



Maine Historic Preservation Tax Credit

Summary:

In April 2008, Governor Baldacci signed into Maine Law, new historic preservation tax credit program that offers credits of between 25% and 30% with the possibility of future credits up to 35%. The law becomes effective on July 1, 2008. However, the tax credit is allowable for certified qualified rehabilitation expenditures incurred from January 1, 2008 through December 31, 2013. The new law also amends the language of the existing statute, which provides credits of up to \$100,000 annually per taxpayer, by limiting it to expenditures incurred between Dec. 31 1999, and ending December 31, 2007. Regulations detailing fees and procedures are expected in July 2008. Interest in the program appears substantial. Several significant projects were designed to target the new credit even before it was signed into law, and a number of developers have begun to identify and secure historic properties for redevelopment.

Qualification of historic properties:

To qualify for the credits the subject property must be a certified historic structure. Effectively, this requires that the structure be on the national register of historic places or located within a registered historic district. The Maine Historic Preservation Commission is currently drafting the regulations that will detail the qualification and certification criteria. These regulations are expected to track the requirements of the IRS rehabilitation code found in 26 USC § 47. The regulations are also expected to provide for certification of a project where the building or the district in which it is located is registered as historic within a certain period of time.

Affordable housing credits:

The new program provides for a credit equal to 30% of certified qualified rehabilitation expenditures for projects in which 50% of the aggregate square footage is housing, and of that housing 50% creates new affordable housing. Alternatively a credit of 30% of certified qualified rehabilitation expenditures is available for projects where 33% of the total square footage of the completed project creates new affordable housing. While not directly addressed in the statute, it is expected that these credits may be applied to units create for affordable rental or ownership. The maximum total credit allowed per project is \$5 million.

For projects that do not necessarily include an affordable housing component the program offers a credit of 25% of expenditures claimed under the IRS rehabilitation code. Alternatively, the program offers a credit for smaller investors who do not claim the federal credit. This track provides a credit of 25% to Maine taxpayers for expenditures between \$50,000 and \$250,000. However, a taxpayer may not claim both state credits for the same project.



Affordability:

Affordability will be determined using HUD income guidelines and limits and will require that the household income of residents be at or below 60 percent of the area median. Income limits for 2008 may be found at: <http://www.huduser.org/DATASETS/il/il08/index.html>

The affordable units must be maintained as affordable for 30 years. The mechanism to certify ongoing affordability will be set by MaineHousing. If the units are not kept affordable for 30 years, there is a provision for repayment equal to the credit allowed plus 7 percent annual interest, calculated from the date the projects was placed in service until repayment is completed. Any repayments will go to the Housing Opportunities for Maine Fund.

Procedures

While detailed procedures should be detailed in the forthcoming regulations, certain aspects of the credit are set out in the statute:

- 25% of the credit must be claimed during the first year the project is put into service, with 25% claimed in each of the subsequent three years.
- Credit for a partnership, LLC, or multiple owners is passed through to partners. Owners or partners may agree to an alternative method of allocation in writing.
- Taxpayers eligible for a credit under the previous version of the statute may not claim a credit under the new statute, even if they do not actually claim the credit under the old version.

An important amendment was added to the law with the purpose of reducing income tax liability for private-sector partners and potential purchasers of the credits. The text of this amendment reads:

“Credits may be allocated to partners, members or owners that are exempt from taxation under Section 501 (c)(3), Section 501 (c)(4) or Section 501 (c)(6) of the Code, and those partners, members or owners must be treated as taxpayers for the purposes of this subsection.”

The amendment was added to address concerns that private-sector partners would be taxed at federal corporate rates for the value of their credits, which in turn would discount the market value of the credits by an amount approximating those rates. Allocating credits to tax exempt organizations, and treating them as the taxpayers for purposes of the credits, could allow non-profit developers to borrow money at competitive interest rates from private-sector partners and repay it using the credit, creating a market value for these credits that approximates that for Low Income Housing Tax Credits, as one possible deal structure. Purchasers are expected to pay between .85 and .90 for each dollar's worth of credit.



At this time the details of the fee structure for applications and project certification are undetermined. These fees could be based on a percentage of the project cost or utilize a flat rate. Regulations describing the fee structure are expected in July, 2008

The Future

The law includes a provision that seeks to adjust the affordable housing credit upwards if it is not adequately utilized. An annual review of the program will compare the credits claimed under the 30% program for historic rehabilitation that includes affordable housing, and the 25% program for rehabilitation that does not. For each year that the creation of affordable housing does not meet or exceed 30% of the aggregate under the entire program, an additional 1% is added to the affordable housing credit up to a maximum credit of 35%. Current indications are that the incentive of increasing credits will not be required as there is significant interest in the program at the current initial rate of 30%. However, until an active market for the credits is established, the possibility of an increase remains.

Mr. Larsson is a consultant with MacDonald Associates, Inc. A former attorney and founder of Rosedale Real Property Partners, Mr. Larsson has an extensive background in real estate legal matters, due diligence and has completed graduate coursework in planning and community development at the Muskie School. He can be contacted at MacDonald Associates, 207-443-3600; or www.macdonaldassociates.com or email macassoc@suscom-maine.net

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