section 1455(b).
- For Article 33 taxpayers, the credit cannot reduce the tax due below the minimum tax under section 1502(a)(4) (life insurance corporations) or the minimum tax under section 1502-a (non-life insurance corporations).

If the amount of the credit allowable for any tax year reduces the tax to the minimum amount for Article 9-A, 32, or 33 as explained above, any excess credit may be carried over to the following year or years and may be deducted from the taxpayer's tax for that following year or years.

Note: For Article 22 taxpayers, there is no credit limitation and the credit may reduce the tax to zero. If the credit allowed exceeds the tax, any excess credit may be carried over to the following year or years and may be deducted from the taxpayer's tax for that following year or years.

Amount of credit for tax years beginning on or after January 1, 2015. For property placed in service in tax years beginning on or after January 1, 2015, the amount of the credit allowed will be equal to 30% of the federal credit allowed under section 47 of the Internal Revenue Code (IRC) for the same certified historic structure located in New York State. The total amount of New York State credit allowed cannot exceed \$100,000 per structure.

(Tax Law sections 606(oo), 210(40), 1456(u), and 1511(y))

Historic homeownership rehabilitation credit (Article 22)

Limitation of credit for multiple residences for tax years beginning on or after January 1, 2010, and before January 1, 2015. Under the prior law, if a taxpayer incurred qualified rehabilitation expenditures for more than one residence in the same year, the total amount of the credit for all expenditures could not exceed \$25,000 (\$50,000 for married taxpayers filing a joint return). Under the new law, if a taxpayer incurs qualified rehabilitation expenditures for more than one residence in the same year, the total amount of the credit for all expenditures may not exceed \$50,000 (\$100,000 for married taxpayers filing a joint return).

Amount of the credit for tax years beginning on or after January 1, 2015. The amount of the credit remains equal to 20% of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified home. However, the credit may not exceed \$25,000 per taxpayer per year (\$50,000 for married taxpayers filing a joint return).

If a taxpayer incurs qualified rehabilitation expenditures for more than one residence in the same year, the total amount of the credit for all expenditures may not exceed \$25,000 (\$50,000 for married taxpayers filing a joint return).

If the amount of the credit exceeds the taxpayer's tax for the year, the credit is not refundable, but the excess may be carried over and applied against the tax for the following year or years.

(Tax Law section 606(pp))

Transitional rules for the rehabilitation of historic properties credit and the historic homeownership rehabilitation credit

Before the new law, Chapter 239 of the Laws of 2009 contained language that provided that the enhanced credits would continue to apply to projects commenced on or before December 31, 2014. The new law removed that language. Accordingly, for any project:

- The amount of the rehabilitation of historic properties credit will be determined by the rules in effect for the tax year in which the property is placed in service.
- The amount of the historic homeownership rehabilitation credit will be determined by the rules in effect for the tax year in which the final step of the three-step certification process is completed.

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.