

**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 [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 § 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

