



## DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

# HISTORIC PRESERVATION TAX CREDIT PROGRAM PROGRAM GUIDANCE

The Historic Preservation Tax Credit Program (Program) provides a State of Delaware income or franchise tax credit equal to a percentage of the costs of rehabilitation work on historic buildings. The Program is administered through the Division of Historical and Cultural Affairs (HCA), and it is the responsibility of Delaware's State Historic Preservation Officer (SHPO) to determine which buildings and structures qualify for the Program, if the rehabilitation work meets Program guidelines, and if other Program requirements have been met. Buildings and structures held for income and those which are owner-occupied are both eligible for the Program although the percentage at which the tax credit is calculated is higher for those in owner-occupied residential use. Multiple dwellings, such as cooperatives or condominiums, are able to apply for these tax incentives if all other Program requirements are met.

### **WHICH PROPERTIES QUALIFY FOR THE PROGRAM?**

A building must be a Delaware Certified Historic Property to qualify for the Program. Buildings which are individually listed in the National Register of Historic Places are automatically qualified. Other categories of buildings which may qualify are:

- those individually designated under a local historic ordinance as long as the SHPO determines that the property is eligible for listing in the National Register; or
- those certified as contributing to the significance of a National Register listed historic district; or
- those certified as contributing to the significance of a locally designated historic district as long as the SHPO determines that the district is eligible for listing in the National Register (Note: The local government must provide documentation similar to that which is included in a National Register nomination).

In order to establish whether a building or structure qualifies as a Certified Historic Property, the property owner submits a *State of Delaware, Historic Preservation Tax Credit Application, Part 1 – Certification of Historic Property* (Part 1). A decision regarding certification as a historic property is rendered by the SHPO in writing within thirty (30) days of receipt of an adequately documented Part 1.

### **DOES ALL REHABILITATION WORK QUALIFY FOR TAX CREDITS?**

To qualify to receive tax credits, a rehabilitation project must have been carried out after July 2000 and the work accomplished must be consistent with Program specified guidance. The rehabilitation work may involve exterior or interior rehabilitation, systems upgrades, additions, and site work. The rehabilitation work is described on the *State of Delaware, Historic Preservation Tax Credit Application, Part 2 - Certification of Rehabilitation* (Part 2). The Part 2 contains general information about the project as well as a description of each of the features which will be impacted by the project, their existing condition, and the nature of the work. Photographs of the areas to be rehabilitated taken prior to the initiation of project work must accompany the application. It is often helpful for applicants to discuss their projects with the HCA Tax Credit Program Coordinator (HCA Coordinator) prior to beginning project work, and it is sometimes necessary for the HCA Coordinator to make a site visit.

In order to receive a Certification of Rehabilitation, the work described in the Part 2 must be carried out in a manner consistent with the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Standards) (<http://www.nps.gov/hps/tps/tax/rehabstandards.htm>) developed by the National Park Service (NPS). NPS has also developed guidance to assist property owners in rehabilitating buildings in a manner consistent with these Standards. This is available online at: <http://www.nps.gov/history/hps/tps/tax/rhb/index.htm>. If the rehabilitation plan is found to be consistent with the Standards, the SHPO will issue a Certification of Rehabilitation. If the rehabilitation work is found to be inconsistent with the Standards, applicants are provided with an opportunity to bring it into compliance. Certain requirements or conditions may be placed on the approval of the Part 2, and documentation of satisfaction of these conditions must be provided when the project is completed. If the applicant, for financial reasons, wishes to divide the project into phases, the phases must be described as part of the Part 2 Application, and the phases and a completion date must be approved by the SHPO as part of the Certification of Rehabilitation. A determination regarding Certification of the Rehabilitation work is rendered by the SHPO in writing within thirty (30) days of receipt of an adequately documented Part 2. If, during the course of project work, changes to the approved rehabilitation plan are required, or if unforeseen rehabilitation issues arise, then the applicant should submit a Part 2 Amendment. Amendment forms and their accompanying documentation will be reviewed within thirty (30) days.

After completion of the project, or an approved phase of the project in accordance with documentation submitted with the Certification of Rehabilitation, the applicant must submit a *State of Delaware, Historic Preservation Tax Credit Application, Part 3 – Request for Certificate of Completion* (Part 3). Photographs of the areas rehabilitated during the project must accompany the Part 3. In addition, any conditions placed on the approval of the Part 2 or any amendments submitted during the course of the work must be addressed. If the rehabilitation work was completed in a manner consistent with the Secretary's Standards, the project is awarded a Certificate of Completion by the SHPO. If not, the project may be denied or remedial action may be required.

## HOW IS THE VALUE OF THE CREDIT AWARD CALCULATED?

The tax credits assigned to a certified rehabilitation are calculated as a percentage of the rehabilitation costs, as follows:

- 20% if the Certified Historic Property is depreciable, and therefore, also eligible for federal rehabilitation tax credits;
- 30% for an owner-occupied Certified Historic Property, and for Certified Historic Properties which are owned by non-profits or local governments. (To qualify as owner-occupied, the building must be the principal residence of the applicant either currently, or within six months of the completion of the project. An applicant may request a one-time three-month extension of this residency requirement.) There is a cap of \$20,000 for projects which are owner-occupied; however, such applicants may re-apply every twenty-four months.
- 30% for those portions of a depreciable Certified Historic Property which qualifies for low income tax credits. (Applicants must provide documentation of the square footage of the property which qualifies for the low income housing credits and the costs associated with rehabilitating this portion of the property.) There is a cap of \$20,000 for projects which are owner-occupied; however, such applicants may re-apply every twenty-four months.
- 40% for an owner-occupied Certified Historic Property where the resident owner meets the definition of a low income property owner in accordance with the definition below. (To qualify, the property owner's personal income must be shown to be below 60% of the median gross income of the county, adjusted for family size. The US Department of Housing and Urban Development (HUD) sets the median gross income levels of each county annually.)
- 100% for a Certified Historic Property in which a Resident Curator resides under a life tenancy agreement with the owner. There is a cap of \$5,000 per year for Resident Curator applicants. Resident Curators may re-apply yearly.

If tax credits are to be claimed for rehabilitating only a portion of a building, only those expenditures that are properly allocable to this portion may be included as part of the estimate and actual accounting of project expenditures. Similarly, for projects in which low income criteria applies to only a portion of the building, or in which an owner will occupy a portion of the building upon completion, the applicant must clearly indicate the amount of square footage in this use and the expenditures related to rehabilitating this portion of the building. This information must be provided in both the cost estimate and the final accounting. Some costs may need to be allocated on a percentage basis.

It is a requirement of the Program that project work is "substantially commenced" within one year of receiving a Credit Award. For purposes of this Program, "substantially commencing" the rehabilitation means that rehabilitation work accounting for a minimum of 25% of the estimate of "qualified" expenditures must be accomplished within one year. Progress on meeting this Program requirement is verified through site inspections and requests for written verification of expenditures. When a project has not been "substantially commenced" within one year, the applicant must update their *Part 2* in order to remain in compliance with Program requirements. If the revised *Part 2* is determined not to meet Program criteria, then the Credit Award will be withdrawn. A phased project is not subject to this requirement.

## ARE THERE RESTRICTIONS ON THE TYPE OF COSTS?

Rehabilitation costs which can be included in assigning a Credit Award under this Program are broad but there are certain restrictions. "Qualified" expenditures are defined as all those associated with the rehabilitation **EXCEPT**:

- acquisition of real property, or acquiring an interest in real property;
- any addition to an existing building or structure, except where the combined square footage of all additions is twenty percent (20%) or less than the total square footage of the historic portion of the Certified Historic Property and such addition has been determined by the SHPO in accordance with Federal guidelines as: (a) preserving the character-defining features of the Certified Historic Property, (b) adequately differentiating the new construction from the existing building, and (c) complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the Certified Historic Property;
- paving or landscaping costs which exceed ten percent (10%) of the total qualified expenditures;
- sales and marketing costs; and
- expenditures not properly charged to a capital account, including in the case of an owner-occupied property, expenditures that would not properly be charged to a capital account if the owner used such property as a trade or business.

The tax credits are calculated as a percentage of the "qualified" costs, rounded down to the nearest dollar.

In addition, the cost of the rehabilitation work must be considered "substantial." For owner-occupied residential properties, a substantial rehabilitation is one in which the rehabilitation's "qualified" expenditures exceed \$5,000. For all other properties, a substantial rehabilitation is one in which the "qualified" expenditures exceed the adjusted basis of the property or \$5,000, whichever is greater, within a 24-month period selected by the taxpayer ending with or within the taxable year. A taxpayer may request approval for phasing a project and may then take up to sixty (60) months to meet this test. All applicants must submit an estimate of "qualified" expenditures broken out into cost categories with a separate accounting of the estimated cost of site improvements, which has been prepared by or is verified by an architect, engineer, contractor, accountant, or certified construction cost estimator.

## HOW DOES AN APPLICANT APPLY FOR TAX CREDITS?

Each fiscal year, \$5 million in tax credits is set aside to assign to Program applicants whose projects meet Program guidelines. The SHPO allocates these tax credits in the form of a Credit Award. These Credit Awards can be assigned at any time after a project has received its Certification of Rehabilitation (*Part 2* approval). Monies not assigned as tax credits in a fiscal year do not carry over to the next fiscal year; however, if there are approved projects for which there were insufficient credits available to make a Credit Award, then these will be allocated out of the next fiscal year in the order in which they were approved. An applicant requests a Credit Award for their project by submitting a *Historic Preservation Tax Credit Application Request for Credit Award (Request for Credit Award)*. It must be accompanied by either an estimate of the project costs which has been prepared by an architect, engineer, contractor, or accountant, OR with the final invoices or receipts for the project work. If estimates are submitted, a final cost accounting will be required when the project is completed. If invoices/receipts are submitted as documentation of cost, the copies submitted should be one invoice/receipt to a page arranged in date order. If the Credit Award is based on estimated costs and the actual costs are less than the estimate, then the assigned tax credits will be adjusted to be a percentage of the final costs. Requests for an increased Credit Award are evaluated on a case-by-case basis. Assignment of the tax credits is finalized by the Delaware Division of Revenue (for income tax credits) and the Office of the State Bank Commissioner (for franchise tax credits). Revenue's *Computation Schedule for Claiming Delaware Historic Preservation Tax Credits* ([http://revenue.delaware.gov/services/Business\\_Tax/Forms\\_New.shtml#bustxcr](http://revenue.delaware.gov/services/Business_Tax/Forms_New.shtml#bustxcr)) (1811AC 0905) must accompany the *Part 3* submittal.

## WHO MAY CLAIM THE CREDITS?

Any taxpayer who has Title 30 Delaware income tax liability or Title 5 Delaware franchise tax liability may claim these tax credits. Such taxpayers may be:

- any individual, either resident or non-resident; or
- any form of company or corporation, including limited liability companies and S corporations, or partnerships which are lawful within the State of Delaware,<sup>1</sup> or
- any estate or trust, or any lawful joint venture; or
- any of the above under a lease contract for five (5) years or longer; or
- a Resident Curator having life tenancy in a residential property within the first 5 years of their agreement with the owner.

<sup>1</sup> Pass-through entities created or recognized under Delaware law, or a partnership, or multiple owners of the property may divide the Credits among the partners, members, shareholders, or owners either according to the distributive shares of income of such entity or in accordance with an executed agreement if such agreement documents an alternate method of distribution.

An applicant may also transfer or sell tax credits for which they have received a Credit Award to any taxpayer who meets the above criteria. Therefore, it is possible for property owners without tax liability, such as non-profits or local governments, to take advantage of the Program. This transfer may take place when the tax credits are first awarded, or may take place at any time during the ten (10) year period the applicant has to claim the tax credits. The applicant may transfer the tax credits in whole or in part. The transfer requires that the applicant submit Revenue's *Certification of Unused Delaware Historic Preservation Tax Credits* ([http://revenue.delaware.gov/services/Business\\_Tax/Forms\\_New.shtml#bustxcr](http://revenue.delaware.gov/services/Business_Tax/Forms_New.shtml#bustxcr)) (1811CC 0701). The re-assignment of the tax credits is then recorded and the transferee may claim the tax credits. Both the applicant and any transferee should retain copies of all signed applications and Revenue forms.

## WHEN MAY THE TAX CREDITS BE CLAIMED?

The tax credits may be claimed no sooner than the tax year that contains the day one year after the approval of the Certification of Rehabilitation (*Part 2* approval). Delaware Income Tax Credit Schedule (Form 700), Part B Historic Preservation Credits, (<http://revenue.delaware.gov/services/Developer/99/700.pdf>) is used when making claims against Title 30 income tax liability. For projects claiming the tax credits against Title 5 franchise tax liability, the taxpayer should consult directly with the Office of the State Bank Commissioner. Tax credits for projects with approved phases, and therefore, more than one Certificate of Completion, are subject to revocations and repayment to the Division of Revenue or the Office of the State Bank Commissioner, if the project is not completed by the date agreed upon when the Certification of Rehabilitation was issued or in a subsequent approved written request, or in the event that any phase does not meet the requirements needed to receive a Certificate of Completion.

## IS THERE A FEE?

Where the "qualified" expenditures of the rehabilitation exceed \$100,000, a review fee of \$250 paid by check to the State of Delaware is to be submitted with the *Part 3*, or in the case of a phased project, with the initial *Part 3*. Applicants submitting *Part 3s* for multiple projects simultaneously will be charged a review fee of not more than \$2,500. A review fee is not required if the "qualified" expenditures of the rehabilitation are under \$100,000. Fees charged under this Program are for the processing of State of Delaware applications only. Assistance is provided to applicants for federal tax incentives without charge.

## **CAN DECISIONS BE APPEALED?**

If an applicant is aggrieved by any formal decision made by the SHPO under this Program, they are entitled to appeal this decision to the Delaware Secretary of State or the Secretary's designee. An appeal must be filed with the Secretary of State within sixty (60) calendar days from the issuance of the non-certification decision. Within sixty (60) days of receipt, the Secretary of State or their designee will notify the appellant if they will uphold the non-certification decision of the SHPO. Where an appellant has exhausted all administrative remedies, they are entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act (29 **Del C.** §10142).

In cases where a taxpayer is aggrieved by an income tax decision, the taxpayer is entitled to pursue an appeal following the administrative procedures of the Department of Finance as set forth in Title 30 or in regulations promulgated in accordance with this Title. In the case of banks, the taxpayer is entitled to pursue an appeal following the administrative procedures of the State Bank Commissioner as set forth in Title 5 or in regulations promulgated in accordance with this Title. Where an appellant has exhausted all administrative remedies, such appellant is entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act (29 **Del C.** §10142).

## **WHAT IS THE PROCESS FOR FILING BOTH FEDERAL AND STATE REHABILITATION TAX APPLICATIONS?**

For properties where a Federal Historic Preservation Certification Application is submitted for the same property, prior to, or at the same time as, the *State of Delaware, Historic Preservation Tax Credit Application*, the cover page only of the *Part 1*, if required, and the *Part 2* should be submitted. A *Request for Credit Award* must be submitted by all applicants. When the project is complete, the applicant must submit *Part 3* and Revenue 1811AC 0905, as well as Revenue 1811CC 0701, if transferring the tax credits.

## **WHERE CAN FURTHER INFORMATION BE OBTAINED?**

Further guidance and information on the Program is available by contacting Joan Larrivee, State Tax Credit Program, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901, 302-736-7400 ([joan.larrivee@state.de.us](mailto:joan.larrivee@state.de.us)). Application forms and guidance as well as copies of the Secretary of the Interior's Standards are provided at no cost to the applicant. This guidance and copies of the applications is also available on the web in various formats at: <http://history.delaware.gov/preservation/taxcredit.shtml>. The Secretary of the Interior's Standards and Guidelines can be accessed on the web at: <http://www.nps.gov/hps/tps/tax/rhb/index.htm>, as can other guidance on interpreting the Standards including a series of Preservation Briefs which address various topics to guide applicants in appropriate rehabilitation of their historic properties. This material was developed by the National Park Service and can be accessed through their web site at: <http://www.nps.gov/hps/tps/index.htm>.

The contact for this Program in the Delaware Division of Revenue is Stephen Seidel, Business Audit Bureau Manager, Division of Revenue, Carvel State Office Building, 8<sup>th</sup> Floor, 820 N. French Street, Wilmington, DE 19801, 302-577-8445 ([stephen.seidel@state.de.us](mailto:stephen.seidel@state.de.us)). The Revenue forms associated with this Program can be found on the Division of Revenue's web page titled: Services for the Business Taxpayer, and in the category Business Tax Forms (<http://revenue.delaware.gov/services/BusServices.shtml>).

The contact for this Program in the Office of the State Bank Commissioner is Kevin Urso, Deputy Bank Commissioner, Intergovernmental Affairs, Office of the State Bank Commissioner, 555 E. Lockerman Street, Suite 210, Dover, DE 19901, 302-739-4235 ([kevin.urso@state.de.us](mailto:kevin.urso@state.de.us)). Bank transferees should be in contact with this agency to discuss claiming their tax credits.

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Regulations of the U.S. Department of the Interior and the State of Delaware strictly prohibit unlawful discrimination in assisted programs on the basis of race, color, national origin, age, or handicap. Any person who believes that they have been discriminated against in any program or activity should write to: Office of Equal Opportunity, National Park Service, 1849 C Street, NW, Washington, DC 20240, or the Office of Equal Opportunity, Department of State, Townsend Building, Dover, DE 19901.