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REALTORS CONTINUING EDUCATION SEMINAR

THE ABANDONED BUILDING REVITALIZATION AND RETAIL REVITALIZATION ACTS

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BACKGROUND

- Retail Facilities Revitalization Act enacted in 2006 – Title 6, Chapter 34 of S.C. Code of Laws
- Abandoned Buildings Revitalization Act just enacted in June 2013 – Title 12, Chapter 67 of S.C. Code of Laws
- Both targeted at bolstering redevelopment of abandoned buildings – Retail Facilities Act more narrowly targets abandoned <u>retail sales</u> facilities
- Acts are similar but there are some very important differences – many can be pitfalls for the unwary

LEGISLATIVE INTENT

- Stated purposes of both Acts are virtually identical
  - "The abandonment of buildings has resulted in the disruption of communities and increased the cost to local governments by requiring additional police and fire services due to excessive vacancies"
  - List of ills from abandoned buildings include:
    - ✓ Excessive and disproportionate expenditure of public funds
    - ✓ Inadequate public and private investment
    - ✓ Unmarketability of property
    - ✓ Growth of delinquencies and crime in the areas
    - ✓ Abnormal exodus of families and businesses
- Viewed as necessary step "to encourage private investment and restore and enhance the tax base" of the communities in which such buildings are located

BASIC INCENTIVES

Retail Facilities Act

- Allows a taxpayer who improves, renovates, or redevelops an "eligible site" to benefit from an income tax or a property tax credit based on level of "rehabilitation expenses"

Abandoned Buildings Act

- Allows a taxpayer who rehabilitates an "abandoned building" to also benefit from an income tax credit or a property tax credit based on level of "rehabilitation expenses"
    -- Distinction – Specifically allows for credit to banks
- Also provides credit against corporate license fees

RETAIL FACILITIES CREDIT – "ELIGIBLE SITE"

- A shopping center, mall, or free standing site whose primary use was as a retail sales facility with at least one tenant or occupant located in a forty thousand square foot or larger building or structure – S.C. Code § 6-34-30(2)
  - Property tax credit only – county or municipality where the site is located may, by resolution, reduce the 40,000 square foot requirement down to a minimum of 25,000 square feet
- "Abandoned" – at least 80% of the site's building or structure continuously closed to business or otherwise nonoperational for at least 1 year immediately preceding the time at which the eligibility determination is made – S.C. Code § 6-34-30(1)
  - May serve as a wholesale facility, provided the site serves as a wholesale facility for no more than 1 year

RETAIL & ABANDONDED BUILDINGS CREDITS "ABANDONED BUILDING"

Abandoned Building Site - Condition of Site

According to DOR DRAFT Abandoned Building Policy Document, a shopping center, mall, or free standing retail sales facility whose ceiling has fallen in and whose walls are collapsing meets the definition of an eligible site. In contrast, if the facility has been cleared except for the concrete foundation, the facility will not meet the definition of an eligible site.

Retail Revitalization DRAFT policy document contains similar language.

RETAIL FACILITIES CREDIT – "ABANDONED BUILDING"

Abandoned Building - 80% Abandonment Requirement

According to DOR DRAFT Retail Facilities Policy Document, A shopping center consisting of 400,000 square feet of space, had 4 stores each occupying 25% of the square footage of the shopping center, has been closed from making retail sales of over a year. However, one of the stores has been renting out its space to allow a third party retailer to store excess inventory in the store. The shopping center does not meet the requirement that at least 80% of the eligible site's facilities be continuously closed for business or otherwise nonoperational for at least one year immediately preceding the time at which the determination is to be made.

ABANDONDED BUILDINGS CREDIT – "ABANDONED BUILDING"

- A building or structure where at least 66% of the space has been closed continuously to business or otherwise nonoperational for income producing purposes for at least 5 years immediately preceding the date on which the taxpayer files a Notice of Intent to Rehabilitate – S.C. Code § 12-67-120(1)
- Allows for buildings or structures that otherwise qualifies as an "abandoned building" to be subdivided into separate units or parcels
  - May be owned by the same taxpayer or different taxpayers
  - Each unit or parcel is deemed to be an abandoned building site
- Building does not qualify if immediate preceding use was a single family residence
- Use of any portion of a building or structure listed on the National Register for Historic Places when used solely for storage or warehouse purposes is consider nonoperational for income producing purposes
- No square footage requirement

QUALIFYING REHABILITATION EXPENSES – RETAIL FACILITIES

<u>Retail Facilities Credit</u> – S.C. Code § 6-34-30(6)

- Expenses incurred in the rehabilitation of the eligible site, <u>excluding</u> the <u>cost of</u> acquiring the <u>eligible site</u> or the <u>cost of personal property</u> maintained at the eligible site

QUALIFING REHABILITATION EXPENSES – ABANDONED BUILDINGS

Abandoned Buildings Credit – S.C. Code § 12-67-120(6)

- Expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site
    - Renovation or redevelopment of existing buildings
    - Environmental remediation
    - Site improvements
    - Construction of new buildings and other improvements on the building site
- Also excludes the cost of acquiring the building site or the cost of personal property located at the building site
    - "Building site" means the abandoned building together with the land upon which it is located and immediately surrounding it and other improvements located there (includes parking)
- Site improvement expenses only qualify if the building site is renovated or redeveloped
- Rehabilitation expenses don't qualify if more than double existing square footage on site
- Demolition expenses for building on the National Register for Historic Places don't qualify

QUALIFING REHABILITATION EXPENSES – ABANDONED BUILDINGS

<u>Rehabilitation that Includes Excess Enlargement over Twice the Size of Original Building</u>. According to DOR DRAFT Policy Document, if the square footage of a building site increases by more than double the square footage of the existing buildings on the site, rehabilitation expenses associated with the excess enlargement are not qualifying rehabilitation expenses and do not qualify for the credit. The expenses must be allocated between the qualifying portion of the rehabilitated building(s) (no more than double the square footage of the original building) and the non-qualifying portion of the rehabilitated building(s) (i.e., the excess enlargement). If it is not possible to make a specific allocation of expenses, expenses must be allocated to each portion on some reasonable basis, such as reasonable allocation of costs by the contractor or architect based on justifiable factors (e.g., type of improvement and how the improvement relates functionally to the building.) If a reasonable allocation cannot be determined, the allocation should be based upon square footage.

QUALIFYING REHABILITATION EXPENSES – ABANDONED BUILDINGS

Abandoned Buildings Credit:

- Minimum Rehabilitation Expenses –S.C. Code § 12-67-130:
  - more than $250,000 for buildings located in the unincorporated areas of a county or in a municipality in the county with a population of more than 25,000 persons
  - more than $150,000 for buildings located in the unincorporated areas of a county or in a municipality in the county with a population between 1,000 persons and 25,000 persons
  - more than $75,000 for buildings located in a municipality with a population of less than 1,000 persons
  - based on most recent U.S. Census
  - No minimum rehabilitation expenses for Retail Facilities Credit

INCOME TAX CREDIT – RETAIL FACILITIES

Retail Facilities Income Tax Credit

- 10% of the "rehabilitation expenses" at the site
  - Entire credit may not be taken for the taxable year in which the eligible site is placed in service
  - Claimed in equal installments over an 8 year period beginning with the year "placed in service"
    - "Placed in service" the date upon which the eligible site is suitable for occupancy for the purposes intended
  - Unused credit may be carried forward for 5 years

INCOME TAX CREDIT – ABANDONED BUILDINGS

Abandoned Buildings Income Tax Credit

- 25% of the "rehabilitation expenses" at the site
  - Entire credit is earned in the taxable year in which the site is placed in service
  - Claimed in equal installments over a 5 year period beginning with the tax year in which the applicable phase or portion of the building site is placed in service
    - "Placed in service" – the date upon which the building site is completed and ready for its intended use
  - Unused credit may be carried forward 5 years
  - Entire Credit earned may not exceed $500,000 for any taxpayer in a tax year for each abandoned building site
  - Credit capped at 50% of annual income tax liability

PROPERTY TAX CREDIT – RETAIL FACILITIES

Retail Facilities Property Tax Credit

- 25% of the "rehabilitation expenses" at the eligible site times the "local taxing entity ratio" for each local taxing entity consenting to the credit
  - "Local taxing entity ratio" – that percentage computed by dividing the millage rate for each local taxing entity by the total millage rate for the eligible site
  - Capped at 75% of the real property taxes due on the eligible site each year for up to 8 years
  - Can begin claiming credit in year placed in service

PROPERTY TAX CREDIT – ABANDONED BUILDINGS

Abandoned Buildings Property Tax Credit

- 25% of the “rehabilitation expenses” at the building site times the “local taxing entity ratio” for each local taxing entity consenting to the credit
  - Same definitions of “local taxing entity ratio”
  - Also capped at 75% of the real property taxes due on the eligible site each year for up to 8 years
  - Can begin claiming credit in year in building site (or portion thereof) placed in service

ADVANCE NOTICE TO GOVERNMENTAL ENTITIES – RETAIL FACILITIES

Retail Facilities Credit

- Taxpayer elects to pursue either income tax credit or the property tax credit by providing written notice of its intent to receive the benefit of the credit to SCDOR prior to the date that the eligible site is placed in service

    - Only required to provide notice if plan to take property tax credit – no required notice process for the income tax credit – simply claimed on the taxpayer's income tax return

ADVANCE NOTICE TO GOVERNMENTAL ENTITIES – ABANDONED BUILDINGS

<u>Abandoned Buildings Credit</u>

- Income Tax Credit – Taxpayer required to file with SCDOR a “Notice of Intent to Rehabilitate” <u>before incurring its first rehabilitation expenses</u> at the building site
  - Only those rehabilitation expenses incurred <u>after</u> the Notice is provided qualify
- Property Tax Credit – Taxpayer required to file same Notice, <u>but</u> with the municipality of county (if in unincorporated portion) in which the building is located
  - Same timing restrictions apply
- “Notice of Intent to Rehabilitation” must include:
  - Intent to rehabilitation the building site
  - The location of the building site
  - The amount of acreage involved in the building site
  - The amount of square footage of existing buildings involved in the building site
  - The estimated expenses to be incurred in connection with rehabilitation of the building site
  - Which buildings the taxpayer intends to renovate and whether new construction is to be involved
- Amount of estimated rehabilitation expenses provided in the Notice is <u>critical</u>

ADVANCE NOTICE TO GOVERNMENTAL ENTITIES – ABANDONED BUILDINGS

Abandoned Buildings Credit – Importance of Notice

- Credit amounts apply only if the actual rehabilitation expenses incurred in rehabilitating the building site are between 80% and 125% of the estimated rehabilitation expenses in the Notice of Intent to Rehabilitate

  - If the actual rehabilitate expenses exceed 125% percent of the estimated expenses in the Notice of Intent of Rehabilitate, the taxpayer qualifies for the credit based only on 125% of the estimated expenses as opposed to the actual expenses

  - If the actual rehabilitation expenses are below 80% of the estimated rehabilitation expenses, the credit is not allowed

ADVANCE NOTICE TO GOVERNMENTAL ENTITIES – ABANDONED BUILDINGS

According to DOR DRAFT Policy Document, the Notice of Intent cannot be amended to restate estimated expenses to be incurred in connection with the rehabilitation or to change the number of building sites or units to be rehabilitated.

LOCAL GOVERNMENT APPROVALS – PROPERTY TAX CREDIT

- Initial Approval by Resolution – By governing body of municipality (or county if located in an unincorporated area) approving the eligibility of the site and the proposed overall project (for Retail Facilities Credit) or the proposed rehabilitation expenses (for the Abandoned Buildings Credit)
  - Retail Facilities Credit – requires simple majority vote
  - Abandoned Buildings Credit – requires "positive" majority vote – approval by majority of all council members <u>whether present or not</u>

LOCAL GOVERNMENT APPROVALS – PROPERTY TAX CREDIT

- Final approval by ordinance and public hearing required
  - Local governing body must provide notice to all affected local taxing entities where the eligible site is located of its intention to grant the credit and the amount of the credit proposed to be granted
  - Notice must be at least 45 days prior to public hearing
  - If a local taxing entity does not file an objection to the credit with the locality prior to the public hearing, it is deemed to have consented to the credit
- Locality also required to find that the credit will not violate any existing TIF covenant, representation, or warranty
  - Abandoned Buildings Credit also requires finding of as to outstanding general obligation bonds

PASS THROUGH OF INCOME TAX CREDIT

- A partnership or LLC taxed as a partnership may pass through the credit to its partners or members and may allocate the credit in any manner
  - May allocate the entire credit to one partner or member
  - Retail Facilities Credit requires that allocation be consistent with Subchapter of the Internal Revenue Code
  - Abandoned Buildings Credit allows allocation without regard to any provision of the Internal Revenue Code
- S Corporation – Retail Facilities Credit requires S corporation owing corporate level income tax to first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on percentage of stock ownership

TRANSFERABILITY OF CREDITS

<u>Retail Facilities Credit</u> – S.C. Code § 6-34-40(E)

- Transfer of income tax credit <u>and</u> property tax credit <u>specifically</u> allowed <u>only</u> to a tenant of the eligible site
  - SCDOR must receive written notification of <u>and</u> approve the transfer

<u>Abandoned Buildings Credit</u> – S.C. Code § 12-67-140(6)

- Transfer of <u>only</u> income tax credit <u>specifically</u> allowed
  - Transfer to both a tenant <u>and</u> a purchaser of the site (or applicable portion)
  - Similar notice to SCDOR required but silent on whether SCDOR has approval rights

ABANDONDED BUILDINGS CREDIT – "ABANDONED BUILDING"

Property Sold After Being Completed

According to DOR DRAFT Policy Document, taxpayer John renovates and rehabilitates an eligible site and meets all the Act requirements. The Taxpayer John then sells the site to Purchaser Jason. Pursuant to Code Section 6-34-30(5), Taxpayer John is deemed to have "placed in service" the eligible site and is eligible for the credit. Taxpayer John may not transfer the credit to Purchaser Jason; however, if instead of purchasing the site, Jason leases the site, Taxpayer John may transfer the credit associated with the site to Jason as a lessee.

SPECIAL PROVISIONS – ABANDONED BUILDINGS

- Taxpayer not eligible for credit if it owned the building site when the site was operational and immediately prior to is abandonment
- No “stacking” of income tax credits with the Retail Facilities Credit and the credit allowed under the Textiles Communities Revitalization Act
  - Allows for stacking with any other tax credit that allows stacking
- Only applies to abandoned building sites put into operation for income producing purposes
  - Construction or operation of a charter school, private or parochial school, or other similar educational institution <u>does</u> qualify
  - Construction of a single family residence <u>does not</u> qualify

KEY POINTS

- Abandoned Buildings Credit not limited to retail sales facilities
- No square footage requirements for Abandoned Buildings Credit
- Abandonment Requirement:
  - Retail Facilities Credit – 1 year prior to eligibility determination
  - Abandoned Buildings Credit – 5 years prior to Notice of Intent to Rehabilitate
- Notice to Government Entities – Abandoned Buildings Credit requires earlier and more detailed notice
- Abandoned Buildings Income Tax Credit higher (25% vs. 10%) and allows benefits to be received quicker (5 years vs. 8 years)
  - <u>But</u> total credit capped at $500,000
- Qualifying rehabilitation expenses much ore specific for Abandoned Buildings Credit – could be good or bad
  - <u>But</u> Abandoned Buildings Credit has minimum rehabilitation expense requirements
- Transfer of Abandoned Buildings Income Tax Credit to purchasers allowed

DEMOLITION OF THE BUILDING RETAIL REVITALIZATION ACT

Demolish Building and New Construction by Same Taxpayer

According to DRAFT DOR Policy Document, a taxpayer demolishes (completely destroys) an eligible site and constructs a new building meeting all the Act requirements. The taxpayer is eligible for the credit.

DEMOLITION OF THE BUILDING RETAIL REVITALIZATION ACT

Demolish Building and New Construction by Different Owners

According to DRAFT DOR Policy Document, a developer purchases an eligible site and demolishes the mall located on the site. The developer sells the land to a business owner that will construct an office building on the land. Since the developer did not redevelop the eligible site with a new building and the business owner purchased vacant land and not an abandoned shopping center, mall, or free standing retail sales facility, neither meets the Act requirements. Accordingly, neither the developer nor the business owner is eligible for the credit.

RETAIL FACILITIES REPEAL OF THE ACT IN 2016

<u>What is the practical effect of the repeal of the retail facilities revitalization income tax credit?</u>

The Act is repealed on July 1, 2016. Accordingly, an income tax credit earned on July 1, 2016 or thereafter does not qualify for the credit. According to DRAFT DOR Policy Document, the repeal does not affect remaining installments for an income tax credit earned before July 1, 2016. Further, it does not affect the 5-year carry forward period of any credit installment earned but unused. Act No. 285, 2006 S.C. Acts, Section 2.

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