



**DELAWARE DEPARTMENT OF STATE
STATE HISTORIC PRESERVATION OFFICE**

**HISTORIC RESERVATION TAX CREDIT PROGRAM
PROGRAM GUIDANCE**

In 2001, the General Assembly enacted the Delaware Historic Preservation Tax Act to assist the private sector in preserving Delaware's historic buildings and structures. In its Statement of Purpose, the Act declared that "many properties and structures associated with Delaware's history, and in some cases the history of our nation, have been steadily disappearing. . . . once gone, they are gone forever, and can never be replaced. . . . the private sector is uniquely able to be a major factor in the preservation of many of Delaware's historic structures." The Historic Preservation Tax Credit Program (Program) assists taxpayers by offering a tax credit for the rehabilitation of historic buildings and structures which meet Program requirements. It has been authorized at \$30 million over a ten (10) year period.

More specifically, the Program offers a tax credit equal to a certain percentage of the rehabilitation costs for Certified Rehabilitation of a Certified Historic Property. The Program is administered through the Delaware State Historic Preservation Office (DE SHPO), 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 the Standards established under the Program, if the rehabilitation work was carried out in accordance with the plan, and if other Program requirements have been met. While the SHPO established the amount of the Credits based on review of an estimate of the projects "qualified" costs, the Division of Revenue must approve this computation of the Credits after the rehabilitation work is complete and costs are finalized. The Division of Revenue also monitors the Credits as they are applied against income tax liability in accordance with Title 30 income taxes. Because the law also allows a bank to apply the Credits against their Title 5 franchise tax liability, holders of Credits may consider negotiating for a discounted mortgage rate, a reduction in closing costs, or some other economic benefit in exchange for assignment of the Credits to a bank. Credits may also be transferred, sold, or assigned.

For further guidance and information on the Program contact: State Tax Credit Program Manager, Delaware State Historic Preservation Office, 21 The Green, Suite A, Dover, DE 19901, 302-739-5685, fax 302-739-5660, (www.state.de.us/shpo).

For further guidance and information on the tax aspects of this Program, contact: Business Audit Bureau Manager, Division of Revenue, Carvel State Office Building, 8th Floor, 820 N. French Street, Wilmington, DE 19801, 302-577-8445; fax 302-577-8662, (www.state.de.us/revenue).

For further guidance and information on the assignment of Historic Preservation Tax Credits to banks, contact: Deputy Bank Commissioner, Intergovernmental Affairs, Office of the State Bank Commissioner, 555 E. Lookerman Street, Suite 210, Dover, DE 19901, 302-739-4235; fax 302-739-3609, (www.state.de.us/bank).

WHO MAY CLAIM THE CREDITS?

As long as a taxpayer has Delaware tax liability, and if other Program requirements are met, Historic Preservation Tax Credits (Credits) may be claimed by:

- 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,¹ 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.

¹ 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.

Because the Program allows for Credits to be transferred, sold, or assigned, it is possible for property owners without tax liability, such as non-profits or local governments, to take advantage of the Program by fulfilling all Program requirements and then sell or assign the Credits they have received to a taxpayer who has Title 30 income tax liability, or to a bank to be applied against their Title 5 franchise tax liability. Any holder of Credits may sell or assign their Credits initially, or may transfer or sell unused portions of their Credits if they have insufficient tax liability to use all of their assigned Credits within a period not to exceed ten (10) years from the first year claimed. In the latter case, in order to verify the amount of Credits that may be transferred or sold, taxpayers must submit a *Certification of Unused Delaware Historic Preservation Tax Credits* (Form 1811CC 0701) to the Division of Revenue (http://www.state.de.us/revenue/services/common_used_forms/bus_tax_credits/form1811cc.pdf).

WHICH PROPERTIES QUALIFY FOR TAX CREDITS?

Certification as Historic Property - A Delaware building or structure qualifies as a Certified Historic Property if it is:

- individually listed in the National Register of Historic Places; or
- individually designated as an historic property under local ordinance and certified by the SHPO as meeting the criteria for inclusion in the National Register of Historic Places; or
- located in a National Register listed historic district and certified as contributing to the district's historic significance; or
- located in an historic district designated under a local ordinance and certified by the SHPO as contributing to the historic significance of the district which the SHPO has determined meets the criteria for inclusion in the National Register of Historic Places.

In order to establish whether a building or structure qualifies as a Certified Historic Property, the property owner submits to the SHPO a *State of Delaware, Historic Preservation Tax Credit Application, Part 1 – Certification of Historic Property* (Part 1 Application). Delaware properties individually listed in the National Register of Historic Places have already been determined to be Certified Historic Properties; therefore, a Part 1 Application submission is not required. For properties where a Federal Historic Preservation Certification Application, Part 1 – Evaluation of Significance is submitted for the same property, prior to, or at the same time as, the Delaware Part 1 Application, only the cover page of Delaware's Part 1 Application is submitted. Under Delaware's Program, there are no restrictions on a property's use after rehabilitation which would preclude claiming the Credit. Buildings and structures held for income and those which are owner-occupied are both eligible for the Program although the rate of the Credit is higher for those in owner-occupied residential use. Multiple dwelling or multiple-purpose buildings, or a series of buildings, including a cooperative or condominium may qualify under this Program as long as all other Program requirements are met. A determination regarding Certification as an Historic Property is rendered by the SHPO in writing within thirty (30) days of receipt of an adequately documented Part 1 Application.

HOW DOES A REHABILITATION PROJECT QUALIFY FOR TAX CREDITS?

A rehabilitation project qualifies for tax credits if the work is carried out on a building or structure which has been determined to be a Certified Historic Property; if it is rehabilitated in accordance with Program specified guidance; if the costs of the rehabilitation work meet the Program's definition of being "substantial" and "qualified;" and if the project work is "substantially commenced" within one year of receiving a Certification of Rehabilitation from the SHPO.

Certification of Rehabilitation – In order to determine if the rehabilitation work meets Program guidance, the work must be described in a *State of Delaware, Historic Preservation Tax Credit Application, Part 2 - Certification of Rehabilitation* (Part 2 Application). The Part 2 Application 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. For properties where a Federal Historic Preservation Certification Application, Part 2 – Certification of Rehabilitation is submitted for the same property, prior to, or at the same time as, the Delaware Part 2 Application, only the cover page of Delaware's Part 2 Application is submitted. In order to receive a Certification of Rehabilitation, the work described in the Part 2 Application must be consistent with the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Standards and Guidelines) (<http://www.cr.nps.gov/hps/tps/tax/rehabstandards.htm>) as well as any other guidance developed by the DE SHPO or the National Park Service in interpretation of these Standards such as that found on the web at: <http://www.cr.nps.gov/hps/tps/care/sitemap.htm>. If, after review of the Part 2 Application including a field inspection, the rehabilitation work is found to be consistent with the Standards and Guidelines, the SHPO will issue a Certification of Rehabilitation. If the rehabilitation work is found to be inconsistent with the Standards and Guidelines, the applicant is provided with an opportunity to revise the project. Although it is not required that the Part 2 Application are submitted prior to the start of construction, it is recommended; and applicants who proceed with project work prior to submission of the Part 2 Application do so at their own risk. 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. Certain requirements or conditions may be placed on the project as part of the Certification of Rehabilitation, and documentation of satisfaction of these conditions must be provided when the project, or an approved phase, is completed. A determination regarding Certification of Rehabilitation is rendered by the SHPO in writing within thirty (30) days of receipt of an adequately documented Part 2 Application.

Substantial Rehabilitation and "Qualified" Expenditures - In addition to the requirement that the rehabilitation work is consistent with the Standards, the costs 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 a licensed architect, engineer, or contractor, or a certified construction cost estimator.

“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 where the owner used such property as a trade or business.

Project Work Schedule - It is a requirement of the Program that project work is “substantially commenced” within one year of receiving a Certification of Rehabilitation. 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. Where it is determined that the project has not been “substantially commenced” within the required time frame, the SHPO will send a letter indicating that the project has forfeited its Credits. A new Part 2 Application for the project may be submitted but a subsequent award of Credits will be made only if the Part 2 Application is determined to meet Program criteria and there are funds available to assign Credits to the project. A phased project is not subject to this requirement.

HOW IS THE VALUE OF THE CREDIT AWARD CALCULATED?

Under this Program, the Credits are calculated as a percentage of the “qualified” expenditures of the rehabilitation, as follows:

- 20% for a Certified Historic Property eligible for a rehabilitation tax credit under § 47 of the Internal Revenue Code
- 30% for a Certified Historic Property eligible for a rehabilitation tax credit under § 47 of the IRC, for those portions of the square footage which are eligible for low income tax credits under § 42 of the IRC¹
- 30% for a Certified Historic Property not eligible for a rehabilitation tax credit under §47 of the Internal Revenue Code
- 40% for a Certified Historic Property not eligible for a rehabilitation tax credit under §47 of the Internal Revenue Code in which is resident owner meets the definition of a low income property owner in accordance with the definition below²
- 100% for a Certified Historic Property in which a Resident Curator resides under a life tenancy agreement with the owner

¹ In order to qualify for this increased percentage, applicants must provide evidence that they qualify for low income housing credits. Their documentation must include 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. The Credit Award on these costs will be calculated using the increased percentage of 30% while the Credit Award on all other qualified costs will be calculated at 20%.

² For owner-occupied residential property, the property owner must provide an income statement which shows that their personal income is 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. The information is available at: www.huduser.org/datasets/il.html or by contacting the Delaware State Housing Authority at 302-739-4263.

Owner-occupied residences fall into the category of those which do not qualify for a Federal Rehabilitation Tax Credit under §47 of the Internal Revenue Code. Under Delaware’s Program, owner-occupied residences are defined as a house which is owned by the person who is claiming the Credit, and is in use, or within a “reasonable time” will be in use, as their primary residence. The SHPO has determined that an owner must occupy a residential property within six (6) months of the date on which a Certificate of Completion is issued in order to meet the requirement of occupancy within a “reasonable time.” Upon written request, the SHPO may offer a one-time extension of this residency requirement, not to exceed three months, for cause. Owner-occupied residential properties may not receive Credits in excess of \$20,000 for any one Part 2 Application. Subsequent Part 2 Applications may be submitted as long as there is at least twenty-four (24) months between each Certification of Rehabilitation.

If Credits are to be claimed on only a portion of the building, only those “qualified” 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 “qualified” 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.

HOW ARE THE CREDITS AWARDED?

Credit Award - Each State fiscal year, beginning July 1, 2000 and ending July 1, 2009, \$3 million is made available to the SHPO to assign as Credit Awards for rehabilitation projects which meet the Program guidelines and to which the SHPO has awarded a Certification of Rehabilitation. Once all available funds for Credit Awards have been assigned, the SHPO will not assign any additional Credit Awards until July 1 of the next fiscal year. At the beginning of each fiscal year, priority is given to the project for which there were insufficient funds remaining from the previous year to fully assign all of its Credits and then to any other projects in the order in which they receive their Certification of Rehabilitation. Any unused funds will be carried over into the next fiscal year and assigned first. Any Credits forfeited due to non-compliance with Program requirements will be re-assigned to eligible projects. The Credit Award for a project is calculated based on information provided by the applicant in their estimate of “qualified” expenditures and in the *Historic Preservation Tax Credit Application Request for Credit Award* which must be submitted with the Part 2 Application. All Credit Awards will be rounded to the nearest \$100 after the percentage of estimated “qualified” expenditures which meet Program requirements is calculated. The Credit Award equals the maximum amount of Credits which may be claimed for the project as long as the actual “qualified” expenditures for the project meets or exceeds the estimate provided with the Part 2 Application. If actual “qualified” expenditures are less than estimated on the Request for Credit Award, the Credits awarded will reflect this. Credits will not be assigned by the Division of Revenue until the SHPO awards a Certificate of Completion to the project or to an approved phase of the project in accordance with documentation submitted prior to the Certification of Rehabilitation. **In no case will the Credits assigned to a project by the Division of Revenue exceed the amount of the Credit Award.** It is important for holders of Credits to provide copies of all three Certification documents and the executed Revenue forms to any taxpayer to whom the Credits are to be transferred, sold or assigned.

HOW ARE THE CREDITS CLAIMED?

Certificate of Completion - After completion of the project or an approved phase of the project in accordance with documentation submitted prior to 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 Application). After review, the SHPO determines if the project work described in the Part 3 Application was carried out in accordance with the plan described in the Part 2 Application or any amendments to the Part 2 Application, and if conditions contained in the Certification of Rehabilitation were addressed. A site inspection may be required. If the Program criteria have been met and the project work was completed in a manner consistent with the Secretary’s Standards, the project is awarded a Certificate of Completion by the SHPO. A Certificate of Completion is required in order to convert the project’s Credit Award to Credits.

Review of Project Costs - A Division of Revenue *Computation Schedule for Claiming Delaware Historic Preservation Tax Credits (Form 1811AC 0702)* (http://www.state.de.us/revenue/services/common_used_forms/bus_tax_credits/1811AC.pdf) and an accounting of the actual “qualified” expenditures for the project must be submitted to the DE SHPO with the Part 3 Application. Once the SHPO determines that a Certificate of Completion can be issued for the project, Form 1811AC 0702 is sent to the Division of Revenue who will verify that all expenditures are “qualified” to be included in the final calculation of the Credits. As part of their review, the Division of Revenue may ask applicants to provide further information on project costs. After computing the Credits a project will receive, the Division of Revenue will return Form 1811 AC 0702 to the SHPO to be forwarded to the applicant with the Certificate of Completion for the project or the approved phase. A taxpayer must have received these two documents and one year must have elapsed since the approval of the Part 2 Application in order for Credits to be claimed on a tax return. In order to claim Credits against Title 30 income tax liability, Delaware Income Tax Credit Schedule (Form 700), Part B Historic Preservation Credits, (http://www.state.de.us/revenue/services/Business_Tax/taxforms/02/Form700.PDF) must be completed. For projects with approved phases, and therefore, more than one Certificate of Completion, Credits issued to the initial assignee or to the first taxable transferee for each phase 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. Questions on the topic of “qualified” expenditures should be addressed to the Division of Revenue.

ARE THERE FEES?

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 Application, or in the case of a phased project, with the initial Part 3 Application.¹ A review fee is not required if the “qualified” expenditures of the rehabilitation are under \$100,000. An applicant who is submitting Part 3 Applications for multiple projects at the same time, will be charged a review fee for no more than ten (10) of the Part 3 Applications for a total fee of \$2,500. For phased projects, the fee must be submitted with the initial Part 3 Application.

¹ Fees charged under this Program are for the processing of State of Delaware applications only. The DE SHPO provides assistance to the applicants for federal tax incentives by reviewing and commenting on applications 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).

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Instructions for completion of all parts of the Application as well as the Application forms themselves are available from the DE SHPO at 21 The Green, Suite A. Dover, DE 19901, 302-739-5685. The DE SHPO will also provide at no cost copies of the Standards and Guidelines and other guidance on interpreting the Standards. Many of these publications are also available on the World Wide Web including the Historic Preservation Tax Credit Application Instructions and the Application Forms (in .PDF, Word, and rich text formats) (<http://www.state.de.us/shpo/services/TaxCreditProgram.shtml>); the Secretary of the Interior's Standards and Guidelines (<http://www.cr.nps.gov/hps/tps/tax/rhb/index.htm>); as well as other guidance including a series of Preservation Briefs (<http://www.cr.nps.gov/hps/tps/index.htm>). Specific topics covered in the Preservation Briefs are:

Accessibility	Log Buildings
Additions	Masonry, Cleaning
Adobe	Masonry, Re-pointing
Barns	Materials, Substitute
Cast Iron	Moisture Control
Cast Stone	Mothballing Buildings
Character, Architectural	Ornament, Composition
Cleaning, Dangers of	Paint (Exterior, Lead-based)
Concrete	Plaster (Flat, walls and ceilings; Ornamental)
Cooling	Roofing (Clay Tile; Slate; Wood shingle)
Energy, Conserving	Siding, Aluminum and Vinyl
Floors	Seismic Retrofit
Glass (Stained and Leaded; Pigmented Structural)	Signs
Graffiti, Removal	Stucco
Heating	Tiles
Interiors (Composite ornament; Painting)	Terra-Cotta
Investigation	Ventilating
Landscapes, Cultural	Windows (Historic Wooden; Historic Steel)

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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.