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Notice 2020-58

I. PURPOSE

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic. The emergency declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).” Section III of this notice describes the relief provided pursuant to § 7508A(a) of the Internal Revenue Code (Code) for certain requirements of the rehabilitation credit under § 47 of the Code.

II. BACKGROUND

Section 38(b)(1) of the Code provides that the current year general business credit includes the investment credit determined under § 46 of the Code. The investment credit under § 46 includes the rehabilitation credit under § 47.

On December 22, 2017, former § 47 was amended by section 13402 of Public Law No. 115-97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Prior to the TCJA, former § 47(a) provided for the purposes of § 46 a two-tier credit for qualified rehabilitation expenditures (QREs) incurred in connection with the

rehabilitation of a qualified rehabilitated building (QRB). Former § 47(a)(2) allowed a 20-percent credit for QREs with respect to a certified historic structure, and former § 47(a)(1) allowed a 10-percent credit for QREs with respect to a QRB other than a certified historic structure (for certain buildings first placed in service before 1936 (pre-1936 buildings)). Under former § 47, both the 20-percent and 10-percent credits were fully allowed in the taxable year the QRB was placed in service.

Section 13402(a) of the TCJA repealed the 10-percent credit for pre-1936 buildings and modified the rules for claiming the 20-percent credit for certified historic structures. Section 13402(b) of the TCJA amended § 47(c), in part, by redesignating former § 47(c)(1)(C) and (D) as § 47(c)(1)(B) and (C). Section 13402(c)(1) of the TCJA provides that the amendments made by section 13402(a) and (b) are generally applicable to QRE amounts paid or incurred after December 31, 2017, subject to a statutory transition rule provided in section 13402(c)(2) of the TCJA (TCJA transition rule).

Section 47(a)(1) provides for the purposes of § 46, for any taxable year during the 5-year period beginning in the taxable year in which a QRB is placed in service, the rehabilitation credit for such year is an amount equal to the ratable share for such year.

Section 47(a)(2) defines the ratable share for any taxable year during the 5-year period described in § 47(a)(1) as an amount equal to 20 percent of the QREs with respect to the QRB, as allocated ratably to each year during the 5-year period.

Section 47(b) provides that QREs with respect to any QRB are taken into account for the taxable year in which the QRB is placed in service.

Under § 47(c)(1)(A)(i), a QRB must be a building that has been substantially rehabilitated. Under § 47(c)(1)(B)(i), a building is treated as substantially rehabilitated only if the QREs during the 24-month period selected by the taxpayer ending with or within the taxable year exceed the greater of the taxpayer's adjusted basis in the building (and its structural components) or \$5,000. For certain rehabilitations expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins as described in § 47(c)(1)(B)(ii) (phased rehabilitation), the taxpayer selects a 60-month period rather than a 24-month period.

Section 1.48-12(b)(2)(i) of the Income Tax Regulations defines “substantial rehabilitation test” and provides that a building is treated as having been substantially rehabilitated for a taxable year only if the QREs incurred during any 24-month period selected by the taxpayer ending with or within the taxable year exceed the greater of (A) the adjusted basis of the building (and its structural components), or (B) \$5,000. Section 1.48-12(b)(2)(v) describes special rules for phased rehabilitation and provides that § 1.48-12(b)(2)(i) is applied by substituting “60-month period” for “24-month period.”

The TCJA transition rule provides that in the case of QREs (for either a certified historic structure eligible for a 20-percent credit or a pre-1936 building eligible for a 10-percent credit prior to December 31, 2017), with respect to any building owned or leased by the taxpayer at all times on and after January 1, 2018, the 24-month period selected by the taxpayer under § 47(c)(1)(B)(i), or the 60-month period selected by the taxpayer under the rule for phased rehabilitation under § 47(c)(1)(B)(ii), is to begin no later than the end of the 180-day period beginning on December 22, 2017, and the amendments made by section 13402 of the TCJA apply to such QREs paid or incurred

after the end of the taxable year in which such 24-month or 60-month period ends. For taxpayers selecting a 24-month period, the requirement to begin the period within 180 days from December 22, 2017, means that the latest day that such a 24-month period can end under the TCJA transition rule is June 20, 2020. For taxpayers permitted to select a 60-month period for phased rehabilitation, the requirement to begin the period within 180 days from December 22, 2017, means that the latest day that such a 60-month period can end under the TCJA transition rule is June 20, 2023.

Section 7508A provides the Secretary of the Treasury or his delegate (Secretary) with authority to postpone the time for performing certain acts under the internal revenue laws for a taxpayer determined by the Secretary to be affected by a Federally declared disaster as defined in § 165(i)(5)(A). Pursuant to § 7508A(a), a period of up to one year may be disregarded in determining whether the performance of certain acts is timely under the internal revenue laws.

On April 9, 2020, the Department of the Treasury and the Internal Revenue Service (IRS) issued Notice 2020-23, 2020-18 I.R.B. 742, which pursuant to § 7508A provided certain relief to affected taxpayers and postponed due dates until July 15, 2020, with respect to certain tax filings and payments, certain time-sensitive government actions, and all time-sensitive actions listed in Rev. Proc. 2018-58, 2018-50 I.R.B. 990 (Dec. 10, 2018), that were due to be performed on or after April 1, 2020, and before July 15, 2020. See Notice 2020-23 and Rev. Proc. 2018-58. Among the relief granted, Notice 2020-23 (referencing Rev. Proc. 2018-58) postponed until July 15, 2020, the time to perform certain time-sensitive actions for purposes of § 47 that were due to be performed on or after April 1, 2020, and before July 15, 2020, including the

time period for satisfying the substantial rehabilitation test described in former § 47(c)(1)(C) (redesignated as § 47(c)(1)(B) by the TCJA) and § 1.48-12(b)(2).

III. GRANT OF RELIEF UNDER SECTION 47 PURSUANT TO SECTION 7508A

The Secretary has determined that persons with deadlines under § 47 that are described in sections III.A and B of this notice are persons affected by the COVID-19 emergency for the purposes of the relief provided under § 7508A(a) as described in sections III.A and B of this notice.

A. MEASURING PERIOD UNDER THE SUBSTANTIAL REHABILITATION TEST

For purposes of §§ 47(c)(1)(B) and 1.48-12(b)(2), if the 24- or 60-month measuring period in which the requisite amount of QREs have to be paid or incurred in order to satisfy the substantial rehabilitation test for a building originally ends on or after April 1, 2020, and before March 31, 2021, the last day of the 24- or 60-month measuring period for a taxpayer to incur the requisite QREs with respect to the building is postponed to March 31, 2021. This means that a taxpayer may have a measuring period that is longer than 24 or 60 months.

B. DEADLINE FOR TCJA TRANSITION RULE

For purposes of taxpayers subject to the TCJA transition rule, if the 24- or 60-month measuring period in which the requisite amount of QREs have to be paid or incurred in order to satisfy the substantial rehabilitation test for a building originally ends on or after April 1, 2020, and before March 31, 2021, the last day of the 24- or 60-month measuring period for a taxpayer to pay or incur the requisite QREs with respect to the building is postponed to March 31, 2021. Thus, if the requisite QREs described in the preceding sentence are paid or incurred by March 31, 2021, the TCJA transition rule

allows the rules of former § 47 allowing the 10-percent and 20-percent credits in a single year to apply to QREs paid or incurred with respect to such building in the taxable year in which the 24- or 60-month measuring period (the last day of which is postponed by this notice) ends. In addition, the amendments made by section 13402(a) and (b) of the TCJA, under which only the 20-percent credit is allowed over five years, apply to QREs paid or incurred with respect to such building in succeeding taxable years.

C. OTHER REQUIREMENTS

Except as expressly provided in this notice, all other rules and requirements of § 47 continue to apply.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2020-23 is amplified.

V. DRAFTING INFORMATION

The principal authors of this notice are Barbara J. Campbell and Michael J. Torruella Costa, Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Barbara J. Campbell or Michael J. Torruella Costa at (202) 317-4137 (not a toll-free number).