

# **PUBLIC DRAFT**

Circulated for Public Comments

Comments Due by: **May 6, 2015**

## SC REVENUE RULING #15- x (DRAFT – 4/15/2015)

**SUBJECT:** Abandoned Building Revitalization Act and Credit  
(Income and Property Taxes)

**EFFECTIVE DATE:** Rehabilitation, renovation, and redevelopment of abandoned buildings begun in tax years beginning after 2012, except as otherwise provided.

For a taxpayer who has filed a Notice of Intent with the Department and has not placed the qualifying site in service, the provisions in Part 2 regarding amendments to the Notice of Intent to Rehabilitate are effective 90 days after the issuance date of this advisory opinion.

**REPEAL DATE:** December 31, 2019

**SUPERSEDES:** All previous documents and all oral directives in conflict herewith.

**REFERENCES:** Chapter 67 of Title 12 (Supp. 2014)

**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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

### **GENERAL OVERVIEW OF ACT**

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 located in South Carolina.

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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. To remove and alleviate adverse conditions, including disproportionate expenditure of public funds, unmarketability of property, area crime, and abnormal exodus of families and businesses, it is necessary to encourage private investment and restore the tax base of the taxing districts in which such buildings are located by the redevelopment of abandoned buildings.

The Act provides that a taxpayer who rehabilitates an abandoned building, incurs rehabilitation expenses of at least \$75,000, \$125,000, or \$250,000 at the abandoned building, or at each site, based on the building's location, and meets the other Act requirements, is eligible for either a credit against "income taxes"<sup>1</sup> or real property taxes. A taxpayer selects the credit type by filing a "Notice of Intent to Rehabilitate."

A taxpayer seeking an income tax credit should file a Notice of Intent with the Department before incurring any rehabilitation expenses at the abandoned building site. The estimated expense amount reported in the Notice of Intent is used in the calculation of the income tax credit. If the actual rehabilitation expenses are between 80% and 125% of the estimated rehabilitation expense amount reported in the Notice of Intent, then the income tax credit is equal to 25% of the actual expenses for each site. If the actual rehabilitation expenses exceed 125% of the estimated rehabilitation expense reported, then the credit for each site is capped at 25% of 125% of the estimated rehabilitation expense amount. If the actual rehabilitation expenses are below 80% of the estimated rehabilitation expense amount, then no credit is allowed. The income tax credit may not exceed \$500,000 for each abandoned building site (each unit or each parcel.)

The entire income tax credit is earned in the tax year the applicable phase or portion of the building site is placed in service. It is taken, however, in equal installments over 5 years beginning with the tax year the applicable phase or portion of the building site is placed in service. Any unused credit can be carried forward for 5 years.

For the property tax credit, the approval process and credit provisions differ. A taxpayer seeking a property tax credit should file a Notice of Intent with the municipality or county where the building site is located before incurring any rehabilitation expenses at the site. A proposed rehabilitation of a building site must be approved by a majority vote of the local governing body. If the county or municipality determines the site and

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<sup>1</sup>A credit is allowed against the income tax imposed under Chapter 6, bank franchise tax under Chapter 11, savings and loan income tax under Chapter 13, corporate license fee under Chapter 20, or any combination of these taxes. While all of these taxes in Title 12 are not income taxes, the credit allowed against all of these taxes is referred to in this advisory opinion as the "income tax credit" for simplicity.

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expenses are eligible for the credit, there must be a public hearing and the building site must be approved for the credit by ordinance. The ordinance must provide for the property tax credit to be taken against up to 75% of the real property taxes due on the building site each year for up to 8 years. The property tax credit may exceed \$500,000.

The Act contains a number of requirements including qualification of the abandoned building, qualification of the expenses incurred in the rehabilitation, and information required in the Notice of Intent. The rules and requirements can be complex. This advisory opinion is limited to the basic credit principles. It provides guidance and examples regarding the provisions of the income tax credit under the Act and only a general overview of the property tax credit. Special rules exist for a building or structure listed on the National Register of Historic Places.

NOTE: The Act is repealed on December 31, 2019.

This question and answer document is divided into the following categories:

1. Abandoned Building Definitions and Qualifications
2. Notice of Intent to Rehabilitate
3. Income Tax Credit
4. Special Provisions
5. Transfer of Credit and Notification to the Department
6. Property Tax Credit Overview
7. Examples and Additional Guidance

## **PART 1 - ABANDONED BUILDING DEFINITIONS AND QUALIFICATIONS**

1. Q. What is the definition of an “abandoned building”?

A. An abandoned building is a building or structure (clearly delineated from other buildings or structures) with 66% or more of the space continuously closed to business or nonoperational for income producing purposes for at least 5 years immediately preceding<sup>2</sup> the date the taxpayer files a “Notice of Intent to Rehabilitate.” Special rules for a building or structure listed on the National Register of Historic Places are discussed in Question 25. Code Section 12-67-120(1).

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<sup>2</sup>The 5 year time period of abandonment is a consecutive period based on calendar days; it is not simply 5 calendar years. For example, the 5 year time period for a building abandoned on April 1, 2010 ends March 31, 2015. The burden of proof of the abandonment time period is on the taxpayer. Note: There is no county or municipal certification of an abandoned building site as permitted for the textile credit in Code Section 12-65-60.

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2. Q. Can an abandoned building be divided into separate units or parcels?

A. Yes. An abandoned building can be subdivided into separate units or parcels. The units or parcels may or may not be owned by the same taxpayer. Each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is abandoned. Code Section 12-67-120(1).

3. Q. What is the definition of a “building site”?

A. A building site is the abandoned building and the parcel of land it is located upon and other improvements on the parcel. However, the area of the building site is limited to the land the abandoned building is located upon and the land immediately surrounding the building used for parking and other similar purposes directly related to the building’s income producing use. Code Section 12-67-120(2).

4. Q. What types of building sites qualify for the credit?

A. The Act only applies to abandoned building sites or phases or portions put into operation for income producing purposes and that also meet the purposes stated in Code Section 12-67-110.

The Act provides that the construction or operation of a charter school, private school, or other similar educational institution meets the purpose of the Act. Code Section 12-67-130(B).

The Act specifically does not apply to:

- a. A building or structure with an immediate preceding use as a single-family residence.<sup>3</sup> Code Section 12-67-120(1).
- b. The construction of a single family residence. Code Section 12-67-130(B).

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<sup>3</sup>For purposes of this credit, the Department has determined that a single-family residence is a building containing only one housekeeping unit with at least a kitchen, bathroom, and sleeping area that is designed to house not more than one family in a permanent manner. A multi-family residence is a building or complex designed for two or more families being independent of each other, each having its own kitchen and bath facilities (e.g., apartment complex, duplex, condominium complex.) For example, a building with two or more residences is considered a multi-family residence and is one economic unit and one abandoned building site.

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- c. A taxpayer who owned the building site when it was operational and immediately prior to its abandonment. Code Section 12-67-140(D).
- d. A taxpayer who incurs rehabilitation expenses under \$75,000, \$125,000, or \$250,000 at the abandoned building site based on the building location. Code Section 12-67-130(A).
- e. A taxpayer whose actual rehabilitation expenses are below 80% of the estimated rehabilitation expenses set forth in the “Notice of Intent to Rehabilitate.” Code Section 12-67-140(B)(2).
- f. A taxpayer who claims the Textile Revitalization Credit in Title 12, Chapter 65, or the Retail Facility Revitalization Credit in Title 6, Chapter 34, for the building site. Code Section 12-67-140(B)(4).<sup>4</sup>

## 5. Q. What are “rehabilitation expenses”?

- A. Rehabilitation expenses are the expenses or capital expenditures incurred in the rehabilitation, demolition, renovation or redevelopment of the building site. For rehabilitation expenses to qualify, the abandoned building on the building site must be either renovated or redeveloped; expenses incurred for demolition of a building site without subsequent redevelopment do not qualify. Code Section 12-67-120(6).

Below are examples of costs that qualify and costs that do not.

<b>Rehabilitation Expenses Include:</b>	<b>Rehabilitation Expenses Do Not Include:</b>
Renovation costs of existing building (e.g., interior demolition, movement of walls, replacing floors, ceilings, or roofs, wall to wall carpet, permanent tiles and paneling, central HVAC systems, plumbing, electrical wiring, fixtures, sprinkler systems and elevators)	Cost of acquiring the building, land and other improvements, including the purchase price
Redevelopment costs of existing building	Expenses incurred on an abandoned building that is not renovated or redeveloped

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<sup>4</sup>A taxpayer claiming the abandoned building credit for a qualifying building site is not prevented from claiming the Textile Credit or Retail Credit for a different qualifying building site.

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<b>Rehabilitation Expenses Include:</b>	<b>Rehabilitation Expenses Do Not Include:</b>
Demolition expenses (i.e., the complete destruction or removal of a building), except as otherwise noted	Demolition expenses if the building being demolished is on the National Register for Historic Places  Demolition expenses if the building site is not redeveloped.
Construction of new buildings	Expenses incurred prior to sending the Department a Notice of Intent to Rehabilitate the building site or unit
Expenses that double the square footage of an abandoned building (i.e., the existing building square footage is increased from 1000 to no more than 2000 square feet)	Expenses associated with the increase in square footage of a building site more than double the square footage of the existing building (e.g., the existing building square footage is tripled in size from 1000 to 3000 square feet; costs of the 1000 square foot excess enlargement do not qualify.) See below for guidance on allocation of excess enlargement costs.
Environmental remediation (e.g., abatement of lead paint, removal of asbestos or mold, removal of underground oil tanks)	All expenses when the minimum amount of rehabilitation expenses based on the building site location are not incurred (i.e., over \$75,000, \$150,000, or \$250,000)
Site improvements (e.g., sidewalks, fences, and docks)	All expenses when actual expenses are less than 80% of the estimated rehabilitation expense amount reported in the Notice of Intent
Other improvements on the building site (e.g., landscaping, drainage, or paving)	Cost of personal property at the building site (e.g., furniture, appliances, window treatments). See below for guidance on distinguishing real property costs from personal property costs.
Professional fees associated with redevelopment of the site, including engineering and architectural fees	Professional fees associated with the purchase of the site (e.g., title work, surveying, closing costs)
Interest costs on construction loan	Interest costs to purchase the site
Expenses paid from grant proceeds when the grant money is taxable (i.e., the taxpayer will have basis)	Expenses paid from nontaxable grant money

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<b>Rehabilitation Expenses Include:</b>	<b>Rehabilitation Expenses Do Not Include:</b>
Expenses paid by the taxpayer under a “tenant improvement allowance” with the lessee for improvements to the real property to customize the space to fit a tenants needs (e.g., costs incurred for adding permanent walls, permanent paneling or tiling, lighting, wiring, and cable)	Expenses paid under a “tenant improvement allowance” for personal property costs (e.g., cubicles, office furniture, etc.) or moving costs
	All expenses if the site is not put into operation for income producing purposes

Additional guidance concerning specific costs as qualifying rehabilitation expenses are discussed below.

- A. Distinguishing Real Property Costs and Personal Property Costs. Whether an expense is for personal property depends on the facts and circumstances. Generally, personal property is a movable item of property that is not permanently affixed to, or part of, real estate. In making this determination, the Department will consider (1) the mode of attachment; (2) the character of the structure or the article; (3) the intent of the parties making the annexation; and, (4) the relationship of the parties. *City of North Charleston v. Claxton*, 431 S.E.2d 610 (S.C. 1993). In addition, the Department may consider whether the removal of the property in question would be costly, time consuming, and/or destructive to the building.<sup>5</sup> Note: This determination may be different for other income tax purposes, such as Internal Revenue Code Section 1245 property.
- B. Rehabilitation that Includes Excess Enlargement over Twice the Size of Original Building. If the square footage of a building site increases by more than double the square footage of the existing buildings on the site, rehabilitation expenses associated with the excess enlargement are not qualifying rehabilitation expenses and do not qualify for the credit. The expenses must be allocated between the qualifying portion of the rehabilitated building(s) (no more than double the square footage of the original building) and the non-qualifying portion of the rehabilitated building(s) (i.e., the excess enlargement). If it is not possible to make a specific allocation of expenses, expenses must be allocated to each portion on some reasonable basis, such as

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<sup>5</sup> The Department has used these guidelines in advisory opinions concerning sales and use taxes and property taxes. See RR #98-2 (Banks), PLR #09-1 (Residential Water Heater Repair Program), PLR #07-3 (Equipment and Services for Enhancement of Wireless Communications) and PLR #07-4 (Signs).

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reasonable allocation of costs by the contractor or architect based on justifiable factors (e.g., type of improvement and how the improvement relates functionally to the building.) If a reasonable allocation cannot be determined, the allocation should be made based upon square footage. Note: An increase in floor space resulting from interior remodeling is not considered an enlargement.

- C. Allocation of Common Costs Associated with Multiple Units. Common cost expenses associated with multiple units, such as common areas and parking garages, must be allocated to each unit on some reasonable basis, such as reasonable allocation of costs by the contractor or architect based on justifiable factors. If a reasonable allocation cannot be determined, the allocation should be made based upon square footage.
  
- D. Determination of When an Expense is Incurred. An expense is incurred by the taxpayer on the date such expenditure would be considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense.
  
- 6. Q. What minimum requirements must the abandoned building site or phase meet to be eligible for the credit?
  - A. The minimum credit requirements for an abandoned building site or phase to be eligible for the credit are:
    - a. The abandoned building site or phase is put into operation for income producing purposes;
    - b. The abandoned building site or phase meets the purpose of the Act contained in Code Section 12-67-110 (see Introduction of this advisory opinion for a summary of the Acts purposes);
    - c. The abandoned building site or phase is one in which the taxpayer has incurred a minimum amount of rehabilitation expenses based on the population of the county or municipality in which the building site is located. The minimum rehabilitation expenses and population criteria for a building site are listed below:

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<b>The Population of the Municipality or County of the Building Location Based on the Most Recent United States Census:<sup>6</sup></b>	<b>Actual Rehabilitation Expenses Are More Than:</b>
Under 1,000 people	\$ 75,000
1,000 – 25,000 people	\$150,000
Over 25,000 people	\$250,000

and

- d. Actual rehabilitation expenses are 80% or more of the estimated expense amount reported in the Notice of Intent for the building site. Code Sections 12-67-120 and 12-67-130.

The following illustrates the interplay of the Acts requirements in items (c) and (d) above requiring a taxpayer incur actual rehabilitation expenses of more than \$75,000 - \$250,000 based on the building location and incur actual expenses over 80% of the estimated expense amount reported in the Notice of Intent.

Assume a taxpayer rehabilitates an abandoned building located in a county that requires rehabilitation expenses exceeding \$75,000. The taxpayer's Notice of Intent reports the following expense for the site:

<b>Estimated Rehabilitation Expense Reported in Notice of Intent</b>	<b>80% of Estimated</b>	<b>Actual Expenses</b>
\$75,001	\$60,001	\$60,001

Since the taxpayer did not incur over \$75,000 of actual expenses, the Act requirement in item (c) above is not met. Accordingly, the taxpayer is not eligible for the credit.

If, however, the taxpayer reported estimated expense in the Notice of Intent of \$93,751 as illustrated below, this would result in the 80% of estimated amount being \$75,001 (i.e., the minimum expenditure required based on county location). If the actual expenses incurred exceed \$75,000, the Act requirements in items (c) and (d) are met.

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<sup>6</sup>The taxpayer should use the census available at the time the Notice of Intent is filed.

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<b>Estimated Rehabilitation Expense Reported in Notice of Intent</b>	<b>80% of Estimated</b> (At least the minimum required based on county location)	<b>Actual Expenses</b>
\$93,751	\$75,001	\$75,001

7. Q. What taxes may the credit be used against?

A. A taxpayer who rehabilitates an abandoned building is eligible for either:

- a. “Income” Tax Credit.<sup>7</sup> A credit against taxes imposed under Title 12, Chapter 6 (income tax), Chapter 11 (bank tax), Chapter 13 (savings and loan), Chapter 20 (corporate license fees), or any combination of these taxes or
- b. Property Tax Credit. A credit against real property taxes levied by local taxing entities. Code Section 12-67-140.

A taxpayer’s selection of the credit type is made when filing the Notice of Intent with the Department or with the county or municipality in which the property is located.

8. Q. When can a building site be separate units?

A. Whether separate “units” of a building site each qualify as an abandoned building is based upon the substance (rather than the form) of the redevelopment. This determination depends upon the specific facts of each redevelopment. Factors to consider include the operational use or line of business of each separate unit, the economic activity of each separate unit, the structural components (*e.g.*, separate firewalls, entrances, HVAC, etc.) of each separate unit, and the sale or lease of the building site as one or more separate properties.

Examples of an abandoned building that is one abandoned building site, and not separate units, are:

- a. A self-service storage building with 50 individual climate controlled storage units rented to the public;

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<sup>7</sup>For simplicity, this credit is referred to as an “income tax credit,” although neither the bank tax nor the corporate license fee is an income tax.

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- b. A two-story building with a restaurant on Floor 1 and a private meeting room for restaurant events on Floor 2;
- c. A hotel with 150 guest rooms, a dining facility, and a fitness facility;
- d. A building with temporary walls partitioning 15 separate antique businesses; and
- e. A residential apartment complex, a residential duplex, or a residential condominium complex (i.e., multi-family residence.)

Examples of an abandoned building that may be considered separate units (sites), depending on the particular facts, are:

- a. A strip mall comprised of four separate and distinct spaces that are rehabilitated as three larger separate and distinct businesses;
- b. A multi-family duplex converted into a duplex office building;
- c. A one-level office building leased by three separately owned businesses (e.g., a hair salon, a real estate office, and a law office) with each having private access, fire walls, and separate HVAC systems; and
- d. A two-story building with a restaurant on Floor 1 and a real estate office on Floor 2 accessed by a separate side entrance.
- e. A commercial condominium or a dual purpose condominium (part commercial and part non-commercial.)

NOTE: Although a building may contain multiple units, the taxpayer may choose to treat the entire building as one abandoned building site. If a building is subdivided into units, it is important to remember that each unit must meet the minimum rehabilitation expense requirement (i.e., \$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 considered an abandoned building site, and each unit is eligible for an income tax credit not to exceed \$500,000.

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## PART 2 - NOTICE OF INTENT TO REHABILITATE

9. Q. Should a taxpayer file a Notice of Intent with the Department or with the county or municipality?

A. This depends upon whether the taxpayer is seeking the income tax credit or the property tax credit. The requirements are:

Income Tax Credit. The taxpayer must file a Notice of Intent with the Department before incurring its first rehabilitation expenses at the building site. Rehabilitation expenses incurred before the Notice of Intent is provided do not qualify. Code Section 12-67-140(B).

The written Notice of Intent for the income tax credit should be mailed to:

Abandoned Building Credit Notice  
Research and Forms Development  
South Carolina Department of Revenue  
Columbia, SC 29214-0019

Property Tax Credit. The taxpayer must file a Notice of Intent with the municipality, or the county if the building site is located in an unincorporated area, where the building site is located before incurring its first rehabilitation expenses at the building site. Rehabilitation expenses incurred before the Notice of Intent is provided do not qualify. Code Section 12-67-140(C).

NOTE: If the taxpayer later decides to choose the alternative credit, then a new Notice of Intent should be filed with the other governmental agency and written notification of withdrawal of the first Notice of Intent should be provided. All expenses incurred prior to the filing of the second Notice of Intent, however, will not qualify for the credit. A Notice of Intent for the same abandoned building or site may not be sent simultaneously to the Department and the county or municipality.

10. Q. What is the “Notice of Intent to Rehabilitate”?

A. The Notice of Intent to Rehabilitate an abandoned building, including a separate unit or parcel, is a letter from the taxpayer to the Department or municipality or county indicating the following information. The Notice must contain:

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- a. A statement of the taxpayer's intent to rehabilitate the building site, unit or parcel;
- b. The building site, unit, or parcel location;
- c. Whether new construction is to be involved;
- d. The amount of acreage in the building site;
- e. The square footage of existing buildings involved in the building site;
- f. The building(s) or unit(s) the taxpayer intends to renovate, and
- g. The estimated expenses to be incurred in connection with rehabilitation of the building site unit or parcel. Code Section 12-67-120(7).

Note: See Question 16 for guidelines to consider when filing the Notice of Intent to avoid any credit reduction or ineligibility.

## 11. Q. Who must file the Notice of Intent?

- A. The Notice of Intent must be filed by the taxpayer actually rehabilitating, renovating or redeveloping the site, unit, or parcel and placing the site in service for its intended use. In some instances, this may be the developer, the owner of the building, one or more lessees of the site or units, or a pass through entity (not the individual members of the pass through entity).

For example, assume a developer/lessor purchases and demolishes the abandoned building on the site for \$1 million. Under the contract terms with the tenants, the newly constructed building will be the same square footage as the abandoned building and will contain two unattached units. The new tenants, a national chain retail store and a local restaurant, have a ground lease and will each construct their own building with estimated construction expenses of \$1.6 million and \$250,000, respectively. Each tenant will place the site in service on its books. Each lessee, the national retail chain and the local restaurant, files a Notice of Intent reporting its own estimated expense amount; all rehabilitation expenses incurred by the developer are disregarded. The developer is not the taxpayer placing the site in service, does not file a Notice of Intent, and cannot claim any credit.

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12. Q. When must the Notice of Intent be filed?

The Notice of Intent should be filed before any rehabilitation expenses are incurred at the building site. If the Notice of Intent is filed after expenses are incurred, then only those rehabilitation expenses incurred after the notice is provided may qualify; all previous expenses do not qualify. See Question 5, Item D. for the method for accounting for expenses.

13. Q. Why is the estimated rehabilitation expense amount reported in the Notice of Intent important and can the Notice of Intent be amended to restate estimated expenses?

A. A Notice of Intent cannot be amended to revise the estimated rehabilitation expense amount to be incurred in connection with the rehabilitation of the building site once submitted to the Department. Accordingly, the accuracy of the estimated expense amount listed in the Notice of Intent is important since the credit calculation is based on the amount of actual expenses compared to the estimated expense amount reported in the Notice of Intent (even if the Notice of Intent inadvertently includes other expenses, such as personal property costs). If actual expenses are less than 80% of the estimated expenses, then no credit is allowed. Note: See Effective Date on page 1 for the 90 day time period allowed to amend a Notice of Intent.

14. Q. Does a Notice of Intent have to be filed for each unit if an abandoned building is divided into separate units?

A. Yes. If a taxpayer chooses to subdivide an abandoned building into separate units, then each unit is deemed a building site and a separate Notice of Intent must be filed for each unit.

15. Q. Can the Notice of Intent be amended to restate the number of units?

A. No. A Notice of Intent cannot be amended to revise the number of units being rehabilitated from one to two or more units or from multiple units to one site. Note: See Effective Date on page 1 for the 90 day time period allowed to amend a Notice of Intent.

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16. Q. What are some guidelines to consider when filing the Notice of Intent to avoid any reduction or credit ineligibility?

A. Guidelines to consider when filing the Notice of Intent include:

- a. The Notice must contain a specific dollar amount of estimated rehabilitation expenses for the building site. A range of expenses, such as \$1 million to \$5 million, is not acceptable.
- b. The specific amount of estimated rehabilitation expenses reported in the Notice of Intent should include only those expenses that qualify as rehabilitation expenses under the Act (see Question 5 for examples). No credit is available if actual rehabilitation expenses are not 80% or more of the total estimated expense amount reported in the Notice of Intent.
- c. Carefully consider and designate whether the abandoned building or structure qualifying for the credit is to be redeveloped or renovated by the taxpayer as one or more building sites (units or parcels.)
- d. File one Notice of Intent for a building site that is anticipated to be completed in phases. The one Notice of Intent should report a total of expenses for the entire rehabilitation; it should not report estimated costs by phases. The answer is different for a site divided into units. (See Question 10 above.)
- e. File a separate Notice of Intent for each unit or each parcel of a building site. The separate Notices of Intent for the income tax credit may be mailed together. In multiple site rehabilitations, it is possible for the taxpayer to select the income tax credit for one or more units and the property tax credit for other units at the site. In such cases, taxpayers selecting the property tax credit should notify the Department that a Notice of Intent has been submitted to the county or municipality.
- f. A taxpayer may not file a “protective” Notice of Intent with both the Department and the county or municipality while deciding whether to take the income tax credit or the property tax credit.
- g. A Notice of Intent provided to the Department does not represent approval of the taxpayer’s eligibility for the credit, approval of the estimated rehabilitation expenses, or approval of the credit amount.

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- h. The appropriate taxpayer(s) should file the Notice of Intent. The person who will be incurring the rehabilitation expenses and placing the site in service is the person who should file the Notice of Intent. For example, the taxpayer may be the developer, the building owner, the tenant with a ground lease, or the pass through entity (not the individual partners, shareholders or members) incurring the rehabilitation expenses.
- i. Expenses associated with a building site that increases the amount of square footage on the building site in excess of 200% of the amount of square footage of the buildings that existed on the building site as of the filing of the Notice of Intent do not qualify. For example, if a 1000 square foot building is tripled in size for 1000 to 3000 square feet, then the expenses of the 1000 square foot excess enlargement do not qualify.
- j. The Notice of Intent cannot be amended to restate estimated expenses to be incurred in connection with the rehabilitation or to change the number of building sites or units to be rehabilitated.

## **PART 3 - INCOME TAX CREDIT**

17. Q. When is the income tax credit earned?

- A. The entire credit is earned in the tax year the applicable phase or portion of the building site is placed in service. The credit, however, is taken in equal installments over 5 years beginning with the tax year the applicable phase or portion of the building site is placed in service. Once the building is placed in service and the credit is earned, there is no clawback provision if the building is not rented, rented to a tax exempt organization, or the business closes. Code Section 12-67-140(B)(3).

18. Q. What is the definition of “placed in service”?

- A. Placed in service is the date the building site is completed and ready for its intended use. If the building site is ready for use in phases or portions, each phase or portion is considered to be placed in service when it is completed and ready for its intended use. Code Section 12-67-120(5).

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19. Q. What form is used to compute and claim the income tax credit?

A. Form TC-55, “Abandoned Buildings Revitalization Credit,” is used to compute and claim the credit. A separate Form TC-55 must be used for each abandoned building site or each unit or parcel deemed to be an abandoned building.

20. Q. What is the credit amount?

A. The credit amount depends upon the amount of actual rehabilitation expenses and estimated rehabilitation expense reported in the Notice of Intent to Rehabilitate. The total credit earned for any taxpayer for each abandoned building site, unit, or parcel may not exceed \$500,000. Code Section 12-67-140(B)(2) and (B)(3).

<b>Rehabilitation Expenses</b>	<b>Credit Calculation</b>	<b>Credit Cap</b>
If the actual expenses are between 80% and 125% of the estimated expense in the Notice of Intent	25% of the actual rehabilitation expenses incurred at the building site	\$500,000 for any taxpayer in a tax year for each abandoned building site (or each unit or parcel deemed to be an abandoned building site)
If the actual expenses are more than 125% of the estimated expense in the Notice of Intent	25% of 125% of the estimated rehabilitation expense in the Notice of Intent	\$500,000 for any taxpayer in a tax year for each abandoned building site (or each unit or parcel deemed to be an abandoned building site)
Actual expenses under 80% of estimated rehabilitation expense	No credit	No credit

Reminder: The credit is earned in the tax year the applicable phase or portion of the building site is placed in service, provided the actual rehabilitation expenses are at least 80% of the total estimated rehabilitation expense. The credit, however, is taken in equal installments over 5 years beginning with the tax year the applicable phase or portion of the building site is placed in service. Code Section 12-67-140(B)(3).

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21. Q. Is the use of each annual credit installment limited?

A. Yes. The annual available credit installment is limited to 50% of the taxpayer's income tax, bank tax, savings and loan tax, and/or corporate license fee liability for the tax year. Code Section 12-67-140(B)(5).

For example, a corporation earns the maximum \$500,000 credit. The credit installment for Year 1 is \$100,000; it may offset 50% of the taxpayer's income tax and corporate license fee liability. The corporation has a \$140,000 income tax liability and a \$40,000 corporate license fee liability. The corporation may offset \$90,000 of its liability (\$70,000 income tax and \$20,000 corporate license fee). The unused \$10,000 credit is carried forward for 5 years.

22.Q. What are the provisions for the allocation of the credit if the taxpayer is a partnership or limited liability company taxed as a partnership?

A. If the taxpayer is a partnership or limited liability company taxed as a partnership, the credit may be passed through to the current partners or members and may be allocated among any of its current partners or members, including an allocation of the entire credit to one partner or member. Note: A partnership cannot allocate more than its current year credit installment amount to any partner in a single tax year. Code Section 12-67-140(B)(7).

23. Q. What is the carry forward period?

A. Any unused credit may be carried forward for 5 years. Code Section 12-67-140(B)(3).

The credit installment and the carry forward years are illustrated below.

<b>Credit Installment</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Amount	20%	20%	20%	20%	20%
Carry forward of Installment	Years 2-6	Years 3-7	Years 4-8	Years 5-9	Years 6-10

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24. Q. What is the practical effect of the repeal of the abandoned building credit?

- A. This Act is repealed on December 31, 2019. Accordingly, a credit may not be earned on January 1, 2020 or thereafter. The repeal does not affect remaining credit installments for a credit earned on or before December 31, 2019. Further, it does not affect the 5 year carry forward period of any credit earned but unused. Code Section 12-67-140 and Act No. 57, 2013 S.C. Acts, Section 1.B.

## PART 4 - SPECIAL PROVISIONS

25. Q. What are the special rules for a building or structure listed on the National Register of Historic Places?

- A. The special rules for a building or structure listed on the National Register of Historic Places include:
- a. Additional Definition of Abandoned Building in Code Section 12-67-120(1). Use of any portion of a building or structure listed on the National Register for Historic Places when used solely for storage or warehouse purposes is considered nonoperational for income producing purposes.
  - b. Limitation on the Income Tax Credit in Code Section 12-67-120(1). The income tax credit is further limited by disqualifying for credit purposes the portion of the building or structure that was operational and used for storage or as a warehouse for income producing purposes. This limitation is calculated based on the actual percentage of 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 a "Notice of Intent to Rehabilitate" divided by 100%. Code Sections 12-67-120(1) and 12-67-140(B).
  - c. Demolition Expenses are Not Rehabilitation Expenses. The definition of rehabilitation expenses provides that demolition expenses (the complete destruction or removal of a building), are not a rehabilitation expense for purposes of calculating the credit amount if the building being demolished is on the National Register for Historic Places. Code Section 12-67-120(6).

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26. Q. Does Title 6, Chapter 31 apply to the credit?

A. The provisions of Title 6, Chapter 31 (“South Carolina Local Government Development Agreement Act”) apply to this credit, however, Code Section 6-31-40, (“Developed Property must Contain Certain Number of Acres of Highland”), does not apply. Code Section 12-67-150.

## **PART 5- TRANSFER OF CREDIT and NOTIFICATION to DEPARTMENT**

27. Q. Can a taxpayer transfer the credit earned if he sells the building site, or any phase or portion of the building site that has been placed in service?

A. Yes. If a taxpayer has earned the credit and sells the building site, or any phase or portion of the building site, the taxpayer may transfer all or part of the remaining credit associated with the rehabilitation expenses incurred with respect to that phase or portion of the site to the purchaser of the applicable portion of the building site. Code Section 12-67-140(B)(6). Note: The answer is different if the property is sold prior to the site being placed in service. In such instance, no credit has been earned and no future credit can be earned on the property since it is no longer an abandoned building. See Questions 17 and 18 for a discussion of when the income tax credit is earned.

28. Q. Can a taxpayer that is the lessor of the building site, or part of the building site, transfer any remaining credit to the lessee of the site?

A. Yes. If the taxpayer that is the lessor of the building site, or part of the building site, has earned the credit, then the taxpayer may transfer any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the lessee of the site. Unused credit carry forwards may not be transferred. Code Section 12-67-140(B)(6).

29. Q. Can an earned credit be transferred more than one time?

A. Yes, providing the transfer of the earned credit is to a new owner or lessee of the abandoned building or site. Unused credit carry forwards may not be transferred. The Act does not contain any other transfer provision. The credit by itself cannot be bought or sold. Note: If the building site, or phase or portion of the site, has not

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been placed in service, a credit has not been earned. See Questions 17 and 18 for a discussion of when the income tax credit is earned.

30. Q. When and how does a transferor notify the Department of a credit transfer?

- A. The transferor must notify the Department in writing at least 30 days before the transfer. The request will be deemed approved two weeks after the transferor has submitted all information requested below in complete form and the transfer is carried out consistently with the information submitted in the request. Failure of the transferor to notify the Department of the transfer results in disallowance of the transferred credit until the transferor complies. See Question 36 below for the information that must be provided in the notification.

Certain events do not constitute a credit transfer, such as the allocation of the credit through a partnership or the proposed pledge or collateral assignment of any future credit to be earned to a lender as collateral for the project loan. If the lender later takes possession of the property after the credit is earned, then a transfer has taken place and notification to the Department is required.

31. Q. What form is used to claim a transferred credit?

- A. The transferee claims a transferred credit on Form TC-55, "Abandoned Buildings Revitalization Credit," by completing applicable portions of the form.

32. Q. When can a credit be transferred?

- A. A credit can be transferred once the taxpayer rehabilitating the abandoned building has earned the credit (*i.e.*, after placing the building in service.) A transfer may take place prior to the time the South Carolina income tax return is filed for the year in which the credit is earned.

33. Q. What credit amount may the transferee claim?

- A. The original credit is earned in the year the site is placed in service, but is claimed over a 5 year period in equal installments. As such, the transfer may be for any applicable remaining credit associated with the rehabilitation expenses. For example, if the original taxpayer sells the site in Year 3, the taxpayer may transfer the credit installments for Years 3, 4 and 5.

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Any credit carry forward resulting from the installments for Years 1 and 2 remain with the original taxpayer and may not be transferred. Code Sections 12-67-140(B)(3)(a) and (6).

34. Q. Can the transferee claim the entire credit in the year of transfer?

A. A taxpayer to whom a credit has been transferred may only claim that year's credit installment; that installment is limited in use to 50% of the transferee's income tax liability (e.g., the entity's, partner's, shareholder's, or member's income tax liability or married couple's income tax liability.) Code Section 12-67-140(B)(3).

35. Q. What is the credit carry forward period for a transferred credit?

A. Each annual installment of the credit transferred may be carried forward for 5 years. A transfer does not extend the time period a credit can be used. Code Section 12-67-140(B)(3)(a).

36. Q. How does a transferor notify the Department of a transfer of all or a portion of the credit?

A. The transferor must send a written "notice of transfer" to the Department containing the following information:

- a. The complete name, address, telephone number and the taxpayer identification number of the transferor of the credit;
- b. The complete name, address, telephone number and taxpayer identification number of each transferee of the credit;
- c. The complete address and tax map number of the building site;
- d. The total amount of credit currently available to the transferor (*i.e.* the total amount of credit less any credits used or carried forward by the transferor in the current or prior tax years);
- e. The date the original credit was earned (the date the site was placed in service) and the amount of each credit installment;

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- f. The date the transfer of the credit will be made;
- g. The amount of the credit to be transferred;
- h. The transferor must provide a waiver of the right to claim that portion of the credit being transferred;
- i. The transferor's remaining credit balance after the transfer;
- j. The consideration paid by the transferee; and
- j. Any other information requested by the Department.

The written notification of transfer should be mailed to:

Abandoned Building Credit Transfer Notice  
Research and Forms Development  
South Carolina Department of Revenue  
Columbia, SC 29214-0019

## **PART 6 - PROPERTY TAX CREDIT OVERVIEW**

37. Q. What are the requirements to file a Notice of Intent with the municipality or county?

A. The taxpayer must file a Notice of Intent to Rehabilitate with the municipality, or the county if the building site is located in an unincorporated area, where the building site is located before incurring its first rehabilitation expenses at the building site. Rehabilitation expenses incurred before the Notice is provided do not qualify. Code Section 12-67-140(C).

38. Q. What is the property tax credit amount?

A. The amount of the property tax credit depends upon the amount of actual rehabilitation expenses compared to the estimated rehabilitation expenses reported in the Notice of Intent and is summarized below. Code Section 12-67-140(C)(3).

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<b>Expenses</b>	<b>Credit</b>
If the actual expenses incurred in rehabilitating the building site are between 80% and 125% of the estimated expenses in the Notice of Intent	25% actual rehabilitation expenses incurred at the building site x the local taxing entity ratio <sup>8</sup> of each local taxing entity that has consented to the credit
If the actual expenses are more than 125% of the estimated expenses in the Notice of Intent	25% of 125% of the estimated expenses incurred at the building site x the local taxing entity ratio of each local taxing entity that has consented to the credit
Actual expenses under 80% of estimated rehabilitation expenses	No credit

The credit may be taken against up to 75% of the real property taxes due on the building site each year for up to 8 years. Code Section 12-67-140(C)(3).

39. Q. What is the repeal date?

A. The Act is repealed on December 31, 2019. Any credit carry forward will continue to be allowed until the 8 year time period in Code Section 12-67-140(C)(3) is completed. See Act No. 57 of 2013, Section 1.B.

## **PART 7 - EXAMPLES AND ADDITIONAL GUIDANCE**

**Additional Guidance.** The following scenarios provide additional guidance on the general rules discussed in this advisory opinion regarding credit requirements and Notice of Intent considerations.

A. Demolish Building and New Construction by Same Taxpayer. A taxpayer demolishes (completely destroys) an abandoned building and constructs a new building meeting all the Act requirements. The taxpayer is eligible for the credit.

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<sup>8</sup>The local taxing entity ratio is set as of the time the Notice of Intent is filed and remains set for the entire period the credit may be claimed by the taxpayer. Code Section 12-67-140(3)(b).

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B. Demolish Building and New Construction by Different Owners. A developer purchases an abandoned building and demolishes it. The developer sells the land to a business owner who will construct a new building on the land. Since the developer did not redevelop the site with a new building and the business owner purchased vacant land and not an abandoned building, neither meets the Act requirements. Accordingly, neither the developer nor the business owner is eligible for the credit.

C. Abandoned Building Site – Condition of Site. An abandoned building that has fallen in but remains on the ground meets the definition of abandoned building. In contrast, an abandoned building that has been cleared except for the concrete foundation at the time of purchase does not meet the definition of abandoned building.

D. Abandoned Building – 66% Abandonment Requirement and Storage Use. A building used for storage or warehouse purposes (e.g., storing old office furniture or boxes of records) is considered abandoned. A building used for storing inventory or generating rental income is not abandoned. The burden of proof rests with the taxpayer.

E. Selecting One Site or Multiple Units in Notice of Intent – Multiple Businesses Adjoining on Ground Level. A taxpayer purchases an abandoned national retail store. The taxpayer will redevelop and up-fit the building into 6 independent stores (5 junior anchor shops and one local retail shop). Each store is totally separated from the other by a firewall, each has direct access to the street, and each has separate utilities and HVAC systems. The taxpayer may decide whether the abandoned building will consist of one building site or 6 units. If he chooses 6 units, then each unit must meet the minimum rehabilitation expenses requirement of \$75,000 - \$250,000 based on location and a Notice of Intent must be submitted for each of the 6 sites.

F. Selecting One Site or Multiple Units in Notice of Intent – Multiple Businesses on Multiple Floors (Commercial Condominium). A taxpayer purchases a three story abandoned building. He intends to rehabilitate and lease the entire building. Floor 1 will be a restaurant, Floor 2 will be a banquet room for the restaurant, and Floor 3 will be professional office spaces. The taxpayer must decide whether the abandoned building will consist of one building site or two units (Floors 1 and 2 are one unit and Floor 3 is a second unit) when filing the Notice of Intent. His decision may be influenced, in part, on the estimated and actual expenses.

G. Selecting One Site or Multiple Units in Notice of Intent – Dual Purpose Condominium. A taxpayer purchases a three story abandoned building. He intends to rehabilitate and lease Floor 1 as a retail store and Floors 2 and 3 as four residential condominiums. The taxpayer must decide when filing the Notice of Intent whether the entire building is one site or one commercial unit and one multi-family residence unit.

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H. Abandoned Building Site – Selection of Multiple Units is Not Allowed. A taxpayer is redeveloping an abandoned apartment building. The building will contain 20 apartments with its own separate entrance, kitchen, bath and utilities. The taxpayer spends \$250,000 to redevelop each apartment. The taxpayer must file one Notice of Intent for the entire multi-family residence; each planned apartment cannot be a separate unit.

I. Two Units – Each Selects Different Credit Type. A taxpayer has chosen to divide an abandoned building into two units – Unit A and Unit B. He has decided to file a Notice of Intent with the Department selecting the income tax credit for Unit A and file a Notice of Intent with the county requesting the property tax credit for Unit B. The taxpayer also should notify the Department that the property tax credit has been requested for Unit B.

J. Property Sold After Being Completed. A developer rehabilitates an abandoned building and meets all the Act requirements. The building is recorded as “inventory” on his books (*i.e.*, the developer has completed the building and it is ready to be held for sale or lease.) He sells the building to a retailer. Pursuant to Code Section 12-67-140(6)(a), the developer is deemed to have “placed the building in service” as defined in the Act, and is eligible for the income tax credit; he also may transfer the credit to the retail purchaser.

K. Property Sold Before Being Completed. A limited liability company purchases and rehabilitates an abandoned building that meets all the Act requirements. The site is sold to another investor during the rehabilitation. The limited liability company did not complete the rehabilitation. Accordingly, no credit has been earned and it does not have any credit to transfer to the new owners. When the new owners complete the rehabilitation and place the building in service, they are not eligible for a credit since the building they purchased was not an abandoned building under the Act.

L. Rehabilitate a Portion of a Site – Future Rehabilitation Eligibility. A taxpayer purchases an abandoned building that was and will continue to be a retail showroom and a warehouse. The taxpayer rehabilitates only a portion of the site due to his current retail and warehouse needs. The taxpayer reports in the Notice of Intent that the redevelopment is for one site. As a result, any future rehabilitation is not eligible for the credit since the building site is no longer abandoned. The answer may be different if the rehabilitation is completed in phases or the redevelopment was for 2 sites or more.

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## EXAMPLES

### Example 1: Entire Building Placed in Service in One Year.

A taxpayer rehabilitates an abandoned building and meets the requirements in the Act. The Notice of Intent reports the following expenses for the site:

<b>Estimated Expense</b>	<b>80%</b>	<b>125%</b>
\$1.6 million	\$1,280,000	\$2 million

The taxpayer incurs \$5 million in expenses. In Year 3, the taxpayer places the entire building in service and earns a \$500,000 income tax credit (25% of 125% expense amount of \$2 million).

### Example 2: Estimated and Actual Expense Impacts Income Tax Credit Amount.

A taxpayer files a Notice of Intent with the Department reporting the following for the site:

<b>Estimated Rehabilitation Expense Reported in Notice</b>	<b>80%</b>	<b>125%</b>
\$400,000	\$320,000	\$500,000

Scenario 1: The following illustrates the credit amount based on the actual expenses incurred within 80% - 125% of the estimated rehabilitation expense amount reported to the Department.

<b>Actual Expenses</b>	<b>Income Tax Credit (25% x actual expenses)</b>
\$350,000	\$87,500 (25% x \$350,000 actual expenses)

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Scenario 2: The following illustrates the credit amount if the actual expenses incurred exceed 125% of the estimated rehabilitation expense amount reported to the Department.

<b>Actual Expenses</b>	<b>Income Tax Credit (25% x 125% of estimated expenses)</b>
\$600,000	\$125,000 (25% x \$500,000)

### Example 3: Building Site Placed in Service in Phases.

An abandoned building redevelopment is completed in multiple phases as indicated below. The taxpayer's Notice of Intent provided to the Department reports the following expenses for the abandoned building site:

<b>Estimated Expense</b>	<b>80%</b>	<b>125%</b>
\$2 million	\$1.6 million	\$2.5 million

The income tax credits for the actual rehabilitation expenses incurred in Phase 1 (completed in Year 1), Phase 2 (completed in Year 3), and Phase 3 (completed in Year 3) are calculated as follows:

<b>Year</b>	<b>Phase</b>	<b>Actual Rehabilitation Expenses</b>	<b>Year Phase is Placed in Service</b>	<b>Income Tax Credit</b>
1	1 (Exterior and Floor 1-Retail store)	\$1.5 million	Year 1	No credit earned in Year 1. The costs incurred are below the 80% estimated expense for the entire site.
2	2 (Floor 2 – Professional Office)	\$200,000	n/a - not yet placed in service	No credit earned in Year 2. Although total expenses to date are \$1.7 million, no credit is allowed since Phase 2 has not been placed in service.
3	2 (continuing phase 2)	\$300,000	Year 3	\$500,000 credit. Since Phase 2 is placed in service and the actual costs incurred to date (\$2 million) are over the 80% estimated expense for the entire site, the credit is earned. (25% x \$2 million actual

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				rehabilitation expenses)
4	3 (Landscaping)	\$200,000	n/a	No credit is allowed for any other phases. The maximum \$500,000 credit for this site has been earned.

NOTE: The answer may be different if the taxpayer had elected 2 units instead of 1 site when submitting the Notice of Intent to Rehabilitate.

## Example 4: Credit Calculation Based on One Site or Multiple Units

This example illustrates a taxpayer deciding whether to rehabilitate an abandoned building as one site, two units, or four units.

Scenario 1: Assume the taxpayer decides to rehabilitate one building. The taxpayer sends one Notice of Intent to the Department. Based on the estimated and actual expenses, the income tax credit earned is capped at \$500,000 as calculated below.

<b>Estimated Rehabilitation Expense Reported in Notice of Intent</b>	<b>80%</b>	<b>125%</b>	<b>Actual Expenses</b>	<b>Income Tax Credit</b>
\$4,000,000 (one site)	\$3,200,000	\$5,000,000	\$3,900,000	\$500,000 – Maximum credit

Scenario 2: Assume instead the taxpayer decides to rehabilitate the building as two sites. The taxpayer would submit two separate Notices of Intent to the Department. The credit earned per unit is \$500,000 as calculated below. The taxpayer earns total credit of \$1 million.

<b>Estimated Expense</b>	<b>80%</b>	<b>125%</b>	<b>Actual Expenses</b>	<b>Income Tax Credits</b>
Unit 1 – \$2,000,000	\$1.6 million	\$2.5 million	\$2 million	\$500,000 (25% of actual)
Unit 2 – \$2,000,000	\$1.6 million	\$2.5 million	\$2 million	\$500,000 (25% of actual)

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Scenario 3: Assume instead the taxpayer decides to rehabilitate the building as four sites. The taxpayer would submit four separate Notices of Intent to the Department and report a separate estimated expense amount for each of the four units as indicated below. The credit earned per unit ranges from \$200,000 to \$312,500 based upon the actual expenses indicated. The taxpayer earns total credits of \$975,000.

<b>Estimated Expense</b>	<b>80%</b>	<b>125%</b>	<b>Actual Expenses</b>	<b>Income Tax Credits</b>
Unit 1 – \$1,000,000	\$800,000	\$1,250,000	\$1,300,000	\$312,500 (25% of 125% amount)
Unit 2 – \$1,000,000	\$800,000	\$1,250,000	\$1,000,000	\$250,000 (25% of actual)
Unit 3 – \$1,000,000	\$800,000	\$1,250,000	\$850,000	\$212,500 (25% of actual)
Unit 4 – \$1,000,000	\$800,000	\$1,250,000	\$800,000	\$200,000 (25% of actual)

Example 5: Over Estimation of Estimated Expenses Could Result in Disallowance of Credit.

The following example illustrates that a taxpayer may not be eligible for \$500,000 income tax credit if he estimates in the Notice of Intent \$2 million of expenses versus \$1.6 million of expenses, even though his actual expenses may be greater.

<b>Estimated Rehabilitation Expense Reported in Notice of Intent</b>	<b>80%</b>	<b>125%</b>	<b>Actual Expenses</b>	<b>Income Tax Credit</b>
\$2 million	\$1,600,000	\$2,500,000	\$1,550,000	\$0

<b>Estimated Rehabilitation Expense Reported in Notice of Intent</b>	<b>80%</b>	<b>125%</b>	<b>Actual Expenses</b>	<b>Income Tax Credit</b>
\$1,600,000	\$1,280,000	\$2 million	\$1,300,000	\$325,000 (25% of actual)

Example 6: Credit Calculation and Credit Transfer Notification.

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Assume a \$500,000 credit is earned in Year 1 by XYZ Partnership. The partnership has two equal partners who will share the credit equally based on their profit sharing ratio. The \$100,000 credit installment (1/5 installment x \$500,000) passed through to each partner in Year 1 is \$50,000.

The credit generated by the pass through entity is limited to 50% of the partners income tax liability or married couples income tax liability. Once the credit installment is passed through by the entity generating it, the credit may not later be used by the entity.

## Calculation of Credit by Individual Partner A.

Year 1 – A’s Share of Year 1 Installment	\$50,000
50% of tax liability (assumed fact)	\$40,000
Unused credit to carry forward to Years 2 - 6	\$10,000

Year 2 – A’s Share of Year 2 Installment	\$50,000
Tax liability (assumed fact) - none; tax loss in Year 2	\$ 0
Unused credit to carry forward to Years 3 - 7	\$50,000

Transfer of Credit by Partnership to New Owner. On January 1, Year 3, XYZ Partnership sells the redeveloped building to a retailer. XYZ Partnership completes a transfer notification to the Department.

The remaining credit installments that have not been passed through to XYZ’s two partners are transferred to the new owners as follows:

Year 3 - \$100,000  
Year 4 - \$100,000  
Year 5 - \$100,000

Partner A may not transfer his \$60,000 unused credit carry forwards.

Use of Credit by New Owner. The new owner is eligible to claim the Year 3 installment in the year of the transfer, the Year 4 installment in the next year, and so on. It may not aggregate the installments.

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## Example 7: New Partnership Investors and Allocation of Credit Installments.

Developer LLC and Investors LLC form Development LLC. Each LLC is taxed as a partnership and has a calendar tax year.

Developer LLC selects abandoned building sites for rehabilitation.

Investors LLC contributes \$800,000 to Development LLC in exchange for 100% of the tax credits generated.

Investors LLC is a member of Development LLC at the time the each building site is placed in service. The members of Investors LLC may change each year as a result of the purchase of an ownership interest or capital contribution.

Development LLC uses the \$800,000 capital and a \$200,000 bank loan to purchase an abandoned building site.

Development LLC files a Notice of Intent for Unit A and a Notice of Intent for Unit B. Unit A will be leased to a tenant.

Unit	Estimated Costs	Actual Costs	Placed in Service
A	\$1,600,000	\$2 million	Year 1
B	\$1,600,000	\$1 million – Year 1 \$1.1 million – Year 2	Year 2

In Year 1, Development LLC earns a \$500,000 credit when Unit A is placed in service. It passes 100% of the first year tax credit installment through to Investors LLC (who passes the credit installment through to each of its members who have an interest as of December 31, Year 1). Unit A is leased to a retail tenant. In Years 2 – 5, equal installments will be passed out to Investors LLC members with ownership interests for that respective year.

In Year 2, Development LLC sells site A for \$2.5 million and uses \$1.1 million to complete Unit B and place it in service.

In July Year 2, Developer LLC sells its interest in Development LLC to Leasing LLC, a leasing company which leases Site B to a retailer. In Year 2, Development LLC earns a \$500,000 credit when Unit B is placed in service and passes 100% of the credit through to Investors LLC (who passes the credit installment through to each of its members who have an interest as of December 31, Year 2). In Years 2 – 5, equal installments will be passed out to Investors LLC members with ownership interests for that respective year.