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# Realtors Continuing Education Seminar

## The Abandoned Buildings and Retail Facilities Revitalization Acts


Tushar V. Chikhliker
1230 Main Street, Ste. 700
Columbia, SC 29201
803-540-2188
tushar@nexsenpruet.com

Burnet R. Maybank, III
1230 Main Street, Ste. 700
Columbia, SC 29201
803-540-2048
bmaybank@nexsenpruet.com

James Price
55 E. Camperdown Way, Ste. 400
Greenville, SC 29601
864-370-1164
jprice@nexsenpruet.com


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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.

# 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.”

- 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.

- May serve as a wholesale facility, provided the site serves as a wholesale facility for no more than 1 year.

# ABANDONED BUILDINGS CREDIT – "ABANDONED BUILDING"

- A building or structure where <u>at least 66% of the space</u> has been closed continuously to business or otherwise nonoperational for income producing purposes for at least <u>5 years</u> immediately preceding the date on which the taxpayer files a Notice of Intent to Rehabilitate.
- 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 <u>not</u> 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 considered nonoperational for income producing purposes.
- <u>No square footage requirement</u>.

# QUALIFYING REHABILITATION EXPENSES

Retail Facilities Credit

- Expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.

Abandoned Buildings Credit

- 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.

# QUALIFYING REHABILITATION EXPENSES – ABANDONED BUILDINGS

Abandoned Buildings Credit:

- Minimum Rehabilitation Expenses:
  - 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 US 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

<u>Abandoned Buildings Property Tax Credit</u>

- Also 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 <u>real property</u> 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.

# PROPERTY TAX CREDIT – ABANDONED BUILDINGS

Abandoned Buildings Property Tax Credit (cont.)

- 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 rehabilitation expenses exceed 125% percent of the estimated expenses in the Notice of Intent to 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 – 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

Abandoned Buildings Credit

- Income Tax Credit – Taxpayer required to file with SCDOR a "Notice of Intent to Rehabilitate" before incurring its first rehabilitation expenses at the building site.
  - Only those rehabilitation expenses incurred after the Notice is provided qualify.
- Property Tax Credit – Taxpayer required to file same Notice, but with the municipality or county (if in unincorporated portion) in which the building site is located.
  - Same timing restrictions apply.
- "Notice of Intent to Rehabilitate" must include:
  - Intent to rehabilitate 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 critical.

# LOCAL GOVERNMENT APPROVALS – PROPERTY TAX CREDIT

- Initial Approval by Resolution - By governing body of municipality or (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 as to outstanding general obligation bonds.

# TRANSFERABILITY OF CREDITS

Retail Facilities Credit

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

Abandoned Buildings Credit

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

# SPECIAL PROVISIONS – ABANDONED BUILDINGS CREDIT

- Taxpayer not eligible for credit if it owned the building site when the site was operational and immediately prior to its 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 TAKEAWAYS

- Abandoned Buildings Credit not limited to retail sales facilities.
- No square footage requirement 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 Governmental 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.
- Qualify Rehabilitation Expenses much more 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.

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