STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2017-09

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:	:	
	:	**Case No.: 16-T-083**
	:	**Historic Preservation Tax Credit**
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came for hearing pursuant to a Notice of Hearing and Appointment of Hearing Officer ("Notice") issued on October 11, 2016 to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to the Taxpayer's request for hearing. The parties were represented by counsel. The parties agreed that a decision could be issued on stipulated facts and briefs. A briefing schedule was set with briefs being timely filed by June 1, 2017.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq.*, R.I. Gen. Laws § 44-33.6-1 *et seq.*, the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*, and the *Division of Legal Services Regulation 1 Rules of Procedure for Administrative Hearings*.

III. ISSUE

Whether the Division correctly disallowed the Taxpayer's claim for a qualified rehabilitation expenditure ("QRE") pursuant to R.I. Gen. Laws § 44-33.6-1 *et seq.*

IV. MATERIAL FACTS AND TESTIMONY[1]

1. The Division is a state agency statutorily charged, *inter alia*, with the administration and enforcement of all state taxes and state tax credit programs.

2. The Division jointly administers the Historic Tax Credit with the Rhode Island Historical Preservation and Heritage Commission ("Historical Commission"). R.I. Gen. Laws § 44-33.6-4. The Historical Commission determines whether a particular structure qualifies as having historical significance and if that structure's proposed rehabilitation will be consistent with standards established by the US Department of the Interior. Once rehabilitation is completed, the Historical Commission certifies that a historic structure's rehabilitation is consistent with the federal standards and the Division certifies the amount of tax credits for which the rehabilitation qualifies. The Division is authorized to examine any books, papers or records or memoranda bearing upon the premises for the purpose of ascertaining the correctness of any tax credits claimed. R.I. Gen. Laws § 44-33.6-5.

3. The period at issue in this matter is July, 2013 through April, 2016 ("Project Period").

4. The Taxpayer is a domestic limited liability company organized under the laws of Rhode Island in 2010 that elected to be treated as a partnership for federal income tax purposes. During the time period at issue, the Taxpayer had its principal place of business in Providence, Rhode Island. The original declared purpose of this business entity was to engage in any lawful business. During the Project Period, the Taxpayer declared its business purpose to "own, operate and lease real estate" and the managers of this entity were alternatively identified as being or the members of the company ("Company"). Exhibit One (1).

5. The Company is a domestic limited partnership organized under the laws of Rhode Island in 1986. During the time frame at issue, it had its principal place of business located in the same location as Taxpayer. During the time period at issue, the declared purpose of this business entity was "to acquire, own, develop, construct, renovate, sell, lease and manage real estate properties." Exhibit Two (2).

6. ("Manager") is a domestic limited liability company organized under the laws of Rhode Island in 2014. During the time period at issue, Manager had its principal place of business located in the same location as Taxpayer and Company. The original declared purpose of this business entity was to engage in any lawful business and the original managers of this company were identified as its members. The Manager subsequently declared its business purpose "to own, operate and lease real estate." Exhibit Three (3).

7. ("Investor") is a domestic limited liability company organized under the laws of Rhode Island in 2014. During the time period at issue, Investor

[1] See the parties' agreed statement of facts in which the parties also agreed to the issue in this matter.

had its principal place of business in the same location as Taxpayer, Company, and Manager. The original declared purpose of this business entity was to engage in any lawful business and the original manager of the company was identified as Manager. Manager subsequently declared its business purpose "to own, operate and lease real estate" and identified as its manager. Exhibit Four (4).

8. is a domestic non-profit corporation chartered in February of 1980. During the time period at issue, the had its principal place of business located in Providence, Rhode Island. During the time period at issue, the declared purpose of this business entity was "to improve the urban environment of Providence through low interest loans." Exhibit Five (5).

9. In 2013, a project was initiated to renovate a commercial structure known as the ("Building") located in Providence, Rhode Island (hereafter the "Building Project"). Exhibit Six (6).

10. On July 23, 2013, the Taxpayer filed an application with the Division for the reservation of Historic Tax Credits when and if such tax credits became available. It requested the 25% tax credit in Historic Tax Credits. Exhibit Seven (7).

11. On July 29, 2013, the Taxpayer filed a Request for Certification of Historical Significance (Part 1 Certification) and a Request for Certification of a Proposed Rehabilitation Plan (Part 2) with the Historical Commission. Exhibits Eight (8) and Nine (9). On January 17, 2014, the Historical Commission certified the Building as having Historical Significance and approved the Proposed Rehabilitation Plan as long as certain conditions were met. Exhibits Ten (10) and 11.

12. On February 14, 2014, the Taxpayer and the Division entered an Agreement for Historic Preservation Tax Credits 2013. The Taxpayer revised its estimates of the requested in QREs but still the requested the 25% tax credit. Exhibit 12 including Exhibit C at lines 4-6 (Tax Credit Election and Fee Payment).

13. On June 16, 2014, the Taxpayer and a construction company ("Contractor") entered a cost plus contract for the rehabilitation of the Building (Exhibit 14) and work commenced on or before the same date. See Exhibit 16.[2]

14. On December 15, 2014, the Taxpayer entered a Development Services Contract ("Development Contract") with the Company and Investor with regards to the Building Project. Exhibit 15, p.1, preliminary paragraph. After outlining the various services that were to be performed during the course of the Project, Exhibit 15, ¶ 2 at pp. 1-4, the Development Contract states that "the Owner shall pay the Developer a development fee (the "Development Fee") . . . in the amount of . . . $. (and) . . . in no event shall the Development Fee exceed twenty percent (20%) of the . . . QREs." Exhibit15, ¶ 5 at pp. 5-6.

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[2] The construction contract was initially projected to be for $. Exhibit 16, p.1, but this figure was revised as the project progressed and the actual final construction cost was $

15. The Development Contract provided that, upon that upon completion of the designated services, "the Developer shall be paid such portion of the development fee as is available fee out of debt and equity proceeds of the Owner, to the extent that such proceeds are not required for other Development Costs; provided however, that the Development Fee shall be payable only after payment of all Excess Development Costs (including the establishment of required reserves). . . . Any unpaid balance of the Development Fee remaining...shall be payable annually from available cash flow. . . . The entire unpaid balance of the Development Fee shall be paid not later than January 1, 2025. Exhibit 15, ¶ 5 at p. 6.

16. During the Project Period, various and sundry employees and agents of the Developer performed services, pursuant to the Development Contract, with regards to the Building Project.

17. On January 7, 2015, the Company provided the Division with evidence of Commencement of Substantial Construction Activities on the Building Project. Exhibit 16.

18. On March 17, 2016, the Taxpayer filed a Request for Certification of Completed Rehabilitation (Part 3 Certification) with the Historical Commission. On March 18, 2016, the Historical Commission certified that the Building Project met its Standards for Historic Preservation and approved Part 3 Certification. Exhibits 17 and 18.

19. Along with its request for approval of the completed renovation, the Taxpayer submitted a Historic Structures Tax Credit Cost Report Detail ("Cost Report") along with an Independent Accountants' Report to the Division for audit and review. In the Cost Report, the Taxpayer declared that the final development costs for the Building Project totaled $ of which $ were claimed to be QREs. Exhibit 19, p. 4.

20. Upon review of the Cost Report, the Division disallowed certain QREs. Exhibit 20.

21. On July 25, 2016, the Taxpayer was notified as to the disallowances of the QREs and tax credits and advised of its right to request an administrative hearing on these disallowances. On August 18, 2016, the Taxpayer made a timely written request for hearing on the disallowances of its claimed QREs and tax credits. The matter was forwarded for formal administrative hearing on September 29, 2016. Exhibits 21, 22, 23, 24 and 25.

22. Between the notice of QRE disallowance dated July 25, 2016 (Exhibit 21), and the briefs being filed, all but one of the original (11) cost items disallowed as QREs were resolved. Exhibits 20 and 25 and Addendum to Stipulated Facts. The only contested amount for this decision is $ in Development Fees.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management,* 553 A.2d 541 (R.I. 1989) (internal citation omitted). In cases where a statute may contain ambiguous language, the Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

B. Relevant Statutes and Regulation

R.I. Gen. Laws § 44-33.6-1 *et seq*. is the Historic Preservation Tax Credits 2013 act. R.I. Gen. Laws § 44-33.6-2 provides in part as follows:

> Definitions
> As used in this chapter:
> ***
> (11) "Qualified rehabilitation expenditures" means any amounts expended in the rehabilitation of a certified historic structure properly capitalized to the building and either:
> (i) Depreciable under the Internal Revenue Code, 26 U.S.C. § 1 et seq., or

(ii) Made with respect to property (other than the principal residence of the owner) held for sale by the owner. Fees paid pursuant to this chapter are not qualified rehabilitation expenditures. Notwithstanding the foregoing, except in the case of a nonprofit corporation, there will be deducted from qualified rehabilitation expenditures for the purposes of calculating the tax credit any funds made available to the person (including any entity specified in section 44-33.5-3(a)) incurring the qualified rehabilitation expenditures in the form of a direct grant from a federal, state or local governmental entity or agency or instrumentality of government.

R.I. Gen. Laws § 44-33.6-5 provides as follows:

The tax division and its agents, for the purpose of ascertaining the correctness of any credit claimed under the provisions of this chapter, may examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, report, or other statement, and may require the attendance of the person executing the return, report, or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine the person under oath respecting any matter which the tax administrator or his or her agent deems pertinent or material in determining the eligibility for credits claimed and may request information from the commission, and the commission shall provide the information in all cases, to the extent not otherwise prohibited by statute.

The *Historic Preservation Tax Credits 2013 Regulation* CR14-16 ("CR14-16") provides in part as follows.

Rule 18. Application Guidelines

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(e) Scope of Rehabilitation. For purposes of Commission reviews and certification, a Rehabilitation project encompasses all work on the interior and exterior of the certified historic building(s) and its site and environment, as well as related demolition, new construction or Rehabilitation work that may affect the historic qualities, integrity, site, landscape features, and environment of the property. The Commission will determine if such work is consistent with the Standards for Rehabilitation - whether or not a credit is claimed for those costs. However, only those costs that constitute QREs may be included in the calculation of the historic preservation tax credit. The Commission and the Division of Taxation may rely on the Accountant's Certification regarding the QREs actually incurred included with the application without independent investigation. However, the Division of Taxation reserves the right to request additional documentation and supporting detail to verify QREs, including but not limited to, the original documents of entry, vendor lists, payroll record, accounts, and other records. ***

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(g) Determination of QREs. The Division of Taxation, upon receipt of the complete and fully documented Rhode Island Form HTC-8016, shall determine if the costs attributed to the Rehabilitation meet the criteria of QREs. If any costs of a project are denied as QREs, the Division of Taxation shall advise the Applicant of that fact in writing briefly setting forth the grounds for said denial.

Rule 20. Substantial Rehabilitation; Qualified Rehabilitation Expenditures

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(b) Qualified Rehabilitation Expenditures (QREs).

(1) QREs are those amounts expended in the Rehabilitation of a Certified Historic Structure properly capitalized to the building and either:

(i) depreciable under the IRC; or

(ii) made with respect to property (other than the Principal Residence of the Owner) held for sale by the Owner.

(2) Amounts are properly capitalized to the building if they are properly includible in computing the depreciable basis of real property under federal income tax law. Amounts treated as an expense and deducted in the year paid or incurred or amounts that are otherwise not added to the basis of real property do not qualify. Amounts incurred for soft costs – including, without limitation, architectural and engineering fees, survey fees, legal expenses, insurance premiums, development fees and other construction related costs that are added to the depreciable basis of real property - satisfy this requirement.

(3) Expenses that do not qualify as QREs include, without limitation:

(i) The cost of acquiring a building, an interest in a building (including a leasehold interest) or land. ***

(ii) Any expense attributable to an enlargement of a building. ***

(iii) Any expense attributable to the Rehabilitation of a Certified Historic Structure, or a building located in a Registered Historic District, which is not a Certified Rehabilitation.

(iv) Any site work expenses.

(v) Any costs of demolition of adjacent structures.

(vi) Processing Fees imposed under RIGL chapter 44-33.6.

(vii) Additional expenses that do not qualify as QREs include, without limitation:

Appliances;
Cabinets;
Carpeting (if tacked in place and not glued);
Decks (not part of the original building);
Fencing;
Feasibility studies;
Financing fees;
Furniture leasing expenses;
Landscaping;
Moving (building) costs (if part of acquisition);

Outdoor lighting remote from building;
Parking lot;
Paving;
Planters;
Porches and porticos (not part of original building);
Retaining walls;
Sidewalks;
Signage;
Storm sewer construction costs; or
Window treatments.
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Rule 21. Determination of credit

(a) The amount of the credit shall be determined by multiplying the total amount of QREs incurred in connection with the plan of Rehabilitation by the appropriate percentage as elected in the Contract. QREs may include expenses in connection with the Rehabilitation which were incurred prior to the start of Rehabilitation or of the Measuring Period but not prior to July 3, 2013. Further, QREs may include expenses incurred prior to completion of a formal plan of Rehabilitation but not prior to July 3, 2013, provided the expenses were incurred in connection with the Rehabilitation which was completed.

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(d) The Division of Taxation may rely without independent investigation on the Accountant's Certification as to the amount of QREs actually incurred and the satisfaction of Substantial Rehabilitation test. However, the Division of Taxation reserves the right to review such certifications and to audit the original documents of entry, vendor lists, payroll records, accounts or other records supporting such Accountant's Certification.

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C. Arguments

The parties agreed that this is primarily an issue of law as there are few disputed or uncorroborated facts on this issue. The Taxpayer submitted that the development fees – claimed as the QRE – that have been earned, accrued and properly capitalized, and for which contractual liability has been established, are allowable QREs without regard to whether said fees have actually been paid as of the Cost Report date. The Division submitted that to be an allowable QRE, the cost has to have been actually paid.

In its arguments, the Division relied on the plain and ordinary statutory language, legislative intent, the law of tax benefits, and prior Division decisions. The Taxpayer argued that the definition of QRE should be considered in the context of State and Federal tax law and that the prior administrative decisions were distinguishable.

D. Whether the Development Fees are a QRE

The issue of the what qualifies as a QRE has previously come before the Division. Two (2) Division administrative decisions ("Decisions") have addressed the issue of the meaning of "amounts expended" contained in the statutory definition of QRE. See 2013 R.I. Tax LEXIS 9 and 2011 R.I. Tax LEXIS 21. While both of those Division decisions were decided under the prior historic tax credit act, the definition for a QRE in the Historic Preservation Tax Credits 2013 act is almost identical to the prior statutory definition except for a reference to "this chapter" in the current statute rather than to a specific statutory cite. The Taxpayer argued that the Decisions were erroneous as they relied on a dictionary definition and ignored what the Taxpayer argued is the statutory tax framework and the context of the state and Federal tax statutes and regulations.

The Taxpayer argued that R.I. Gen. Laws § 44-33.6-2(11) and Rule 20(b)(2) of CR14-16 incorporated by reference Federal tax law into the definition of QREs. The Taxpayer argued that the "amounts expended" must be defined in the context of the terms "capital expenditures," "properly capitalized," and "depreciable under the Internal Revenue Code" and that to understand those terms as they relate to each other requires reference to the Federal and state law framework. The Taxpayer relied on Federal law and U.S. treasury regulations to argue that when "amounts expended" are used to make permanent improvements to or betterments to increase the value of any real property, the

"amounts expended" become known as "capital expenditures." The Taxpayer argued that amounts expended do not need to be actually paid to be capital expenditures. The Taxpayer argued that the only temporal requirement relates to when the liability is incurred and to require development fees to be paid before a certain point misapprehends the meaning of the term amounts expended and construes the statute to reach an absurd result by adding a severe limitation to what are otherwise QREs.

R.I. Gen. Laws § 44-33.6-2(11) defines "qualified rehabilitation expenditure" as "any amounts expended" in rehabilitating a certified historic structure. On the face of it, the definition refers to any money spent in rehabilitation. A QRE is not defined as a reasonable cost, fair market value, a fixed liability, a future contracted payment, or an accrued cost.

In interpreting a statute, words are to be given their plain and ordinary meaning. Words are to be accorded their plan and ordinary meaning unless a contrary intent appears on the face of the statute. In determining common usage, the Court in *Roadway Express, Inc. v. Rhode Island Commission for Human Rights*, 416 A.2d 673, 674 (R.I. 1980) relied on a dictionary definition in applying the "ordinary meaning" of "must." As the Court has found, "[i]n a situation in which a statute does not define a word, courts often apply the common meaning given, as given by a recognized dictionary." *Defenders of Animals, Inc.*, at 543. While any amounts expended is clear, it should be noted that *Random House Webster's Unabridged Dictionary*, 2nd Edition (1987) contains the following definitions: 1) Amount is defined as "the sum total of two or more quantities or sums; aggregate," and 2) Expend is defined as "to use up" and "to pay out; disburse; spend." As expected, any

amount expended refers to the aggregate sum of what was paid out or spent. By its own terms, a QRE refers to money spent.

Instead of relying on the plain and ordinary meaning of expended (as confirmed by the dictionary definition), the Taxpayer argued that statutory definition incorporates by reference Federal tax law into the definition of QRE so that expended can only be understood in the context of Federal law and State law including references to Treasury regulations and the Internal Revenue Code ("IRC"). The statutory definition has two (2) requirements to be a QRE: first) money spent, and second) either be depreciable under the IRC **or** made with respect to property. In arguing in favor of its interpretation, the Taxpayer cites to the Rhode Island Supreme Court's holdings that the plain meaning approach should not result in myopic literalism and that an entire statute is to be considered as a whole with individual sections to be considered in the context of the entire statutory scheme and that the Court will not construe a statute to reach an absurd result.[3] All of those points are valid, but inapplicable to the statute at issue.

Finding that QREs must have been actually spent is not myopic literalism nor is it out of step with the entire statutory scheme nor is it an absurd result. Instead, the plain language of the statute requires that the QRE actually be spent. This is consistent with the case law regarding the construction of tax benefits – exemptions, deductions, or credits. A party claiming the exemption from taxation under a statute has the burden of demonstrating the statute has a clear legislative intent to grant such an exemption. *Cookson America v. Clark*, 610 A.2d 1095, 1098 (R.I. 1992). Tax exemptions are to be strictly construed against a taxpayer and in favor of the public unless by their terms they disclose a clear

[3] *Generation Realty, LLC v. Catanzaro*, 21 A.3d 253, 259 (R.I. 2011) (citations omitted).

intention to grant an exemption. Unless a contrary intention clearly appears, the words are to be given their plain meaning and the Court is bound by the statutory definition and cannot interpret or extend the words but must apply them literally. *American Hoechst Corp. v. Norberg*, 462 A.2d 369, 371-372 (R.I. 1983). See also *Fleet Credit Corp. v. Frazier*, 726 A.2d 452 (R.I. 1999). Thus, it is not an absurd result that the plain language of the statute requires that a QRE be actually spent since exemptions are to be strictly construed.[4]

At the same time, the plain meaning of the amounts expended is consistent with the entire statute and its implementing regulations. As cited above, R.I. Gen. Laws § 44-33.6-5 authorizes the Division to examine papers, records, and anyone under oath to determine the eligibility of the credits.[5] This is not a change from the statute prior to 2013. After the 2013 act, CR14-16 was promulgated to assist in the implementation of this tax credit statute and is identical in part and very similar in other parts with the prior regulation implementing the prior statute. Consistent with the statutory definition, as cited above,

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[4] This statute is clear on its face that credits are based on the actual expense of rehabilitation. Thus, there is no need to discuss the public policy behind this statute. However, it can be noted that the purpose of tax credits is to compensate a taxpayer for the costs of providing something of benefit to society but it is not to be a gratuitous gift from public coffers at the expense of other taxpayers. Indeed, the specific statutory purpose of the 2013 act is to provide a vital catalyst to the recovery of building and construction trades and to stimulate other economic and business activities. Thus, it is not a surprise that this statute clearly provides for credits to be determined on "amounts expended" rather than on amounts billed or to be paid since tax benefits are narrowly construed against a taxpayer and in favor of the public for that very reason – tax benefits are not to be a gratuitous gift.

[5] Rule 15 of CR14-16 provides for information requests made by the Divisions and that -

(b) Submissions to the Rhode Island Division of Taxation shall include:
(1) CPA cost Certification Report;
(2) Rhode Island Form HTC-8016;
(3) Schedule of all development costs – qualified and non-qualified;
(4) Schedule of all documents filed with the Commission, including pictures; and
(5) Excel spreadsheet (or similar program) containing all costs, qualified and nonqualified, associated with the project. This spreadsheet shall:
(i) Be sorted and subtotaled by the historic cost categories as outlined on the Rhode Island Form HTC-8016. Subtotals must agree with the line items on the cost report.
(ii) All categories in the cost report shall be itemized separately.
(iii) The detail shall include the vendor's name, amount and date of each invoice. Copies of invoices may be requested.
(iv) The spreadsheet shall have columns for qualified and non-qualified costs.

both Rule 18(e) and Rule 21 of CR14-16 allow the Division to rely on an Accountant's Certification[6] regarding the expenditures "actually incurred" without independent investigation but reserve the right for the Division to request additional documentation and supporting detail to verify the QRE including but not limited to original documents of entry, vendor lists, payroll records, accounts, and other records. Thus, the Division is to determine whether an expense claimed as a QRE was actually incurred. At the same time, Rule 20 of CR14-16 provides that there are certain expenses that do not qualify as a QRE and lists those expenses without limitation.[7] R.I. Gen. Laws § 44-33.6-4(h) (and its corollary regulation, Rule 25) allows the Division to deny or revoke credit if information comes to the attention of the Division that is materially inconsistent with an applicant's application for credit.[8]

The Taxpayer argued that Rule 20(b)(2) of CR14-16 allows development fees and the regulation does not require those fees to be paid for by a certain time. However, the regulation does not need to include a deadline for the payment of development fees as the statutory definition addresses the issue of payment: it is to be already made.

While the Taxpayer argued that the statutory definition of amounts expended incorporated by reference Federal tax law, this is not so. Instead, the second requirement that must be met (along with money spent) to be a QRE can either fall under the IRC or be made in respect to property. That requirement does not incorporate by reference Federal

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[6] Said certification is defined in Rule 6 of CR14-16. It is a required certification containing specific information made by a Rhode Island licensed CPA and included in an applicant's application for said credit.
[7] Credits are to be for money spent on rehabilitation and not for example, on acquiring buildings or land, enlarging buildings, or demolishing adjacent structures. See Rule 20 of CR14-16.
[8] Thus, pursuant to R.I. Gen. Laws § 44-33.6-5 and CR14-16, the Division can request documentation to support an application for a QRE and if it is found that an amount has not been expended than the QRE is disallowed. For example, if an applicant submitted an Accountant's Certification certifying $500,000 but the Division discovered that the bill had been inflated and the applicant had only really spent $200,000, the credit would be disallowed as materially inconsistent with the application.

tax law into the entire definition of a QRE. Instead, the definition clearly separates out the requirements to be met including the actual expenditure of money. There is no reason to go far afield – to the IRC or Treasury Regulations (etc.) - in determining the meaning of amounts expended as it is clear from the statute what it means.

This matter revolves around the Historic Preservation Tax Credits 2013 statute. The statute does not provide that QREs include liabilities or payments contracted in the future. Rather, tax credits are to be given for actual expenditures. Thus, the issue is what expenses were actually incurred. The Taxpayer has not spent any money on the development fees claimed as a QRE. As there has been no actual expenditure by the Taxpayer, the Division appropriately denied the claimed QRE.

VII. FINDINGS OF FACT

1. A Notice was issued on October 11, 2016 by the Division to the Taxpayer in response to its request for a hearing.

2. The parties agreed that a decision could be issued on stipulated facts and briefs. A briefing schedule was set with briefs being timely filed by June 1, 2017.

3. The facts contained in Sections IV and V are reincorporated by reference herein.

4. The development fees claimed as a QRE by the Taxpayer have not been paid.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-1-1 *et seq*. and R.I. Gen. Laws § 44-33.6-1 *et seq*.

2. Pursuant to R.I. Gen. Laws § 44-1-1 *et seq*. and R.I. Gen. Laws § 44-33.6-1 *et seq*., the Taxpayer's claimed QRE shall be denied.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Based on R.I. Gen. Laws § 44-1-1 *et seq*. and R.I. Gen. Laws § 44-33.2-1 *et seq*., the Taxpayer's claimed QRE credit is denied.

Date: July 10, 2017

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

✓ ADOPT
_____ REJECT
_____ MODIFY

Dated: 7.24.2017

Neena S. Savage
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO THE FOLLOWING WHICH STATES AS FOLLOWS:

> R.I. Gen. Laws § 8-8-25 Time for commencement of proceeding against the division of taxation. – (a) Any taxpayer aggrieved by a final decision of the tax administrator concerning an assessment, deficiency, or otherwise may file a complaint for redetermination of the assessment, deficiency, or otherwise in the court as provided by statute under title 44.

(b) The complaint shall be filed within thirty (30) days after the mailing of notice of the final decision and shall set forth the reasons why the final decision is alleged to be erroneous and praying relief therefrom. The clerk of the court shall thereupon summon the division of taxation to answer the complaint.

CERTIFICATION

I hereby certify that on the 24th day of July, 2017 a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to the Taxpayer's attorney at the address on file with the Division of Taxation and by hand delivery to Bernard Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, RI 02908.

Gail Belasco