

PART E: PROPERTY REHABILITATION AND HOUSING CREDITS

36. TEXTILE REVITALIZATION CREDITS

a. General Provisions

The South Carolina Textile Communities Revitalization Act, contained in Title 12, Chapter 65, provides a credit for the renovation, rehabilitation, and redevelopment of abandoned textile mill sites in South Carolina. The credit is not available to a taxpayer who owned the textile mill site immediately prior to its abandonment if the site was operational at that time or if the site has previously received textile mill credits.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-8.¹

S.C. Code Ann. § 12-65-30 allows a taxpayer who rehabilitates an abandoned textile mill site to choose one of the following tax credits:

1. A credit against income tax, license tax, or both or a credit against bank taxes (“income/bank/license tax credit”) or insurance premium taxes equal to 25% of eligible rehabilitation expenses or
2. A credit against real property taxes (“property tax credit”) equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio for each local taxing entity consenting to the credit.

For a credit under (1) above, a taxpayer must file a “Notice of Intent to Rehabilitate” (Notice) with the Department before receiving the building permits for rehabilitating the site, or the applicable phase of the site. Transfers between affiliated taxpayers of any of the developmental phases of the textile mill site are not considered an acquisition that would subject the taxpayer to filing a Notice. Failure to provide the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- ◆ the taxpayer intends to rehabilitate the site
- ◆ the location of the site

¹ The South Carolina General Assembly amended certain provisions of the South Carolina Textiles Communities Revitalization Act in 2019, 2020 and 2021. As such, SC Revenue Ruling #15-8 must be reviewed in light of these legislative amendments as well as the amendments made to S.C. Code Ann. § 12-2-100 discussed herein.

- ◆ the amount of acreage involved with the site
- ◆ the estimated expenses to be incurred
- ◆ which buildings on the site are to be renovate or demolished, and
- ◆ whether new construction is to be involved at the site.

b. Income/Bank/License/Insurance Premium Tax Credit

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses unless the expenses exceed 125% of the estimated rehabilitation expenses set forth in the Notice.
2. The credit is 25% of 125% of the estimated rehabilitation expenses set forth in the Notice if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.

This credit can be used against income taxes imposed under Chapter 6 of Title 12 or license taxes imposed by Chapter 20 of Title 12, or both, bank taxes imposed under Chapter 11 of Title 12 or insurance premium taxes imposed by Chapter 7, Title 38. The entire credit is earned in the taxable year in which the site (or applicable phase or portion) is placed in service and is claimed in equal installments over a 5-year period beginning with the tax year the site (or applicable phase or portion) is placed in service. The credit may offset 100% of the taxpayer's income tax liability or license tax liability. Any unused credit may be carried forward for 5 years. The credit is claimed on Form TC-23, "Credit for Textiles Rehabilitation."

Under S.C. Code Ann. § 12-2-100(B), to the extent a partnership or limited liability company taxed as a partnership earns the textile facility revitalization credit, the credit, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis. This includes, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time in the year in which the credit or unused credit was allocated. The allocation must be allowed without regard to any provision of the Internal Revenue Code, or regulation promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including and without limitation, the treatment of the allocation as a disguised sale.

S.C. Code Ann. § 12-2-100(B) applies to a qualified project placed in service after January 1, 2020, but before December 31, 2030, provided the qualified project is issued an eligibility statement after May 14, 2020.

An S corporation may pass through the credit to its shareholders but must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. S.C. Code Ann. § 12-6-3310(B)(2).

NOTE: A taxpayer may claim the income/bank/license/insurance premium textile revitalization tax credit in addition to the credit for rehabilitation of a certified historic structure allowed under S.C. Code Ann. § 12-6-3535

c. Certification Procedures

S.C. Code Ann. § 12-65-60 provides a procedure which allows a taxpayer to apply to the governing body of the municipality or county in which the textile mill site is located for certification of the site. The certification can be done by either ordinance or binding resolution and must include certain findings. A taxpayer who receives this certification may conclusively rely on the certification in determining the credit allowed, however, the taxpayer must include a copy of the certification on his first return where the credit is claimed.

d. Property Tax Credit

See Chapter 4, “Business Property Tax and Exemptions”, Section 7, for a summary of the textile revitalization property tax credit.

e. Definitions

S.C. Code Ann. § 12-65-20 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. “Textile mill” - a facility or facilities that was initially used for textile manufacturing, dying, or finishing operations and for ancillary uses to those operations.
2. “Textile mill site” - the textile mill together with the land and other improvements on it which were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dying, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses.

Notwithstanding the above, with respect to (i) any site acquired by a taxpayer before January 1, 2008, (ii) a site located on the Catawba River near Interstate 77, or (iii) a site which, on the date the notice of intent to rehabilitate is filed, is located in a distressed area of a county in this State, as designated by the applicable council of government, “textile mill site” means the textile mill structure, together with all land and improvements which were used directly for textile manufacturing operations or ancillary uses, or were located on the same parcel or a contiguous parcel within one thousand feet of any textile mill structure or

ancillary uses. For purposes of this item, "contiguous parcel" means any separate tax parcel sharing a common boundary with an adjacent parcel or separated only by a private or public road or railroad rights of way.

3. "Ancillary uses" - uses related to the textile manufacturing, dyeing, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.
4. "Abandoned" - at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a "Notice of Intent to Rehabilitate." A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether each subdivided parcel has been abandoned.
5. "Rehabilitation expenses" - the expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including without limitations, the demolition of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the textile mill site, but excluding the cost of acquiring the textile mill site or the cost of personal property located at the textile mill site. For expenses associated with a textile mill site to qualify for the credit, the textile mill and buildings on the textile mill site must be either renovated or demolished.

Notwithstanding the above, for purposes of calculating the credit with regard to new or rehabilitated buildings on "contiguous parcels" as described above, "rehabilitation expenses" do not include expenses that increase the amount of square footage of the buildings that existed on that contiguous parcel immediately preceding the time at which the textile mill became abandoned by more than 200%.

6. "Placed in service" - the date the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

f. Transfer of Credit

A taxpayer who sells or leases all or part of the textile mill site may transfer all or part of any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the purchaser or lessee. The taxpayer must notify the Department of the credit transfer. Questions concerning a credit transfer and the method to request approval of the transfer from the Department should be directed to the Department at 803-898-5749 or by email at TaxCredits@dor.sc.gov.

NOTE: Other rules not discussed in this general summary may apply to sites purchased before January 1, 2008, a site located on the Catawba River near Interstate 77, or a site which on the date a notice of intent to rehabilitate is filed is located in a distressed area of a county, as designated by the applicable council of government. Also, transitional rules may apply to certain sites.

37. RETAIL FACILITY REVITALIZATION CREDITS

NOTE: The Retail Facilities Revitalization Act was repealed on July 1, 2016. However, for those sites which provide written notification of their election prior to July 1, 2016 and for which a building permit was issued prior to July 1, 2016, the repeal is suspended for fiscal year 2022-2023.

a. General Provisions

The South Carolina Retail Facilities Revitalization Act, contained in Title 6, Chapter 34, provides an income tax credit or property tax credit for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-9.

S.C. Code Ann. § 6-34-40 allows a taxpayer who improves, renovates, or redevelops an eligible site to elect one of the following revitalization tax credits:

1. An “income tax credit” equal to 10% of the rehabilitation expenses or
2. A “property tax credit” equal to 25% of the rehabilitation expenses made to the eligible site multiplied by the local taxing entity ratio of each local taxing entity consenting to the credit, up to 75% of the real property taxes due on the eligible site each year.

The taxpayer elects whether to claim the income tax credit or the real property tax credit. There is no formal procedure to elect the income tax credit; it is simply claimed on the income tax return. To elect the property tax credit, the taxpayer must provide written notification to the Department prior to the date the eligible site is placed in service. If the taxpayer does not affirmatively make the property tax credit election timely in writing before the date the site is placed in service or does not obtain the required county approvals in S.C. Code Ann. § 6-34-40(B), then the taxpayer is deemed to have elected the income tax credit.

b. Income Tax Credit

The income tax credit provided in S.C. Code Ann. § 6-34-40(A)(2) is claimed in equal installments over an 8-year period beginning with the year the property is placed in service. Any unused credit may be carried forward for 5 years. The credit is claimed on Form TC-31, “Retail Facilities Revitalization Credit.”

A partnership or limited liability company taxed as a partnership may pass the credit earned to each partner or member in any manner agreed to by the partners or members that is consistent with Subchapter K of the Internal Revenue Code, including an allocation of the entire credit to one partner or member. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. S.C. Code Ann. § 12-6-3310(B)(2).

NOTE: A taxpayer may claim this credit against income tax in addition to the credit for rehabilitation of a certified historic structure allowed under S.C. Code Ann. § 12-6-3535.

c. Property Tax Credit

See Chapter 4, “Business Property Tax and Exemptions,” Section 8, for a summary of the retail facility revitalization property tax credit.

d. Definitions

S.C. Code Ann. § 6-34-30 contains a list of definitions of terms used in the Act. Some of these defined terms are:

1. “Eligible site” – an abandoned shopping center, mall, or free standing site whose primary use was as a retail sales facility with at least one occupant in a 40,000 square foot or larger building or structure.
2. “Abandoned” - at least 80% of the facilities of the eligible site has been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made. During the abandonment, the eligible site may serve as a wholesale facility for no more than one year.
3. “Rehabilitation expenses” - the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.
4. “Placed in service” - the date the eligible site is suitable for occupancy for the purposes intended.

e. Transfer of Credit

The owner of an eligible site may transfer, devise, or distribute any unused credit to the tenant of the eligible site, provided the Department receives written notification of and approves the transfer, devise or distribution. Questions concerning a credit transfer and information needed in connection with the Department’s approval of a transfer should be directed to the Department at 803-898-5749 or TaxCredits@dor.sc.gov.

38. ABANDONED BUILDINGS REVITALIZATION CREDIT

a. General Provisions

The South Carolina Abandoned Buildings Revitalization Act, contained in Title 12, Chapter 67 provides an income tax credit or property tax credit for the renovation, redevelopment or improvement of abandoned building sites put into operation for income producing purposes.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-7.² Also, see SC Revenue Ruling #15-12 for additional rules relevant to state-owned abandoned buildings.

Under Title 12, Chapter 67 a qualifying taxpayer may elect one of the following tax credits:

1. A credit against income tax, license tax, bank tax, insurance premium tax (including retaliatory taxes), or a combination thereof equal to 25% of the eligible rehabilitation expenses made to the site or
2. A credit against real property taxes equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio of each local taxing entity consenting to the credit, which can offset up to 75% of the real property taxes due on the eligible site each year.

In order for expenses associated with the site to qualify for the credit, the abandoned buildings on the building site must be either renovated or redeveloped. For sites which have had no portion thereof placed in service before July 1, 2018, and upon which is located a redeveloped multi-floor structure that is listed on the National Register of Historic Places, the taxpayer may subdivide the structure into separate units, with the limitation that up to 7 separate floors may be considered 7 separate subdivided units if a floor is redeveloped for the exclusive use as a residential apartment or apartments. If a taxpayer intends to redevelop a multi-floor structure listed on the National Register of Historic Places referenced in the immediately preceding sentence, the taxpayer must, in lieu of filing a Notice of Intent to Rehabilitate but before claiming this tax credit, notify the Department in writing of the taxpayer's intent to claim the Abandoned Buildings Credit, and must provide any information required by the Department, including, but not limited to, the location of the building site, the actual expenses incurred in connection with the rehabilitation, the number of units for which a credit is being claimed, and the date the building site will be placed in service.

For the income/license/bank tax credit, a taxpayer must file a "Notice of Intent to Rehabilitate" (Notice) with the Department before incurring any rehabilitation expenses. Failure to provide

² Note, the statute has been amended since the publication of this ruling, so caution should be exercised when reviewing the ruling as it pertains to portions of the statute that have been amended.

the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- ◆ the taxpayer intends to rehabilitate the building;
- ◆ the location of the building site;
- ◆ the amount of acreage involved with the site;
- ◆ the amount of square footage of existing buildings;
- ◆ the estimated expenses to be incurred;
- ◆ which buildings will be rehabilitated; and
- ◆ whether new construction is to be involved at the site.

b. Income/License/Bank/Insurance Premium Tax Credit

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses if such expenses are between 80% to 125% of the estimated rehabilitation expenses listed in the Notice.
2. The credit is 25% of 125% of the estimated rehabilitation expenses set forth in the Notice if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.
3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated expenses.

The entire credit is earned in the taxable year in which the site (or applicable phase or portion) is placed in service and is claimed in equal installments over a 3-year period beginning with the tax year the site (or applicable phase or portion) is placed in service. The credit cannot exceed \$500,000 for any taxpayer in any tax year for each unit or parcel deemed to be an abandoned building site. Any unused credit may be carried forward for 5 years at the individual, partnership, or limited liability company level. The credit is claimed on Form SC SCH TC-55, "Abandoned Buildings Revitalization Credit."

A partnership or limited liability company taxed as a partnership may pass through the credit earned, including any unused credit amount carried forward, to the partners or members and may be allocated among any of its partners or members on an annual basis including, without

limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time during the year in which the credit or unused carryforward is allocated. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. S.C. Code Ann. § 12-6-3310(B)(2).

If the taxpayer qualifies for the abandoned buildings credit and the textile revitalization credit or the retail revitalization credit, the taxpayer may only claim one of the three credits.

However, the taxpayer is not disqualified from claiming any other tax credit in conjunction with the abandoned buildings credit, including the certified historic structure tax credit.

c. Investment Requirements

The abandoned buildings credit only applies to abandoned building sites, or phases or portions thereof, put into operation where the taxpayer incurs:

- More than \$250,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population of more than 25,000 people.
- More than \$150,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population between 1,000 and 25,000 people.
- More than \$75,000 of rehabilitation expenses for buildings located in a municipality with a population of less than 1,000 people.

d. Property Tax Credit

See Chapter 4, “Business Property Tax and Exemptions”, Section 9, for a summary of the abandoned buildings property tax credit.

e. Certification of Abandoned Building Site

The taxpayer may apply to the county or municipality in which the building is located for certification that the building is an abandoned building or state-owned abandoned building, as defined in S.C. Code Ann. § 12-67-120. The taxpayer may conclusively rely on this certification. A copy must be included with the first tax return for which the credit is claimed. See S.C. Code Ann. § 12-67-160.

f. Definitions

S.C. Code Ann. § 12-67-120 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. “Abandoned building” - a building or structure, other than a single family residence, which clearly may be delineated from other buildings or structures, at least 66% of the space which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least 5 years immediately preceding the date on which the taxpayer files the Notice of Intent to Rehabilitate. A building that otherwise qualifies may be divided into unit or parcels, which may be owned by the same taxpayer or different taxpayers. Each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is considered to be abandoned. Special rules apply if the building is listed on the National Register for Historic Places.
2. “Building site” - the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building’s income producing use.
3. “Rehabilitation expenses” - expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site, including without limitation, the renovation or redevelopment of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the site, but excluding the cost of acquiring the site or the cost of personal property located at the site, and demolition expenses if the building is on the National Register of Historic Places.

Rehabilitation expenses associated with a building site that increase the amount of square footage on the building site in excess of 200% of the amount of the square footage of the buildings that existed on the buildings site as of the filing of the Notice shall not be considered a rehabilitation expense for calculating the amount of the credit.

4. “Placed in service” - the date upon which the building site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.
5. “State-owned abandoned building” – an abandoned building and its ancillary service buildings or a project consisting of one or more abandoned buildings, the aggregate size of which is greater than 50,000 square feet, that has been abandoned for more than five years, and, prior to the taxpayer’s acquisition of such building, was most recently owned by the State, or an agency, instrumentality, or political subdivision of the State. For purposes of this definition, the taxpayer shall include any entity under common control or common ownership with the taxpayer.

g. Transfer of Credit

A taxpayer who sells or leases all or part of the abandoned building site may transfer all or part of any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the purchaser or lessee. The taxpayer must notify the Department of the credit transfer. Questions concerning a credit transfer and the method to request approval of the transfer from the Department should be directed to the Department at 803-898-5749 or by email at TaxCredits@dor.sc.gov.

h. Extension of Placed in Service Date

If a taxpayer files a notice of intent to rehabilitate and has been rehabilitating an abandoned building continuously for the preceding year and the building is more than 60% complete, the taxpayer must be allowed to extend the placed in service date until 90 days after construction is completed, provided the construction continues diligently until the end of the 90 days. S.C. Code Ann. § 12-67-170. This provision is not to be construed to allow a taxpayer to earn a credit before the applicable phase or portion of the building site is placed in service.

i. Repeal of the Act

The South Carolina Abandoned Buildings Revitalization Act is repealed on December 31, 2025, however, taxpayers should consult their tax advisors as this date may be extended. Any credit carryforward will continue to be allowed until the 5-year time period in S.C. Code Ann. § 12-67-140 is completed.

39. CREDIT FOR REHABILITATION OF A CERTIFIED HISTORIC STRUCTURE

S.C. Code Ann. § 12-6-3535 has two similar income tax credits available to taxpayers making historic rehabilitation expenditures in South Carolina. The first credit, rehabilitation of a certified historic structure credit, is available to taxpayers that qualify for the federal rehabilitation credit. The second credit, rehabilitation of a certified historic residential structure credit, is available to individual taxpayers that do not qualify for the federal rehabilitation credit.

A general overview of the credit for rehabilitation of a certified historic structure is provided below. See Chapter 3, "Individual Income and Estate and Gift Taxes," Section 18 for a general overview of the credit for rehabilitation of a certified historic residential structure.

S.C. Code Ann. § 12-6-3535(A) allows a taxpayer a credit against income taxes and license taxes imposed under Title 12 (equal to 10% of the qualified rehabilitation expenditures for a certified historic structure located in South Carolina that qualify for the federal rehabilitation credit provided in I.R.C. § 47. A taxpayer may elect a 25% tax credit in lieu of the 10% tax credit, not to exceed \$1 million for each certified historic structure.

The credit is claimed in equal amounts over a 3-year period beginning with the year that the property is placed in service. Any unused credit may be carried forward for the succeeding 5 years at the individual, partnership, or limited liability company level. To claim this credit, the taxpayer must attach to the South Carolina income tax return a copy of the appropriate federal tax forms showing the amount of federal rehabilitation credit claimed. The credit is claimed on Form TC-21, "Credit for a Certified Historic Structure Placed in Service after June 9, 2015."

Under S.C. Code Ann. § 12-2-100(B), to the extent a partnership or limited liability company taxed as a partnership earns the certified historic structure credit, the credit, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis. This includes, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time in the year in which the credit or unused credit was allocated. The allocation must be allowed without regard to any provision of the Internal Revenue Code, or regulation promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including and without limitation, the treatment of the allocation as a disguised sale. S.C. Code Ann. § 12-2-100(B) applies to a qualified project placed in service after January 1, 2020, but before December 31, 2030, provided the qualified project is issued an eligibility statement after May 14, 2020.

An S corporation may pass through the credit to its shareholders but must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. S.C. Code Ann. § 12-6-3310(B)(2).

Additionally, a taxpayer who makes a passthrough election under I.R.C. § 50(d) may elect to pass the credit claimed to the tenant of the eligible structure or to retain the credit.

The terms "taxpayer," "qualified rehabilitation expenditures," and "certified historic structure" have the same meaning as provided in I.R.C. § 47 and the applicable Treasury Regulations.

Other credit provisions include:

1. Additional work done by the taxpayer while the credit is being claimed, for a period of up to 5 years, must be consistent with the Secretary of the Interior's Standards for Rehabilitation. During this period, the State Historic Preservation Officer may inspect and review additional work to the certified historic structure. If this work is not consistent with the Standards for Rehabilitation, the taxpayer and Department must be notified in writing and any unused portion of the credit, including any carryforward, is forfeited.
2. The South Carolina Department of Archives and History has developed an application and certification process. A taxpayer claiming the credit must pay a preliminary and/or a final fee to the South Carolina Department of Archives and History based on a prescribed fee schedule, however, the fee is suspended for the fiscal year beginning July 1, 2022 and ending June 30, 2023. A copy of the application and certification information can be

obtained from the South Carolina Department of Archives and History at 803-896-6174. A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.

40. CREDIT FOR RESIDENTIAL LOW INCOME HOUSING

S.C. Code Ann. § 12-6-3795 provides a tax credit against income tax, license tax, bank tax or insurance premium and retaliatory tax to eligible owners of residential low-income rental buildings. A sole proprietor, partnership, corporation, limited liability company or association taxable as a business entity may be an eligible building/project owner (“owner”).

To qualify for the credit, an owner must obtain an eligibility statement from the South Carolina Housing and Finance Development Authority (“Housing Authority”) and otherwise meet the requirements of the statute. The eligibility statement certifies that the project qualifies for the credit and specifies the annual amount of credit allocated to the project for each year of the credit period and the total amount allocated for all years. The Housing Authority may not issue the eligibility statement until the owner provides a report detailing how the credit will benefit tenants at the project, including, reduced rent, or why the state credit is necessary to undertake the project, as well as other information required by the statute or the Housing Authority. The Housing Authority shall promulgate rules establishing criteria upon which the eligibility statements are issued which must include consideration of evidence of local support for the project.

The state credit amount for a qualified project can be up to the amount of the federal low-income housing credit allowed under I.R.C. § 42, “Low-Income Housing Credit”. The Housing Authority determines the amount of credit allocated to the taxpayer. The total state credit used in any tax year cannot exceed the taxpayer’s tax liability, but any unused credit may be carried forward five years, but may not be carried back. However, the total amount of credits available to all qualifying projects for each year may not exceed \$20 million plus, the total of all unallocated tax credits, if any, for any preceding years, and the total amount of any previously allocated tax credits that have been recaptured, revoked, cancelled, or otherwise recovered but not otherwise reallocated. Additional requirements relating to how credits may be allocated have been enacted.

The Housing Authority is responsible for the allocation and administration of the housing tax credit and ensuring that all dollar limitations and restrictions are not exceeded.

Under S.C. Code Ann. § 12-2-100(B), to the extent a partnership or limited liability company taxed as a partnership earns the low income housing tax credit, the credit, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis. This includes, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time in the year in which the credit or unused credit was allocated. The allocation must be allowed without regard to any provision of the

Internal Revenue Code, or regulation promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including and without limitation, the treatment of the allocation as a disguised sale. S.C. Code Ann. § 12-2-100(B) applies to a qualified project placed in service after January 1, 2020, but before December 31, 2030.

If a portion of any federal housing tax credit taken on a project is required to be recaptured, the taxpayer claiming any state credit for that project also is required to recapture a portion of the state credit in the same manner as the recapture of the federal tax credit.

S.C. Code Ann. § 12-6-3795 contains a list of definitions of terms. Some of the defined terms are:

Qualified Project - A qualified low-income building as defined in Internal Revenue Code Section 42 that is located in South Carolina and receives approval for tax credits from the Housing Authority.

Project - A housing project that has restricted rents that do not exceed 30% of income for at least 40% of its units occupied by persons or families having incomes of 60% or less of the median income, or at least 20% of the units occupied by persons or families having incomes of 50% or less of the median income.

Median Income - Those incomes that are determined by the federal Department of Housing and Urban Development guidelines and adjusted by family size.

Federal 9 percent tax credit means the federal housing tax credit described in Section 42(b)(1)(B)(i) of the Internal Revenue Code.

Federal 4 percent tax credit means the federal housing tax credit described in Section 42(b)(1)(B)(ii) of the Internal Revenue Code.

Credit period has the same meaning as provided in Section 42(f)(1) of the Internal Revenue Code.

The state credit only applies to projects placed in service after January 1, 2020 and before December 31, 2030 and the owner must have received an eligibility statement from the Housing Authority after May 14, 2020 to be eligible for the credit. For more information about this credit, see SC Revenue Ruling #21-5.³ Additionally, the Housing Authority should be consulted as there have been recent legislative changes to the law that concern federal 4 percent projects that may impact their ability to receive tax exempt financing.

³ S.C. Code Ann. § 12-6-3795 has been substantially amended since SC Revenue Ruling #21-5 was issued.