

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance (“Department”) received a Petition for Advisory Opinion from [ REDACTED ] (“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 §§ 210-B(26), 606(oo) and 1511(y) is controlling and will be followed by the Department of Taxation and Finance.

**Facts**

Petitioner plans to undertake the rehabilitation of the Building. The Building was listed in the National Register of Historic Places in January 2019. The building, therefore, qualifies 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 2021. The Building is located wholly within a specified census tract in Queens County, New York. Petitioner submitted several letters from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) to the Petitioner in which OPRHP approved the renovation plans and confirmed that OPRHP will certify that the Building located in the specified census tract is eligible for the New York State Commercial Rehabilitation Tax Credit program.

Despite the OPRHP’s determination of eligibility, Petitioner’s lenders/investors remain concerned that the building may not be eligible for the New York State Rehabilitation Tax Credit, based upon its reading of the raw census data.

**Analysis**

Tax Law §§ 210-B(26), 606(oo), and 1511(y) allow 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. The credit is allowed during the taxable year in which the qualified rehabilitation project is placed into service pursuant to IRC § 167. The credit cannot exceed the taxpayer’s tax due for the year the project is placed into service or, in the case of the corporate taxes, the fixed dollar minimum tax, and is refundable, but 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 §§ 210-B[26][c], 606[oo][5], and 1511[y][5]).

The determination of eligibility is made by the OPRHP (see TSB-M-13[4] regarding the Rehabilitation of Historic Properties Credit). As evidenced by the correspondence Petitioner received from OPRHP, OPRHP 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 OPRHP 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: January 21, 2020

/S/  
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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.