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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:5
PLR-114583-10
Date: August 3, 2010

LEGEND

Taxpayers =

Corp =

b =

c =

d =

City =

e =

f =

Dear :

This letter responds to your authorized representative's letter on your behalf, dated b, and subsequent correspondence, requesting a private letter ruling involving the special rule for specified credits under § 38(c)(4).

The relevant facts as represented in your submission are set forth below.

You (hereinafter referred to as "Taxpayers") own a controlling interest in a number of passthrough entities that own and operate rental properties including shopping centers, apartments, office buildings, and industrial flex space. Among these, Taxpayers own an interest in Corp, an S corporation.

Taxpayers represent that distributable items from Corp for d included qualified rehabilitation expenditures (QREs) taken into account under § 47 in d that were attributable to an office building in City undergoing renovation. Taxpayers further represent that these QREs were progress expenditures for which they made in d the election under § 47(d)(5), and that their distributable share of these QREs generated an investment credit in d of approximately $e. This amount was reported by Taxpayers on their jointly filed d individual tax return, Forms 3468 and 3800. However, Taxpayers could not use all of the investment tax credit generated in d, resulting in an excess business credit of $f, which Taxpayers intend to carry back to c.

Taxpayers generated no other business credits in d, and did not have any credit carryforwards to c or d. Taxpayers have not yet filed a return reporting an excess business credit carryback to c.

Taxpayers request a ruling that the rule for specified credits under § 38(c)(4) applies to a carryback of its unused d rehabilitation credits in c.

Section 38(a) allows an income tax credit for a taxable year equal to the business credit carryforwards carried to the taxable year, the amount of the current year business credit, plus the business credit carrybacks carried to the taxable year.

Under § 38(b)(1), one component of the current year business credit is the investment credit determined under § 46. Under § 46(1), the amount of the investment credit includes the rehabilitation credit under § 47.

Section 47(a) provides that the rehabilitation credit for any taxable year is the sum of 10 percent of the QREs with respect to any qualified rehabilitated building other than a certified historic structure, and 20 percent of the QREs with respect to any certified historic structure.

Section 38(c)(1) provides that the general business credits allowed for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of either the tentative minimum tax for the taxable year, or 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000.

Under § 38(c)(4)(A)(ii), in applying § 38(c)(1) to specified credits, the tentative minimum tax shall be treated as being zero. Section 38(c)(4)(B)(vii) includes in the definition of specified credits the credit determined under § 46 to the extent that such credit is attributable to the rehabilitation credit under § 47, but only with respect to

qualified rehabilitation expenditures properly taken into account after December 31, 2007. The legislative history to § 38(c)(4)(B)(vii), enacted as part of the Housing Assistance Tax Act of 2008 (P.L. 110-289, § 3022(c)), clarifies that the effective date of this provision includes any carryback of the credit. [See, Technical Explanation of Division C of H.R. 3221, "The Housing Assistance Tax Act of 2008" As Scheduled for Consideration By the House of Representatives on July 23, 2008. Joint Committee on Taxation publication JCX-63-08, at 31.]

Section 39(a)(1) provides that if the sum of the business credit carryforwards to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by § 38(c) for the taxable year ("unused credit year"), the excess (to the extent attributable to the amount of the current year business credit) shall be a business credit carryback to the taxable year preceding the unused credit year and a business credit carryforward to each of the 20 taxable years following the unused credit year.

Taxpayers represent that their rehabilitation credits were properly taken into account in d. Accordingly, based solely on the foregoing law and facts and representations made by Taxpayers, we rule that § 38(c)(4)(A)(ii) applies to a carryback of Taxpayers' unused rehabilitation credits in c.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations. In particular, no opinion is expressed or implied regarding the validity of any rehabilitation credits claimed by Taxpayers, nor whether Taxpayers' rehabilitation credits were properly taken into account in d.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Christopher J. Wilson
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure: 6110 copy