



Declaratory Ruling Relating to the Rehabilitation of Historic Properties Credit

Reproduced below is Declaratory Ruling # 24-1, issued by Amanda Hiller, Acting Commissioner of Taxation and Finance, on June 21, 2024. This declaratory ruling, made pursuant to section 204 of the State Administrative Procedures Act, addresses the issues of whether the statutory cap on the Rehabilitation of Historic Properties Credit is applied on a per structure basis when multiple structures are required to be aggregated on a single application, and whether the Department will defer to determinations made by the NYS Office of Parks, Recreation and Historic Preservation on what constitutes a separate certified historic structure for the purpose of administering the Credit.

**Department of Taxation and Finance
Declaratory Ruling #24-1
Rehabilitation of Historic Properties Credit
Tax Law §§ 210-B(26), 606(oo), 1511(y)**

The Department of Taxation and Finance (Department) received a Petition for Declaratory Ruling, pursuant to section 204 of the State Administrative Procedure Act, from the owner (Petitioner) of an assemblage of structurally independent, but functionally related, historic buildings that the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) has certified to the Department are separate certified historic structures. Petitioner requests a ruling on the issue of whether the statutory cap on the Rehabilitation of Historic Properties Credit (Credit) is applied separately for each certified historic structure, as certified historic structure is defined for purposes of the federal rehabilitation credit under section 47(c)(3) of the Internal Revenue Code (IRC), even though the National Park Service and the OPRHP require functionally-related certified historic structures to be aggregated on a single application and assign them a single project number. Assuming the Credit cap is applied separately for each certified historic structure, Petitioner also requests a ruling as to whether the Department will defer to OPRHP determinations on what constitutes a separate certified historic structure for the purpose of administering the Credit cap.

The Credit is available to individuals, business corporations and insurance corporations for expenses related to the rehabilitation of certified historic structures in New York State. Tax Law §§ 210-B(26), 606(oo), 1511(y). The Credit is measured as a percentage of the IRC § 47 rehabilitation credit “allowed the taxpayer with respect to a certified historic structure” and is capped at \$5 million for tax years beginning on or after January 1, 2010, and before January 1, 2030. Tax Law § 606(oo)(1)(A).

IRC § 47(a) allows a taxpayer to claim a credit for a qualified rehabilitated building, which is defined as “any building (and its structural components) if— (i) such building has been substantially rehabilitated, (ii) such building was placed in service before the beginning of the rehabilitation, (iii) such building is a certified historic structure, and (iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.” IRC § 47(c)(1).

As the Tax Law specifically calculates the Credit in terms of the federal credit allowed for a certified historic structure, the \$5 million Credit cap is applied on a per structure basis, as that structure is defined for purposes of the federal credit. The fact that multiple structures are required to be submitted on one application is irrelevant. See Advisory Opinion TSB-A-21(1)I. Furthermore, the Department relies upon and will defer to OPRHP certification as to whether a building is a separate certified historic structure for purposes of the Credit.

Dated: Albany, New York
June 21, 2024

_____/s/_____
Amanda Hiller
Acting Commissioner of Taxation and Finance

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.