



**Historical Note:** This PLR addresses La. R.S. 47:6019(A)(3)(b)(i)(aa) prior to the enactment of [Act s 2009, No. 444](#). Beginning July 8, 2009 the two transfer limit has been eliminated.

Private Letter Ruling  
Redacted Version  
No. 08-017

Individual Income Tax, Corporation Income Tax and Corporation Franchise Tax  
Historic Rehabilitation Credit  
October 6, 2008

This is in reply to your request for a private letter ruling concerning whether or not the Louisiana historic rehabilitation credits as provided under La. R.S. 47:6019 are subject to recapture and what transfers qualify for the two transfers rule under the same section.

**Factual Scenario**

You provided these facts:

1. Company A, L.P. has completed the restoration of the Department Store in LA into a mixed-use retail/office (non-residential) and residential rental property. The property was certified as a historic structure on November 17, 2003 and listed in the National Register on February 15, 2007. The rehabilitation work was completed on August 1, 2007. Costs attributed to rehabilitation were \$\$\$\$. On December 4, 2007, the taxpayer received certification from the Louisiana Division of Historic Preservation. A copy of Part 3 of the Certification Application is attached as well as the amended Certification.
2. As the general partner in Company A, L.P., through its operating agreement, Company B, L.L.C. has been allocated 100% of the Louisiana Historic Rehab Credits. Company B, L.L.C. will transfer the Louisiana Historic Rehab Credits of \$\$\$ to two parties. One of these parties will be Company C, L.L.C. who will acquire \$\$\$ of these credits and who will subsequently transfer these credits to Louisiana taxpayers. There will be no further transfer of these credits. The credits will be sold for an amount in excess of 75% of the value of the credits.
3. An independent auditor has certified the qualifying expenditures for purposes of the federal tax credits applicable to the project.

**Relevant Regulations and Statutes**

1. Louisiana Revised Statute 47:6019(B)(2) states that “any term used in this Section shall have the same meaning as when used in a comparable context in federal law”. The statute and the regulations do not refer to originally certified qualifying expenditures being subject to recapture.

617 North Third Street  
P. O. Box 44098  
Baton Rouge, Louisiana 70804-4098  
225-219-2780 • 225-219-2759 Fax  
TDD# 225-219-2114 • [www.revenue.louisiana.gov](http://www.revenue.louisiana.gov)

2. In PLR 06-001 a public “entity” was permitted to transfer credits to Louisiana taxpayers. The Legislature subsequently confirmed this ruling with a change in the term from “taxpayer” to “persons”.
3. Louisiana Revised Statute 47:1675(F)(1) allows entities not subject to Louisiana income or corporation franchise tax who acquire an income or franchise tax credit to allocate the credit to its partners or members as provided in the statute granting the credit. Louisiana Revised Statute 47:6019 does not provide an alternative manner in which to allocate the credits. Since the partnership agreement of Developer allows for credits to be allocated in a manner that is disproportionate to the partners’ respective equity contributions and ownership percentages, the allocation is valid.
4. See PLR 07-017; November 8, 2007.

### **Rulings Requested**

1. Are the Louisiana Historic Credits provided under La. Rev. Stat. 47:6019 subject to recapture; and if so, under what circumstances and what is the rate of recapture?
2. Does the transfer from Company B, L.L.C. or any partner of Company B, L.L.C. to Louisiana Incentive Consultant, L.L.C. and its subsequent transfer to a Louisiana taxpayer constitute the allowable two transfers of credits?

### **Taxpayer’s Conclusions**

1. There are no provisions in La. Rev. Stat. 47:6019 that provide for a recapture of credits that have been approved by the Department of Culture, Recreation and Tourism. Once Part 3 of the Application has been approved, the credits are not subject to recapture.
2. The transfer from Company B, L.L.C. to Company C, L.L.C. or from any partner of Company B, L.L.C. represents the first transfer and the subsequent transfer to a Louisiana taxpayer from Company C, L.L.C. represents the second and final allowable transfer.

### **Rulings**

1. The Louisiana historic rehabilitation credit is governed by the provisions of R.S. 47:6019 and the general credits provision in La. R.S. 47:1675. Louisiana Revised Statutes 47:6019 sets out the specific provisions related to the historic rehabilitation credit. The provisions of La. R.S. 47:6019 do not provide for recapture of the credits under any circumstances. La. R.S. 47:1675 contains the general administrative provisions for credits taken against income and corporation franchise tax. Nothing in the general credits statute provides for the recapture of credits against income and corporation franchise tax; therefore, once Part 3 of the Application has been approved by the Department of Culture, Recreation and Tourism, the rehabilitation tax credits are not subject to recapture under the provisions of La. R.S. 47:6019 or La. R.S. 47:1675. However, if the Department of Revenue audits a taxpayer and finds that the taxpayer either took a historic rehabilitation tax credit they were not entitled to take or took more credit than they were allowed to take, the department has the right to disallow the credit. The disallowance of the credit may result in the taxpayer owing additional taxes.

August 13, 2008

2. The transfer of the historic rehabilitation credit is governed by La. R.S. 47:6019(A)(3)(b)(i)(aa). The statute provides in pertinent part that taxpayers who are granted rehabilitation tax credits in excess of their tax liability for a year can elect to sell their unused credits to another taxpayer with a tax liability. The statute goes on to state that the rehabilitation credits may only be sold twice. Under the facts presented in this private letter ruling, the transfer or sale of rehabilitation tax credits from Company B, L.L.C. or one of its members to Company C, L.L.C. constitutes the first allowed sale of the historic credit. A subsequent transfer of the credit from Company C, L.L.C. to another Louisiana taxpayer will be the second and final transfer of the tax credit. No additional transfer of the tax credit would be allowed.

If you have any questions or need additional information, please call Michael Pearson, Senior Policy Consultant or Danielle B. Clapinski, Attorney, Policy Services Division, at 219-2780.  
Sincerely,

Cynthia Bridges  
Secretary

By: Danielle B. Clapinski  
Attorney  
Policy Services

This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on the department only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for the department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.