North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

December 15, 2015

[redacted]

RE: Application of the Historic Preservation Tax Credits Investment Program to a Project in [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you submitted an amendment to a letter submitted on [redacted] on behalf of [redacted] ("Taxpayer') and requested that the North Carolina Department of Revenue ("Department") issue a private letter ruling, based on the amendment, regarding the application of the North Carolina tax credit for rehabilitating income-producing historic structures (the "NC Historic Tax Credit"), to a project comprised of [redacted], to be located in [redacted].

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

A. Project

In 2014, Taxpayer began renovating a portion of [redacted] into a low-income apartment project comprised of [redacted] units of rental low-income elderly apartments and certain commercial spaces, to be located in [redacted] (the "Project"). Landlord owns land, known as Tract 1 as shown on the Map entitled "[redacted]" recorded in [redacted], Page [redacted], [redacted] Registry (the "Land"). Landlord is leasing the Land and all existing buildings, structures, parking facilities and other improvements, which are located on [redacted] (collectively, the "Premises") to Taxpayer under [redacted] (the "Lease").

Taxpayer is in the process of renovating at its sole cost and expense those buildings located on the Land and commonly referred to as (i) [redacted]; ([redacted]; (iii) [redacted]; (iv) [redacted]; (v) [redacted]; and (vi) [redacted]. All of the improvements will be treated as qualified rehabilitation expenses.

B. Project Parties

Taxpayer. [redacted] is a [redacted] limited liability company that will lease the Premises, including the Improvements, from Landlord. The issued and outstanding membership interests of Taxpayer are currently owned by [redacted]. A state investor may be admitted as a member of Taxpayer, and make a capital contribution to the Taxpayer, on or before December 31, 2015. Any such investor's investment return is reasonably anticipated to be derived from the NC Historic Tax Credit, the federal historic tax credit, and the federal low income housing tax credit. Taxpayer has elected to be taxed as a partnership rather than an association taxable as a corporation.

Landlord. [redacted] is a [redacted] corporation that owns the Premises. Landlord leases the Premises to Taxpayer pursuant to the Lease (further discussed below).

Managing Member 1. [redacted] is a [redacted] corporation that owns fifty-five ten-thousandths of one percent (.0055%) of Taxpayer.

Managing Member 2. [redacted] is a [redacted] corporation that owns forty-five ten-thousandths of one percent (.0045%) of Taxpayer.

Federal Investor. [redacted] is a [redacted] partnership that currently owns ninety-nine and ninety-nine one-hundredths of a percent (99.99%) of the issued and outstanding membership interests of Taxpayer.

NC Investor. The Project Parties are seeking a separate investor for the NC Historic Tax Credit (the "NC Investor") to make a capital contribution to Taxpayer of at least forty percent (40%) of the amount of the NC Historic Tax Credit that would be allocated to NC Investor in exchange for a one percent (1%) ownership interest in Taxpayer. Taxpayer would then allocate all of the NC Historic Tax Credit to NC Investor. Upon admission of NC Investor to Taxpayer, Taxpayer would continue to be taxed as a partnership rather than an association taxable as a corporation. NC Investor's address, phone number and federal tax identification number are yet unknown.

C. The Lease

Taxpayer has incurred and will continue to incur qualified rehabilitation expenses in 2014 and in 2015. Taxpayer expects to complete the Improvements not later than December 31, 2015. The Lease is structured as a capital lease, and Taxpayer will be considered the owner of the Improvements for federal income tax purposes for the duration of the Lease. Taxpayer and Landlord will obtain a certificate of occupancy for the Project on or before December 31, 2015. Upon completion of the Improvements and the issuance of a certificate of occupancy, Taxpayer will consider the Project as being placed in service.

D. North Carolina Tax Credits

As provided by N.C. Gen. Stat. § 105-129.100(a), and as indicated above, Taxpayer intends to claim the NC Historic Tax Credit generated by Taxpayer's qualified rehabilitation expenditures incurred in 2014

and 2015 in completing the Improvements. The NC Historic Tax Credit will be calculated based on Taxpayer's qualified rehabilitation expenditures incurred in 2014 and 2015. All of the NC Historic Tax Credit will be allocated to NC Investor in accordance with N.C. Gen. Stat. § 105-129.100(b).

REQUESTED RULINGS:

1. *The Certified Historic Structure is owned by* [redacted]. Because [redacted] holds fee simple title to the Premises, the condition described in N.C. Gen. Stat. § 105-129.100(e)(2), which requires the certified historic structure to be owned by a city is satisfied even though the Lease shifts ownership for federal and state income tax purposes to Taxpayer.

   Department's Response: We agree. Although the ownership of the certified historic structure transfers to Taxpayer for federal and state income tax purposes pursuant to the Lease, and Taxpayer will be entitled to all depreciation deductions and other income tax benefits related to the Improvements, [redacted] is the fee simple owner of the certified historic structure Premises and is, therefore, the legal owner. As a result, the requirement that the certified historic structure be owned by a city is satisfied.

2. *NC Investor Eligibility for the NC Historic Tax Credit in 2016.* A NC Investor that is admitted as a member of Taxpayer before December 31, 2015 and that makes a capital contribution to Taxpayer before December 31, 2015 that is equal to 40% or more of the amount of the NC historic preservation credit available for allocation will be entitled to an allocation of the credit available for allocation in 2016.

   Department's Response: We agree. If the NC Investor is admitted as a member of Taxpayer on or before December 31, 2015 and the NC Investor makes a capital contribution to Taxpayer such that the NC Investor's adjusted basis in Taxpayer as of December 31, 2015, the year the property is placed in service, is at least (40%) of the amount of the credits to be allocated to NC Investor for the year 2016, then the NC Investor will be eligible for an allocation of the NC Historic Tax Credit for the tax year 2016 as provided under the special allocation provisions of N.C. Gen. Stat. § 105-129.100(e).

This ruling 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 the facts and circumstances given are inaccurate or if there are other facts that were not disclosed that might cause the Department to reach a different conclusion, the taxpayer requesting this ruling may not rely on it. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. 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]