

IRS Ruling Considers Three Buildings As One Project



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In the recently issued PLR 201228016 ([PLR 201228016.pdf](#)), the IRS ruled that the computation of qualified rehabilitation expenditures for purposes of the IRC Section 47 rehabilitation tax credit included all of the net rentable floor space in determining the 50% threshold for tax-exempt use property.

Background to IRC Section 47

The IRC Section 47 rehabilitation tax credit for a building is 10% (20% for a certified historic structure) of the qualified rehabilitation expenditures. A qualified rehabilitation expenditure is any amount charged to the capital account and incurred in connection with the rehabilitation (including reconstruction, or an addition or improvement) of a qualified rehabilitated building that is depreciable under IRC Section 168, and is nonresidential real property, residential rental property, or real property with a class life of more than 12.5 years. Qualified rehabilitation expenditures do not include those allocable to the portion of property that is (or may reasonably be expected to be) tax-exempt use property.

Nonresidential real property is treated as tax-exempt use property only if more than 50% of the net rental floor space is leased to tax-exempt entities in disqualified leases. The net rentable floor space in a building does not include the common areas of the building, regardless of the terms of the lease. For purposes of this rule, two or more buildings will be treated as separate properties unless they are part of the same project, in which case they will be treated as one property.

Two or more buildings will be treated as part of the same project if the buildings are constructed under a common plan, within a reasonable time of each other, on the same site, and will be used in an integrated manner.

New Ruling – Combining the Properties Into One Project Helped Taxpayers Qualify for the Credit

In PLR 20128016, the taxpayer's buildings are to be constructed under a common plan and developed in an integrated manner because of the buildings proximity to each other, their common history and architectural design, and the common marketing plan for each structure with an emphasis towards research. The buildings will be constructed on the same site within a reasonable time of each other using a single architect and a single general contractor. The adjacent buildings will be separated only by public streets; however, the buildings will be interconnected through skywalks and several parking lots will be shared among the tenants. The buildings will also share, and their tenants will use, many amenities/facilities, including a fitness center, a central conference center, convenient retail and restaurant options, and a park for recreation. Furthermore, the County and the City entered into a financing agreement with the taxpayer to create an interconnected and integrated center consistent with the historic theme and nature throughout the area. Lastly, the National Park Service issued a letter noting that the rehabilitation work is "a single overall project," and the rehabilitation certification will be issued "on the merits of the overall project rather than for each structure."

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Based on the taxpayer's facts, the IRS held that the taxpayer's rehabilitation and leasing of one of three buildings constituted one property and the total net rentable floor space in the buildings would be combined. As a result, the taxpayer did not exceed the 50% threshold and no portion of the property will be considered tax-exempt use property. This allows the taxpayer to include the net rentable floor space in computing the qualified rehabilitation expenditures used in the calculation of the rehabilitation credit.

If you have any questions related to the IRC Section 47 rehabilitation tax credit, please feel free to contact Thomas Denson, (tdenson@keitercpa.com) or your Keiter tax professional for further clarification.

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