

Rehabilitating old buildings with the government's money

The federal government often uses tax benefits to encourage the private sector do what it cannot or will not do otherwise. Preserving old buildings is one example of this.

The government categorizes old buildings as either Certified Historic Structures ("CHS") or what we call Non-certified Old Buildings ("NOB"). CHSs qualify for an Historic Tax Credit ("HTC") of 20% of the rehab expenses, NOBs for 10%.

HTCs are dollar-for-dollar credits against the bottom-line tax bill. The amount of the HTC is based on several factors, including the amount of qualifying rehabilitation expenditures put into each project and classification of the project property. HTCs have become a major force behind redevelopment and rehabilitation projects throughout the United States, and interest in them is growing in the Midwest.

Couple HTCs with donations of facade and future development rights easements ("Conservation Easements") to qualifying charities, and suddenly the government is covering a significant portion of the development costs on rehab projects.

Rehab investors are often willing to contribute 80 to 95 cents for every dollar of tax credit generated by a project, substantially reducing the owner's portion of the rehabilitation cost. Conservation Easements donations can help raise additional capital because the deduction can be passed along to rehab investors. The investors are often willing to contribute 25 to 35 cents for every dollar of deduction allocated to them. But

be careful—these types of donations involve a number of technical aspects, so it's very important to obtain counsel from qualified advisors. For example, the value of the easement determines the amount of the deduction.

A good appraisal is key to preserving and documenting the tax benefit, so hiring the right appraiser is crucial. There are relatively few appraisers who are experienced in and qualified to give appraisals for Conservation Easement donation purposes.

In addition, there are a number of rules that must be followed when planning the project to forecast the appropriate tax and economic numbers. The proper accounting is crucial in the success of the project.

More good news for rehabbers: *Certain lenders and investors have become very interested in rehab projects because of these tax advantages.* Both HTCs and Conservation Easement deductions are being syndicated through partnerships with financial institutions or other large corporate taxpayers not subject to certain tax provisions that sometimes prevent ordinary taxpayers and closely held business from realizing any HTC benefit.

The structuring, negotiation, financing and closing fo complex real estate transactions require expert legal counsel—not only in real estate law, but also in tax, commercial lending, construction, environmental, municipal and securities law. The following Walter & Haverfield real estate and tax lawyers, who contributed to this article, welcome your questions or comments regarding this or any other real estate issue.

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Do you qualify?

The area of historic rehabilitation is very specialized and cannot be fully examined within the scope of this article. Your project may qualify for one of the HTCs if

20% Credit (CHS)

- Must be certified as an historic structure by being listed on the National Register of Historic Places or located in a registered historic district
- May be residential or commercial use property
- Must submit to National Park Service ("NPS") and State Historic Preservation Office ("SHPO") review and qualification procedures.
- Developer must follow rehabilitation guidelines and requirements and be approved by NPS and SHPO.

10% Credit (NOB)

- Must be a NON-certified building built before 1936
- No National Park Service or State Historic Preservation Office oversight needed
- Some rehabilitation guidelines and requirements pertaining to overall retention of interior and exterior walls must be followed
- Only non-residential use buildings qualify

Remember, the rules for HTCs and Conservative Easements are complex, and there are relatively few experts in the field. Choose your advisors carefully.



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