**Opinion Letter**

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| **Letter Number:** | **O-2002-017** |

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| **Tax Type:** | **Corporate Income Tax; Individual Income Tax** |
| **Brief Description:** | **Kansas Historic Preservation Tax Credits - Not-for-Profit and Governmental Entities.** |
| **Keywords:** |  |
| **Approval Date:** | **09/27/2002** |

**Body:**

Office of Policy & Research

September 27, 2002

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Re: Ruling Request re the Kansas Historic Preservation Tax Credit—Not-for-Profit and Governmental Entities

Dear XXXX:

This letter is in response to your correspondence dated August 2, 2002, in which you ask whether the historic preservation tax credit under K.S.A. 79-32,211, as amended by 2002 Senate Bill 39, section 31, is available to not-for-profit corporations and governmental entities.

You note that the 2001 Legislature passed House Bill 2128, which created the historic preservation tax credit, and the subcommittee report to the House Tax Committee on that bill stated the following:

Unlike federal law, which generally allows historic preservation and restoration tax credits only for income-producing properties, the state credits authorized by HB 2128 also would be available to residential and other properties not producing income.

This same language is also contained in the Supplemental Note to that bill. You further point out that the statutory definition of “qualified historic structure” at subsection (b)(2) includes “any building, *whether or not income producing*, which is defined as a certified historic structure . . .” (italics added). You contend that in passing House Bill 2128, the 2001 Legislature intended to provide an incentive for preservation and rehabilitation of historic structures regardless of the tax status of the owner. Representative Becky Hutchins, who chaired the subcommittee on this bill, has indicated that the committee members discussed buildings such as historic theaters and old school buildings, as well as historic residences, in connection with this legislation.

The tax credits available under section 31 of 2002 Senate Bill 39 are based on a certain percentage of “qualified expenditures” made by a “qualified taxpayer.” See subsection (b)(1). “Qualified taxpayer” is statutorily defined at subsection (b)(4) as “*the owner of the qualified historic structure*or any other person who may qualify for the federal rehabilitation credit allowed by section 47 of the federal internal revenue code” (italics added). The federal credit is not available to a governmental unit or tax-exempt entity. It is also not available for restoration projects on residences. However, even if an entity does not qualify for the federal credit, it is not necessarily excluded from the Kansas statutory definition of “qualified taxpayer,” so long as the entity is the owner of a “qualified historic structure.”

The 2002 Legislature amended the historic preservation tax credit statute to make the credit transferable by “any person,” pursuant to subsection (c) of section 31, Senate Bill 39. Were the credits nontransferable, they would be of no use to a governmental or non-profit entity owning a “qualified historic structure” and considering a restoration project on that structure.

Given the legislative history, the broad statutory definitions for “qualified historic structure” and “qualified taxpayer,” and given the credit transferability feature, it is the opinion of the Department that the Kansas historic preservation tax credit is available to owners of “qualified historic structures,” including individuals, not-for-profit corporations or governmental entities, so long as the other requirements within the historic preservation tax credit law are met.

Please let me know if you have further questions.

Very truly yours,

Richard L. Cram

**Date Composed: 10/04/2002 Date Modified: 10/04/2002**