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Directive 08-9: Historic Rehabilitation Tax Credit Phased-In Projects

Introduction

This Directive discusses the provisions governing phased-in projects contained in the Massachusetts historic rehabilitation tax credit statute.

Issue

May phased-in projects qualify for the Massachusetts historic rehabilitation tax credit?

Directive

Yes, any rehabilitation that the Massachusetts Historical Commission (“MHC”) reasonably expects to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, may qualify as a phased-in project. M.G.L. c. 62, § 6J(a); c. 63, § 38R(a). Each phase of the rehabilitation is considered a reasonably definable portion of overall rehabilitation activities. The MHC is allowed to issue a credit certificate for a phase of the rehabilitation that does not entail the possibility of occupancy when the reasonably definable portion of overall rehabilitation activities are completed. A phase is complete when a reasonably definable portion of overall rehabilitation activities are completed and final certification is issued by the MHC for that phase. See, M.G.L. c. 62, § 6J(c)(2); c. 63, § 38R(c)(2); See also, 830 CMR 63.38R.1(3)(a)&(d),(9).

Discussion of Law

The MHC administers, allocates and determines eligibility for the Massachusetts historic rehabilitation tax credit (“MHRTC”) through an application process and criteria set forth in the MHRTC regulation, 830 CMR 63.38R.1. The credit is authorized for up to 20% of qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic structure which has received final certification from the MHC and has been placed in service. M.G.L. c. 62, § 6J(b)(1)(ii); c. 63, § 38R(b)(1)(ii).

The statute clarifies that the credit is 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. M.G.L. c. 62, § 6J(b)(2); c. 63, § 38R(b)(2). The statute allows for flexibility in a phased project’s ability to meet the substantial rehabilitation test by providing a 60 month period for measuring qualified rehabilitation expenditures. In the context of a phased-in project, owing to this flexibility, the term “substantially rehabilitated” is further defined to include “...any rehabilitation that may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins...”^[1] M.G.L. c. 62, § 6J(a); c. 63, § 38R(a).

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The MHC is allowed to issue a credit certificate to a chosen single-phase project^[2] once the project has been placed in service and received final certification from the MHC.^[3] M.G.L. c. 62, §6J(c)(2); c. 63, § 38R(c)(2); 830 CMR 63.38R.1(3)(a)&(d),(9). In the context of a phased-in rehabilitation involving a phase or phases that does not entail the possibility of occupancy, the certification requirement is satisfied when a definable portion of work is completed as determined by the MHC in the phases set forth in the architectural plans and specifications. See, M.G.L. c. 62, § 6J(b)(2); c. 63, § 38R(b)(2).

As part of the application process, the determination that a project "...may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins..." is within the purview of the MHC, and it is within the purview of the MHC to make this determination on a case-by-case basis. See, M.G.L. c. 62, § 6J(a); c. 63, § 38R(a).

/s/Navjeet K. Bal

Navjeet K. Bal
Commissioner of Revenue

NKB:MTF:jmw

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^[1]The statute further provides that substantial rehabilitation occurs when the qualified rehabilitation expenditures exceed 25 per cent of the taxpayer's basis in the qualified structure during a 24-month period, except in the case of a phased-in rehabilitation, in which case the applicable period is 60 months. M.G.L. c. 62, § 6J(a); 63, §38R(a).

^[2]A chosen project is a project that has received written notice from the MHC awarding an allocation of MHRTC. See, 830 CMR 63.38R.1 for further details regarding the application process and criteria.

^[3]The statute reiterates the requirement of a final certification by the MHC by stating that "...[a] rehabilitation shall not be treated as complete before the dates of the [final] certification..." M.G.L. c. 62, § 6J(c)(2); c. 63, § 38R(c)(2).