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The Fundamentals of Ohio's Historic Tax Credit

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Ohio recently established a refundable tax credit for the rehabilitation of historic buildings located in the state. This two-year pilot program allows a fee simple owner of a historic building to take a credit equal to 25 percent of the owner's qualified rehabilitation expenditures against Ohio's corporation franchise tax, dealer in intangibles tax or personal income tax. There is no stated cap on the amount of the credit allowed; however, as discussed below, only 100 applications will be approved in each period and a taxpayer must show a net tax benefit to the state.

In order to claim the credit, a taxpayer must apply for and receive a tax credit certificate (certificate). The statute permits the approval of as many as 100 applications in each of the following two years. Only the fee owner of the building can submit an application and claim the credit. A taxpayer must apply on or after July 1, 2007, but before June 30, 2009. The regulations indicate that the director of development (director) will review and approve applications in the order in which they are filed with the state historic preservation officer (officer). However, the director has some discretion to deviate from this regulatory directive in order to ensure a mix of large and small rehabilitation projects. The officer will reject (without opportunity to cure) any incomplete applications with the consequence that such a rejected application must be resubmitted and loses its place in line. Further, a taxpayer will have 45 days to cure all substantive deficiencies that the director identifies in a complete application; after that time the application will be rejected and must be resubmitted.

Once an application is classified as complete, the director will review an application to determine whether (1) the building is a historic building (defined below); (2) the applicant is the owner of the fee simple interest in the building; (3) the rehabilitation will satisfy the Secretary of Interior's preservation standards (rehabilitation

standards); and (4) receiving the credit is a major factor in the taxpayer's decision to rehabilitate the building or to increase the level of investment in the rehabilitation. Importantly, the taxpayer must demonstrate to the satisfaction of the officer and the director prior to beginning the physical rehabilitation that the anticipated rehabilitation will satisfy the rehabilitation standards. Although the statute is not clear and there is no regulatory guidance on point, a reasonable interpretation of the statute is that expenditures made in connection with an ongoing rehabilitation can qualify for the credit if the rehabilitation to which those expenditures relate is approved by the director and officer prior to beginning that physical rehabilitation.

If the criteria in the preceding paragraph are satisfied, the director and the tax commissioner will conduct a cost and benefit analysis to determine whether the rehabilitation will result in a net revenue gain to state and local government. The regulations indicate that a net revenue gain will exist when the present value of state and local taxes relating to the rehabilitation during a certain period (beginning after the rehabilitation is complete) exceeds the amount of the credit. State and local taxes include real and personal property tax, sales and use tax, individual income tax, school district income tax, dealer in intangibles tax, corporate franchise tax, commercial activity tax, and domestic and foreign insurance taxes.

Once an application is approved, the director will issue a certificate to the taxpayer upon completion of the rehabilitation in accordance with the rehabilitation standards. However, the amount of qualified rehabilitation expenditures stated on the certificate will be subject to inspection and examination by the tax commissioner. The taxpayer must request and receive approval from the director prior to implementing any modification to the project, as it is described in the approved application. Such modifications include changes in the rehabilitation

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activities or end use. The taxpayer cannot appeal the director's determinations and decisions.

A building is a historic building if it is (1) listed on the National Register of Historic Places, (2) located in a registered historic district and certified by the officer as being of historic significance to the district or (3) listed as a historic landmark by a local government.

Qualified rehabilitation expenditures are expenditures made during a certain period and incurred by the owner in the rehabilitation of a historic building. Also included in this definition are architectural or engineering fees paid in connection with the rehabilitation, and expenses for the preparation of nomination forms listing the building on the National Register. However, the cost of acquiring, expanding or enlarging a building, new building construction costs and the cost of work done to related facilities are not included.

The taxpayer must claim the credit in the calendar year specified in the certificate. The credit is non-transferable and is to be applied to the tax liability of the owner or, if the owner is a pass-through entity, to the shareholders, partners or members of that entity. The application requires allocation of the credit in an entity taxed as a partnership for federal tax purposes to have substantial economic effect; however, this result does not appear to be mandated by either the statute or the regulations. If the credit amount exceeds the taxpayer's tax liability for the year in which the credit is claimed, the balance of the credit amount is refunded to the taxpayer. The taxpayer claiming the credit must retain the certificate for four years following the end of the year in which the credit is claimed and must make the certificate available for inspection by the tax commissioner during that time.

Ohio is currently reviewing its first round of applications for the 2007-2008 period and a few application slots are still available. The Ohio Department of Development hosts a web site at <http://www.odod.state.oh.us/edd/OHPTC/> providing links to the relevant provisions of the state statute and regulations, the application and other related information. A chart comparing Ohio's historic preservation tax credit to the federal credit is available at www.novoco.com/related_program/resource_files/ssd_ohiohistoric_v_federal.pdf. ♦

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