

## **GIL 29-17-2 Use of Nebraska Historic Tax Credits by Members, Partners, or Shareholders**

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March 7, 2017

Dear XXXX,

You have asked when members, partners, or shareholders (owners) of a flow-through entity who received Nebraska Historic Tax Credits (NHTCs) through distribution through the ownership structure may use the NHTCs against their tax liability. Specifically, if the owner is admitted into the ownership structure of a pass-through entity holding NHTCs in a year after the historically-significant real property is placed in service, may the owner use the NHTCs to offset tax liabilities for the prior year when the building was placed in service? To provide guidance to taxpayers throughout the state, the Nebraska Department of Revenue (Department) has decided to answer this singular question by issuing a General Information Letter (GIL).

GILs address general questions; provide analysis of issues; and direct taxpayers to the Nebraska statutes, Department regulations, revenue rulings, or other sources of information to help answer a question. A GIL is a statement of current Department policy, and taxpayers may rely on the Department to follow the principles or procedures described in a GIL until it is rescinded or superseded. You may also find current regulations, revenue rulings, information guides, taxpayer rulings, and other GILs at [revenue.nebraska.gov](#) that may be helpful to you.

The Nebraska Job Creation and Mainstreet Revitalization Act (Act) allows a credit to an applicant incurring eligible expenditures to rehabilitate historically-significant real property. The allowable credit is equal to 20% of the eligible expenditures. NHTCs may be used against the income tax, insurance premium tax, or financial institutions franchise tax liability as provided below:

1. [Neb. Rev. Stat § 77-2904\(1\)](#) allows any person incurring eligible expenditures to use the credit “for the year the historically significant real property is placed in service;”
2. [Neb. Rev. Stat. § 77-2909](#) provides that if the applicant is a for-profit entity, up to one-half of the credits may be sold or transferred for use by the buyer “in the year the historically significant real property is placed in service.” If the taxpayer is a political subdivision of Nebraska, or an income tax-exempt entity under IRC § 501(c)(3), 100% of the credits may be transferred to another taxpayer (Type A credits);
3. [Neb. Rev. Stat § 77-2906\(5\)](#) allows NHTCs to be passed through to the owners of a pass-through entity on the same basis as income or losses are distributed, or as agreed to between the owners (Type B credits); and
4. [Neb. Rev. Stat. § 77-2906\(6\)](#) allows unused NHTCs to be carried forward until fully utilized, but there is no provision for carrying NHTCs back to an earlier tax year.

After reviewing these statutory provisions and the IRC with respect to the treatment of historic tax credits by pass-through entities, the Department has determined that Type B credits that are distributed to owners

may not be used by the owner to offset taxes for any year prior to the year the recipient became an owner of a pass-through entity holding Type B NHTCs. While [Neb. Rev. Stat. §§ 77-2904\(1\) and 77-2909\(3\)](#) allow an applicant and a purchaser of a Type A transferrable tax credit to use credits in the year a project was placed in service, [Neb. Rev. Stat. § 77-2906\(5\)](#) does not extend this legislative grace to owners who are distributed Type B credits, but who did not have an ownership interest in the entity during the year when the historically-significant real property was placed in service. To reiterate, the Act contains no carryback provisions and tax credits may only be carried back by express legislative approval.

Additionally, the usual rules that apply to pass-through entities apply in these circumstances, including partnership tax filing requirements in the IRC and regulations promulgated thereunder. Tax attributes that are distributed by a pass-through entity may only be applied with respect to a year in which the taxpayer was a member, partner, or shareholder of the pass-through entity. This general principle applies to the use of NHTCs.

The position established by this GIL applies to all NHTCs earned or distributed after the date of this GIL.

For the Tax Commissioner

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