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Alert

Economic Development Incentives

Governor Cuomo Proposes Dramatic Improvements to New York's Historic Rehabilitation Tax Credit

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As part of his Executive Budget for FY 2013-14, Governor Cuomo has proposed changes to New York's Historic Rehabilitation Tax Credit that would: (1) extend the \$5 million cap on the credit until 2020 (the enhanced New York credit is set to expire on December 31, 2014); (2) change the definition of census tracts eligible for the credit; and (3) beginning in 2015, the credit would be a refundable credit.

Analysis. The Governor's proposal, with corrective changes, would resolve most of the problems that have been apparent under current law (assuming the technical application of the census tract standards demonstrates that the criteria fit the purpose). By adopting a relatively long-term extension, the proposal removes uncertainty with respect to continued availability of the credit. By allowing refundability, the proposal would resolve the serious problems associated with utilizing the New York credit in qualifying projects.

The proposal makes three significant changes:

- Extender. The proposal would extend New York's current Historic Rehabilitation Tax Credit until 2020 (under current law, the credit would revert to its traditional \$100,000 cap at the end of 2015).
- Census Tracts. The proposal would change the criteria for determining census tracts that are eligible for the New York credit (presumably in a fashion better targeted towards blight, unemployment and poverty).
- Refundability. The proposal would make, beginning in 2015, the New York credit fully refundable.

Developers of historic properties have two issues they may wish to address with the Legislature. First, the Governor's proposal tacitly rejects the increase in the cap on the credit (from \$5 million to \$12 million) previously adopted by the Legislature (and vetoed last year by the Governor). While this will not impact very many projects, it will have a dramatic impact on a few projects across the state that are key to economic redevelopment of distressed urban areas.

Second, the Governor's proposal would delay refundability until 2015. This raises the following questions and comments:

- As the credit is currently an unlimited carry-forward item, will refundability be available in 2015 for tax credit claimed in prior tax years? This may include projects placed in service in prior years or in 2013 and 2014.
- With the delay in refundability, and with many projects currently in planning that have an expected placed in service date in 2013 or 2014, should the credit be made refundable beginning with tax years commencing on or after January 1, 2013?

The proposal would have maximum impact if either the effective date of refundability is changed to January 1, 2013, or the State confirms that refundability would attach in 2015 to credits claimed in prior years and treated as carry-forward items.

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