The 29th Annual Affordable Housing & Community Development Conference

Historic Preservation Tax Credits

Hyatt Regency Hotel
Buffalo, New York
October 30, 2008

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 qualified rehabilitation expenses (QRE's)

   v. Unused credit can be carried back one year and forward for 20 years

   vi. IRS has authority to determine tax policy and monitor compliance

   vii. Can immediately claim 100% of the historic credits

      a. When building is placed in service (see Treasury Regulation 1.46-3 (d)) so long as Substantial Rehab test is met

      b. 20% of the eligible basis

      c. Per accountant cost certification

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

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

1. "Income Producing"
2. Substantial Rehabilitation

ix. 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.

I. The Basics of Federal Historic Rehab Tax Credits

a. 20% Historic Rehabilitation Tax Credit

ix. Qualified Rehabilitation Expenditures (QRE's)

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.

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

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

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

I. The Basics of Federal Historic Rehab Tax Credits

b. 10% Rehabilitation Tax Credit

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.

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. NYS Historic Tax Credit

a. A.30000, sponsored by Assemblymember Sam Hoyt and Senator Frank Padavan.

   i. this legislation passed the NYS Senate unanimously and by consent.
   ii. It passed the NYS Assembly with overwhelming bi-partisan support.

b. Governor vetoed the bill.

c. Would have expanded incentives and programmatic features of NYS Rehabilitation Tax Credit Programs established in 2006.

II. NYS Historic Tax Credit

d. Would have increased state credit value to 50% of federal credit value (equivalent to 10% of qualified rehabilitation costs)

e. Would have increased the cap on qualified rehabilitation costs to $5 million per project

f. Would have made the credit transferable within business partnerships, increasing investor flexibility and attracting out-of-state investment

g. Would have applied to any National Register-listed commercial (income-producing) property utilizing the federal rehabilitation tax credit

III. 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, State must now give points in their QAP for Historic Rehab properties

IV. 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