

Client Alert

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On Real Estate Law

NEW TAX INCENTIVES FOR REDEVELOPMENT OF OHIO'S HISTORIC BUILDINGS

On January 2, 2007, Governor Taft signed into law Sub. House Bill 149 which provides incentives for the redevelopment of historic buildings through tax credits. The new law, known as the Ohio historic rehabilitation tax credit, establishes a tax credit of 25% of qualified rehabilitation expenditures for up to 200 projects during the next two years. The law, which will help fund renovation costs for historic building owners, is beneficial to property owners, developers and local governments desiring economic development and redevelopment, and to historic preservation organizations.

What Buildings Qualify For The Tax Credit?

The law creates a tax credit for qualified costs associated with rehabilitating "historic buildings" located in Ohio. To qualify as a historic building, the building must be either:

- Listed on the National Register of Historic Places under the federal National Historic Preservation Act or located in a registered historic district, and certified by the State Historic Preservation Office as being of historic significance to the district; or

- Individually listed as a historic landmark designated by a local government certified under the National Historic Preservation Act (16 U.S.C. § 470).

What Expenditures Qualify For The Tax Credit?

Under the law, an owner may be eligible for a tax credit for qualified rehabilitation expenditures paid or incurred after the law's effective date. The law defines "rehabilitation" as the process of repairing or altering a historic building, making possible an efficient use while preserving those portions and features of the building, the building site, and the environment that are significant to its historic, architectural, and cultural values. Qualified rehabilitation expenditures include architectural and engineering fees as well as expenses incurred in the preparation of nomination forms for listing the building on the National Register of Historic Places. However, the law specifically excludes the following expenditures from qualifying for the tax credit: the cost of acquiring, expanding, or enlarging a historic building; expenditures attributable to work done to facilities related to the building, such as parking lots, sidewalks, and landscaping; and new building construction costs.

The Application Process

In order to receive the tax credit, the owner of a historic building must obtain a tax credit certificate stating the amount of the qualified rehabilitation expenditures. To do so, the owner must file an application with the State Historic Preservation Officer during one of the two annual application periods, the first beginning on July 1, 2007, and the second beginning on July 1, 2008. Once submitted, the application is reviewed by the Ohio Director of Development to determine if the following criteria are met:

- The building is a historic building and the applicant is an owner of the building; and
- The rehabilitation will satisfy the standards prescribed by the U.S. Secretary of the Interior under the National Historic Preservation Act and other federal regulations; and
- That receiving the tax credit is a major factor in the applicant's decision to rehabilitate the building or the decision to increase the level of investment in the rehabilitation.

Even if the above criteria are met, a certificate will not be issued unless a cost benefit analysis conducted by the Director and the Tax Commissioner determines that the rehabilitation will result in a net revenue gain in state and local taxes. This discretionary aspect of the law distinguishes it from the federal historic tax credit provisions. Furthermore, the certificate will only be issued when the rehabilitation is completed.

What Is The Tax Credit?

The tax credit, which must be used within the specified calendar year, equals 25% of the dollar amount of the qualified rehabilitation expenditures stated on the tax credit certificate. However, the issuance of the certificate does not represent a verification or certification of the amount of the qualified rehabilitation expenditures for which a tax credit can be claimed. The amount of the expenditures is subject to inspection and examination by the Tax Commissioner. The tax credit may be used by dealers in intangibles against the intangibles tax, by corporations against a corporation franchise tax, or by a person or pass-through entity against income tax.

Other Important Information

The new law goes into effect 90 days from the date it was signed into law. Applications submitted will expire at the end of each of the two application periods: July 1, 2007 to June 30, 2008 and July 1, 2008 to June 30, 2009. The Director of Development may not approve more than 100 applications in any application period. The Director is required to adopt further rules with respect to this program by July 1, 2007, which may include additional eligibility requirements. Upon the conclusion of the two year program, the program's success will be evaluated by the state legislature and it will be considered for permanent implementation.

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