

Late Submission of the “Historic Preservation Certification Application”

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The purpose of this brief is to review the requirements of both Treasury Regulation 1.48-12(d)(1) and 1.48-12(d)(7) which deal directly with the late submission of Parts 1, 2 and 3 of the “Historic Preservation Certification Application” and how late submission may prevent a taxpayer from claiming the rehabilitation tax credit.

To better understand the consequences that result from the late submission of Parts 1, 2 and 3 of the “Historic Preservation Certification Application”, it is important to review the pertinent sections of the Treasury Regulations and the Internal Revenue Code.

Internal Revenue Code Section 47(b) indicates that the credit should be claimed when the building is placed in service. It specifically provides that “qualified rehabilitation expenditures, with respect to any qualified rehabilitated building, shall be taken in to account for the taxable year in which such qualified rehabilitated building is placed in service.”

Treasury Regulation 1.48(f)(2) reiterates the fact that the credit is claimed when the property is placed in service, and adds the language “meets the definition of a qualified rehabilitated building for

the taxable year.” This special language means that, in addition to the placed in service provision, the building owner must also meet the substantial rehabilitation test for that year.

Late Submission of Part 1

To be eligible for the 20% rehabilitation tax credit, the property must also be a certified historic structure. Treasury Regulation 1.48-12(d)(1) provides rules relating to the rehabilitation of certified historic structures. A certified historic structure is defined in this regulation as “any building and its structural components that is listed in the National Register of Historic Places or located in a registered historic district and certified by the Secretary of Interior as being of historic significance to the district. For purposes of this section, a building shall be considered to be a certified historic structure at the time it is placed in service if the taxpayer reasonably believes on that date the building will be determined to be a certified historic structure **and has requested on or before that date a determination from the Department of Interior that such building is a certified historic structure within the meaning of this paragraph and the Department of Interior later determines that the building is a certified historic structure.**”

Simply stated, Treasury Regulation 1.48(d)(1) requires that the taxpayer submit Part 1 of the Historic Preservation Certification Application before the property is placed in service.

The only exception where Part 1 would not have to be submitted prior to the placed in service date would be if the

building were already individually listed in the National Register. If a building were listed in the National Register, the property owner would have already requested a determination from the Department of Interior that the building was a certified historic structure.

It is important to note that a building that is simply located in a registered historic district would not fall under this exception. This is true even if the building was specifically listed as one of the contributing buildings in the registered historic district nomination.

Late Submission of Part 3

Treasury Regulation 1.48-12(d)(7) and (f)(2) indicate that if the property is placed in service and the taxpayer reasonably expects that the National Park Service will approve Part 3 of the “Historic Preservation Certification Application”, *Certification of Completed Work*, the tax credit can be claimed by the taxpayer. If the taxpayer, however, fails to receive the final certification of completed work within 30 months after filing the tax return on which the credit was claimed, the taxpayer must submit a written statement to the Internal Revenue Service (District Director) stating such fact prior to the last day of the 30th month. In such case the taxpayer will be requested to extend the normal 3-year statute of limitation period for the return on which the credit was claimed.

If the taxpayer claims the rehabilitation tax credit, but never receives Part 3 approval from the National Park Service, the taxpayer must recapture the entire credit.

A taxpayer does not have a “certified rehabilitation” until it receives a Part 3 approval. In other words, the taxpayer is not entitled to the rehabilitation tax credit unless the Department of the Interior has certified the rehabilitation project by signing Part 3 of the “Historic Preservation Certification Application”. The definition of the term “certified rehabilitation” is found in Treasury Regulation 1.48-12(d)(3).

Treasury Regulation 1.48-12(d)(3) states that the term “certified rehabilitation” means any rehabilitation of a certified historic structure that the Secretary of the Interior has certified to the Internal Revenue Service as being consistent with the historic character of the building and, where applicable, the district in which such building is located.

Statute of Limitations

In general, the statute of limitation is three years from the due date of the return. Internal Revenue Code Section 6511(a) provides that a claim for credit or refund of an overpayment of any tax shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever the periods expire the later.

If a taxpayer placed a “certified rehabilitation” in service, but never claimed the rehabilitation tax credit, the taxpayer would have 3 years from the due date of the return filed for the year the property was placed in service, to file a claim for refund. Once this period expires, the taxpayer will not be eligible to claim the rehabilitation tax credit.