



Private Letter Ruling (Redacted)

No. 06-001

January 18, 2006

**Corporation Income Tax, Corporation Franchise Tax, and Individual Income Tax
Historic Rehabilitation Tax Credit Earned by a Downtown Development District**

This is in reply to your request for a private letter ruling as to whether the Downtown Development Authority, an agency of City is permitted to sell the Louisiana Historic Rehabilitation Credits that they have earned.

Facts

The Downtown Development Authority (DDA) is a public entity created by City and oversees City's Downtown Development District, a development district created by the Louisiana Legislature.

The DDA owns property within City's Downtown Development District that was eligible for the historic rehabilitation credit. Prior to their purchase and rehabilitation by the DDA the properties were vacant for an extended period of time. The DDA applied to the Department of Culture, Recreation, and Tourism, Division of Historic Preservation (SHPO) for the credit, have rehabilitated the buildings according to the statutory requirements, and have been granted the credit by SHPO. The sale of the tax credits is necessary to make the cost of the rehabilitation and resale of the properties cost effective.

Ruling Request

Is the DDA, an agency of the City, permitted to sell the Historic Rehabilitation Credits?

Discussion

In 2002, the Louisiana Legislature created an income and corporation franchise tax credit for the rehabilitation of historic structures located in downtown areas. The Louisiana Historic Rehabilitation Credit, La. Rev. Stat. 47:6019, allows a credit against income and corporation franchise tax for the amount of costs and expenses incurred during the rehabilitation of a historic structure located in a downtown development district. The credit cannot exceed twenty-five percent of the eligible costs and expenses of the rehabilitation for any taxable year, is limited to one credit per historic structure rehabilitated, and cannot exceed two hundred fifty thousand dollars.

As additional incentive to encourage rehabilitation of downtown historic structures, the credit was made transferable. La. Rev. Stat. 47:6019(A)(3)(b)(i)(aa) provides that "[t]axpayers who are awarded tax credits in excess of their tax liabilities for a given year may elect to sell their unused tax credits to taxpayers with a Louisiana tax liability provided the unused credits are sold for a minimum of seventy-five percent of the value of the tax benefits."¹ (Emphasis added.)

In order for the DDA to sell the credits that they have earned they must be considered a taxpayer for purposes of La. Rev. Stat. 47:6019. La. Rev. Stat. 47:2 provides definitions to be used throughout Title 47 and includes a definition of taxpayer.

¹ **Historical Note:** Subsequent to the transaction that is the subject of this private letter ruling, 2005 La. Acts 439 amended La. Rev. Stat. 47:6019. The amendment of this subclause, (A)(3)(b)(i)(aa), substituted the term "taxpayers" with the term "persons". The new language will apply to all sales of the Historic Rehabilitation Tax Credit after August 11, 2005, the effective date of Act 439.

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47:2. General definitions

For the purposes of this Title, unless the context clearly otherwise requires or unless otherwise defined in specific portions of the Title, the following words and phrases shall have the respective meanings ascribed to them in this Section:

...

(4) "Taxpayer" means any person liable to pay a tax or file a return under any provision in which the word "taxpayer" appears, regardless of whether such person has paid any tax or filed the required return.

The DDA is not liable to pay or file a return for state income or franchise tax and, therefore, does not appear to fit directly under the La. Rev. Stat. 47:2(4) definition of taxpayer. However, the opening paragraph of La. Rev. Stat. 47:2 provides that if the context clearly requires otherwise that the definitions, including the definition of taxpayer, can be interpreted more broadly. In addition, La. C.C. Art. 10 states that "[w]hen the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law."

The purpose of La. Rev. Stat. 47:6019 is to encourage the rehabilitation of historical buildings in Louisiana's downtown areas. There is nothing in the La. Rev. Stat. 47:6019 that prevents non-profit organizations, municipalities or their subdivisions from earning the credit. As long as the entity meets all the statutory requirements and complies with the application and approval process administered by SHPO, they will be granted a credit. The word "taxpayer" does not appear until the transfer provision. If the word "taxpayer" when used in this context refers only to those persons subject to Louisiana income and corporation franchise tax, then certain persons or entities that have properly earned the credit not only cannot use the credit but would be prohibited from selling the credit, thus making the incentive created by the legislature of no value to this group.

Allowing any person or entity who earns the credit to sell the credit, even if they are not subject to Louisiana income or franchise tax effectuates the purpose of the law by increasing the pool of persons who can cost effectively rehabilitate Louisiana's historic structures.

Ruling

The City Downtown Development Authority is authorized to sell any Louisiana Historic Rehabilitation tax credits that it earns.

If you have any questions or need additional information, please call Michael Pearson, Senior Policy Consultant, or Leonore Heavey, Attorney, Policy Services Division, at 225-219-2780.

Sincerely,

/s/
Cynthia Bridges
Secretary

By: Leonore F. Heavey
Attorney
Policy Services Division

This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on LDR only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for LDR's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.