

THE HISTORIC TAX CREDIT COALITION

July 23, 2010

Mr. Michael Mundaca
Depart of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Mundaca:

The historic tax credit described in Section 47 of the Internal Revenue Code, (the “HTC”) has a long and successful track record of facilitating the rehabilitation of historic structures and creating new centers of economic activity in the nation’s urban and rural communities. A study released in 2010 by Rutgers University confirmed that the HTC is indeed an economic driver. The report states that since its inception in 1981, the federal government has invested \$21 billion in the HTC, leveraged over \$85 billion in private investment, created over 1.8 million jobs and placed more than 36,000 historic buildings back in service.

While its economic impact has been very strong, the HTC has the potential to be an even more efficient and effective tool for economic development. It is with this goal in mind that the Historic Tax Credit Coalition (the “HTCC”) requests that the Treasury Department provide guidance on the legislative intent embodied in footnote 344 included in the Technical Explanation of the Revenue Provisions of the “Reconciliation Act of 2010” prepared by the Joint Committee on Taxation (the “JCT”).

As you know, in the Health Care and Education Affordability Reconciliation Act of 2010, Congress included codification of the economic substance doctrine as a revenue offset. As is customary, the JCT prepared a technical description explaining the revenue provisions of the Act. As part of the technical description the JCT included footnote 344, which clarified that tax credits such as the HTC should not “. . . be disallowed in a transaction pursuant to which, in form and substance, a taxpayer makes the type of investment or undertakes the type of activity that the credit was intended to encourage.” The HTCC applauds the inclusion of this language because it further recognizes Congress’ original intent to enact a tax credit that promotes economic development through the adaptive reuse of older and historic structures.

Given that Congress did not include any report language, as it has in the past, to clarify Congressional intent on this matter, the HTCC would like to encourage the Treasury to provide written guidance confirming the JCT’s technical description of how the HTC should be treated under footnote 344. While we believe that footnote 344 generally is consistent with existing case law and Treasury guidance in this area, the JCT explanation is not technically an official part of the legislative history of the provision since it is not a House, Senate, or Conference Committee report.

Additional guidance from the Treasury would presumably be given more deference by a court interpreting the statute than the JCT explanation. It would also promote greater investor confidence in the HTC and assist in attracting new investors to the market in these difficult economic times.

Please do not hesitate to contact me at 202 588 6064 or jleith@ntcicfunds.com. to discuss the matter further.

Sincerely,

John Leith-Tetrault
Chairman

cc: Brandon Carlton, Attorney-Advisor, Office of Tax Legislative Counsel
Robert Crnkovich, Senior Counsel, **Office of Tax Policy**