

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 7, 2015**

SC REVENUE RULING #15-## (Draft 9/14/15)

SUBJECT: Abandoned Building Revitalization Credit – Additional Rules for State-Owned Abandoned Buildings (Income and Property Taxes)

EFFECTIVE DATE: Rehabilitation, renovation, and redevelopment of state-owned abandoned buildings placed in service on or after June 9, 2015.

REPEAL DATE: December 31, 2019

REFERENCES: Chapter 67 of Title 12 (Supp. 2014)
2015 Act No. 68
SC Revenue Ruling #15-7

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or a general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

I. INTRODUCTION

The Abandoned Building Revitalization Act of 2013 (Act) was enacted in Title 12, Chapter 67, to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned buildings in South Carolina. The Act provides that restoration of abandoned buildings into productive assets for the communities in which they are located serves a public and corporate purpose and results in job opportunities. On July 8, 2015, the Department issued SC Revenue Ruling #15-7 to provide guidance regarding the basic credit principles applicable under the Act.¹

¹ See also SC Information Letter #15-9 for a summary of the credit requirements.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 7, 2015**

In 2015, the General Assembly amended the Act to provide a definition of “state-owned abandoned building,” and to provide the manner in which a taxpayer may apply to obtain certification of a state-owned abandoned building site by a county or municipality.² The purpose of this advisory opinion is to provide guidance on the new rules applicable to state-owned abandoned buildings and discuss how the basic credit principles under SC Revenue Ruling #15-7 continue to apply to state-owned abandoned buildings. Except as otherwise provided in this advisory opinion, the general credit principles under SC Revenue Ruling #15-7 remain applicable to state-owned abandoned buildings.

II. DISCUSSION

A. Definition of “State-Owned Abandoned Building” Under Code Section 12-67-120(8)

Act No. 68 added Code Section 12-67-120(8) to provide for the statutory definition of “state-owned abandoned building.” Code Section 12-67-120(8) provides:

“State-owned abandoned building” means 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 fifty thousand 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.

² 2015 Act No. 68, Sections 2 and 4. The Act also provided for several other generally applicable changes to Title 12, Chapter 67, including shortening the income tax credit installment period from 5 years to 3 years, eliminating the 50% income tax credit installment limitation, and providing that the income tax credit may be taken against insurance premium taxes. 2015 Act No. 68, Section 3. See SC Revenue Ruling #15-7 for discussion of these other amendments to Title 12, Chapter 67.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 7, 2015**

B. Certification of Abandoned Building Site or State-Owned Abandoned Building Site Under Code Section 12-67-160

Act No. 68 also added Code Section 12-67-160, which provides for the manner in which a taxpayer may apply to obtain certification of an abandoned building site, or state-owned abandoned building site, by the municipality or county in which the abandoned building is located. Code Section 12-67-160 provides:

(A) Notwithstanding any other provision of law, the taxpayer may apply to the municipality or county in which the abandoned building is located for a certification of the abandoned building site made by ordinance or binding resolution of the governing body of the municipality or county. The certification must include findings that the:

(1) abandoned building site was an abandoned building as defined in Section 12-67-120(1); and

(2) geographic area of the abandoned building site is consistent with Section 12-67-120(2).

(B) The taxpayer may apply to the municipality or county in which the state-owned abandoned building is located for a certification of the state-owned abandoned building site made by ordinance or binding resolution of the governing body of the municipality or county. The certification must include the findings that the:

(1) state-owned abandoned building site was a state-owned abandoned building as defined in Section 12-67-120(8); and

(2) geographic area of the state-owned abandoned building site is consistent with Section 12-67-120(8).

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 7, 2015**

(C) The taxpayer conclusively may rely upon the certification in determining the credit allowed; provided, however, that if the taxpayer is relying upon the certification, the taxpayer shall include a copy of the certification on the first return for which the credit is claimed.

C. Application of Code Sections 12-67-120(8) and 12-67-160

Code Section 12-67-120(8) was added to provide for specific treatment of building sites that involve either (1) a single state-owned abandoned building and its ancillary service buildings or (2) projects consisting of multiple state-owned abandoned buildings with an aggregate size greater than 50,000 square feet. All state-owned abandoned buildings must have been abandoned for more than five years, and most recently have been owned by the State (or an agency, instrumentality, or political subdivision of the State) prior to acquisition by the taxpayer.

In the interpretation of a statute, the legislature will be presumed to have inserted every part thereof for a purpose. As a general rule, a statute should be construed so that effect is given to all its provisions so that no part will be inoperative or superfluous, void or insignificant. It should not be presumed that any provision of a statute is redundant. A statute should not be construed in such a manner as to render it partly ineffective or inefficient if another construction will make it effective. 73 Am. Jur. 2d Statutes § 156.

Based on the above, the Department's position concerning state-owned abandoned buildings is as follows: Where a state-owned abandoned building consists of one abandoned building and its ancillary service buildings, the abandoned building and ancillary service buildings are considered to be one abandoned building. General credit principles under SC Revenue Ruling #15-7 apply to the abandoned building – e.g., the abandoned building must be put into operation for income producing purposes and meet the purpose of the Act,³ the taxpayer must file a Notice of Intent to Rehabilitate for the abandoned building before incurring any rehabilitation

³ See SC Revenue Ruling #15-7, Question 4.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 7, 2015**

expenses at the site,⁴ the abandoned building site must meet the minimum rehabilitation expense requirement of over \$75,000 - \$250,000 based on location,⁵ etc.

Where a building site is a project consisting of two or more state-owned abandoned buildings, each abandoned building that is part of the project may be considered an abandoned building eligible for the credit. The taxpayer has the burden of proving the number of state-owned abandoned buildings in a project. General credit principles under SC Revenue Ruling #15-7 apply to each abandoned building – e.g., each abandoned building must be put into operation for income producing purposes and meet the purpose of the Act, the taxpayer must file a Notice of Intent to Rehabilitate for each abandoned building before incurring any rehabilitation expenses at the site, each abandoned building site must meet the minimum rehabilitation expense requirement of over \$75,000 - \$250,000 based on location, etc.

Under the general credit principles of the Act, a state-owned abandoned building can be subdivided into separate units. Whether separate units of a building qualify as an abandoned building is based on the substance (rather than the form) of the redevelopment. This determination depends on the specific facts of each redevelopment.⁶

Code Section 12-67-160(B) was added to provide that for a state-owned abandoned building placed in service on or after June 9, 2015, the taxpayer may apply to the county or municipality in which the building is located for certification that the building is a state-owned abandoned building, as defined in Code Section 12-67-120(8), that has been abandoned for at least five years. The taxpayer may conclusively rely on this certification. A copy must be included with the first tax return for which the credit is claimed.

⁴ See SC Revenue Ruling #15-7, Question 12.

⁵ See SC Revenue Ruling #15-7, Question 6.

⁶ See SC Revenue Ruling #15-7, Questions 2 and 8.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 7, 2015**

III. EXAMPLES⁷

A. One State-Owned Abandoned Building. Taxpayer acquires a three-story state-owned abandoned building consisting of one abandoned building and its ancillary service buildings. The taxpayer intends to rehabilitate the building into an apartment complex with three residential apartments on each floor.

The abandoned building and ancillary service buildings are considered to be one abandoned building site eligible for one credit. General credit principles under SC Revenue Ruling #15-7 apply to the abandoned building site. The abandoned building site must be put into operation for income producing purposes and meet the purpose of the Act, the taxpayer must file a Notice of Intent to Rehabilitate for the abandoned building site before incurring any rehabilitation expenses at the site, etc. Each planned residential apartment cannot be a separate unit because a single family residence does not qualify under the Act pursuant to Code Section 12-67-130(B) and SC Revenue Ruling #15-7.⁸

B. One State-Owned Abandoned Building with Multiple Units. Taxpayer acquires a three-story state-owned abandoned building consisting of one abandoned building and its ancillary service buildings. The taxpayer will rehabilitate Floor 1 as a retail store and rehabilitate Floors 2 and 3 as residential apartments.

The abandoned building and ancillary buildings are considered to be one abandoned building site eligible for the credit. General credit principles under SC Revenue Ruling #15-7 apply to the abandoned building site. The taxpayer may choose to treat the entire building as one abandoned building site, or as multiple units (one commercial unit and one multi-family residential unit). If the building is subdivided into units, each of the two units must meet the minimum rehabilitation expense requirement (i.e., over \$75,000 - \$250,000 based on location population), each unit must file a separate Notice of Intent, and each unit must report an estimated rehabilitation expense in its Notice of Intent. If each unit meets the

⁷ For purposes of these examples, it is assumed that the taxpayer has either obtained certification from the municipality or county that each building is a state-owned abandoned building that has been abandoned for at least five years, or has otherwise met the burden of proving that the building qualifies as a state-owned abandoned building that has been abandoned for at least five years.

⁸ See SC Revenue Ruling #15-7, Question 8.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 7, 2015**

purpose and requirements of the Act, then each is eligible for an income tax credit not to exceed \$500,000. See SC Revenue Ruling #15-7, Question 8.

Again, each planned residential apartment cannot be a separate unit because a single family residence does not qualify under the Act pursuant to Code Section 12-67-130(B) and SC Revenue Ruling #15-7.

C. Project Consisting of Multiple State-Owned Abandoned Buildings. Taxpayer acquires a parcel consisting of three separate state-owned abandoned buildings with an aggregate square footage exceeding 50,000 square feet. The taxpayer intends to develop a residential apartment complex by rehabilitating each building to contain 20 residential apartments, each with its own separate entrance, kitchen, bath and utilities.

Provided that other applicable requirements are met, each state-owned abandoned building is considered to be an abandoned building site eligible for a credit.⁹ General credit principles under SC Revenue Ruling #15-7 apply to each abandoned building site. Each abandoned building site must be put into operation for income producing purposes and meet the purpose of the Act, the taxpayer must file a Notice of Intent to Rehabilitate for each abandoned building site before incurring any rehabilitation expenses at the site, etc. Again, each planned residential apartment cannot be a separate unit because a single family residence does not qualify under the Act pursuant to Code Section 12-67-130(B) and SC Revenue Ruling #15-7.

D. Project Consisting of Multiple State-Owned Abandoned Buildings with Multiple Units. Taxpayer acquires a parcel consisting of three separate state-owned abandoned buildings with an aggregate square footage exceeding 50,000 square feet. The taxpayer will rehabilitate the project as follows:

- Building 1 will be developed into a hotel.

⁹ This example is intended to illustrate the special rule for a project consisting of multiple state-owned abandoned buildings – i.e., each abandoned building that is part of the project is eligible for the credit. The result would be different for similar rehabilitation involving non-state-owned abandoned buildings. In that scenario the taxpayer would be eligible for only one credit. See SC Revenue Ruling #15-7, Question 8 (A multi-family residential complex is one economic unit and one abandoned building site).

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 7, 2015**

- Building 2 will be developed into a restaurant on Floor 1, a banquet room for the restaurant on Floor 2, and professional office spaces on Floor 3 accessed by a separate side entrance.
- Building 3 will be developed into four separate retail stores. Each store is totally separated from the others by a firewall, each has direct access to the street, and each has separate utilities and HVAC systems.¹⁰

Provided that other applicable requirements are met, each state-owned abandoned building is considered to be an abandoned building site eligible for the credit. General credit principles under SC Revenue Ruling #15-7 apply to each abandoned building site.

Building 1, the hotel, is eligible for only one credit.¹¹ The taxpayer may choose to treat Building 2 as one abandoned building site, or as multiple units (Floors 1 and 2 being one unit and Floor 3 being the second unit), and the taxpayer may choose to treat Building 3 as multiple units (e.g. each retail store being a separate unit).

If a building is subdivided into units, each unit must meet the minimum rehabilitation expense requirement (i.e., over \$75,000 - \$250,000 based on location population), each unit must file a separate Notice of Intent, and each unit must report an estimated rehabilitation expense in its Notice of Intent. If each unit meets the purpose and requirements of the Act, then each unit is eligible for an income tax credit not to exceed \$500,000.¹²

¹⁰ See SC Revenue Ruling #15-7, Question 8 and Example E.

¹¹ See SC Revenue Ruling #15-7, Question 8.

¹² See SC Revenue Ruling #15-7, Question 8.