Internal Revenue Service

Department of the Treasury
Washington, DC 20224

164.00-00

Person To Contact:
Sean M. Dwyer, ID No. 50-19510
Telephone Number:
(202) 622-5020
Refer Reply To:
CC:ITA:1 – PLR-117318-03
Date: AUG 28 2003

In re: Letter Ruling Request Regarding A Deduction For State Income Taxes

LEGEND:

A =

B =

State X = Rhode Island

Credit = Rhode Island Historic Preservation Investment Tax Credit

Dear

This letter is in response to your request for a private letter ruling concerning the application of § 164 of the Internal Revenue Code to state income taxes offset by purchased state tax credits.

FACTS:

State X allows a Credit against State X income taxes for a percentage of the costs of renovating or rehabilitating certain historic structures. The Credits are transferable. B has incurred creditable expenses renovating a historic structure owned by B. A, an individual using the cash receipts and disbursements method of accounting, intends to purchase a portion of B's Credits.

The Credit is allowable against state income tax for the year that the renovated structure is placed in service. Unused Credits may be carried forward up to 10 years. The Credit is evidenced by a certificate issued by State X. The Credit is assignable by endorsing the certificate. State X requires that it be notified of any assignment. To claim the Credit, the certificate must be attached to the State X income tax return.

RULING REQUESTED:

A, a purchaser of transferable Credits will be allowed a deduction under § 164 for State X income taxes paid with the purchased Credits.

Law & Analysis:

Section 164(a)(3) provides for the deduction of state income taxes paid or accrued within the taxable year.

The payment to B in exchange for the Credit is clearly not a payment of tax or a payment in lieu of tax. Rev. Rul. 61-152, 1961-2 C.B. 42. In addition, generally the application of a credit against tax liability is merely a reduction of the tax liability. See Rev. Rul. 79-315, 1979-2 C.B. 27.

However, in this instance A has purchased the Credit for value and the Credit is "property" in A's hands rather than a factor in the calculation of A's tax due. In order to claim the credit A must submit the Credit certificate to State X's taxing authority. The use of the Credit to offset A's State X income taxes is analogous to the transfer of property to State X in satisfaction of A's tax liability. Thus A's transfer of the Credit certificate to State X is a payment of state income taxes, deductible under § 164.

RULING:

A, a purchaser of transferable Credits will be allowed a deduction under § 164 for State X income taxes paid with the purchased Credits.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. Specifically, no opinion is expressed regarding any consequences arising from the transaction discussed under § 1001 or any other provision of the Code. This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney and Declaration of Representative, or other proper authorization currently on file with the Internal Revenue Service we are sending a copy of this letter to the taxpayer's authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Sincerely,

ANDREW M. IRVING
Senior Counsel, CC:ITA:1
Office of Associate Chief Counsel (Income Tax and Accounting)

cc: Chief, Planning and Special Programs, Area 1

H. Peter Olson