

NEXT CHALLENGE. NEXT LEVEL.

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Incentives for Real Estate Developers – October 5, 2012

**RETAIL FACILITIES
“CLOSED BIG BOX”
REVITALIZATION
CREDIT**

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RETAIL FACILITIES REVITALIZATION CREDIT

SC Retail Facilities Revitalization Act – enacted in 2006 – S.C. Code §6-34-10 et. seq.

- Allows a taxpayer who improves, renovates, or redevelops an “eligible site” to benefit from either a property tax credit or an income tax credit.

First Question – What qualifies as an “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”.
- The shopping center, mall, or freestanding site must have also have been “abandoned.”

RETAIL FACILITIES REVITALIZATION CREDIT

What qualifies as an “abandoned” site?

- “Abandoned” - at least 80% of the eligible site’s facilities have been continuously closed to business or have been otherwise nonoperational for a period of at least 1 year immediately preceding the time at which the determination is to be made.” S.C. Code § 6-34-30(1).
- For purposes of this definition, the eligible site’s facilities only include the site’s building or structure.
- During the abandonment, the eligible site may serve as a wholesale facility, provided the site serves as a wholesale facility for no more than 1 year.

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Credit Options

- A property tax credit equal to 25% of the “rehabilitation expenses” made to the eligible site times the “local taxing entity ratio” for each “local taxing entity” consenting to the credit, up to 75% of the real property taxes due on the eligible site each year (the “Property Tax Credit”); or
- An income tax credit equal to 10% of the “rehabilitation expenses” (the “Income Tax Credit”).
 - “Rehabilitation expenses” is defined to mean “the expenses incurred in the rehabilitation of the eligible site, excluding [1] the cost of acquiring the eligible site or [2] the cost of personal property maintained at the eligible site.” S.C. Code § 6-34-30(6).

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Additional Property Tax Credit Provisions

- “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. S.C. Code § 6-34-30(4)
- “Local taxing entities” - a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the eligible site. S.C. Code § 6-34-30(3).
- “Eligible site” – square footage flexibility for the Property Tax Credit only - the governing body of a county or municipality where the site is located may, by resolution, reduce the 40,000 square foot “eligible site” requirement by up to 15,000 square feet. S.C. Code § 6-34-40(F).

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Election of Property Tax Credit or Income Tax Credit

- Taxpayer may elect to pursue either credit by providing written notification of its intent to SCDOR prior to the date that the eligible site is placed in service.
 - “Placed in service” - the date upon which the eligible site is suitable for occupancy for the purposes intended. S.C. Code § 6-34-30(5).
- If taxpayer has not obtained the approvals of the local taxing entities or has not affirmatively made an election prior to the date the eligible site is placed in service, the taxpayer is treated as having elected to receive the Income Tax Credit.
- No required notification process in connection with the Income Tax Credit – simply claimed on the taxpayer’s income tax return.

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Governmental Approvals Required for Property Tax Credit

- The municipality (or county if located in an unincorporated area) must first, by resolution with a majority vote of the local governing body, determine the eligibility of the site and the proposed project.
 - Before determining the eligibility of the proposed eligible site, the locality is required to find that the credit will not violate any existing TIF covenant, representation, or warranty.
- Those determinations and the actual approval of the eligible site and the proposed project must be made by ordinance and public hearing.

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Governmental Approvals Required for Property Tax Credit (cont'd)

- The 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.
 - Deemed consent only if actual credit granted is equal to or less than the credit stated in the public hearing notice.

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Earning and Claiming of the Property Tax Credit

- Ordinance shall provide that the credit be taken against up to 75% of the real property taxes due on the eligible site each year for up to 8 years.
- Credit vests in the taxpayer in the year in which the eligible site is placed in service.
 - May be carried forward, in whole or in part, for up to 8 years following that date.

RETAIL FACILITIES REVITALIZATION CREDIT

Earning and Claiming the Income Tax Credit

- Entire credit may not be taken for the taxable year in which the eligible site is placed in service.
- Must be claimed in equal installments over an 8-year period beginning with the year the property is placed in service.
- Unused credit may be carried forward for the succeeding 5 years.

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Pass Through of Income Tax Credit

- A GP, LP, LLC taxed as a partnership, or any other entity taxed as a partnership must pass through the credit to its partners or members and may allocate the credit in any manner agreed to by the partners or members that is consistent with Subchapter K of the IRC.
 - May allocate the entire credit to one partner or member.
- S corporation owing corporate level income tax must 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.

RETAIL FACILITIES REVITALIZATION CREDIT

Key Issues

- Transferability of either credit - Owner of an eligible site may transfer, devise, or distribute any unused credit to the tenant of the eligible site.
 - SCDOR must receive written notification of and approve the transfer, devise or distribution.
- Is the entity which made the qualifying rehabilitation expenditures the same entity which is claiming the credit?
- Not always clear what is real vs. personal property.
- For large projects the developer may want to commission a cost segregation study prior to or contemporaneous with construction.

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