New York State Rehabilitation Tax Credit Strategy Summit

Historic Rehabilitation Tax Credits

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit
   i. Internal Revenue Code Section 47
   ii. 20% tax credit for rehabilitations of historic buildings
   iii. Dollar-for-dollar reduction of federal income tax liability
   iv. Calculated as a percentage of the eligible rehabilitation expenses (QRE's)
   v. Applies to buildings:
      1. listed in the National Register of Historic Places
      2. eligible for listing on the National Register or
      3. located in a National Register historic district
   vi. Unused credit can be carried back one year and forward for 20 years.
   vii. IRS has authority to determine tax policy and monitor compliance.
   viii. National Park Service (NPS), a division of the U.S. Department of the Interior certifies the rehabilitation
   ix. Each state's Historic Preservation office (part of NY Parks Department) reviews and recommends to NPS
   x. May apply for the historic rehabilitation tax credit before, during or after a rehabilitation project.

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xi. Historic Preservation Certificate Application - three parts:

1. Part 1 - Evaluation of Significance
   a. A building is eligible if:
      i. Building contributes to an historic district or
      ii. Building itself is historically significant
   b. A preliminary determination of significance can be obtained to allow rehabilitation to commence pending nomination process
2. Part 2 - Description of Rehabilitation
   a. approval of construction plans
   b. NPS evaluates for compliance with The Secretary of the Interior's Standards for Rehabilitation.
   c. the analysis of current architectural and historical features of the building
   d. description of the proposed work to be undertaken
   e. we recommend that Part 2 be filed before any work is started

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xi. Historic Preservation Certificate Application - three parts:

3. Part 3 - Certification of Completed Work
   a. After the rehabilitation is completed, the owner submits the Request for Certification of Completed Work.
   b. NPS evaluates the completed work against the work described in the Part 2
   c. Takes approximately 45 days from submission
   d. Can immediately claim 100% of the historic credits
      i. When building is placed in service (See Treasury Regulation 1.46-3(d)) so long as Substantial Rehab test is met.
      ii. 20% of the eligible basis
      iii. Per accountant cost certification
4. Application Process:
   a. Owner submits the application to the SHPO
   b. SHPO reviews the application and forwards it to the NPS
   c. NPS reviews the rehabilitation project for conformance and issues a decision.

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xii. Two other tests to qualify for historic rehabilitation tax credits:

1. "Income Producing"
   a. must be income-producing property - office, retail, industrial, hotel and/or rental residential housing (i.e., a depreciable building)
   b. if property is partially income producing, allocate based on square footage. Portion used "exclusively for business" is eligible.
   c. Owner-occupied residences are not depreciable, and do not qualify for federal rehabilitation tax credits.
   d. Residential rental use is considered to be income-producing.

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xii. Two other tests to qualify for historic rehabilitation tax credits:

2. Substantial Rehabilitation
   a. rehabilitation must be "substantial" to qualify for any tax credits.
   b. a building is substantially rehabilitated if QRE's during a 24-month period (or 60-month, if phased project is specified prior to the start of rehabilitation) selected by the taxpayer exceed the greater of
      i. $5,000 or
      ii. the adjusted basis of the building and its structural components, determined as of the beginning of the first day of the 24-month period (or 60-month) or the holding period of the building, whichever is later.
   c. The adjusted basis is defined as the purchase price, minus the cost of the land minus any depreciation already claimed.
   d. No tax credits can be taken until the substantial rehabilitation test is satisfied.

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xiii. Qualified Rehabilitation Expenditures (QRE's)

1. The rehabilitation tax credit is 20% of the qualified rehabilitation expenditures incurred before and during, but not after, the taxable year in which the property is placed in service.
2. Rehabilitation expenditures must be "capital" in nature and "depreciable" as real property to qualify for a rehabilitation tax credit.
3. This includes almost all hard and soft construction costs
4. Architect's fees, engineering fees, legal fees, consulting fees, reasonable developer fees, construction management costs and construction period interest and taxes and any other fees paid that would normally be charged to a capital account are allowable as part of the qualified rehabilitation expenditures.

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xiii. Qualified Rehabilitation Expenditures (QRE's)

5. Building and land acquisition costs are not considered qualified rehabilitation expenses.
6. The cost of new construction beyond the "shell" of the existing building, such as expenditures attributable to landscaping, parking lots, site work and building enlargements, are not considered qualified rehabilitation expenses.
7. The costs of personal property and furnishings are typically not considered qualified rehabilitation expenses.

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

xiv. Recapture

Historic rehabilitation tax credits claimed may be subject to prorated recapture by the IRS if within five years of completion of the rehabilitation:

a. if a rehab property is disposed of or foreclosed,
b. if a rehab property is destroyed by casualty
c. if ownership is transferred
d. if the facade is changed or
e. If the property loses its status as income-producing

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

b. 10% Rehabilitation Tax Credit

i. Internal Revenue Code Section 47 also offers a 10% tax credit

ii. for rehabilitations of non-historic, non-residential income producing pre-1936 buildings

1. building must NOT be listed in the National Register
2. building must NOT be located in a Registered Historic District (or if so, has been determined to be a "non-contributing structure")
3. Building was placed in service before 1936 and has not been moved since
4. Properties must be income-producing (i.e., a depreciable building)
5. Building is used for non residential rental purposes

iii. calculated as a percentage of qualified rehabilitation expenses.

iv. requires only a single IRS tax form submission without any other federal or state involvement.

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law

I. The Basics of Federal Historic Rehab Tax Credits

b. 10% Rehabilitation Tax Credit

v. Must satisfy the substantial rehabilitation test

vi. Must satisfy the following internal and external wall retention tests:

1. 50% or more of the existing external walls are retained in place as external walls,
2. 75% or more of the existing external walls are retained in place as internal or external walls, and
3. 75% or more of the existing internal structural framework is retained in place.

II. Combining Historic Tax Credits with Other Incentives

a. NMTC
b. LIHTC
   i. Must be 20% (10% is not available for residential rental)
   ii. The taxpayer must reduce the amount of rehabilitation expenditures eligible for the low income housing tax credit by the amount of rehabilitation tax credit allowed.
   iii. Alternatively use Master Lease
   iv. Recent Housing Bill
      1. Housing and Economic Recovery Act of 2008 (H.R. 3221)
      2. Effective July 30, 2008
      3. Now, HTC and LIHTC offset AMT
      4. In awarding LIHTC, Stated must now give points in their QAP for Historic Rehab properties

III. Syndication

a. Market remains strong for HTC's

b. Fewer institutional investors than LIHTC

c. Watch for preferred return that reduces the net raise

Presented By:
Steven J. Weiss, Managing Partner
Cannon Heyman & Weiss, LLP
www.chwattys.com

CHW

Cannon Heyman & Weiss, LLP

Law Practice Concentrating in Affordable Housing and Community Development Law