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Comments Due by: **October 29, 2024**

SC REVENUE RULING #24-x [DRAFT – 10/8/2024]

SUBJECT: Rehabilitation Credits for Historic Structures and Historic Residential Structures  
(Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

REFERENCES: S.C. Code Ann. § 12-6-3535

AUTHORITY: S.C. Code Ann. § 12-4-320  
S.C. Code Ann. § 1-23-10(4)  
S.C. 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 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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

S.C. Code Ann. § 12-6-3535 provides tax credits as incentives for rehabilitating certified historic structures and historic residential structures located in South Carolina. This document provides an overview of the two available credits and answers questions taxpayers frequently ask about these credits.

This document is broken into five different sections as follows:

- I. Credit for Certified Historic Structures Qualifying for Federal Credit
- II. Credit for Historic Residential Structures
- III. Application Fees
- IV. Certification of Additional Work
- V. Frequently Asked Questions

## **I. Credit for Certified Historic Structures Qualifying for Federal Credit**

### Credit Overview

S.C. Code Ann. § 12-6-3535(A) provides a nonrefundable tax credit against state income taxes and license fees for taxpayers who qualify for the federal income tax credit under I.R.C. § 47 for making qualified rehabilitation expenditures for a certified historic structure located in South

# PUBLIC DRAFT

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Comments Due by: **October 29, 2024**

Carolina. The South Carolina credit amount is 10% of the expenditures that qualify for the federal credit. Taxpayers can elect to take a 25% South Carolina credit instead of 10%, but the 25% credit is limited to \$1 million for each certified historic structure. The credit is taken in equal installments over a three-year period beginning with the year in which the property is placed in service.<sup>1</sup> Any unused portion of a credit installment may be carried forward for five years.

## Definitions

I.R.C. § 47 and the applicable treasury regulations define the terms “qualified rehabilitation expenditures” and “certified historic structures.”

**Qualified rehabilitation expenditures<sup>2</sup> (QRE)** include any amounts properly chargeable to capital accounts, and therefore added to the basis, of depreciable property which is:

1. Nonresidential real property;
2. Residential rental property;
3. Real property with a useful life of more than 12.5 years; or
4. An addition or improvement to property in 1, 2, or 3.

Expenditures must be incurred in connection with the rehabilitation of a qualified rehabilitated building, including its structural components.

As defined in Treas. Reg. § 1.48-1(e), a building is generally any structure or edifice enclosing a space within its walls and usually covered by a roof that provides shelter or housing or working, office, parking, display, or sales space. It does not include a structure which is essentially an item of machinery or equipment or used solely to house an item of machinery or equipment. Structural components include parts of a building such as walls, partitions, floors, and ceilings; windows and doors; central air conditioning or heating system components; plumbing and plumbing fixtures; electric wiring and lighting fixtures; chimneys; stairs, escalators, and elevators; sprinkler systems; fire escapes; and other components relating to the operation or maintenance of the building.

Qualified rehabilitation expenditures do **not** include:

1. Expenditures that are not depreciated using straight line depreciation over the recovery period in I.R.C. § 168;
2. The cost of acquiring a building or interest in a building;
3. Expenditures for the enlargement of an existing building;

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<sup>1</sup> “Placed in service” means the rehabilitation is completed and allows for the intended use. S.C. Code Ann. § 12-6-3535(C)(1)

<sup>2</sup> I.R.C. § 47(c)(2)

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

4. Expenditures for a rehabilitation that is not certified;
5. Expenditures allocated to the portion of the property which is tax-exempt use property;
6. Expenditures of a lessee if the remaining term of the lease on the date the rehabilitation is completed is less than the recovery period for the property.

**Certified historic structure**<sup>3</sup> is any building, and its structural components, which is:

1. listed in the National Register; or
2. located in a registered historic district and certified by the Secretary of the Interior as being of historic significance to the district.

## Application Process

Taxpayers applying for the federal credit complete the Historic Preservation Certification Application (HPCA) provided by the National Park Service (NPS). Applications are submitted electronically to the State Historic Preservation Office (SHPO) at the South Carolina Department of Archives and History (SCDAH). The SHPO reviews the completed applications and makes recommendations to the NPS on whether the project meets the Secretary of the Interior's Standards for Rehabilitation (Standards). After the SHPO review, the application is forwarded to the NPS along with the SHPO's comments. The NPS makes the final decision on whether the building is a certified historic structure and whether the rehabilitation meets the Standards.

The Application consists of three parts. Part 1 is the evaluation of significance and appearance of the building; Part 2 is a description of the condition of the building and the planned rehabilitation work to be done; and Part 3 is the request for certification of completed work. NPS approval of Part 3 certifies that the project meets the Standards and is a certified rehabilitation for the credit. Taxpayers who are approved for the federal credit automatically qualify for the state credit. There is no separate state application to complete before claiming the credit on a South Carolina tax return.

## Claiming the Credit on South Carolina Returns

In the tax year the property is placed into service, the taxpayer who completed the rehabilitation uses the Schedule TC-21 to calculate the South Carolina Credit for a Certified Historic Structure. Taxpayers filing a paper return must attach a copy of the federal Form 3468 showing the qualifying expenditures and credit claimed on the federal return<sup>4</sup> and must also include documentation from the SHPO and the NPS showing the rehabilitation project was approved and any applicable fees were paid. Taxpayers who file electronically and cannot attach the documentation to their return should keep the documents available with their tax records to submit if requested by the

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<sup>3</sup> I.R.C. § 47(C)(3)

<sup>4</sup> S.C. Code Ann. § 12-6-3535(A)(1)

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

Department of Revenue. Taxpayers should not send receipts or invoices supporting the rehabilitation expenses to the Department of Revenue unless they are requested as part of an audit or review of the credit.

Taxpayers filing paper returns should include a copy of the TC-21 each year they claim a credit installment or carryforward on a South Carolina income tax return. Taxpayers filing electronically should complete the TC-21 and attach it to their electronic return submissions, if possible, or keep a copy with their tax records.

## Pass-through Credit Allocations

### 1. S Corporations

Credits earned by an S Corporation owing income tax at the corporate level must be used first at the entity level.<sup>5</sup> S Corporations may elect to use the credit against their corporate license fee, but are not required to do so. Any remaining credit that was not used against a corporate-level income tax or license fee passes through to each shareholder in a proportion equal to the shareholder's percentage of stock ownership.

### 2. Partnerships

Credits earned by a partnership<sup>6</sup> must be passed through to its partners<sup>7</sup> and may be allocated among partners in any manner agreed to by the partners or members. This includes, without limitation, an allocation of the entire credit or unused carryforward to any partner who was a member or partner at any time during the year in which the credit or unused carryforward is allocated.

For projects placed in service after January 1, 2020 but before January 31, 2030, allocations of the South Carolina credits are allowed without regard to any Internal Revenue Code provision or regulation that may be interpreted as contrary to the allocation.<sup>8</sup> For example, an allocation that would be treated as a disguised sale under the Internal Revenue Code might be allowed for South Carolina purposes.

Taxpayers who receive the credit from a partnership or S Corporation enter the name and tax identification number of the entity at the top of the TC-21 and enter the amount received from the partnership or S Corporation as the annual installment amount. Taxpayers receiving a pass-through credit are not required to enter the qualifying expenditures amounts when completing the TC-21 but should include a copy of the SC K-1 received from the partnership or S Corporation showing the amount of credit passed through.

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<sup>5</sup> S.C. Code Ann. § 12-6-3535(C)(2)

<sup>6</sup> "Partnership" includes a general partnership, limited partnership, limited liability company, or other pass-through entity as defined in Section 12-6-545. S.C. Code Ann. § 12-6-3535(C)(2)

<sup>7</sup> "Partner" means a partner, member, or owner of an interest in the pass-through entity. S.C. Code Ann. § 12-6-3535(C)(2)

<sup>8</sup> S.C. Code Ann. § 12-2-100(B)

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

## II. Credit for Historic Residential Structures

### Credit Overview

S.C. Code Ann. § 12-6-3535(B) provides a nonrefundable income tax credit for taxpayers who are not eligible for the federal credit under I.R.C. § 47 (so are also ineligible for the credit in Section 12-6-3535(A).) Subsection (B) creates a credit for rehabilitation expenditures for a certified historic *residential* structure located in South Carolina. The credit is for 25% of the rehabilitation expenses. The credit is taken in equal installments over a three-year period beginning with the year in which the property is placed in service.<sup>9</sup> Any unused portion of a credit installment may be carried forward for five years.

### Definitions

A **certified rehabilitation**<sup>10</sup> means repairs or alterations consistent with the Secretary of the Interior’s Standards for Rehabilitation and certified by the State Historic Preservation Officer before work commences.

Rehabilitation expenses must exceed \$15,000 within a 36-month period. This does not mean that the entire project must be completed within 36 months, but projects that take longer than 36 months must have at least \$15,000 of expenses within any 36-month period during the rehabilitation project.

The following examples demonstrate the 36-month period for four separate taxpayers each completing a different rehabilitation project. Unless stated otherwise, the examples assume project expenses were incurred evenly throughout each year.

Taxpayer	Year 1 Expenses	Year 2 Expenses	Year 3 Expenses	Year 4 Expenses	Total Expenses
A	\$12,000	\$3,000	\$1,000	\$1,000	\$17,000
B	\$1,000	\$2,000	\$10,000	\$4,000	\$17,000
C	\$4,000	\$4,000	\$4,000	\$4,000	\$16,000
D	\$12,000	\$4,000	Property placed in service.		\$16,000

Taxpayer A has \$16,000 of qualifying rehabilitation expenses within the 36-month period making up Years 1 through 3. *Taxpayer A qualifies for the credit.*

Taxpayer B has \$16,000 of qualifying rehabilitation expenses within the 36-month period making up Years 2 through 4. *Taxpayer B qualifies for the credit.*

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<sup>9</sup> “Placed in service” means the rehabilitation is completed and allows for the intended use. S.C. Code Ann. § 12-6-3535(C)(1)

<sup>10</sup> S.C. Code Ann. § 12-6-3535(B)(2)

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

Taxpayer C has \$16,000 of total rehabilitation expenses but does not have more than \$15,000 of qualifying rehabilitation expenses within any 36-month period. *Taxpayer C does not qualify for the credit.*

Taxpayer D has \$16,000 of qualifying rehabilitation expenses in Years 1 and 2 before placing the property in service in Year 3. *Taxpayer D qualifies for the credit.*

A **certified historic residential structure**<sup>11</sup> is an owner-occupied residence that is:

1. Listed individually in the National Register of Historic Places;
2. Considered by the State Historic Preservation Officer to contribute to the historic significance of a National Register Historic District;
3. Considered by the State Historic Preservation Officer to meet the criteria for individual listing in the National Register of Historic Places; or
4. An outbuilding, such as a barn or garage, of an otherwise eligible property if considered by the State Historic Preservation Officer to contribute to the historic significance of the property.

An **owner-occupied residence**<sup>12</sup> is a building, or portion of a building, in which the taxpayer has an ownership interest that is, after being placed in service, the residence of the taxpayer and is not:

1. Actively used in a trade or business;
2. Held for the production of income; or
3. Held for sale or disposition in the ordinary course of the taxpayer's trade or business.

A building can be a house or another type of historic building, such as a school or store, that the taxpayer is rehabilitating to use as his or her residence.

The ownership interest may be in whole or in part, in fee, by life estate, or as the income beneficiary of a property trust. For South Carolina tax purposes, a single member LLC not taxed as a corporation is not regarded as an entity separate from its owner.<sup>13</sup> Therefore, property owned by a single member LLC may be considered to be an owner-occupied residence if its single member is an individual who uses the property as his or her residence.<sup>14</sup>

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<sup>11</sup> S.C. Code Ann. § 12-6-3535(B)(1)

<sup>12</sup> S.C. Code Ann. § 12-6-3535(B)(5)

<sup>13</sup> S.C. Code Ann. § 12-2-25(B)(1)

<sup>14</sup> CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011)

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

**Rehabilitation expenses**<sup>15</sup> are those incurred by the taxpayer in the certified rehabilitation of a certified historic residential structure that are paid before the credit is claimed and include:

1. Preservation and rehabilitation work done to the exterior of a certified historic residential structure;
2. Repair and stabilization of historic structural systems;
3. Restoration of historic plaster;<sup>16</sup>
4. Energy efficient measures such as insulation in the attic or crawlspace, storm windows, storm doors, weather stripping, solar energy systems, and geothermal heat pumps;<sup>17</sup>
5. Repairs or rehabilitation of heating, air-conditioning, or ventilating systems;
6. Repairs or rehabilitation of electrical or plumbing systems;<sup>18</sup> and
7. Architectural and engineering fees.

Rehabilitation expenses do **not** include:

1. The cost of acquiring or marketing the property;
2. The cost of new construction beyond the volume of the existing certified historic residential structure;
3. The value of an owner's personal labor;
4. The cost of personal property;
5. Insulation in frame walls;
6. New electrical appliances; or
7. Electrical or plumbing fixtures.

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<sup>15</sup> S.C. Code Ann. § 12-6-3535(B)(3)

<sup>16</sup> This does not include replacing damaged plaster with skim-coated sheetrock or replacing plaster cornices or medallions with substitute materials such as fiberglass.

<sup>17</sup> See Question 1 in **V. Frequently Asked Questions** below for more information about eligible expenses for energy efficiency measures.

<sup>18</sup> Plumbing expenses are only eligible from the point of water connection to the plumbing fixture.

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

Expenses for elevating a structure beyond the building's historic volume do not qualify for the credit.

Site work or drainage correction expenses are only eligible if they directly involve work to the building, such as gutter installation or a retaining wall that is part of the building's foundation. Well installation does not qualify for the credit.

Abatement of lead paint or asbestos may be able to qualify if the abatement is part of the rehabilitation of the building, such as removal of flaking exterior paint containing lead or replacement of asbestos siding with a compatible wood siding.

For a condominium building, only those expenses related to personal residential spaces will qualify. Expenses for portions of a condominium building that fall under the common ownership of the condominium complex do not qualify for the credit for historic residential structures.<sup>19</sup>

## Application Process

The Certified Rehabilitation Application has three parts. Taxpayers submit the *S1: Evaluation of Significance Application* and *S2: Description of Rehabilitation Application* to the SHPO before beginning work on the project.

The SHPO reviews the application, including the rehabilitation plans, to ensure the project meets the Standards for Rehabilitation. The SHPO must review and approve all proposed project work, including expenditures that will not qualify for the credit. Expenses do not qualify for the credit if the work was not reviewed and approved by the SHPO in advance. The date of approval is the date on which the first page of the S2 application, and any associated conditions, was signed by the SHPO, not the date the application is received from the applicant.

Taxpayers complete the *S3: Documentation of Completed Work Application* after the project has been completed and placed into service. SHPO will review and certify the completed project. Taxpayers claim the credit for the tax year in which the building was placed into service as provided on the S3 form. SHPO receipt of the S3 in a later calendar year does not affect the timing of claiming the credit. For example, a calendar-year taxpayer who places a project into service in December 2023 will qualify for the credit for the 2023 tax year, even if the S3 application is certified by SHPO in 2024.

Taxpayers who file a paper return must attach a copy of the completed and approved S3 application to their return. Taxpayers filing a return after the property is placed into service but before the final approval by the SHPO should include a copy of the S3 application submitted to the SHPO. If a taxpayer claims the credit for a property and the S3 application is rejected by the SHPO, the taxpayer should amend any South Carolina returns to remove credits claimed in error. Taxpayers who file electronically and cannot attach the application to their return should keep a copy with their tax records to submit if requested by the Department of Revenue.

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<sup>19</sup> See Question 4 in **V. Frequently Asked Questions** below for more information about mixed-use projects that include both an income-producing use and an owner-occupied residence.



# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

A taxpayer cannot take more than one credit on the same certified historic residential structure within 10 years. The credit is considered taken, and this 10-year period started, in the first year the credit is claimed on a South Carolina income tax return. The taxpayer can have another qualifying project begin within the 10-year period, but the taxpayer will only qualify for another credit if the project is completed and placed into service outside of the 10-year window. If the taxpayer sells the property within the 10-year period, the new owner can apply to SHPO for a credit for a new rehabilitation project on the historic residential structure within 10 years of when the credit was taken by the original owner. The 10-year period does not carry over to the new owner of the property.

## Claiming the Credit on South Carolina Returns

In the tax year the property is placed into service, the taxpayer uses the Schedule TC-22 to calculate the Certified Historic Residential Structure Credit. Taxpayers filing a paper return must include the approved S3 application and documentation from the SHPO showing that the rehabilitation project was approved, and any applicable fees were paid.<sup>20</sup> Taxpayers filing electronically who cannot attach the documentation to their return should keep the documents available with their tax records to submit if requested by the Department of Revenue. Taxpayers should not send receipts or invoices supporting the rehabilitation expenses to the Department of Revenue unless they are requested as part of an audit or review of the credit.

## **III. Application Fees**

*As of the publication date of this Revenue Ruling, the fees have been suspended each year by way of budget provisos. The fees described below may be required beyond June 30, 2025 if the relevant budget provisos are not renewed by the Legislature each fiscal year.*

S.C. Code Ann. § 12-6-3535(G) provides a fee schedule for projects where rehabilitation expenses are greater than \$500,000.

Taxpayers will pay a preliminary fee based on the estimated qualified rehabilitation expenses and a final fee based on the actual rehabilitation expenses. The fee is paid to the Department of Archives and History for the State Historic Preservation Grant Fund.

Taxpayers will pay the preliminary fee before review of the Historic Preservation Certification Application, Part 2, or Certified Rehabilitation Application, S2, as follows:

<b>Estimated Qualified Rehabilitation Expenses</b>	<b>Preliminary Fee</b>
Less than \$500,000	0% of estimated expenses
At least \$500,000 but less than \$2,000,000	0.1% of estimated expenses
At least \$2,000,000 but less than \$4,000,000	0.25% of estimated expenses
\$4,000,000 or greater	0.5% of estimated expenses

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<sup>20</sup> S.C. Code Ann. § 12-6-3535(B)

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

Taxpayers will pay the final fee, less any amount paid as a preliminary fee, before review of the Historic Preservation Certification Application, Part 3, or Certified Rehabilitation Application, S3, as follows:

<b>Actual Qualified Rehabilitation Expenses</b>	<b>Final Fee</b>
Less than \$500,000	0% of actual expenses
At least \$500,000 but less than \$2,000,000	0.25% of actual expenses
At least \$2,000,000 but less than \$4,000,000	0.5% of actual expenses
\$4,000,000 or greater	1.0% of estimated expenses

## **IV. Certification of Additional Work**

For both historic structures and historic residential structures, any additional work done by the taxpayer while the credit is being claimed, for a period of up to five years, must be consistent with the Secretary of the Interior's Standards for Rehabilitation.<sup>21</sup> The State Historic Preservation Officer will review additional work submitted for review by the applicant and has the right to inspect certified historic structures and certified historic residential structures. If additional work is not consistent with the Standards for Rehabilitation, the State Historic Preservation Officer will notify the taxpayer and the Department of Revenue in writing, and any unused portion of the credit, including carry forwards, is forfeited.

If the property is sold to another taxpayer who completes work that is not consistent with the Standards for Rehabilitation, the work done by the other taxpayer will not cause the credits earned by the original owner to be forfeited.

## **V. Frequently Asked Questions**

### **1. Can taxpayers who claim a South Carolina credit for historic rehabilitation also claim the South Carolina solar energy credit for systems installed as part of the rehabilitation?**

The federal rehabilitation credit requires that qualifying expenses be capitalized and included in the basis of the property. Therefore, costs of solar energy systems, hydropower systems, or geothermal machinery and equipment that are not capitalized and included in the basis of the rehabilitated property where they are installed will not qualify for the federal rehabilitation credit under I.R.C. § 47 or for the state credit for rehabilitating historic structures under S.C. Code Ann. § 12-6-3535(A).

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<sup>21</sup> The Secretary of the Interior's Standards for Rehabilitation are found in 36 C.F.R. § 67.

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

The South Carolina credit for rehabilitating historic *residential* structures under S.C. Code Ann. § 12-6-3535(B) does not limit the qualifying expenses to those that are capitalized and included in the basis of the property. Qualifying rehabilitation expenditures include energy efficiency measures as well as repairs to or rehabilitation of heating, air-conditioning, or ventilating systems and repairs to or rehabilitation of electrical systems. Section 12-6-3535(B) does not reference the solar energy credit or provide limits on taking both credits. Therefore, a solar energy system that qualifies for the solar energy credit in S.C. Code Ann. § 12-6-3587 and improves energy efficiency, heating, air-conditioning, ventilating, or electrical systems will also qualify for the credit for a historic residential structure in S.C. Code Ann. § 12-6-3535(B).

## **2. Will the same rehabilitation expenses qualify for the abandoned building credit or the textiles mill credit?**

Section 12-67-140(B)(4) provides that a taxpayer may only claim one of the Abandoned Building Credit, the Textiles Rehabilitation Credit, or the Retail Facilities Credit (since repealed) for a single property, but that a taxpayer is not disqualified for claiming any other tax credit in conjunction with those credits.

Section 12-65-30(C)(4) provides that a taxpayer who qualifies for both the Textiles Rehabilitation Credit and the credit in S.C. Code Ann. § 12-6-3535 for rehabilitating a historic structure may take both credits.

Section 12-6-3535 does not limit other credits a taxpayer can take along with the historic structure credits. Therefore, a taxpayer can take the abandoned building credit or the textiles rehabilitation credit along with the credit for historic structures.

For more information about the Abandoned Building Credit, see SC Revenue Ruling #15-7, and for more information about the Textiles Rehabilitation Credit, see SC Revenue Ruling #15-8.

## **3. Can expenses incurred in rehabilitating a property qualify for both the rehabilitation credit and the South Carolina low income housing credit?**

Yes. There is no prohibition in the Internal Revenue Code against the federal rehabilitation credit under I.R.C. § 47 being used in conjunction with the federal low-income housing tax credit under I.R.C. § 42. The South Carolina credits are based on the federal credits, so a property qualifying for both federal credits would similarly be able to qualify for both South Carolina credits.

See SC Revenue Ruling #21-5 for more information on the South Carolina Low Income Housing Credit.

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

#### **4. Can rehabilitation expenses at a single property qualify for both credits in S.C. Code Ann. § 12-6-3535?**

A historic property rehabilitation may be a “mixed-use project” which includes both an income-producing use and an owner-occupied residence. In these cases, the credits are mutually exclusive and cannot be combined, but they may be applied separately to the distinct portions of the historic property that relate to the particular use. The same rehabilitation expenditures cannot be used for both credits.

The credit in S.C. Code Ann. § 12-6-3535(A) is based on the expenditures qualifying for the federal credit. When a personal residence is also used for business, only the business use portion would be eligible for the federal credit and the credit in S.C. Code Ann. § 12-6-3535(A).

Expenditures not used exclusively for business would not qualify for the federal credit or for the credit in S.C. Code Ann. § 12-6-3535(A) but may qualify for the credit in S.C. Code Ann. § 12-6-3535(B). The owner must use the personal portion of the property as his or her residence for the expenditures from that portion to qualify for the credit.

Taxpayers with mixed-use projects will need to complete the federal application for the income-producing use portion and the state application for the owner-occupied residence portion.

#### **5. Is the basis of the property reduced by the South Carolina credit?**

No. There are no requirements in S.C. Code Ann. § 12-6-3535 that the basis of the property be reduced by the South Carolina credit.

#### **6. What is a nonrefundable credit?**

Both credits are nonrefundable, which means the amount of credit that can be taken in a year is limited to the tax liability of the taxpayer qualifying for the credit. Taxpayers will be unable to take advantage of the credit in a year in which they have no tax liability. Unused credits can be carried forward for up to five years.

#### **7. Can unused credits be sold or transferred to other taxpayers?**

Section 12-6-3535 does not include any provisions allowing the credit to be sold to another taxpayer.

Taxpayers may invest in a partnership or an S Corporation completing a rehabilitation project qualifying for the credit under S.C. Code Ann. § 12-6-3535(A). Credits earned by

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **October 29, 2024**

a S Corporation can be passed through to shareholders in a percentage equal to the shareholder's percentage of stock ownership after use by the S Corporation, if applicable. Credits earned by a general partnership, limited partnership, limited liability company, or other pass-through entity are passed through to the partners and may be allocated in any manner agreed to by the partners.<sup>22</sup> A taxpayer who makes a passthrough election under I.R.C. § 50(d) may elect to pass the South Carolina credit to the tenant of the eligible structure or to retain the credit.<sup>23</sup>

Since the credit for historic residential structures in S.C. Code Ann. § 12-6-3535(B) is earned by the owner occupying the residence, it is generally earned by individual taxpayers, not pass-through entities, so is not able to be passed through or transferred to another taxpayer.

The credits are earned in the year the property is placed in service. If the property is sold, the credit is not transferred to the new owner. The taxpayer who earned the credit continues to take any remaining credit installments or carryforwards.

## **8. Is the credit limited by passive activity restrictions?**

No. S.C. Code Ann. § 12-6-3535 does not provide any restrictions based on passive activity. Taxpayers whose federal credit may be limited by passive activity rules in I.R.C. § 469 will be able to take the South Carolina historic structure credit.

## **9. Is there credit recapture if the property is disposed of or use changes?**

If additional work is done by the taxpayer that is not consistent with the Standards for Rehabilitation, any unused portion of the credit, including carryforwards, will be forfeited. There are no other provisions for South Carolina credit recapture if the property is disposed of or the use of the property changes.

## **10. Can a lessee of a building, or portion of a building, claim a credit?**

A lessee, or renter, cannot claim the credit for historic residential structures because, to qualify, the building must be owner-occupied.

A lessee may be able to take the credit for historic structures if the lessee's expenditures also qualify for the federal rehabilitation credit, as described in Treas. Reg. § 1.48-4(a).

## **11. Can the South Carolina credit be carried back to prior tax years?**

No. S.C. Code Ann. § 12-6-3535 does not include any provision allowing a carryback of the credit. S.C. Code Ann. § 12-6-3535(C)(1) does provide that unused credits may be carried forward for up to five years.

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<sup>22</sup> See [Pass-through Credit Allocations](#) in **I. Credit for Certified Historic Structures Qualifying for Federal Credit** above for more information about allocating credits to shareholders and partners.

<sup>23</sup> S.C. Code Ann. § 12-6-3535(C)(2)