

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

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Legend

Taxpayer =

Property =

Historic District =

State =

Jurisdiction =

x =

Dear :

This is in response to your letter dated June 3, 2004, and subsequent correspondence requesting a ruling under section 47 of the Internal Revenue Code regarding whether amounts expended to replace an exterior stair attached to Property, a building located in Historic District, are included within "qualified rehabilitation expenditures" for purposes of § 47.

FACTS

Taxpayer owns and is rehabilitating Property, a building within Historic District. Property consists of three floors, with one family unit on each floor. The interior floor area of each unit is x. The housing code of Jurisdiction requires floor area in excess of x for dwelling units and, while Jurisdiction will permit reoccupation of the units at their present size, that floor area cannot be further reduced by, for example, the construction of an interior stair. Each floor of Property above ground level is accessible only by

means of an exterior stair, which connects exterior porches at the rear of the second and third levels of Property. That stair, as it exists prior to rehabilitation, is too small to comply with the building code of Jurisdiction and Jurisdiction will not allow reoccupation of the units without replacement and enlargement of the stair. A larger stair cannot be built at the rear of the property due to requirements that the Property be “set-back” from adjacent properties.

Taxpayer intends to replace the existing wooden stair with a brick stair tower. The brick used in the new stair tower will have detailing similar to, but not replicative of, that used in Property. The exterior porches on the second and third levels of Property will be rebuilt by the Taxpayer. The addition of the stair tower increases the total volume of the Property over the volume prior to the rehabilitation. The Planning and Zoning Commission of Jurisdiction has approved the new stair tower, concluding that “[t]he size, scale, materials, and all the details are appropriate for this site.” In addition, the National Park Service has reviewed Taxpayer’s application and reached a preliminary determination that the proposed rehabilitation, including the new stair tower, meets the Secretary of the Interior’s Standards for Rehabilitation.

LAW AND ANALYSIS

Section 38(b) of the Code provides a credit against income taxes for certain business credits, including the investment credit determined under section 46.

Section 46 of the Code provides that, for purposes of section 38, the amount of the investment credit includes the rehabilitation credit.

Section 47(a)(2) of the Code provides that the rehabilitation credit for any taxable year includes an amount equal to 20% of the qualified rehabilitation expenditures with respect to any certified historic structure.

Section 47(b) of the Code provides that qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service.

Section 47(c)(2)(A) defines the term “qualified rehabilitation expenditure” to include any amount properly chargeable to capital account for residential real property for which depreciation is allowable under § 168 and which is in connection with the rehabilitation of a qualified rehabilitated building. Section 47(c)(2)(B)(iii) provides that “qualified rehabilitation expenditure” does not include any expenditure attributable to the enlargement of an existing building.

Section 1.48-12 of the Income Tax Regulations applies to qualified rehabilitation expenditures incurred after December 31, 1981.

Section 1.48-12(c)(5) provides that, in order for an expenditure to be a qualified rehabilitation expenditure, such expenditure must be incurred in connection with the rehabilitation (as defined in § 1.48-12(b)(2)(iv)) of a qualified rehabilitated building. That section further provides that expenditures attributable to work done to facilities related to a building (such as a sidewalk, a parking lot, or landscaping) are not considered made in connection with the rehabilitation of a qualified rehabilitated building.

Section 1.48-12(b)(2)(iv) defines rehabilitation to include renovation, restoration, or reconstruction of a building. Rehabilitation does not include an enlargement (as defined in § 1.48-12(c)(10)) or new construction.

Section 1.48-12(c)(10)(i) provides that a building is enlarged to the extent that the total volume of the building is increased. That section also provides that the total volume of a building is generally equal to the product of the floor area of the base of the building and the height from the underside of the lowest floor (including the basement) to the average height of the finished roof. For this purpose, floor area is measured from the exterior faces of external walls.

Section 1.48-1(e) defines buildings and structural components to include stairs and fire escapes.

In summary, to be included within the credit provided by § 47, an amount must be included within the definition of a “qualified rehabilitation expenditure” set forth in § 47(c)(2)(A) and the regulations set forth in § 1.48-12. A qualified rehabilitation expenditure must be incurred in connection with the rehabilitation of a qualified rehabilitated building. Property is a qualified rehabilitated building; however, the expenditures for the new brick stair must be incurred in connection with the rehabilitation of Property, within the meaning of § 1.48-12(b)(2)(iv).

Rehabilitation includes renovation, restoration, or reconstruction of a building, but does not include enlargement of the building or new construction. Construction of the new stair tower to replace the old wooden stair is included within “renovation, restoration, or reconstruction” of Property. However, if construction of the stair tower enlarges the property, that construction is not “rehabilitation,” within the meaning of § 1.48-12(b)(2)(iv). Section 1.48-12(c)(10)(i) provides that a building is enlarged to the extent that the total volume of the building is increased. That section also provides that the total volume of a building is generally equal to the product of the floor area of the base of the building and the height from the underside of the lowest floor to the average height of the finished roof. For this purpose, floor area is measured from the exterior faces of external walls. Because the new brick stair tower is attached to Property, the outer wall of the stair tower is now the outer wall of Property for purposes of determining the volume of Property. Thus, the total volume of the building is increased by that tower and the amount expended for that enlargement is not incurred in connection with the rehabilitation of a qualified rehabilitated building.

Amounts expended to replace the exterior stair attached to Property, a building located in Historic District, are therefore not included within qualified rehabilitation expenditures for purposes of § 47.

CONCLUSION

Amounts expended to replace the exterior stair attached to Property are not qualified rehabilitation expenditures within the meaning of § 47.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Charles B. Ramsey
Chief, Branch 6
(Passthroughs & Special Industries)

cc: