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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 5, 2004

Dr. Rodger Stroup
State Historic Preservation Officer
South Carolina Department of Archives and History
8301 Parklane Road
Columbia, SC 29223

Dear Dr. Stroup:

You have asked whether the certification by the Department of Archives and History for state income tax credits for rehabilitation expenses on certified historic residential structures pursuant to S.C. Code Ann. §12-6-3535 (B)(Supp. 2002) must be obtained prior to commencement of the work. This provision provides, in part as follows¹:

(B) A taxpayer who is not eligible for a federal income tax credit under Section 47 of the Internal Revenue Code and who makes **rehabilitation expenses** for a certified historic residential structure located in this State is allowed to claim a credit against the tax imposed by this chapter. . . . **To claim the credit allowed by this subsection, the taxpayer must attach to the return a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection,** along with all information that the Department of Revenue determines is necessary for the calculation of the credit provided by this subsection.

For the purposes of subsections (B) through (F): . . .

¹ Paragraphs 2 and 3, *infra*, are set forth in reverse order to present the definition of rehabilitation expenses first.

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(3) "**Rehabilitation expenses**" means expenses incurred by the taxpayer in the **certified rehabilitation of a certified historic residential structure** that are paid before the credit is claimed including . . .

(2) "**Certified rehabilitation**" means repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and **certified as such by the State Historic Preservation Officer before commencement of the work**. The review by the State Historic Preservation Officer shall include all repairs, alterations, rehabilitation, and new construction on the certified historic residential structure and the property on which it is located. To qualify for the credit, the taxpayer shall receive documentation from the State Historic Preservation Officer verifying that the completed project was rehabilitated in accordance with the standards for rehabilitation. . . ." (Emphasis added).

According to your letter, Archives has interpreted these provisions to require that review and certification take place before work begins on projects for which a credit is to be claimed. If work has already begun on such project, Archives requires that the work be stopped until it is reviewed and receives certification. Archives takes the position that only work done after certification is received would be eligible for this credit. Archives reviews the completed work to verify that the project was completed in accordance with rehabilitation standards.

The following standards of statutory construction apply to the review of this statute:

The "...primary function in interpreting a statute is to ascertain the intention of the legislature." *South Carolina Department of Highways and Public Transportation v. Dickinson*, 288 S.C. 134, 341 S.E. 2d 134 (1986). "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning." *Id.*

The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. *Dunton v. South Carolina Board of Examiners in Optometry*, 291 S.C. 221, 353 S.E. 2d 132 (1987).

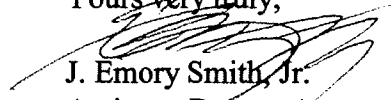
The statute plainly states that "[c]ertified rehabilitation" means repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer **before commencement of the work** . . ." This language indicates that the legislature intended that the credit be limited to expenses for the work done after certification. When work has previously begun, Archives' requirement that it be stopped while certification is obtained. is consistent with these provisions. Archives' administrative interpretation

Dr. Rodger Stroup
February 5, 2004
Page 3

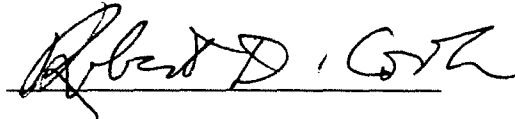
of these provisions would be entitled to great weight from a court, and a court would be likely to find them to be consistent with the literal meaning of the statute.

If you have further questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Deputy Attorney General

Reviewed and approved:



Robert D. Cook
Assistant Deputy Attorney General