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**OPINION COMMITTEE**

**TEXAS HISTORICAL COMMISSION**  
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August 30, 2013

FILE # ML-47381-13

I.D. # 47381

The Honorable Greg Abbott  
Attorney General of Texas  
Attention: Opinions Committee  
P.O. Box 12548  
Austin, Texas 78711

**RQ-1149-GA**

Dear General Abbott:

On behalf of the Texas Historical Commission, I ask for your official opinion concerning the implementation and interpretation of House Bill 500 passed by the 83<sup>rd</sup> Legislature, Regular Session. A section of the bill charges the Commission with the evaluation of properties that may qualify for a credit against the state franchise tax, and my questions concern that issue.

Section 14 of H.B. 500, which establishes a tax credit for the certified rehabilitation of certified historic structures, includes two dates for implementation. Section 14 (b) indicates that this section of the bill takes effect on January 1, 2015. Another part of this section of the bill enacts Texas Tax Code § 171.903(1), which provides that rehabilitated certified historic structures placed in service on or after September 1, 2013 are eligible for the tax credit. The Commission is authorized to issue certificates of eligibility upon determining the building and rehabilitation meet the requirements of the statute. Tex. Tax Code § 171.904(b).

Accordingly, I ask the following questions concerning the tax credit program:

1. Does the Texas Historical Commission have the authority to begin reviewing applications for the tax credit prior to January 1, 2015, the effective date of this section of the bill?
2. May the Commission issue certificates of eligibility prior to January 1, 2015?
3. Is denial of a certificate of eligibility subject to appeal, and if so, is this appeal a contested case under Tex. Gov't Code ch. 2001?
4. May property owners whose qualifying historic structures are placed in service between September 1, 2013 and January 1, 2015, claim the credit?
5. Would costs and expenses incurred by an owner prior to either September 1, 2013 or January 1, 2015 be eligible for the credit?
6. To what tax year may credits for periods prior to January 1, 2015 be applied, if any?

Section 171.908 of the Tax Code as adopted by the bill allows for unlimited sale or assignment of all or part of the credit. Part (d) of that section provides that "the entity that claims the credit must be subject to the tax imposed by this chapter." No other section of the bill specifies that the owner of the property must be an entity that is subject to the franchise tax. Accordingly, I ask the following additional question:

7. Is it necessary that the owner of the property be subject to the franchise tax, or may a homeowner, nonprofit corporation, or other non-taxable entity make use of the credit through its sale or assignment to a taxable entity?



Thank you for considering this request. With the new fiscal year upon us, property owners, developers, tax credit marketers and state legislators are calling our offices daily for guidance. Your assistance is very much appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Mark Wolfe". The signature is written in black ink and is positioned to the right of the typed name and title.

Mark Wolfe  
Executive Director

CC: Matt Kreisle, Chairman, Texas Historical Commission  
Joe Thrash, Assistant Attorney General, Administrative Law Division