# New York State Department of Taxation and Finance Office of Counsel

TSB-A-17(3)I Income Tax June 30, 2017

## STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

#### ADVISORY OPINION PETITION NO – I170127A

The Department of Taxation and Finance ("Department") received a Petition for Advisory Opinion from ("Petitioner"). Petitioner asks, whether the property specified in the petition ("the Building"), is located within a qualifying census tract for the tax credit for rehabilitation of historic properties.

We conclude that the determination of the New York State Office of Parks, Recreation and Historic Preservation that the Building is in a qualifying census tract for purposes of the tax credit for the rehabilitation of historic properties under Tax Law § 606(00) is controlling and will be followed by the Department of Taxation and Finance.

#### **Facts**

Petitioner began renovation work to the Building and anticipates that the Building will be listed in the National Register of Historic Places as a "certified historic structure" under IRC § 47(c)(3)(A). The rehabilitation of the Building is expected to be completed and placed in service, within the meaning of IRC § 167, in 2017. The Building is located wholly within a specified census tract in Monroe County, New York. The New York State Office of Parks, Recreation and Historic Preservation approved the renovation plans and issued Petitioner a letter dated August 15, 2016, confirming that the Building located in the specified census tract is "eligible for the New York State commercial Rehabilitation Tax Credit program."

Subsequent to Petitioner's receipt of the August 15, 2016 correspondence, Petitioner's lender/investor noted that the median family income for the specified census tract using the most recent five-year American Community Survey estimate published by the United States Census Bureau was higher than the median family income for New York State. As a result, Petitioner's lender/investor questioned Petitioner's eligibility for the credit for rehabilitation of historic properties and temporarily ceased renovations of the Building until further guidance could be obtained.

### **Analysis**

Tax Law § 606(00) allows for a credit against tax equal to one hundred percent of the federal credit allowed for the rehabilitation of historic properties under IRC § 47(a)(2), up to five million dollars per structure. The credit is allowed during the taxable year in which the qualified rehabilitation project is placed into service, pursuant to IRC § 167. The credit can exceed the taxpayer's tax due for the year the project is placed into service and is refundable in accordance

with the provisions in Tax Law § 686; no interest will be paid on the refundable portion of the credit.

To be eligible for the credit, the project must be located within a census tract that is identified as being at or below 100% of the state median family income ("qualifying census tract"). The state median family income is computed as of January 1 of each year using the most recent five-year estimate from the American Community Survey published by the United States Census Bureau (*see* Tax Law § 606[00][5]).

The determination of eligibility is made by the New York State Office of Parks, Recreation and Historic Preservation (*see* TSB-M-13[4]I regarding to the Rehabilitation of Historic Properties Credit). As evidenced by the August 15, 2016 correspondence, the New York State Office of Parks, Recreation and Historic Preservation determined that the rehabilitation project at the Building located in the specified census tract is eligible for the New York State Rehabilitation Tax Credit program, and approved the project. The determination made by the New York State Office of Parks, Recreation and Historic Preservation is controlling, and the Department of Taxation and Finance will follow the determination of that office that the Building is located in a qualifying census tract.

DATED: June 30, 2017

/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.