

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-14(1)I
Income Tax
January 27, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I130521A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether he is eligible for the historic homeownership rehabilitation credit for a home in which his mother has a life estate and he has a remainder interest. We conclude that Petitioner satisfies the ownership and residency requirements for the credit. We do not have sufficient information to address any of the other statutory requirements.

Facts

By a deed recorded on March 29, 2011, Petitioner was conveyed property at 19 Pleasant Street, Sidney, NY 13838. The property was conveyed to him subject to the life use and occupancy by his mother on those premises during her lifetime. The deed states that his mother is “entitled to the sole possession and enjoyment of that premises. Upon her death, sole title to the premises shall pass to the [Petitioner], his heirs, successors and assigns as holder of the remainder interest in the premises.” Petitioner states that he resides in the home 25% or more of the year, and that he is at the residence 3 to 4 days every 2 to 3 weeks. He also receives mail and stores an antique car at the home.

Analysis

Section 606(pp) of the Tax Law provides a credit equal to 20% of the qualified rehabilitation expenditures made by a taxpayer with respect to a qualified historic home. The requirements of the definition of the term “qualified historic home” relevant to this Petition are that the structure be owned, in whole or in part, by the taxpayer, and that the taxpayer reside in the home during the taxable year in which the taxpayer is allowed the credit (see Tax Law § § 606(pp)(5)(A)(ii) and (iii), respectively). This Advisory Opinion will address only these two requirements.

Petitioner has a remainder or future interest in the property. Under EPTL § 6-5.1, future interests are descendible, devisable and alienable, in the same manner as estates in possession. Accordingly, the Petitioner has an ownership interest in the property, and thus, he satisfies the requirement in Tax Law § 606(pp)(5)(A)(iii). In addition, because Petitioner resides 25% of the time at the property, Petitioner satisfies the requirement in Tax Law § 606(pp)(5)(A)(iii). The statute does not require that the property be the taxpayer’s primary residence. The statute also contemplates that a taxpayer may have more than one residence. There is a dollar cap per taxable year on the amount of the credit that is allowed, and the statute states specifically that, if the taxpayer incurs qualified rehabilitation expenses in relation to more than one residence in the

same year, the total amount of credit allowed for all those qualified rehabilitation expenditures shall not exceed the applicable dollar cap (see Tax Law § 606(pp)(2)(A)). Thus, the fact that Petitioner resides in the home 25% of the year is sufficient to satisfy the residency requirement.

DATED: January 27, 2014

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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.