

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE IX** TAXATION**CHAPTER 63** TAXATION OF CORPORATIONS**Section 38R** Massachusetts historic rehabilitation tax credit

Section 38R. (a) For purposes of this section, the following terms shall have the following meanings unless the context clearly requires otherwise:

“Certified rehabilitation”, the rehabilitation of a qualified historic structure that has been approved and certified by the chairman of the Massachusetts historical commission as being consistent with the standards established by the Secretary of the United States Department of the Interior for rehabilitation of historic properties.

“Qualified historic structure”, any building or structure, located within the commonwealth that is individually listed on the National Register of Historic Places or is a contributing building within a district that is listed on the National Register of Historic Places or which has been determined by the Massachusetts historical commission to be eligible for listing on the National Register of Historic Places, and which all or any portion of which is owned, in whole or in part, by the taxpayer.

“Qualified rehabilitation expenditure”, any amount properly chargeable to a capital account and described in section 47(c)(2)(A)(i) of the Code, as amended and in effect for the taxable year, incurred in connection with the certified rehabilitation of a qualified historic structure, but, the term shall not include personal property, personal use property or the cost of acquiring a building or interest thereon.

“Substantial rehabilitation” and “substantially rehabilitated”, the qualified rehabilitation expenditures of the building during the 24-month period selected by the taxpayer ending with or within the taxable year exceed 25 per cent of the taxpayer’s adjusted basis in such building and its structural components as of the beginning of such period. In the case of any rehabilitation that may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, the applicable period referred to in this paragraph shall be 60 months.

“Taxpayer”, a corporation or other entity subject to an excise imposed by this chapter.

(b)(1) There shall be a Massachusetts historic rehabilitation tax credit.

(i) The commissioner, in consultation with the Massachusetts historical commission, shall authorize annually, for the 12-year period beginning January 1, 2006, and ending December 31, 2017, under

this section together with section 6J of chapter 62, an amount not to exceed \$50,000,000 per year. The Massachusetts historical commission shall determine the criteria for eligibility for the credit, the criteria to be set forth in regulations promulgated under this section; but, at least 25 per cent of the tax credits shall be allowed to projects that contain affordable housing whenever possible and consistent with the criteria.

(ii) A taxpayer that incurs qualified rehabilitation expenditures may be allowed a credit, to be computed as hereinafter provided, against the excise imposed by this chapter. The credit shall be equal to a percentage, not to exceed 20 per cent, of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic structure which has received final certification and has been placed in service as provided for in this section. The Massachusetts historical commission shall administer and determine eligibility for the Massachusetts historic rehabilitation tax credit and allocate the credit in accordance with this section; but, the Massachusetts historical commission may impose a fee for the processing of applications for the certification of any rehabilitation under this section.

(2) The credit allowable under this section shall be allowed for the taxable year in which the substantially rehabilitated property is placed in service, that is, when occupancy of the entire structure or some identifiable portion of the structure is permitted. A taxpayer allowed a credit under this section for a taxable year may carry over and apply to the excise imposed by this chapter in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those credits which exceed the excise for the taxable year.

(i) Credits allowed under this section which are provided to multiple owners of property shall be passed through to the persons designated as partners, members or owners, respectively, pro rata or pursuant to an executed agreement among the persons designated as partners, members or owners documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity.

(ii) Taxpayers eligible for the Massachusetts historic rehabilitation tax credit may, with prior notice to and in accordance with regulations adopted by the commissioner, transfer the credits, in whole or in part, to an individual or entity, and the transferee shall be entitled to apply the credits against the excise with the same effect as if the transferee had incurred the qualified rehabilitation expenditures itself. The transferee shall use the credit in the year it is transferred. If the credit allowable for any taxable year exceeds the transferee's excise liability for that tax year, the transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced from year to year, of those credits which exceed such excise for the taxable year; but the carryover period shall not exceed 5 taxable years after the close of the taxable year during which the qualified historic structure received final certification and was placed in service as provided for in this section.

(iii) The credit allowed under this section shall not be subject to the limitations of section 32C; but, the credit allowed by this section shall not reduce the excise due under this chapter below the

minimum excise provided by subsection (b) of section 32 and subsection (b) of section 39.

(c)(1) A certified rehabilitation shall require:

(i) an initial certification by the Massachusetts historical commission that the structure meets the definition of qualified historic structure;

(ii) a second certification by the Massachusetts historical commission, to be issued prior to construction, certifying that if completed as proposed, the rehabilitation work will meet the standards required for a certified rehabilitation; and

(iii) a final certification by the Massachusetts historical commission, issued when construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed. Such final certification shall be acceptable as proof that the expenditures related to such construction qualify as qualified rehabilitation expenditures for purposes of the credit allowed under this section.

(2) A rehabilitation shall not be treated as complete before the date of the certification referred to in clause (iii) of paragraph (1).

(d) A taxpayer who leases its property shall be treated as the owner thereof if the remaining term of the lease as of the date determined under regulations prescribed by the commissioner of revenue is not less than such minimum period as the regulations require.

[There is no subsection (e).]

(f) For any qualified historic structure, qualified rehabilitation expenditures shall be treated for purposes of this section as made:

(i) on the date substantial rehabilitation is completed, or

(ii) to the extent provided by the commissioner of revenue by regulation, when such expenditures are properly chargeable to a capital account. Regulations under this paragraph shall include a rule similar to the rule under section 50(a)(2) of the Internal Revenue Code, as amended and in effect for the taxable year, relating to recapture if property ceases to qualify for progress expenditures.

(g)(1) If, before the end of the 5 year period beginning on the date on which the qualified historic structure received final certification and was placed in service, the taxpayer disposes of the taxpayer's interest in the structure, the taxpayer's tax for the taxable year in which the disposition occurs shall be increased by the recapture amount. A carry forward credit shall be adjusted by reason of the disposition.

(2) For purposes of paragraph (1), the recapture amount shall equal the amount of the credit taken by the taxpayer, including any credit transferred by the taxpayer, minus the credit allowed for ownership, but not less than zero. The credit allowed for ownership shall be the product of the amount of credit allowed multiplied by a ratio, the numerator of which is the number of months the rehabilitated structure is owned by the taxpayer, and the denominator of which is 60.

(h) For purposes of this section, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would, but for this paragraph, result from such expenditure shall be reduced by the amount of the credit so allowed.

(i) The commissioner, in consultation with the Massachusetts historical commission, shall prescribe regulations necessary to carry out this section.

(j) Except for unused credits carried forward pursuant to paragraph (2) of subsection (b) of section 6J of chapter 62 and paragraph (2) of subsection (b) of this section, a taxpayer shall not be eligible for any historic rehabilitation tax credits for more than 5 taxable years.