

River Edge Redevelopment Zone credit may not be transferred.

January 29, 2018

RE: Request for Private Letter Ruling – River Edge Historic Preservation Tax Credit

This is in response to your letter dated December 18, 2017, in which you request a Private Letter Ruling on behalf of Sugar Creek State Credit Fund, LLC (“Investor”). Although your letter identifies the Illinois Historic Preservation Tax Credit, the statute cited pertains to the River Edge Historic Preservation Tax Credit. Accordingly, this Ruling will relate to the River Edge Historic Preservation Tax Credit. Review of your request for a Private Letter Ruling indicates that all information described in paragraphs 1 through 8 of subsection (b) of 2 Ill. Adm. Code 1200.110 is contained in your request. This Private Letter Ruling will bind the Department only with respect to Investor. Issuance of this ruling is conditioned upon the understanding that Investor and/or any related taxpayer(s) is not currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them are as follows:

On behalf of taxpayer INVESTOR (“Investor”) (EIN ###) ABC requests a private letter ruling (“PLR”) regarding the Illinois Historic Preservation Tax Credit for the PROPERTY located at ADDRESS. Power of Attorney for NAME 1 and NAME 2 of ABC is attached.

#### Background Information

DEVELOPER (EIN ###) applied and was approved for the Illinois Historic Preservation Tax Credit (“Tax Credit”) for the Property for qualified rehabilitation expenditures incurred during the 2016 tax year, pursuant to 35 Illinois Compiled Statutes Section 5/221. The application and credit certification are enclosed as **Exhibit A**. The amount of the Tax Credit awarded to the Developer was \$\$\$\$. COMPANY 1 (EIN #####) is a 90% member manager of the Developer. Enclosed as **Exhibit B** is an entity organizational chart for the Developer and its members. The Developer allocated 100% of the Tax Credit to COMPANY 1 (“Holder”) pursuant to 35 ILCS 5/221(d). See **Exhibit C**, COMPANY 2 2016 Form IL-1065.

Investor is a capital member of COMPANY 1. COMPANY 1 allocated 100% of the Tax Credit to Investor. See **Exhibit D**, COMPANY 1 2016 Form IL-1065. Investor filed its 2016 tax return prior to the allocation of the credit by Holder and therefore the allocated credit was not reported on its’ 2016 Form IL-1065 and accordingly not passed through to its’ members. Investor is pursuing two options to allow for full utilization of the Tax Credit.

The first option is for Investor to file an amended Form IL-1065 for tax year 2016 to claim the Tax Credit that was allocated for the tax year. The Tax Credit will then be passed through to its’ members who will in turn also file amended returns and apply the credit against 2016 income tax liabilities and/or carry over the credit to offset 2017 liabilities.

The second option being explored by Investor is reallocation to a new investor. Investor wishes to reallocate the Tax Credit to an entity that can claim the Tax Credit against its 2016 Illinois income tax liability by amending the original 2016 filing.

Rulings Requested

*1) Authority for Ruling: 35 Illinois Compiled Statutes Section 5/911 provides that a tax return can be amended to claim a refund due if filed within three (3) years of the date it was filed. There is no requirement in 35 Illinois Compiled Statutes Section 5/221(c) that the credit must be claimed on an original return.*

Ruling Requested: Please confirm that an amended return may be filed by investor to claim the Tax Credit on its 2016 Illinois income tax return (Form IL-1065).

*2) Authority for Ruling: 35 Illinois Compiled Statutes Section 5/221(c) provides that the “tax credit under this section may not reduce the taxpayer’s liability to less than zero”. In prior rulings the Department has held that this language limits the ability to generate any tax refunds related to the credit and that the statute does not provide for the carryover of credits. This is contrary, however, to the Department’s representation on 2016 Schedule 1299-D (and instructions in Form 1299-C) which provides for a 5 year carryover period for the credit. In conversations with Richard Sgro from the Illinois Department of Revenue, the Developer has received guidance that given the reliance on the Department’s representation on Schedule 1299-D the Department will permit the carryover of the credit to tax year 2017. Schedule 1299-D has been corrected for tax year 2017 and forward. Therefore, no credit carryforward will be permitted to be claimed for tax years after 2016.*

Ruling Requested: Please confirm that the Tax Credit claimed on an amended Form IL-1065 by Investor may be carried forward to the 2017 tax return year.

Ruling Requested: Please confirm that as the Tax Credit passes through the Investor to its’ members that amended 2016 Illinois income tax returns may be filed to either apply the credit to a 2016 tax liability or claim a credit carry-forward to the 2017 tax year.

*3) Authority for Ruling: 35 Illinois Compiled Statutes Section 5/221(d) defines a “qualified taxpayer” as “the owner of the qualified historic structure or any other person who qualifies for the federal rehabilitation credit allowed by Section 47 of the Internal Revenue Code with respect to the qualified historic structure. Partners, shareholders of the subchapter S corporations, and owners of limited liability companies are entitled to a credit under this Section to be determined in accordance with the determination of income and distributive share of income under Sections 702 and 703 of the Internal Revenue Code.” There is no direct prohibition within 35 Illinois Compiled Statutes Section 5/221 against allocating credit to an investor that participates in the development after the tax year in which the investment is made and the credit is granted. Authorities contrary to the Ruling requested: Illinois Private Letter Ruling IT 15-0001– July 13, 2015*

Ruling Requested: Because there is no direct prohibition within 35 Illinois Compiled Statutes Section 5/221 against allocating the Tax Credit to a new investor, Investor wishes to determine whether the Tax Credit can flow through to a member of an LLC that was not a member during the tax year when the qualified rehabilitation expenditures were incurred.

Business Reason for the Transaction

Investor was allocated \$1,088,184 of tax credits which currently have not been utilized since they were allocated subsequent to the filing of Investor's 2016 Illinois Form 1065. In order to make the project financially attractive to Investor the credits need to be claimed on an Amended Illinois Form 1065 and then either utilized against 2016 tax liabilities or carried forward to tax year 2017. Investor seeks confirmation of the ability to claim these credits to ensure the economic feasibility of the Lehmann-Stern Knitting Mill property project.

#### Statement of Material Facts

The Developer applied for and was granted certification for the Tax Credit and incurred qualified rehabilitation expenditures in tax year 2016. The Tax Credit was 100% allocated to its member, COMPANY 1. COMPANY 1 allocated 100% of the Tax Credit to its member, Investor. Investor had already filed its 2016 Illinois income tax return when it was allocated the Tax Credit. Investor seeks to amend its' tax return to claim the Tax Credit and pass it through to its' members. Such members will also file amended 2016 Illinois income tax returns to either utilize the Tax Credit against 2016 Illinois income tax liabilities or carry forward the Tax Credit to be utilized against 2017 Illinois income tax liabilities. In the alternative, the Investor seeks to allocate the Tax Credit to an entity that was not a member of INVESTOR in the year the qualified rehabilitation expenditures were incurred.

#### Investor's Representations

The tax period at issue is calendar year 2016. There is no audit or litigation pending with the Department over this matter with the Investor. To the best of the knowledge of both Investor and NAME 1 the Department has not previously ruled on the same or similar issue for the taxpayer or a predecessor. The Investor nor any of its representatives has previously submitted or withdrawn a letter ruling with the same or similar issue to the Department. All contracts, licenses, agreements, instruments or other documents relevant to the request are enclosed.

### **RULING NO.1**

Investor may file an amended return for 2016 to claim the River Edge Historic Preservation Tax Credit within 3 years of the extended due date of the original return. 35 ILCS 5/911(a)(1).

### **RULING NO. 2**

Investor passes the River Edge Historic Preservation Tax Credit through to its members in accordance with IITA section 221(d). The members may file 2016 amended returns to claim the tax credit and carry over any unused tax credit to their 2017 tax year. Although the statute does not provide a five-year credit carryforward, the Department's 2016 Schedules 1299-C and 1299-D mistakenly instructed taxpayers to carry over any unused River Edge Historic Preservation Credit. Therefore, under the Taxpayers Bill of Rights, Investor's members may carry any unused credit from their individual 2016 amended return to the 2017 tax year.

### **RULING NO. 3**

IITA section 221 does not authorize transfers of the River Edge Historic Preservation Tax Credit. Because transfers are not specifically authorized, neither Investor nor its members may transfer any tax credit to another taxpayer. Under Subchapter S of the Internal Revenue Code, each member's distributive share of the credit shall be determined in accordance the partnership agreement, and the

credit cannot be allocated to any person that was not a member in the year in which the expenses were incurred.

This ruling shall bind the Department for taxable years for which Taxpayer obtains a credit certificate under IITA Section 221, except as limited pursuant to 2 Ill. Adm. Code 1200.110(d) and (e). The facts upon which this ruling is based are subject to review by the Department during the course of any audit, investigation or hearing and this ruling shall bind the Department only if the material facts as recited and incorporated in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

Sincerely,

Brian E. Fliflet  
Member, PLR Committee (Income Tax)