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August 9, 2019

Andrew Ackermann, CPA, CVA
MCM
6840 Eagle Highlands Way
Indianapolis, IN 46254

RE: General Information Letter KY-GIL-19-01

Dear Mr. Ackermann:

This letter is in response to your correspondence in which you requested a ruling from the Kentucky Department of Revenue ("Department") regarding whether a Kentucky non-profit entity ("Taxpayer") that has qualified for a Kentucky Historic Tax Credit ("Tax Credit") could create a single-member limited liability company ("SMLLC") to which to transfer the credit.

FACTS

The request letter asks the Department to agree to the following statement:

[I]f the client creates a Kentucky single member limited liability company, which is wholly owned by it (*i.e.*, a 501(c)(3) tax exempt organization), and transfers the certified rehabilitation tax credit to the SMLLC, then the SMLLC would be required to file Form 725 (Kentucky Single Member LLC); remit the \$175 LLET minimum; and the SMLLC may claim the certified rehabilitation tax credit on box 8 of Part II – LLET computation.

LAW AND ANALYSIS

The Tax Credit for rehabilitation of certified historical structures falls under the purview of the Kentucky Heritage Council, which is part of the Kentucky Tourism, Arts and Heritage Cabinet. KRS 171.396 defines terminology contained in KRS 171.3961, and 171.397. KRS 171.396(6) defines an "exempt entity" as "any tax exempt organization pursuant to sec. 501(c)(3) of the Internal Revenue Code, any political subdivision of the Commonwealth, any state or local agency, board, or commission, or any quasi-governmental entity".

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KRS 171.397 sets forth the guidelines for the Tax Credit to be approved and received. KRS 171.397(2)(b) allows for an irrevocable election by the Taxpayer to transfer the credit.

KRS 171.397(1)(a) allows an exempt entity that has incurred qualified rehabilitation expenses to be able to transfer or assign the Tax Credit with certain stipulations. The stipulation contained in 171.397(8) reads as follows: "Credits received under this section may be transferred or assigned if an election is made under subsection (2)(b) of this section, for some or no consideration, along with any related benefits, rights, responsibilities, and liabilities to any entity subject to the tax imposed by KRS 136.505." The tax imposed by KRS 136.505 is the franchise tax for financial institutions for taxable years prior to January 1, 2021. Therefore, an exempt entity may only transfer the Tax Credit to an entity that pays Kentucky bank franchise tax for taxable years prior to January 1, 2021.

CONCLUSION

Pursuant to the language contained in KRS 171.397, the Department cannot agree with your statement that an exempt taxpayer could create a SMLLC and transfer the Tax Credit to that newly formed SMLLC unless that entity is subject to the tax imposed by KRS 136.505.

If you have any questions, do not hesitate to contact me.

With kind regards,



J. Todd Renner, CPA, CGMA
Executive Director