

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

TSB-A-13(5)C  
Corporation Tax  
TSB-A-13(4)I  
Income Tax  
March 27, 2013

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z130211A

The Department of Taxation and Finance received a petition for Advisory Opinion from [REDACTED]. The issue is whether Petitioner is located in a qualifying census tract for purposes of the credit for the rehabilitation of historic properties allowed under Articles 9-A, 22, 32 and 33 of the Tax Law.

**Facts**

The City of New York (the “City”) owns a fee simple interest in certain land and improvements, colloquially referred to as the Brooklyn Navy Yard, located in the City of New York, County of Kings, and located within Census Tract 543, as defined by the 2000 and 2010 U.S. Censuses.

On July 1, 2012, the City leased certain property located within Census Tract 543 to Brooklyn Navy Yard Development Corporation (“BNYDC”). On September 6, 2012, BNYDC, with the express consent of the City, leased a building complex located within Census Tract 543 to Petitioner. Petitioner will renovate the building complex and turn it into a commercial facility. The building complex is expected to be a certified historic structure that qualifies for a federal rehabilitation tax credit under Section 47 of the Internal Revenue Code of 1986, as amended. The 2000 U.S. Census determined that Census Tract 543 had zero population. The 2010 U.S. Census determined that Census Tract 543 had a population, but did not provide any data on median family income.

**Analysis**

One of the requirements for the credit for the rehabilitation of historic properties is that the rehabilitation project must be 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 (see, e.g., Tax Law §210.40(5)). For purposes of this Advisory Opinion, a census tract meeting this standard is referred to as a “qualifying census tract.” Prior to the availability of the 2010 federal census data, the standard to determine a qualifying census tract involved identifying those census tracts from the 2000 federal census that were at or below 100% of the State Median Family Income. Unfortunately, the 2010 census data does not capture this data but relies on the American Community Survey (ACS) to maintain this information. However, the sample data collected for ACS for any particular year is limited and does not provide a comprehensive picture of the

economics of a specific census tract. As a result, the annual ACS data has wide margins of error that make the data, by itself, less than ideal for establishing the financial picture of a community.

Due to the lack of comprehensive Median Family Income data in the 2010 census and in order to provide clear and determinable guidelines to taxpayers regarding their qualifications to claim this credit under current law, we conclude that the standards to determine whether a census tract is a qualifying census tract should use a combination of data that includes the 2000 Federal Census and the most recent ACS. This approach allows for the most comprehensive data (the 2000 Census) to remain in use and adds current data from the ACS that reflects more recent economic conditions.<sup>1</sup>

As noted above, in 2000, Census Tract 543 had zero population. Therefore, in the 2000 census, it was a census tract that was below 100% of the State Median family income. Moreover, the most recently available ACS data, the 2011 ACS issued by the U.S. Census Bureau on December 6, 2012, reports median family income for Census Tract 543 in the amount of \$14,688, which is significantly below the current New York statewide median family income of \$66,852 (as reported by the ACS). Therefore, based upon the combination of the 2000 federal census data and the most recent ACS data, we conclude that Census Tract 543 is a qualifying census tract for purposes of credit for the rehabilitation of historic properties allowed under Articles 9-A, 22, 32 and 33 of the Tax Law.

DATED: March 27, 2013

/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.

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<sup>1</sup> We note that the State Budget for 2013-2014 currently pending in the State Legislature, in recognition of the fact that the census data no longer captures median family income, modifies the eligibility standard to be a census tract which is identified as being at or below 100% of the state median family income as calculated as of January 1 of each year using the most recent five year estimate from the American Community Survey (S 2609-D/A. 3009-D, Part F).