



June 3, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Mnuchin:

The Advisory Council on Historic Preservation (ACHP) is the independent federal agency charged by the National Historic Preservation Act with advising the President and Congress on matters relating to historic preservation. In particular, the Act charges the ACHP with advising on the effects of tax policies upon historic preservation. It is in fulfillment of that duty that I write to you today.

The federal historic rehabilitation tax credit, widely known as the Historic Tax Credit (HTC), supports projects that rehabilitate income-producing historic buildings while ensuring their historic character is preserved. The credit has a solid track record as an incentive for development projects that create jobs, support business development, and improve the economic vitality of America's communities large and small. However, work limitations placed on development projects in response to COVID-19 are jeopardizing the ability of developers using the HTC from completing projects by required deadlines. The ACHP urges you to take administrative action to provide one-year extensions of the deadlines for the following: 1) satisfying the substantial rehabilitation test and 2) completing projects operating under transition rules established by the Tax Cuts and Jobs Act.

The need for action is particularly pressing for projects operating under the transition rules. Without a deadline extension, projects will have to be completed by June 20, 2020, to remain eligible for the all-in-one-year-credit that was phased out by the Tax Cuts and Jobs Act. Many projects will be unable to meet this deadline due to curtailment or stoppage of work due to COVID-19.

Providing one-year extensions for HTC project deadlines would appear to be within your authority under Section 7508A of the Internal Revenue Code to make certain modifications in the event of emergency declarations. It also would be consistent with and help to advance the goals of President Trump's recent executive order "Regulatory Relief To Support Economic Recovery." Section 3 of the order states:

The heads of all agencies are directed to use, to the fullest extent possible and consistent with applicable law, any emergency authorities that I have previously invoked in response to the COVID-19 outbreak or that are otherwise available to them to support the economic response to the COVID-19 outbreak. The heads of all agencies are also encouraged to promote economic recovery through non-regulatory actions.

According to the most recent National Park Service report (2018) on the economic impact of the HTC, the credit has leveraged more than \$162 billion in private investment and generated almost 2.7 million jobs since the program's inception in 1976. The HTC can play an important role in promoting economic

recovery from COVID-19, but only if current projects using the credit do not fall victim themselves to deadlines rendered unrealistic by COVID-19.

The attached letter from a bipartisan group of Members of Congress provides greater detail on the issues raised in this letter and the need for urgency in addressing them. The ACHP asks you to take swift action to provide the needed one-year extensions to HTC deadlines. Doing so will keep the credit from being hobbled as a tool for helping communities recover economically from the COVID-19 pandemic.

If you have any questions, please feel free to contact me.

Sincerely,



Aimee K. Jorjani
Chairman

Attachment

cc: The Honorable Russell Vought, Director (Acting), Office of Management and Budget
The Honorable David Bernhardt, Secretary, Department of the Interior
The Honorable Robert Wallace, Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior

Congress of the United States
Washington, DC 20515

May 22, 2020

The Honorable Steven T. Mnuchin
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Mnuchin,

As Congress' most passionate champions of the federal historic rehabilitation tax credit (HTC), we write to urge you to use your authority under Section 7508A of the Internal Revenue Code to grant a one-year extension to the "substantial rehabilitation test" requirements in light of the COVID-19 pandemic.

First enacted in 1981, the HTC has been a proven success in communities large and small across America. The credit has attracted more than \$130 billion in private investment, created more than 2.4 million jobs, and rehabilitated more than 44,000 buildings. HTC projects revitalize communities, spur long-term economic growth, and return more money to the Treasury than the cost of the credit—\$1.20 in tax revenue for every dollar invested. But all of this is at risk due to the COVID-19 public health emergency.

Social distancing and stay-at-home orders have slowed the pace of HTC projects and jeopardize projects' ability to meet statutory deadlines to qualify for the credit. In order for a building to qualify for the credit, projects must satisfy the "substantial rehabilitation test."¹ This test provides 24-month and 60-month deadlines for determining whether the rehabilitation work is sufficient to qualify for the HTC. These deadlines are at risk of being missed as a result of COVID-19 work stoppages.

Other project sponsors are also at risk of missing the substantial rehabilitation test requirements under the transition rule provided in the Tax Cuts and Jobs Act (TCJA).² TCJA changed the HTC from an all-in-one-year credit to a ratable credit taken over five years and also provided a transition rule that kept the all-in-one-year credit available for buildings owned or leased on or before December 31, 2017. The 24-month substantial rehabilitation test was required to start not later than 180 days after enactment. Since TCJA was signed into law on December 22, 2017, the substantial rehabilitation test must be met by June 20, 2020 to claim the all-in-one-year credit.

While HTC projects around the country were prepared to meet these substantial rehabilitation test deadlines, the COVID-19 pandemic has forced many businesses and projects to stop, or severely curtail, in-person activities. Centers for Disease Control and Prevention guidelines have

¹ 26 U.S.C. 47(c)(1)(B)(i) and (ii).

² Section 13402 of Public Law 115-97.

limited the number of workers on a site at a time, and interruptions to worldwide supply chains have left many projects stalled. As a result, it is likely that many HTC construction projects will be unable to finish their work on time to meet the general substantial rehabilitation test or the deadline for the TCJA transition rule, through no fault of their own.

Given the extraordinary circumstances, we urge you to use your authority under Section 7508A of the Internal Revenue Code to grant a one-year extension to the “substantial rehabilitation test” requirements. Our request includes an extension to both the 24-month and 60-month general substantial rehabilitation test period as well as a one-year delay of the June 20, 2020 deadline for the TCJA substantial rehabilitation test’s transition rule to June 20, 2021.

Thank you for your consideration.

Sincerely,



Earl Blumenauer
Member of Congress



Bill Cassidy, MD
United States Senator



Benjamin L. Cardin
United States Senator



Susan Collins
United States Senator



Darin LaHood
Member of Congress



Brian Higgins
Member of Congress



Terri A. Sewell
Member of Congress



Mike Kelly
Member of Congress



Michael R. Turner
Member of Congress