

Department of Revenue

Revenue Notice # 12-06: Individual Income, Corporate Franchise and Insurance Premium Tax – Historic Structure Rehabilitation Credit – Assignment of Credit Certificate

Introduction

This Revenue Notice sets out the position of the Minnesota Department of Revenue (“Department”) on when a tax credit certificate, issued as part of the historic structure rehabilitation program pursuant to *Minnesota Statutes*, section 290.0681, can be assigned. *Minnesota Statutes*, section 290.0681 provides a refundable tax credit to certain persons who rehabilitate qualified historic property in Minnesota. The credit is jointly administered by the Minnesota State Historic Preservation Office (“SHPO”) and the Department.

One condition of eligibility for the credit is that the project developer must notify SHPO when the project is complete (“MN Application Part B” or “Part B”). The Part B must include the names of the taxpayers who are eligible for the credit and the percentage of the total credit generated by the rehabilitation project that each taxpayer is eligible to receive.

Upon review of the information contained in the Part B and finding that all eligibility conditions for the credit have been met, SHPO is required to issue tax credit certificates to the taxpayers listed on the credit application. Each tax credit certificate must include the amount of the credit for each listed taxpayer.

Pursuant to *Minnesota Statutes*, section 290.0681, subdivision 5, a tax credit certificate issued to a partnership, S corporation, or limited liability company (collectively referred to as “flow-through entities”) is allocated to the partners, shareholders, or members based on their ownership interest of the entity’s assets or as specially allocated in their organizational documents, as of the last day of the taxable year.

A person who receives a tax credit certificate can either claim the credit or assign it to another taxpayer.

Department Position

The Department’s position is that only an original recipient of the tax credit certificate who is listed on the certificate can assign the certificate to another taxpayer, and that the credit certificate can only be assigned once.

The credit may flow through an entity, such as a partnership or other flow-through entity, by operation of law pursuant to *Minnesota Statutes*, section 290.0681, subdivision 5, so the partner or owner of a partnership or LLC would not need to be listed on the application or credit certificate to receive the credit in this manner. The Department’s position is that such a flow-through is not considered to be an assignment. The flow-through provision also permits a taxpayer whose ownership is otherwise indirect to be listed on the tax credit certificate if that taxpayer is listed on the application for the credit. In addition, any partner or owner would be required to be listed on the application and on the credit certificate if that partner or owner wishes to assign the credit that flowed through to it.

Examples

Question 1. Can a taxpayer who has been assigned a credit by the original recipient of the credit reassign the credit to another taxpayer?

Answer 1. No. The credit can only be assigned by the original recipient of the tax credit certificate.

Question 2. Is the distribution of a historic rehabilitation credit from a flow-through entity to its owners an assignment?

Answer 2. No. The distribution of a credit from a flow-through entity to its owners occurs as a matter of law. It is not an assignment. In this way, credits can flow through multiple layers of ownership by flow-through entities without violating the prohibition against more than one assignment.

Question 3. If a flow-through entity is named on a tax credit certificate, and the credit is distributed by operation of law to an owner of the entity not named on the certificate, can that owner then assign the distributed credit?

Answer 3. No. The credit can only be assigned by the actual recipient of the tax credit named on the certificate issued by SHPO.

Question 4. Can a taxpayer who indirectly owns an interest in the rehabilitated property through ownership in a flow-through entity be listed as an owner on the Part B to SHPO?

Answer 4. Yes. Taxpayers listed on the application must have an ownership interest in the property. However, the interest does not have to be direct, but instead can be an interest attributable to an ownership interest in a flow-through entity that has a direct or indirect interest in the historic property.

Question 5. If the original recipient of the credit certificate assigns the certificate to a flow-through entity, can the credit be distributed to the owners of the assignee flow-through entity by operation of law?

Answer 5. Yes. The distribution to the owners occurs by operation of law once it is assigned to the flow-through entity.

Question 6. May the original recipient of the credit certificate assign the certificate to two different taxpayers simultaneously, allocating part of the credit to each recipient?

Answer 6. No. The statute only permits the recipient of the credit certificate to assign the certificate to one other taxpayer.

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