A REPRINT FROM

REAL ESTATE ISSUES®

Published by THE COUNSELORS OF REAL ESTATE® *Volume 39, Number 1, 2014*

FEATURES AND PERSPECTIVES

VIEWPOINT

RESOURCE REVIEWS

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Historic Tax Credit Transactions in the Wake of Revenue Procedure 2014-12

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INTRODUCTION

On December 30, 2013, the Internal Revenue Service issued a widely anticipated revenue procedure related to the historic rehabilitation tax credit (HTC) allowable under Section 47 of the Internal Revenue Code of 1986, as amended (the Code). Revenue Procedure 2014-12 (as revised on January 9, 2014, the Rev Proc) is expected to break open the historic tax credit equity markets, which had been all but frozen by the 3rd U.S. Circuit Court of Appeals' highly controversial decision in *Historic Boardwalk Hall, LLC, v. Commissioner*[1] in May 2013 (HBH). This article provides an overview of the HTC and typical pre-HBH deals, discusses HBH and its effect on the HTC market, summarizes the Rev Proc, and concludes with some thoughts on the practical effect the Rev Proc is likely to have on HTC transactions in the future.

OVERVIEW OF THE HTC AND TYPICAL PRE-HBH DEAL STRUCTURE

Tax incentives (which took the form of accelerated depreciation allowances) with respect to the renovation of historic buildings were first enacted by Congress in 1976 and were intended to encourage the rehabilitation of buildings that the National Park Service (NPS) determined were of important historic significance.[2] The HTC itself was passed soon thereafter in 1978.[3] Congress recognized that historic rehabilitation projects often are more expensive than new construction and involve significantly more construction risk. The HTC was intended by Congress to turn an activity it deemed important (historic rehabilitation)—but was not profitable on a pretax basis—into one that was profitable on an after-tax basis.[4] To date, approximately 39,622 historic rehabilitation projects have been certified, resulting in 2.4 million jobs and more than $69 billion in investment; in 2013 alone 803 projects were certified, representing almost $3.4 billion in investment.[5]

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In general, the owner of an income producing historic building who undertakes a "substantial rehabilitation"[6] of that building in accordance with the Secretary of the Interior's Standards for Rehabilitation (NPS Standards), 36 C.F.R. 67 (2013), is entitled to the HTC. The HTC is a federal income tax credit (a dollar for dollar reduction of federal income tax liability) equal to 10 percent or 20 percent of "qualified rehabilitation expenditures" (QREs). QREs roughly correlate to (but will not necessarily equal) the depreciable basis of the rehabilitated building less acquisition costs.[7]

In order to qualify for the HTC, the owner must navigate the requirements of the Code and, in the case of the 20 percent credit, the requirements of the NPS. The 10 percent credit is available with respect to buildings that were first placed in service before 1936,[8] whereas the 20 percent credit is available with respect to buildings that are either individually listed on the National Register of Historic Places or determined to contribute to the historic significance of a historic district that is listed on the register.[9] To obtain either designation, the owner must file a Part 1 application with the NPS (unless, of course, the historic building is already so designated). In the authors' experience, most historic rehabilitations are intended to qualify for the 20 percent credit because the subsidy is obviously significantly deeper than is the case with the 10 percent credit.

The primary distinction in the requirements for qualifying for the 10 percent versus the 20 percent credit is the need to satisfy the NPS Standards. With respect to a 10 percent credit rehabilitation, the NPS does not review the rehabilitation plans, but the Code and associated regulations require that a certain percentage of the walls and floor space of the rehabilitated building be retained. By contrast, the 20 percent credit requires that the owner submit detailed plans to the NPS (called a Part 2 application) so that the NPS can determine if the rehabilitation is in keeping with the historic character of the building as set forth in the NPS Standards. When the owner completes this rehabilitation, it then must submit a Part 3 application to the NPS to confirm that the rehabilitation was undertaken as set forth in the Part 2 application.

To qualify for the HTC (either the 10 percent or 20 percent credit), the historic building must be income producing. This requirement would, for example, exclude a personal residence from qualifying for the HTC. In addition, and in order to prevent taxpayers from stringing together a series of routine repairs into a tax credit project, the amount of rehabilitation costs incurred by the owner over a two-year (or five-year in certain phased rehabilitations) period must exceed the greater of $5,000 or the basis of the historic building as of the start of the rehabilitation.[10] Finally, the HTC is earned entirely in the taxable year during which the building is placed in service but is subject to a five-year recapture period during which the building, may not (among other things) cease being a certified historic structure.[11] A variety of other issues can affect the availability and the timing of the HTC (for example the tax-exempt property rules are very complex), but those issues are beyond the scope of this article.

It will be helpful to define some terms used by the Rev Proc in explaining the typical pre-HBH deal structure; the defined terms used hereinafter are the same as those used in the Rev Proc. The Rev Proc refers to developers as Principals. Because many Principals do not have sufficient federal income tax liability to efficiently use the HTC on their own account, Principals and taxpayers who have federal income tax liabilities and low costs of funds (Investors) would form a partnership, with the Investor contributing capital and receiving in return the HTCs and a typically modest economic return. The most common deals included a negotiated one to three percent preferred return that was intended to give the Investors a minimum amount of cash distributions.

The Rev Proc acknowledges two different partnerships related to the two different HTC deal structures. The first, a Developer Partnership, is a partnership that owns and rehabilitates the building. The second, a Master Tenant Partnership, is a partnership that leases the rehabilitated building from the Developer Partnership. In what is called in the tax credit world a "single tier" deal, there is no Master Tenant Partnership and the Investor invests directly in the Developer Partnership in exchange for a 99.99 percent profits interest in the Developer Partnership. For a number of reasons that are beyond the scope of this article, few transactions are structured as single tier deals. Instead, most transactions are structured as a so-called "lease pass-through" deal in which the Investor invests in the Master Tenant Partnership in exchange for a 99.99 percent profit interest in the Master Tenant Partnership. Because the construction occurs at the Developer Partnership, the Master Tenant Partnership typically needs to get the proceeds of the Investor's capital contribution to the Developer Partnership. This occurs in a number of ways: additional rent, as a loan, or more commonly as a capital contribution to the Developer Partnership. In all events, the Developer Partnership makes a special election under Section 50(d) of the Code to pass the HTC through to the Master Tenant Partnership; the Master Tenant Partnership is then treated as having incurred the QREs and therefore may allocate the HTCs to its partners.

In both the single tier and lease pass-through structures, the Investor typically received strong guarantees from the Principal and/or its affiliates of its anticipated returns, largely because those expected returns (the HTCs and the modest economics) were so limited.

As discussed above, although the HTC is earned entirely in the year in which the rehabilitated building is placed in service, Section 50 of the Code imposes a five-year recapture period that commences on the date the rehabilitated building is placed in service and prohibits the Investor from transferring more than a third of its interest in the partnership. At the end of the five-year HTC recapture period, the Investor would ordinarily have the right to put its interest to the Principal for a fixed price, usually between five and 15 percent of its initial equity investment. If the Investor did not exercise the put, the Principal typically had the right to call the Investor's interest at fair market value. Because of the Investor's modest economic return, that fair market value was generally far less than the amount of the Investor's capital contribution, although it was usually greater than the put price. In the authors' experience, most of the time the Investors exercised the put option for a variety of economic and non-economic reasons.

To summarize, prior to HBH, Investors would often invest their capital at or post completion and in some instances over the entire five-year compliance period. Investors required a fixed preferred return in addition to residual cash flow. Investors received a guarantee from the Principal and/or its affiliates, often covering nearly all aspects of the deal—completion, operations and tax credit recapture or disallowance. Investors would negotiate a put price fixed at some percentage of their capital contribution and Principals had the right to call the Investors' interests at fair market value.

Because of the relative certainty and stability of the foregoing, a large and efficient market developed over the last 20 years in which Principals would typically receive competing bids from multiple Investors. This would appear to be an ideal situation from a public policy standpoint. Assuming that the historic building is rehabilitated in accordance with the NPS Standards and otherwise qualifies for the HTC, presumably someone should get the tax credit Congress enacted to incentivize that behavior, and if the government's fisc is to forego a dollar of revenue in the process, the closer the Investor's investment per HTC is to a dollar, the more efficient the tax credit.

HBH AND ITS EFFECT ON THE HTC MARKET

In HBH,[12] the Third Circuit Court of Appeals addressed a historic rehabilitation tax credit transaction involving a project partnership (HBH Partnership), an outside investor and the New Jersey Sports and Exposition Authority (NJSEA), a state agency acting as developer.

The building in question was an iconic building located on the Atlantic City Boardwalk in New Jersey, known commonly as the East Hall. The East Hall was completed in 1929 and was most famous for hosting the Miss America Pageant. It was placed on the National Register of Historic Places in 1987.

In 1992 the NJSEA was tasked with acquiring, renovating and operating the East Hall, and in that same year it leased the East Hall from the Atlantic County Improvement Authority under a 35-year lease for one dollar per year. Construction began in 1998 with funding from the Casino Reinvestment Development Authority (the Casino Authority). The Casino Authority was a state agency tasked with divvying up the proceeds from the state's casinos among development and community projects throughout New Jersey.[13] By 1999, the Casino Authority had agreed to backstop any costs related to the East Hall project in excess of a contemplated bond issuance.[14] The project was completed in October of 2001.[15]

Upon appeal from a judgment in favor of the taxpayer in the Tax Court, the Third Circuit reversed and ruled that the investor was not a partner for tax purposes and thus could not share in the historic rehabilitation tax credits. First, based on a tax credit guarantee and other protections, the court determined that the investor "had no meaningful downside risk because it was, for all intents and purposes, certain to recoup the contributions it had made to HBH Partnership and to receive the primary benefit it sought—the [HTCs] or their cash equivalent."[16] Second, the court determined that the investor had no meaningful upside potential. Although the documents gave the investor a 99.9 percent interest in any residual cash flow of HBH Partnership, the court noted that even what the court viewed as unreasonably rosy projections showed that there would never be any such residual cash flow.[17] In addition, the court said "[e]ven if there were an upside, however, NJSEA could exercise its Consent Option, and cut [the investor] out by paying a purchase price unrelated to any fair market value."[18] The court ultimately concluded that the way the HBH Partnership was constructed left the investor without a "meaningful stake in the success or failure of the enterprise."[19]

While we disagree with the analysis set forth in HBH, the ruling raised several questions with respect to a typical HTC transaction. May an Investor defer its capital contribution until after completion and if so, by how much? Are all guarantees suspect or are only those that serve to "fix" a return invalid? Investors often required developers to provide guarantees even if the guarantor was unlikely to be able to make the Investor whole. Are these guarantees treated the same as the guarantor in HBH, which had substantial assets and revenue? Is an Investor's attempt to fix some portion of its return problematic, or is it only problematic if the Investor's entire return is fixed?

One issue left effectively untouched by HBH was whether a taxpayer who claims a tax credit intended to encourage behavior that Congress apparently believes is unproductive on a pretax basis must expect a pretax return and negotiate a transaction consistent with same.

The uncertainty created by HBH, coupled with an apparent surge of HTC audit activity, caused most Investors to withdraw from the market pending the issuance of guidance from the IRS. This stalled projects across the country. Particularly hard hit were projects with limited economics, such as historic theatres.

SUMMARY OF THE REV PROC

In the aftermath of HBH, the IRS appeared to grasp the issues created by the disruption to the HTC marketplace. The IRS, after consultation with industry participants, concluded that the best means of clarifying the practical implications of HBH would be through a "safe harbor," similar to the wind ruling safe harbor.[20]

The good news about the Rev Proc is that it and subsequent statements by the IRS and the Department of the Treasury make it clear that the Investor does not need to expect to receive a pretax profit. The bad news—which is in fairness a mix of good and bad—is that the Rev Proc is not exactly the "safe harbor" many in the industry wished for because it isn't just a simple checklist of required magic words that give taxpayers a clear path to a free pass; as discussed below, some of its language can be interpreted either as being flexible enough to accommodate a wide variety of economic arrangements or vague enough to allow the IRS to challenge good faith attempts at compliance.

So what isn't the Rev Proc? By its terms, the Rev Proc does not apply to any tax credit other than the HTC. The Rev Proc also makes it clear that it is an all-or-nothing proposition: If you comply with each and every requirement of the Rev Proc, the safe harbor applies; if you miss even one, there is no "close enough" and the Rev Proc does not apply. Finally, compliance with the Rev Proc merely takes one item off of the table for the IRS: whether the IRS will challenge the allocations of the HTCs to the Investor. The valid existence of the HTCs themselves and other structural issues still must be analyzed and could be subject to IRS attack notwithstanding compliance with the Rev Proc.

So how does a taxpayer comply with the Rev Proc? There are four main categories of requirements, each of which is discussed below.

REQUIREMENTS RELATED TO THE PRINCIPAL'S AND INVESTOR'S INTERESTS

Principals must have a minimum one percent interest in material partnership tax items. This requirement likely will not pose many structural challenges, but it seems an odd issue to focus on, given the issue in HBH was that the Investor, not the Principal, was not a partner. Presumably, if the Principal was not a partner in the Partnership, the Investor would own a fee interest in the building (in a single tier deal) or a leasehold interest in the building (in a lease pass-through deal) outright, and there would be no doubt that the Investor would be entitled to all of the HTCs.

There are three requirements with respect to the Investor's interest in the Partnership. First, the Investor must at all times maintain a minimum interest in each material tax item equal to five percent of the Investor's largest share of each such material tax item. So if the Investor has a 99 percent share in the bottom-line profits of the Partnership at closing, the Investor's interest in bottom-line profits cannot "flip" below 4.95 percent thereafter.

The second and third requirements applicable to the Investor's interest represent the crux of the IRS's theory regarding the division of partnership economics. As explained below, the gist of it appears to be that the size of the pie does not matter so long as the pie is sliced appropriately (the second requirement) and the parties do not play games to artificially minimize the size of the pie (the third requirement).

With respect to the second requirement, regarding the slicing versus size of the pie, the first two sentences of 4.02(b) provide as follows:

> The Investor's Partnership interest must constitute a bona fide equity investment with a reasonably anticipated value commensurate with the Investor's overall percentage interest in the Partnership, separate from any federal, state, and local tax deductions, allowances, credits, and other tax attributes to be allocated by the Partnership to the Investor. An Investor's Partnership interest is a bona fide equity investment only if that reasonably anticipated value is contingent upon the Partnership's net income, gain, and loss, and is not substantially fixed in amount.

There are two points to unravel in this paragraph. The first, and the one that has by far caused the most consternation in the HTC markets, is what the words "reasonably anticipated value commensurate with the Investor's overall percentage interest in the Partnership" means. Does the "reasonably anticipated value" need to tie in some way to the size of the Investor's capital contribution? The clear answer from the IRS in a number of informal settings has been that the answer is "no," and the critical issue is simply how one divides whatever are the Partnership's economics. For instance, the examples in the Rev Proc contemplate a one percent/99 percent split (which would insure 99 percent of the HTCs end up with the Investor) followed by a 95 percent/five percent flip in favor of the Principal (which minimizes the amount of cash going to the Investor) in year five. That economic sharing arrangement, combined with any other special rights to cash, is the Investor's "overall percentage interest." Must the parties structure the transaction with these exact cash flow splits? No; this is the baseline, or floor. It appears that the parties can vary the economic arrangement between them in any way they like as long as the Investor ends up with a projected value, presumably incorporating time value of money concepts, which is equal to at least the floor.

The second point, again related to the pie slicing, deals with what constitutes a "bona fide equity investment." Given the last sentence's clarification that the Investor's return must be based on partnership operations and not fixed in amount, this is presumably intended to give the IRS a facts and circumstances argument that a transaction that otherwise meets the requirements of the Rev Proc but nevertheless is more properly characterized as debt (which is very hard to imagine) falls outside the Rev. Proc's safe harbor.

We will turn now to the third requirement, which as discussed above relates to the size of the pie. The main point is that although the size of the pie doesn't generally matter, it is a problem if the transaction is structured to artificially reduce the size of the pie by stripping cash that would otherwise go to the Investor out of transaction. Any arrangements that move cash out of the Partnership must not be "unreasonable as compared to" a comparable arrangement in a transaction not involving HTCs.

The Rev Proc singles out subleases back to the Principal for special attention unless they are "mandated by a third party unrelated to the Principal." Developers are a creative bunch and many who are on friendly terms with their lenders adeptly noticed a hole through which to drive their many busses with respect to this exception. The IRS has indicated informally that it is on to this and expects a tiny fraction of transactions will actually have such a "requirement." We believe collusion between the Principal and the "third party" will effectively be assumed absent regulatory requirements clearly requiring the sublease.

REQUIREMENTS RELATED TO THE INVESTOR'S CAPITAL CONTRIBUTION

Two related concepts apply to the Investor's capital contribution. First, the Investor must contribute at least 20 percent of its total expected capital contribution prior to the date that the building is placed in service. The Rev Proc also indicates that this amount (and presumably not a greater amount) must remain in the partnership for the duration of its ownership in the partnership. Interestingly, this ostensibly permits Investors to structure the capital pay-in in a way that reduces or nearly eliminates construction risk (by contributing the 20 percent required capital immediately prior to completion) and reduces operating and HTC recapture risk (by paying in the remaining capital over a longer period of time and only after the satisfaction of negotiated benchmarks). The mitigation of these risks was one of the issues raised by the court in HBH as indicative of the Investor acting as something other than a true partner.

The second point relates not to what the Investor must contribute, but instead to what amount the Investor must agree to contribute by when. Specifically, "[a]t least 75 percent of the Investor's total expected capital contributions must be fixed in amount before the date the Building is placed in service." The IRS and Treasury have made it clear that "fixed in amount" does not require that the capital contributions cannot be subject to reasonable conditions, although the Investor must reasonably expect to make its capital contributions when due.

The Rev Proc also makes it clear that the Investor cannot borrow the funds to make its capital contributions from any of the Developer Partnership, Master Tenant Partnership, or any of their respective Principals.

GUARANTEES IN FAVOR OF THE INVESTOR

As discussed above, prior to HBH, Investors typically required a number of guarantees from Principals and occasionally required those guarantees to be collateralized. The Rev Proc puts certain restrictions on this practice.

At the outset, only "unfunded" guarantees are permitted. A guarantee is funded (and therefore not "unfunded") if cash (other than a reserve not in excess of the Partnership's reasonably projected operating expenses for a twelve-month period) or property is set aside to fund the guarantee or if any person agrees to a minimum net worth covenant in connection with the guarantee. Note no mention is made of, for example, liquidity covenants, which are presumably permitted.

The Rev Proc then divides the universe of guarantees into two boxes: those related to the tax credits themselves and those related to the operations of the Partnership. The underlying obligations related to the former are typically called "tax credit adjusters" in the tax credit industry and govern the circumstances under which the Partnership must make a payment or distribution to the Investor with respect to HTCs that the Investor expected but did not receive. The scope of that liability was always a point of negotiation prior to HBH, and a broader tax credit adjuster usually accompanied a larger proposed capital contribution from the Investor. Some Investors were comfortable effectively limiting the scope of the adjusters merely to the acts or omissions of the Principals. Other Investors went much further and required the Principal to make a payment if the Investor did not receive the HTCs for any reason other than the acts or omissions of the Investor.

The Rev Proc deals with guarantees of tax credit adjusters by defining what they can and cannot be. A loss of HTCs can relate to any acts necessary to claim the HTCs, as well as any acts or omissions of the Principal that would cause the Partnership not to qualify for the HTCs or that would result in a recapture of the HTCs. Examples of these acts would be failing to complete construction or failing to satisfy the NPS Standards. This type of guarantee is permissible.

On the other side of the spectrum, if the IRS challenges the "transactional structure" of the Partnership, then no party can guarantee the HTCs and no party can pay or indemnify the Investor for its costs related to any challenge to the HTCs (apparently even if unrelated to the transactional structure). The Rev Proc explicitly permits the purchase of third-party insurance, which presumably would include tax credit insurance. It is important to note that nothing in the Rev Proc prevents the Investor from receiving a cash distribution from the partnership itself for the loss of HTCs, even if caused by a challenge to the "transactional structure."

The Rev Proc also contemplates more traditional guarantees, including completion guarantees, operating deficit guarantees, environmental indemnities, and financial covenants. Financial covenant guarantees presumably must not contain minimum net worth covenants, as doing so would cause the guarantee to no longer be "unfunded," as discussed above.

In pre-HBH transactions, as noted above, Investors often received a guarantee of payment from the Principals with respect to a negotiated annual cash-on-cash return, typically in the one to three percent range. That type of guarantee is now explicitly prohibited under the Rev Proc.

PURCHASE AND SALE RIGHTS

As discussed above, in the pre-HBH world, the Investor typically had the right to put its interest in the Partnership for a fixed price, usually a percentage of the Investor's capital. If the Investor did not exercise that right, the Principal generally had the right to call the Investor's interest for its fair market value.

The Rev Proc permits the Investor to have a put right, so long as the price with respect thereto does not exceed fair market value at the time of exercise. The Rev Proc explicitly forbids call rights held by the Principal, even if for fair market value (although it does not, of course, forbid a present sale).

CONCLUSION

So what does all of this boil down to? From a practical perspective, there are six main changes from the Principal's point of view. Of course, these are the same changes from the Investor's point of view as well, only in reverse.

First, all Investors, at least those who intend to comply with the Rev Proc, are now going to be contributing a minimum of 20 percent of their equity prior to completion of the project. In pre-HBH transactions, many Investors made their first substantive capital contribution immediately following completion.

Second, Principals and Investors will have substantial flexibility in structuring their economic arrangements. So long as the "reasonably anticipated value" of the Investor's interest is expected to be "commensurate with" the Investor's "overall percentage interest," the Principal maintains a one percent interest, and the Investor's interest does not fall below five percent of its largest interest, the parties should be able to divide economics as they choose, including the economics available after the put rights have expired. Whether the IRS will agree with the parties' decisions about what "reasonably anticipated value" and "commensurate" means is, of course, anybody's guess. But in theory, because it is how the pie is sliced, not the size of the pie (absent "unreasonable" mechanisms to reduce the size), that matters, deals with naturally thin economics, like historic theatres, should be much easier to structure.

Third, Principals will no longer have the comfort of fair market value call options. In pre-HBH transactions, Principals typically had the right to call the Investor's interest for fair market value if the Investor did not exercise its put price. The Rev Proc makes it clear that call rights, even at fair market value, are prohibited. The comfort of holding a fair market value call right should logically be limited because, as an academic matter, the Principal should be indifferent to the choice of paying the Investor the fair market value of its interest and having the Investor remain a partner. However, we anticipate this restriction may cause a significant amount of concern to Principals who want to retain some level of control over the Investor's exit.

Fourth, Principals should expect an easing on guarantee requirements. So-called "structural" tax credit guarantees are prohibited, as are guarantees of priority returns and any guarantee that is "funded." However, the cash flow of the partnership itself is still available to compensate the Investor for a loss of tax credits, even if caused by a structural issue. Therefore, Investors can be expected to require priority cash distributions or deferrals to any flip in the event of an HTC loss for which the Investor is not made whole by a guarantee.

Fifth, Principals can expect substantial scrutiny to be placed on related party fees, in particular developer fees. Prior to HBH, the development budgets of most historic tax credit projects included a fee equal to 20 percent of the project's costs. The Rev Proc appears to say that if even a single fee is "unreasonable" compared to fees charged in a non-HTC project, the Partnership will not qualify for the safe harbor. The problem this presents for HTC projects relates to trying to find accurate comparables; the services provided by HTC developers are unique. How does one make accurate comparisons to the services an HTC developer provides without looking to the services other HTC developers provide?

Finally, Principals can expect substantial scrutiny related to the amount of the master lease payments. Again, the payments will be compared to those in non-HTC transactions, presumably with respect to similar asset classes and geographic locations.

As of this writing, the HTC industry is still digesting the Rev Proc and the verdict is not in as to what its long-term effect will be. It is clear that Principals will be unable to structure transactions in which they all but insure the Investor will not get a penny more than the Investor paid; by the same token, the Investor will not be able to button down its position so tightly that it is all but assured it will not lose any portion of its return. But Investors and Principals should be able to craft arrangements that, though not free from risk on either side, have far more economic and tax certainty on both sides than was the case immediately after HBH. For that reason we anticipate the guidance will bring old as well as new Investors into the HTC market. All of that is good public policy because it increases competition and raises equity pricing, which provides a greater return on investment for the government with respect to its tax expenditure. ■

ENDNOTES

1. 694 F.3d 425 (3d Cir. 2012), cert. denied U.S., No. 12-901, May 28, 2013.
2. See Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, p. 643.
3. Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763 (1978).
4. See, *e.g.*, Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986, p. 149: "The Congress concluded that the incentives granted to rehabilitations in 1981 remain justified. Such incentives are needed because the social and aesthetic values of rehabilitating and preserving older structures are not necessarily taken into account in investors' profit projections. A tax incentive is needed because market forces might otherwise channel investments away from such projects because of the extra costs of undertaking rehabilitations of older or historic buildings."
5. *Federal Tax Incentives for Rehabilitating Historic Buildings, Statistical Report and Analysis for 2013*, U.S. Department of the Interior.
6. Code § 47(c)(1)(C).
7. Code § 47(c)(2).
8. Code § 47(a)(1).
9. Code § 47(a)(2).
10. Code § 47(c)(1)(c).
11. Code § 50(a).
12. *Historic Boardwalk Hall, LLC, v. Commissioner*, 694 F.3d 425,455 (3d Cir. 2012).
13. Ibid., (court opinion) note 8.
14. Ibid., p. 443.
15. Ibid., note 16.
16. Ibid., p. 455.
17. Ibid., p. 459–60 and note 63.
18. Ibid., p. 460.
19. Ibid., p. 454.
20. Rev. Proc. 2007-65, which establishes the requirements under which the IRS will respect the allocation of Code § 45 wind energy production tax credits by partnerships in accordance with Section 704(b) of the Code.