

**FINAL PRIVATE LETTER RULING**

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24-001

[THE REQUEST LETTER HAS BEEN REMOVED]

**RESPONSE LETTER**

June 27, 2024

NAME-1, Technical Preservation Manager

COMPANY-1

EMAIL-1

NAME-2

EMAIL-2

NAME-3

EMAIL-3

Dear NAME-1, NAME-2, and NAME-3:

This letter is in response to your request for a private letter ruling concerning the “residential” requirement of Utah’s Historic Preservation Tax Credit (“Credit”). NAME-1 stated the following in your request letter:

I have a potential applicant requesting information on whether or not their project would meet this program's "residential" requirement. The address is ADDRESS-1. They are using part of the property for offices and part of it for short-term rentals. Would the short-term rental portion of the house be considered "residential"?

NAME-2 and NAME-3, you agreed to join as requesting parties for NAME-1’s request letter. This private letter ruling concludes that the short-term rental portion would not be considered “residential.”<sup>1</sup>

**I. Applicable Law**

Utah Code Ann. § 59-7-609 and § 59-10-1006 contain the Credit. For corporate franchise and income tax purposes, § 59-7-609(1)(a) states the following:

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<sup>1</sup> You did not ask about the part of the building used for offices. That part of the building would not have residential use, so it would not qualify for the Credit.

For tax years beginning January 1, 1993, and thereafter, there is allowed to a taxpayer subject to Section 59-7-104, as a credit against the tax due, an amount equal to 20% of qualified rehabilitation expenditures, costing more than \$10,000, incurred in connection with any **residential** certified historic building. When qualifying expenditures of more than \$10,000 are incurred, the credit allowed by this section shall apply to the full amount of expenditures.

(Emphasis added.) For individual income tax purposes, § 59-10-1006(1)(a) states the following:

For tax years beginning January 1, 1993, and thereafter, there is allowed to a claimant, estate, or trust, as a nonrefundable tax credit against the income tax due, an amount equal to 20% of qualified rehabilitation expenditures, costing more than \$10,000, incurred in connection with any **residential** certified historic building. When qualifying expenditures of more than \$10,000 are incurred, the tax credit allowed by this section shall apply to the full amount of expenditures.

(Emphasis added.)

Utah Code Ann. § 59-7-609(2)(c) and § 59-10-1006(2)(c) contain the following definition of “residential”:

"Residential" means a building used for residential use, either owner occupied or income producing.

The State Historic Preservation Office is involved in administering the Credit. In accordance with § 59-7-609(1)(b) and § 59-10-1006(1)(b), “[a]ll rehabilitation work to which the tax credit may be applied shall be approved by the State Historic Preservation Office prior to completion of the rehabilitation project . . .” In accordance with § 59-7-609(1)(d) and § 59-10-1006(1)(d), “[t]he commission, in consultation with the State Historic Preservation Office, shall promulgate rules to implement this section.”

The Commission has promulgated administrative rules concerning the term, “residential.” Utah Administrative Code R865-6F-26A.3. provides the following definition of “residential”:

“Residential” as used in Section 59-7-609 applies only to the use of the building after the project is completed.

Utah Administrative Code R865-9I-41(1)(c) states the following:

“Residential” as used in Section 59-10-1006 applies only to the use of the building after the project is completed.

The term “residential” is not further defined by the Utah Code or by the Utah Administrative Rules.

Utah Code Ann. § 59-1-1417(2) requires the Commission to construe a statute as follows:

Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:

- (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
- (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

## II. Analysis

As mentioned previously, you asked the following question: “Would the short-term rental portion of the house be considered ‘residential?’” This private letter ruling concludes that the short-term rental portion would not be considered “residential.” The analysis for this conclusion is provided below.

In accordance with § 59-7-609 and § 59-10-1006, the Credit is limited to "any **residential** certified historic building" (emphasis added). This private letter ruling only addresses the requirement that the residential certified historic building be "residential." Utah Code Ann. § 59-7-609(2)(c) and § 59-10-1006(2)(c) define "residential" as "a building used for **residential** use, either owner occupied or income producing" (emphasis added). Administrative rules R865-6F-26A.3. and R865-9I-41(1)(c) further define "residential" as "appl[ying] only to the use of the building after the project is completed." Thus, the definitions of "residential" found in the Utah Code and in the Utah Administrative Rules, considered alone, do not directly resolve the issue of whether the short-term rental portion of a house would be considered "residential."

The Commission has issued unrelated private letter rulings (“PLRs”) addressing the issue of whether certain certified historic buildings were “residential” for purposes of the Credit. For PLR 98-030, the building was to be used as a normal rental for about nine months of a year and as a weekly rental for about three months of a year. The Commission explained that a weekly rental was considered to be commercial in nature. The Commission concluded that the building did not meet the requirement of being “residential.” PLR 98-030 indicated that its analysis was based on Utah Supreme Court decisions about “residential” as used in other contexts; however, PLR 98-030 did not identify those decisions. For PLR 98-088, the building was not going to be used as a person’s personal residence. The Commission concluded that the building did not meet the requirement of being “residential” when the building would not be used as a person’s personal residence.

The short-term rental situation you presented is similar to the weekly rental situation presented in PLR 98-030. If the Commission follows PLR 98-030, the certified historic building used for a short-term rental would not be considered “residential.” Similar to the building referenced in PLR 98-088, the building would not be used as a person’s personal residence.

Before reaching its conclusion about “residential,” this private letter ruling considers dictionary definitions found in *Webster’s New Universal Unabridged Dictionary* (“*Webster’s*”)

and in *Black's Law Dictionary*.

*Webster's* defines "residential" as follows in part:

1. Of or pertaining to residence or to residences: *a residential requirement for a doctorate*. 2. Suited for or characterized by private residences: *a residential neighborhood* . . .

*Webster's New Universal Unabridged Dictionary*, 1638 (1st ed. 2003). *Webster's* defines "residence" as follows in part:

1. The place, esp., the house, in which a person lives or resides; dwelling place; home. Suited for or characterized by private residences: Their residence is in New York City. 2. A structure serving as a dwelling or home, esp. one of large proportion and superior quality: They have a summer residence in Connecticut. . . .

*Id.* *Webster's* defines "reside" as follows in part:

1. To dwell permanently or for a considerable time: *She resides at 15 Maple Street*. . . .

*Id.*

The above definitions from *Webster's* suggest that "residential" applies to a private dwelling or home in which a person lives or dwells permanently or for a considerable time. A short-term rental would not meet this definition.

*Black's Law Dictionary* defines "residence" as follows in part:

1. The act or fact of living in a given place for some time <a year's residence in New Jersey>. --Also termed *residency*. 2. The place where one actually lives, as distinguished from a domicile <she made her residence in Oregon>. • *Residence* usu. just means bodily presence as an inhabitant in a given place; domicile usu. requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously. . . . 3. A house or other fixed abode; a dwelling <a three-story residence>. . . .

*Black's Law Dictionary*, 1423 (9th ed. 2009). *Black's Law Dictionary* defines "residency" and "resident," as follows in part:

**residency**. (14c) 1. A place of residence, esp. an official one <the diplomat's residency>. 2. RESIDENCE (1) <one year's residency to be eligible for in-state tuition>.  
**resident**, *adj.* . . . 2. Dwelling in a place other than one's home on a long-term

basis <the hospital's resident patient>.

**resident**, *n.* (15c) 1. A person who lives in a particular place. 2. A person who has a home in a particular place. . . .

*Black's Law Dictionary*, 1424 (9th ed. 2009).<sup>2</sup>

The above definitions suggest that “residential” applies to a home or other place in which a person lives or dwells for some time or on a long-term basis. A short-term rental would not meet this definition.<sup>3</sup>

After considering prior PLR 98-030, PLR 98-088, and the above dictionary definitions, this private letter ruling concludes that the short-term rental portion of a house would not be considered “residential.” This conclusion is consistent with § 59-1-1417(2)(b)'s requirement for the Commission to "construe a statute providing [a] credit against the tax, fee, or charge strictly against the taxpayer."

### III. Conclusion

As stated previously, this private letter ruling concludes that the short-term rental portion of a house would not be considered “residential.”

The Tax Commission's conclusions are based on the facts as you described them and the Utah law currently in effect. Should the facts be different or if the law were to change, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, please feel free to contact the Commission.

Additionally, you may also appeal the private letter ruling in the following two ways.

First, you may file a petition for declaratory order, which would serve to challenge the Commission's interpretation of statutory language or authority under a statute. This petition must be in written form, and submitted within thirty (30) days after the date of this private letter ruling. You may submit your petition by any of the means given below. **Failure to submit your**

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<sup>2</sup> *Black's Law Dictionary* does not define “residential” alone. *Black's Law Dictionary*, 1424 (9th ed. 2009). *Black's Law Dictionary* defines “residential” in other contexts: e.g. “residential care,” “residential cluster,” “residential community treatment center,” etc. *Id.* *Black's Law Dictionary* does not define “reside.” *Id.* at 1423.

<sup>3</sup> In the context of the Utah Sales and Use Tax Act, the Utah Legislature defined "short-term rental" in Utah Code Ann. § 59-12-102(131) as follows:

As used in this chapter:

- .....
- (131) (a) "Short-term rental" means a lease or rental for less than 30 consecutive days.  
(b) "Short-term rental" does not include car sharing.
- .....

**petition within the 30-day time frame could forfeit your appeal rights and will be deemed a failure to exhaust your administrative remedies.** Declaratory orders are discussed in Utah Administrative Code R861-1A-34 C.2. and in Utah Administrative Code R861-1A-31. The Utah Administrative Code is currently available at <https://adminrules.utah.gov>.

Second, you may file a petition for redetermination of agency action if your private letter ruling leads to an audit assessment, a denial of a claim, or some other agency action at a division level. This petition must be written and may use form TC-738, available online at <http://tax.utah.gov/forms/current/tc-738.pdf>. Your petition must be submitted by any of the means given below, within thirty (30) days, generally, of the date of the notice of agency action that describes the agency action you are challenging.

You may access general information about Tax Commission Appeals online at <http://tax.utah.gov/commission-office/appeals>. You may file an appeal through any of the means provided below:

- **Best way**—by email: [taxappeals@utah.gov](mailto:taxappeals@utah.gov)
- By mail: Tax Appeals  
USTC  
210 North 1950 West  
Salt Lake City, UT 84134
- By fax: 801-297-3919

For the Commission,

Jennifer N. Fresques  
Commissioner

JNF/aln  
24-001