



January 8, 2007

To:

From: Daniel Mackay, Director of Public Policy

Re: PROPOSED CHANGES TO STATE OF NEW YORK
REHABILITATION TAX CREDIT PROGRAMS – COMMERCIAL
AND RESIDENTIAL: Chapter 547 of the Laws of 2006

In 2006, New York State became the 28th state in the nation to enact a tax incentive to encourage the rehabilitation of historic commercial and residential properties. While the Legislature's establishment of this program was welcomed, significant enhancements are required to assure that this program will match the economic and community redevelopment successes stimulated by such programs in other states.

If further developed, this program will offer the Spitzer – Paterson Administration a significant new tool for community revitalization and economic development.

New York State Commercial Rehabilitation Tax Credit – Proposed Changes

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] and ~~lined out~~ is old law to be omitted.

Section 1. Section 606 of the tax law is amended by adding two new subsections (oo) and (pp) to read as follows:

(oo) Credit for rehabilitation of historic properties.

(1) For taxable years beginning on or after January first, two thousand seven, ~~[a taxpayer]~~ any person, firm, partnership, limited liability company, corporation or other business entity shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the qualified rehabilitation expenditures of ~~[the amount of credit allowed the taxpayer for the same taxable year with respect to]~~ a certified historic structure under subsection (c)(2) ~~[(3)]~~ of section 47 of the federal internal revenue code with respect to a certified historic structure located within the state. ~~[Provided, however, the credit shall not exceed one hundred thousand dollars.]~~

(2) Tax credits allowed pursuant to this subsection shall be allowed in the taxable year that the qualified rehabilitation is placed in service in Section 167 of the Internal Revenue Code.

(3) Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property shall be passed through to the persons designated, members or owners, respectively pro rata or pursuant to an executed agreement among the persons designated as partners, members or owners documenting an alternate distribution method without regard to their sharing of other tax or economic attributes of the entity.

(4) Taxpayers that have not claimed the tax credits in whole or in part, may assign, transfer or convey the credits, in whole or in part, by sale or otherwise to an individual or entity. The

assignor shall perfect the transfer in the manner outlined in regulations issued by the Department of Taxation.

(5) [~~(2)~~] With respect to a qualified rehabilitation, if the credit allowed the taxpayer pursuant to [~~subsection (c)(3) of~~] section 47 of the internal revenue code is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subsection must be added back in the same taxable year *and in the same proportion* as [~~such recapture equal to thirty percent times the amount of~~] the federal recapture.

(6)[~~(3)~~] If the amount of the credit allowable under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess may be carried over to the following year or years, and may be *applied against* [~~deducted from~~] the taxpayer's tax for such year or years.

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The changes to the commercial program suggested above are designed to accelerate use and impact of the program, particularly in upstate New York, and address the following issues:

- The current commercial credit equates to additional value of approximately 6% of qualified rehabilitation expenses for project developers. This level of credit is too small to have any significant effect in attracting new developers, projects or properties to the New York State rehabilitation program. Increasing the value of the tax credit to 30% of qualified rehabilitation costs will attract significant developer interest and make feasible a significant number of new rehabilitation and development projects that otherwise would not be pursued.
- The \$100,000 limitation on credit value provides too small an incentive to attract new developers and projects to the New York State program. Particularly in order to stimulate redevelopment and rehabilitation projects in upstate New York, the cap on credit value should be eliminated, as is the program format in other states.
- The current state-level commercial credit is only of value to users of the federal rehabilitation credit who also have their own New York State tax liabilities. To attract new investment and development to New York, statutory language must be changed to allow a project developer the ability to assign, transfer, or convey the commercial tax credits to entities with New York State tax liabilities.

New York State Residential (Owner-Occupied) Rehabilitation Tax Credit – Proposed Changes

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] and ~~lined out~~ is old law to be omitted.

(pp) Historic homeownership rehabilitation credit. (1) For taxable years beginning on or after January first, two thousand seven, a taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be equal to twenty percent of the qualified rehabilitation expenditures made by the taxpayer with respect to a qualified historic home and may be allowed in the taxable year in which the final certification step of the certified rehabilitation is completed.

(A) If such expenditures relate only to exterior work, the credit shall be allowed for qualified rehabilitation expenditures if the exterior work has been approved by a local landmark commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law or by the office of parks, recreation and historic preservation.

(B) If such expenditures relate to both exterior and interior work, the credit shall be allowed for qualified rehabilitation expenditures that have been approved by the office of parks, recreation and historic preservation or by a local government certified pursuant to section 101(c)(1) of the national historic preservation act. Under this subparagraph, approval is necessary for the qualified rehabilitation expenditures related to both the exterior work on the qualified historic home and interior work affecting primary significant historic spaces of the qualified historic home.

(2) (A) With respect to any particular residence of a taxpayer, the credit allowed under paragraph one of this subsection shall not exceed twenty-five thousand dollars. In the case of a husband and wife, the amount of the credit shall be divided between them equally or in such other manner as they may both elect. If a taxpayer incurs qualified rehabilitation expenditures in relation to more than one residence in the same year, the total amount of credit allowed under paragraph one of this subsection for all such expenditures shall not exceed twenty-five thousand dollars.

(B) If the amount of credit allowable under this subsection shall exceed the taxpayer's tax for such year **and the taxpayer's New York adjusted gross income for such year does not exceed one hundred thousand dollars, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided however, that no interest shall be paid thereon. If the taxpayer's New York adjusted gross income for such year exceeds one hundred thousand dollars,** the excess **credit** may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(3)(A) The term "qualified rehabilitation expenditure" means, for purposes of this subsection, any amount properly chargeable to a capital account:

- (i) in connection with the certified rehabilitation of a qualified historic home, and
- (ii) for property for which depreciation would be allowable under section 168 of the internal revenue code if the qualified historic home were used in a trade or business.

(B) Such term shall not include (i) the cost of acquiring any building or interest therein, (ii) any

expenditure attributable to the enlargement of an existing building, or (iii) any expenditure made prior to January first, two thousand seven.

(C) Such term shall not include any expenditure in connection with the rehabilitation of a qualified historic home unless at least five percent of the total expenditures made in the rehabilitation process are allocable to the rehabilitation of the exterior of such building.

(D) If only a portion of a building is used as a residence of the taxpayer, only qualified rehabilitation expenditures which are properly allocable to such residential portion shall be taken into account under this subsection.

(4)(A) The term "certified rehabilitation" means, for purposes of this subsection, any rehabilitation of a certified historic structure which has been approved and certified as being consistent with the standards established by the commissioner of parks, recreation and historic preservation for rehabilitation by the office of parks, recreation and historic preservation, a local government certified pursuant to section 13 101(c)(1) of the national historic preservation act or a local landmark commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law.

(B) A certified rehabilitation shall require:

(i) an initial certification that the structure meets the definition of the term "certified historic structure";

(ii) a second certification, to be issued prior to construction, certifying that the proposed rehabilitation work is consistent with standards established by the commissioner of parks, recreation and historic preservation for rehabilitation; and

(iii) a final certification issued when construction is completed, certifying that the work was completed as proposed and that the costs are consistent with the work completed. Such final certification shall be acceptable as proof that the expenditures related to such construction qualify as qualified rehabilitation expenditures for purposes of the credit allowed under either subparagraph (A) or (B) of paragraph one of this subsection.

30 (5)(A) The term "qualified historic home" means, for purposes of this subsection, a certified historic structure located within New York state:

(i) which has been substantially rehabilitated,

(ii) which, or any portion of which, is owned, in whole or part, by the taxpayer,

(iii) in which the taxpayer resides during the taxable year in which the taxpayer is allowed a credit under this subsection, and

(iv) which is in whole or in part a targeted area residence within the meaning of section 143(j) of the internal revenue code **or which is located within a state empire zone designated under article eighteen-B of the general municipal law and**

(v) located within an area of a city, town or village whose governing body has identified by resolution that such area is in need of community renewal because of deteriorated and/or vacant buildings and, by local law, has adopted a historic preservation and community renewal program to preserve and/or revitalize such area. A historic preservation and community renewal program is a program that coordinates all applicable governmental benefits and programs with the aims of preserving and/or revitalizing neighborhoods, encouraging property owners to complete substantial rehabilitation projects and promoting smart growth economic development. Such local laws shall be filed with the office of parks, recreation and historic preservation. The office of

parks, recreation and historic preservation shall assist local governments in developing historic preservation and community renewal programs.

(B) A building shall be treated as having been "substantially rehabilitated" if the qualified rehabilitation expenditures in relation to such building total five thousand dollars or more.

The term "certified historic structure" means, for purposes of this subsection, any building (and its structural components) which:

- (i) is listed in the state or national register of historic places, or
- (ii) is located in a state or national registered historic district and is certified as being of historic significance to the district.

(7) If the taxpayer holds stock as a tenant-shareholder in a cooperative housing corporation, such taxpayer shall be treated as owning the house or apartment which the taxpayer is entitled to occupy as such shareholder.

(8)(A) A percentage of the total expenditures made in the rehabilitation of the exterior of a building containing cooperative or condominium dwelling units shall be attributed to each such unit within the building based on the percentage of space each such unit occupies within the building.

(B) In the case of a building where less than the entire building is used as a residence of the taxpayer, only the portion of the total expenditures made in the rehabilitation of the building that is attributable to the residence of the taxpayer shall be treated as qualified rehabilitation expenditures for the purposes of this subsection.

(C) In the case of a building that is owned by and is a residence of two or more persons, other than a husband and wife, the portion of the total expenditures made in the rehabilitation of the building that is attributable to each taxpayer shall be equal to the taxpayer's share of ownership in such building.

(9) In the case of a building other than a building to which paragraph ten of this subsection applies, qualified rehabilitation expenditures shall be treated for purposes of this subsection as made on the date of the final certification referred to in clause (iii) of subparagraph (B) of paragraph four of this subsection.

(10)(A) In the case of a purchased qualified historic home, the taxpayer shall be treated as having made, on the date of purchase, the qualified rehabilitation expenditures made by the seller of such home. For purposes of this subsection, expenditures made by the seller shall be deemed qualified rehabilitation expenditures if such expenditures, if made by the purchaser, would have so qualified.

(B) The term "purchased qualified historic home" means any qualified historic home purchased by the taxpayer if:

- (i) the taxpayer is the first purchaser of such home after the date of the final certification referred to in clause (iii) of subparagraph (B) of paragraph four of this subsection, and the purchase occurs within five years after such date,
- (ii) the taxpayer, during the taxable year in which the taxpayer is allowed a credit under this subsection, resides in such home,
- (iii) no credit was allowed to the seller under this subsection with respect to such rehabilitation, and

(iv) the taxpayer is furnished with such information as the commissioner determines is necessary to determine any credit under this subsection.

(11)(A) If, before the end of the two-year period beginning either on the date of the final certification referred to in clause (iii) of subparagraph (B) of paragraph four of this subsection or, if paragraph ten of this subsection applies, on the date of purchase of such building by the taxpayer, the taxpayer disposes of such taxpayer's interest in such building, or such building ceases to be used as a residence of the taxpayer, the taxpayer's tax imposed by this article for the taxable year in which such disposition or cessation occurs shall be increased by the recapture portion of the credit allowed under this subsection for all prior taxable years with respect to such rehabilitation.

(B) For purposes of subparagraph (A) of this paragraph, the recapture portion shall be the product of the amount of credit claimed by the taxpayer multiplied by a ratio, the numerator of which is equal to twenty-four less the number of months the building is used as the taxpayer's residence and the denominator of which is twenty-four.

(12) Nothing contained in this subsection shall be construed to impose a duty upon a local landmark commission established pursuant to section ninety-six-a or one hundred nineteen-dd of the general municipal law or a local government certified pursuant to section 101(c)(1) of the national historic preservation act to undertake any review or approval of an application for the certification of the rehabilitation of historic structures and of rehabilitation expenditures provided for in this subsection.

§ 2. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 3 of part D of chapter 35 of the laws of 2006, is amended to read as follows:

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph (j) of subdivision twelve of section two hundred ten of this chapter.

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The changes to the residential program suggested above address the following issues, and are designed to accelerate use and impact of the program:

- The current residential credit is limited to distressed areas, but does not provide sufficient mechanisms to encourage program participation by low and moderate income homeowners. A rebate provision would provide the means for those with no or limited tax liability to utilize the program to its fullest value, and allow them to reinvest the rebate in additional structural work or mortgage payments.
- The current version of the residential credit is limited to extremely distressed census tracts (at or under 70% State Median Family Income), and as a result, limits the program to approximately 4100 structures listed in the State and National Register in approximately fifteen municipalities statewide. Broadening the definition of "distressed areas" to include historic structures in designated State Empire Zones pushes the number of eligible structures to approximately 11,700 structures statewide. Expanding the program to census tracts at or below 90% State Median Family Income would make the program available for

approximately 25,000 structures statewide (Expansion of the program to 90% SMI is not reflected in the proposed changes to statutory language above, and would need to be addressed by bill drafting staff.)

Additional changes to be considered to expand the impacts of the residential credit are described in the League's transition paper on historic preservation and economic development issues provided to the Administration on December 11, 2006.