
DEPARTMENT OF STATE
DELAWARE ADMINISTRATIVE CODE

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DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS
900 Division of Historical and Cultural Affairs

901 Historic Preservation Tax Credit Program

1.0 Scope

With permission of the property owner, a person or business entity who rehabilitates a certified historic property may apply for a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner. A person eligible for tax credits under this Chapter, except a person engaged in a resident curator relationship, may transfer, sell or assign a portion or all unused credits.

6 DE Reg. 108 (07/01/02)

8 DE Reg. 1031 (01/01/05)

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

2.0 Statutory Authority

These regulations are created pursuant to 30 **Del.C.** Ch. 18, Subch. II, which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the "Historic Preservation Tax Credit Act", under 30 **Del.C.** Ch. 18, Subch. II.

"Application" means the Delaware Historic Preservation Tax Credit application that shall consist of four parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); the Request for Certificate of Completion (Part 3), and the Request for Credit Award.

"Building" means created principally to shelter any form of human activity.

"Certification of Completion", or **"Certificate of Completion"** means the certificate issued by the Delaware State Historic Preservation Officer attesting that the certified rehabilitation, or, if applicable, a phase of the certified rehabilitation project, has been completed, and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (26 USC 47) (whether or not the project would be eligible for the federal tax credit) has been obtained.

"Certified historic property" means a property located within the State of Delaware that is:

- individually listed in the National Register of Historic Places; or
- located in a historic district listed in the National Register of Historic Places and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or
- individually designated as a historic property by local ordinance and certified by the State Office as meeting the criteria for inclusion in the National Register of Historic Places; or
- located in a historic district set apart or registered by a local government, which historic district is certified by the State Office as meeting the criteria for inclusion in the National Register and which property contributes to the historic significance of the historic district.

"Certified rehabilitation" means rehabilitation of a certified historic property, or portion of the property, that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Secretary of the Interior's Standards for Rehabilitation (36 CFR 67) or other standards as the State Office shall from time to time adopt.

"Credit award" means the amount of qualified expenditures as determined by the State Office multiplied by the appropriate percentage as determined in 30 **Del.C.** §1813.

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"Delaware State Historic Preservation Officer" means the person designated and appointed in accordance with the National Historic Preservation Act of 1966, as amended (54 USC §302301(1)). The Delaware State Historic Preservation Officer is an appointed position held by the Director, Division of Historical and Cultural Affairs.

"Downtown Development District" or **"DDD"** means an area within a municipality or unincorporated area designated by the governor as a Downtown Development District under 79 Del. Laws c. 240.

"Federal tax credit" means the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47 (26 USC 47).

"Fiscal Year" means the State of Delaware's fiscal year.

"National Register of Historic Places" or **"National Register"** means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 302101 of the National Historic Preservation Act of 1966, as amended (54 USC §300101 et seq.).

"Office" or **"State Office"** means the Delaware State Historic Preservation Office, which is a part of the Division of Historical and Cultural Affairs.

"Owner-occupied historic property" means a certified historic property, or portion of the property, which is owned by the applicant and is being used, or within a reasonable period will be used, by an applicant as the applicant's principal residence. The property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to that portion shall be eligible under this subchapter to apply for tax credits calculated at the percentage available to owner-occupants.

"Person" or **"applicant"** means an individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations) whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships) whether or not for profit; any trust or estate; and any lawful joint venture. "Person" or "applicant" shall also mean a non-state governmental entity; or a pass-through entity or person under a lease contract for five years or longer.

"Phased rehabilitation" means a certified rehabilitation of a certified historic property reasonably expected to be completed in two or more distinct stages of development as more fully described in Treasury Regulation 1-48-12(b)(v) or a successor provision.

"Property" means real estate and shall include any building which meets the definition in this section, including multiple-unit buildings.

"Qualified expenditure" means an amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

- acquisition of real property or acquiring an interest in real property, or costs associated with the acquisition of the property;
- additions to an existing structure except where the combined square footage of all additions is 20% or less than the total square footage of the historic portion of the property and each addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as: preserving the character-defining features of the certified historic property, adequately differentiating the new construction from the existing structure, and complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;
- sitework, paving or landscaping costs in excess of 10% of the total qualified expenditures;
- sales and marketing costs; or
- an expenditure not properly charged to a capital account, including, in the case of owner-occupied property, an expenditure that would not properly be charged to a capital account where the person using such property is in a trade or business.

"Reasonable period" means that an owner shall occupy the rehabilitated property as their principal residence within six months of the issuance of the Certificate of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause.

"Resident Curator" means a person who has entered into a contractual agreement with the owner of a certified property in which the person agrees to pay for full restoration of the owner's property in exchange for a life tenancy in the property without remunerative compensation to the owner for the life tenancy.

“Substantial rehabilitation” or **“full restoration”** means rehabilitation of a certified historic property for which the qualified expenditures exceeds:

- for an income-producing property, the current standard required by Section 47(c)(1)(C) of the Internal Revenue Code (26 USC 47(c)(1)(C)); and
- for an owner-occupied historic property, non-income producing property, or property under contract with a resident curator, a minimum expenditure of \$5,000.

“Taxpayer” means a person, as defined in this section, and shall include an individual or corporation taxable under Title 5, or taxable under either 30 **Del.C.** Ch. 11, or 30 **Del.C.** Ch. 19.

6 DE Reg. 108 (07/01/02)

8 DE Reg. 194 (07/01/04)

8 DE Reg. 1031 (01/01/05)

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

22 DE Reg. 409 (11/01/18)

4.0 Procedures for Certification of Historic Property

- 4.1 With permission of the property owner, an applicant may submit a Part 1 application to the State Office requesting that the State Historic Preservation Officer certify that a property in a National Register listed or locally designated historic district is a certified historic property as defined in Section 3.0 of this regulation. The applicant shall file the Part 1 application on standard forms developed by the State Office.
- 4.2 The State Office shall not process an incomplete Part 1 application until all required application information is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review.
- 4.3 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and shall notify the applicant of the decision.
- 4.4 If a property is individually listed in the National Register, submission of a Part 1 application is required, whether or not an application for the federal tax credit is submitted.
- 4.5 The Delaware State Historic Preservation Officer may certify as historic a property for which an applicant has obtained a Part 1 certification from the federal government pursuant to 36 CFR 67. Under this provision, an applicant shall file only the cover page of the Delaware Part 1 application.
- 4.6 Once the State Office has approved the Part 1 application, the project is considered initiated for the purpose of this program.
- 4.7 The Part 1 application shall expire if a Part 2 application is not received by the State Office within one calendar year from the date of issue of the approved Part 1.

6 DE Reg. 108 (07/01/02)

8 DE Reg. 1031 (01/01/05)

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

22 DE Reg. 409 (11/01/18)

5.0 Procedures for Certification of Rehabilitation

- 5.1 An applicant may submit a Part 2 application to the State Office requesting that the Delaware State Historic Preservation Officer determine if a proposed rehabilitation work meets the criteria as a certified rehabilitation as defined in Section 3.0 of this regulation. The applicant shall file the Part 2 application on standard forms developed by the State Office.
- 5.2 An applicant shall submit Part 1 of the application prior to, or with, Part 2. The State Office shall not process the Part 2 application until an adequately documented and approved Part 1 application is on file.
- 5.3 The State Office shall not process an incomplete Part 2 application until all required application information is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete a review.

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- 5.4 Applicants may submit subsequent Part 2 applications for the same property as long as the following criteria are met:
- 5.4.1 For certified properties held for income (depreciable properties), a new application may be submitted as often as the project work qualifies for income tax credits under Section 47(c)(1)(C) of the Internal Revenue Code (26 USC 47(c)(1)(C))
- 5.4.2 For all other certified properties, a new application may be submitted no sooner than 24 months from the date of the prior Part 2 approval as long as other program requirements have been met.
- 5.5 The Part 2 application shall include any proposed rehabilitation work. Any rehabilitation work that has been completed prior to the approval of the Part 2 application is not eligible for consideration, except as provided for under Section 12.0.
- 5.6 An applicant requesting approval of a phased rehabilitation plan for a depreciable property shall provide the State Office with a description of the phases and their anticipated completion dates when submitting the Part 2 application. The Delaware State Historic Preservation Officer shall notify the applicant if the phased rehabilitation plan is approved. The final completion date for a phased rehabilitation is binding unless the applicant requests a change in writing. For a phased rehabilitation, the applicant is allowed up to 60 months to meet the substantial rehabilitation test.
- 5.7 The Delaware State Historic Preservation Officer shall determine whether the proposed rehabilitation for which a complete application is received under subsection 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the applicant notice of the determination. The State Office may require modifications to the work as described in the Part 2 application in order to meet the definition of a certified rehabilitation. The State Office may also apply conditions to a Part 2 approval so as to insure the work meets the definition of a certified rehabilitation.
- 5.8 The Delaware State Historic Preservation Officer may issue a Part 2 approval to an applicant who has obtained a Part 2 certification from the federal government pursuant to 36 CFR 67. Under this provision, an applicant shall file only the cover page of the Delaware Part 2 application.
- 5.9 Applicants shall begin construction on the approved certified rehabilitation work as described in the approved Part 2 application within one year of receiving the Part 2 approval. If construction on the rehabilitation work as described in the Part 2 application is not substantially commenced and diligently pursued within this time period, the State Historic Preservation Officer will withdraw any assigned Credit Award. Substantially commenced and diligently pursued means the applicant can demonstrate that a minimum, 25% of the estimated rehabilitation costs was expended within the first year after the tax credits are assigned. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.
- 5.10 If, at any time before a project receives its Certificate of Completion, the State Office requests documentation of on-going qualified expenditures for the previous year and the applicant does not produce such documentation, the Delaware State Historic Preservation Officer will withdraw any assigned Credit Reservation.
- 5.11 The Delaware State Historic Preservation Officer, or his/her designated representative, may inspect the historic property to determine if the work is consistent with the approved certified rehabilitation work as described in the Part 2 application, and if the project has substantially commenced and is being diligently pursued.
- 5.12 The applicant may request that the State Office review proposed changes to the certified rehabilitation as described in the Part 2 application after it is approved. The Delaware State Historic Preservation Officer shall determine whether the proposed change meets the definition of a certified rehabilitation and shall send the applicant notice of the determination.

6 DE Reg. 108 (07/01/02)

8 DE Reg. 1031 (01/01/05)

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

22 DE Reg. 409 (11/01/18)

6.0 Procedures for Certification of Completion

- 6.1 Upon completion of the rehabilitation work outlined in the Part 2 application, or an approved project phase, the applicant shall submit to the State Office a Part 3 application with documentation supporting any conditions in the Part 2 application approval, the form(s) required in the Division of Revenue's regulations indicating the

name of the taxpayer who will claim the tax credit, and a final accounting of qualified expenditures. The State Office may prescribe the format in which the documentation of qualified expenditures is submitted. The costs are verified by and may be adjusted by the State Office if documentation is inadequate or costs are disallowed. Any submission of Part 3 of the application with qualified rehabilitation costs of more than \$750,000 shall include a certified statement by a certified public accountant verifying that the expenses statement includes only qualified rehabilitation costs.

- 6.2 The State Office shall not process an incomplete Part 3 application until all required application information is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review. The State Office may inspect the completed project to determine if the work meets the definition of a certified rehabilitation. The applicant will permit the State Office to inspect the completed project to determine if the work meets the definition of a certified rehabilitation.
- 6.3 Prior to approval of a Part 3 application, if the State Historic Preservation Officer (or the Keeper of the National Register of Historic Places) determines that an individual historic property or a historic district is no longer eligible for listing in the National Register due to a loss of integrity, any application for tax credits that has not yet been assigned by the Delaware Division of Revenue shall have its Credit Award withdrawn.
- 6.4 Upon approval by the State Office that the completed rehabilitation, or an approved phase, meets the definition of a certified rehabilitation, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion for the project, or approved phase. For approved phased rehabilitations, each phase must receive a Certificate of Completion in order for the overall project to be considered a certified rehabilitation.
- 6.5 After issuing a Certificate of Completion for a project, or an approved phase, the State Office shall submit the documentation of qualified expenditures and an 1811AC 0905 form to the Division of Revenue, and request a determination of the value of the documented expenditures and assignment of the calculated tax credits to the applicant for the completed project or an approved phase. For all projects in which the tax credits are to be applied against franchise taxes, and at other times as requested by the Division of Revenue, the forms and documentation will also be submitted to the State Bank Commissioner's Office.
- 6.6 The Division of Revenue or the State Bank Commissioner's Office will return the forms certifying the value of the tax credits assigned to the project, or an approved phase, to the State Office which shall transmit the Certificate of Completion and the Revenue form(s) to the applicant, or taxpayer who will claim the tax credits.
- 6.7 In the case of approved phased projects, a single rehabilitation project may receive more than one Certificate of Completion. Credits issued to the initial assignee, or in the case of a tax-exempt assignee, to the first taxable transferee after the associated phase completion, are subject to revocation and repayment to the Delaware Division of Revenue or the Office of the State Bank Commissioner if, under regulations issued by the State Office, a phased rehabilitation is not completed by the agreed upon completion date indicating that the applicant for the credit award is unable or unwilling to complete it; or in the event that the project does not meet the certification requirements previously agreed to with the State Office.

6 DE Reg. 108 (07/01/02)

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

22 DE Reg. 409 (11/01/18)

23 DE Reg. 470 (12/01/19)

7.0 Procedures for Requesting a Credit Award

- 7.1 An applicant shall request a credit award by filing a Request for Credit Award application with the State Office. The Request for Credit Award application shall be submitted with the Part 3 application.
- 7.2 The State Office will not process an incomplete Request for Credit Award application until all documentation as required is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review.
- 7.3 The State Historic Preservation Officer shall notify the applicant of the amount of their credit award. The credit award is calculated as a percentage of the qualified expenditures and will be rounded down to the nearest whole dollar. The criteria for applying the percentages to establish the credit award are:
- For depreciable (income-producing) certified properties, 20% of qualified expenditures;
 - For depreciable certified properties where the whole or a part, receives low income housing credits, 30% to be applied to that portion of the square footage;

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- For all other certified properties, 30% except where an owner would meet HUD established low income criteria, then 40%; and
- For resident curators, 100% of the qualified expenses submitted up to \$5,000.

- 7.4 The Delaware State Historic Preservation Officer may, at his/her discretion, consider an increase in a credit award where there has been a documented increase in qualified costs. A taxpayer whose request for an increase in credits is disapproved under this subsection may appeal in accordance with the administrative review process established in Section 10.0 of this regulation.
- 7.5 Despite having been assigned a certain credit award, an applicant may only claim the amount of tax credits which are supported by their actual rehabilitation costs.
- 7.6 Each fiscal year, a portion of the total that is allocated for Credit Awards is to be distributed as follows:
- 7.6.1 \$100,000 is reserved for distribution to qualified resident curators. If, in any fiscal year, there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to any eligible project.
- 7.6.2 \$1.5 million is reserved for projects receiving a credit award of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.
- 7.6.3 \$1.5 million is reserved for projects located in Downtown Development Districts, of which \$500,000 is reserved for projects in DDDs receiving tax credits of not more than \$300,000. After April 1, any unassigned portion of the \$1.5 million is released to be available for credit awards to any eligible project.
- 7.6.4 Any credits authorized by the legislature that are not allocated by Delaware Code to a specific type of project shall be reserved for distribution in accordance with the methods established by Delaware Code.

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

22 DE Reg. 409 (11/01/18)

23 DE Reg. 470 (12/01/19)

8.0 Fees for Processing Rehabilitation Certification Request

- 8.1 Except as provided for under Section 12.0, all applicants who seek a Credit Award for their certified rehabilitation are subject to a fee.
- 8.1.1 The fee for applicants of owner-occupied properties and resident curators is \$100. The fee is due at the time the applicant submits their Request for Certification of Historic Property application. All fees are non-refundable.
- 8.1.2 The fee for all other applicants is as follows: \$250 due at the time the applicant submits their Request for Certification of Historic Property Application; 1.5% of the credit reservation requested in the Part 2 Certification of Rehabilitation; and 1.5% of the credit reservation or credit award (whichever is more) in the Part 3 Certification of Completion. The fee will be calculated by the Delaware State Historic Preservation Office based on the qualified expenditures indicated in the Part 2 Certification of Rehabilitation and its associated documentation. If the applicant requests an increase in the amount of tax credits to be awarded to a project, this will result in a supplemental fee. All fees are non-refundable.
- 8.1.3 The Delaware State Historic Preservation Officer may not pro-rate or waive the fee.
- 8.1.4 A Credit Award will not be made to an applicant until all applicable fees are paid.
- 8.1.4 Fees will be paid by check which are to be made payable to the State of Delaware. If the fee exceeds \$10,000, a certified check is required.
- 8.1.5 This fee schedule is applicable to all projects initiated after the effective date of these rules, except as provided for under Section 12.0.
- 8.2 The revenue from fees charged for the Historic Preservation Tax Credit Program will be retained by the Division of Historical and Cultural Affairs for inspections and other expenses, which may include operational expenses and personnel costs.

6 DE Reg. 108 (07/01/02)

8 DE Reg. 1031 (01/01/05)

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

22 DE Reg. 409 (11/01/18)

23 DE Reg. 470 (12/01/19)

9.0 Requirements for Resident Curator Properties

- 9.1 Curatorship property is subject to periodic inspection by the State Office during the tax years in which the credit is applicable.
- 9.2 Improvements to curatorship property shall be completed within five years from the date of execution of the contract between the owner and the resident curator.
- 9.3 Curatorship property shall not be used for commercial purposes.

8 DE Reg. 194 (07/01/04)

14 DE Reg. 485 (11/01/10)

10.0 Administrative Review

- 10.1 A taxpayer whose application is disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.
- 10.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.
- 10.3 A taxpayer whose application is disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 **Del.C.** §10101 et. seq.
- 10.4 An appellant who exhausts all administrative remedies is entitled to judicial review in accordance with 29 **Del.C.** Ch. 101, Subch. V of the Administrative Procedures Act.

6 DE Reg. 108 (07/01/02)

14 DE Reg. 485 (11/01/10)

11.0 Reporting Requirements

- 11.1 Annually, on or before January 31st, the Delaware State Historic Preservation Officer shall issue an annual report on the restoration and rehabilitation status of all tax credit projects approved in the previous fiscal year.
- 11.2 The annual report shall include a list of all tax credit projects issued in previous years for which the tax credits have not been claimed.
- 11.3 The annual report will be distributed to the Governor and the General Assembly.

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

12.0 Transitional Provisions

- 12.1 An applicant that has initiated, but not yet completed, a project prior to November 11, 2018 shall be subject to the regulation as adopted September 1, 2014 (18 DE Reg. 237), following existing guidance associated with that regulation.
- 12.2 Property owners that consulted with the State Office concerning a specific project prior to November 11, 2018 may request that the Division accept an application under the terms of the regulation as adopted September 1, 2014 (18 DE Reg. 237), following existing guidance associated with that regulation; the Division may consider such a request provided that:
 - 12.2.1 The applicant demonstrates that the information in their previously approved Part 1 application remains valid, and submits the Part 2 application to the State Office by December 31, 2018.
 - 12.2.2 If no Part 1 had been previously submitted, then the applicant submits both the Part 1 and Part 2 applications to the State Office by December 31, 2018.
 - 12.2.3 The applicant may submit no more than one such request per property.
 - 12.2.4 All other program requirements are met.

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- 12.3 For owner-occupied properties with applications under subsections 12.1 and 12.2, the Credit Award may not exceed \$30,000.
- 12.4 A taxpayer whose application is disapproved under subsection 12.2 may appeal in accordance with the administrative review process established in Section 10.0 of this regulation.

14 DE Reg. 485 (11/01/10)

18 DE Reg. 237 (09/01/14)

22 DE Reg. 409 (11/01/18)

23 DE Reg. 470 (12/01/19)