North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

December 20, 2022

[redacted]

RE: Request for Written Determination

Dear [redacted]:

This letter is a response to your letter dated August 18, 2022, wherein you requested on behalf of your client, [redacted], that the North Carolina Department of Revenue ("Department") provide a written determination as to whether your client is entitled to claim a tax credit under the reenacted Mill Rehabilitation Tax Credit under Article 3H of the Revenue Laws.

The statement of facts submitted for the Department's consideration of your request is summarized as follows:

[redacted] (the "Project") is a development project in [redacted] County, [redacted], NC that centers around the [redacted] buildings located at [redacted], NC. The Project qualifies for both the Federal Historic Tax Credit (HTC) under IRC § 47 and for the North Carolina Historic Rehabilitation Tax Credits Investment Program pursuant to N.C. Gen. Stat. § 105-129.105.

Chronology of Events

- The National Park Service reviewed the taxpayer's Historic Preservation Certification Application - Part I, and executed approval letter dated [redacted].
- The Project received Eligibility Certification (3L) in [redacted] from NC SHPO.
- North Carolina Department of Natural and Cultural Resources Division of Historic Resources State Preservation Office determined the proposed rehabilitation appears to meet the Secretary of the Interior's Standards for Rehabilitation if conditions are met dated [redacted].

- National Park Service reviewed Historic Preservation Certification Application - Part 2, and executed its approval letter dated [redacted].

- Construction started in [redacted], and the rehabilitated buildings are now 100% complete and were completed by end of [redacted] (confirmed by respective Certificates of Substantial Completion and Occupancy).

- The Project received a North Carolina Historic Mill Rehabilitation (3H) Tax Credit Eligibility Certification on [redacted] from the North Carolina Department of Natural and Cultural Resources State Historic Preservation Office (SHPO).

The financing for the Project includes both Federal Historic Tax Credit Equity and North Carolina State Historic Tax Credit Equity. The Project is owned and held by [redacted]. However, [redacted] is the lessor of the buildings and leases the buildings to [redacted]. For tax purposes this lessor/lessee arrangement is structured as a Master/Tenant or lease pass-through structure. As such, on its federal and NC income tax returns, and pursuant to IRC § 50 and Treas. Reg. 1.48-4 et. seq., [redacted] filed the respective tax election to pass the HTC to the lessee, [redacted]. Since the Project's financing is a lease pass-through structure, [redacted] also attached a copy of the federal pass-through election to the respective NC return reporting the pass-through of the NC HTC. A portion of the buildings were placed in service in late [redacted] and both IRC § 47 Federal Historic Tax Credits [redacted] and North Carolina State (Article 3L) Historic Tax Credits [redacted] were allowable.

ISSUES:

1. Because North Carolina Credits (3L) were claimed in 2021, does the Project's owner amend the relevant tax returns to update for the additional, net increase, to 2021 Tax Credits (3H) which are now available?

   Department's Response: Based on our review of the facts submitted, the Project has met the qualifying conditions outlined in Article 3H, Mill Rehabilitation Tax Credit (N.C. Gen. Stat. §§ 105-129.70 through 105-129.75A) Therefore, [redacted], the owner of the Project and the subject of this ruling, qualifies for the Article 3H tax credit. In addition, because the Project is represented to be located in a tier 2 development zone, the NC credit rate applied to [redacted] Qualified Rehabilitation Expenditures (QRE) is 40% under Article 3H.

   Before [redacted] can claim the tax credit under Article 3H, your client must amend relevant returns and forms for the 2021 tax year and not claim the tax credit under Article 3L. This step is necessary because N.C. Gen. Stat. § 105-129.74 prohibits a taxpayer that claims an Article 3L tax credit from claiming an Article 3H credit on the same activity. Also, since the election of the tax against which the tax credit is claimed is binding, the Article 3H tax credit must be claimed against the same tax on the 2021 and 2022 tax years.

2. For 2022, may the Project's owners claim 3H credits?

   Department's Response: Please see the response to Question #1. The Department addressed [redacted] eligibility for the credit in the previous response. With regard to the eligibility of any unnamed owners, the Department is currently engaged in litigation involving tax credits, and a written response to this question is not in the best interest of the State of North Carolina.

This ruling answers the questions presented in the ruling request and does not address any other issues unrelated to the questions. It is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. Your statement of facts and our findings are subject to audit verification. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Should you have any questions, please contact me.

Very truly yours,

[redacted]

[redacted]
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