

# HISTORIC PRESERVATION TAX CREDIT

Program Guidelines | January 2018



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## Section I – General

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### A. Definitions

The following terms shall have the following meanings:

**“Adjusted Basis.”** Adjusted basis of a building is the cost of the property (excluding land) plus or minus capital improvements, legal fees incurred in perfecting title, zoning costs, and deductions previously allowed for depreciation. See IRS Regulation 1.48-12(b)(2)(iii).

**“Commission.”** The Pennsylvania Historical and Museum Commission.

**“Completed project.”** The completion of the restoration of a qualified historic structure in accordance with a qualified rehabilitation plan and the receipt of an occupancy certificate for the structure.

**“Department.”** The Department of Revenue of the commonwealth.

**“DCED.”** The Department of Community and Economic Development.

**“Historic District.”** Any district listed in the National Register or any district which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior.

**“Internal Revenue Code.”** The Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §1 et seq.).

**“Placed in service.”** Appropriate work has been completed which would allow for occupancy of either the entire building, or some identifiable portion of the building.

**“Preliminary Certification.”** Action by Department of Community and Economic Development that the Qualified Taxpayer has obtained certification of a qualified rehabilitation plan and the project is selected to receive a reservation of tax credits.

**“Qualified expenditures.”** The costs and expenses incurred by a Qualified Taxpayer in the restoration of a qualified historic structure pursuant to a qualified rehabilitation plan and which are defined as qualified rehabilitation expenditures under Section 47(c)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(2)).

**“Qualified historic structure.”** A commercial building located in this commonwealth that qualifies as a certified historic structure under Section 47(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(3)).

**“Qualified rehabilitation plan.”** A plan to rehabilitate a qualified historic structure that is approved by the Pennsylvania Historical and Museum Commission as being consistent with the standards for rehabilitation and guidelines for rehabilitation of historic buildings as adopted by the United States Secretary of the Interior.

**“Qualified tax liability.”** Tax liability imposed on a taxpayer including Personal Income Tax, Corporate Net Income Tax, Capital Stock-Franchise Tax, Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, Gross Receipts Tax or Mutual Thrift Institution Tax.

**“Qualified Taxpayer.”** Any natural person, corporation, business trust, limited liability company, partnership, limited liability partnership, association or any other form of legal business entity that:

1. Is subject to a qualified tax liability as defined above; and
2. Owns a qualified historic structure.

**"Region."** A Community Action Team region as established by the Department of Community and Economic Development.

**"Reservation of Credits."** Action of the Pennsylvania Department of Community and Economic Development to hold tax credits based on the total estimated qualified rehabilitation expenditures until the rehabilitation project is complete.

**"Standards."** The Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67).

**"Substantial rehabilitation" or "substantially rehabilitate."** The qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year exceed the greater of:

1. The adjusted basis of such building (and its structural components), or
2. \$5,000.

## **B. Program Overview**

The Historic Preservation Incentive Tax Credit allows qualified taxpayers to receive tax credits for restoring qualified historic buildings, according to an approved rehabilitation plan. The Program has 6 steps that must be completed sequentially.

**Step 1** – Determination of Qualified Historic Structure Status

**Step 2** – Approval of the Proposed - Qualified Rehabilitation Plan

**Step 3** – Preliminary Certification and Reservation of Tax Credits

**Step 4** – Final Certification of a Completed Qualified Rehabilitation Plan

**Step 5** – Issuance of Tax Certificates

**Step 6** – Claiming the Historic Preservation Incentive Tax Credit

## **C. Eligibility**

1. A Qualified Taxpayer may apply to the DCED under this program to fund the rehabilitation of a qualified historic structure, according to a qualified rehabilitation plan.
2. Applications shall be submitted by the Qualified Taxpayer or in cases of multiple owners, application may be made by a duly authorized joint owner, partner or member on behalf of the owners.
3. If a complex constitutes more than one legal parcel and the parcels are under separate ownership, the Qualified Taxpayer of the legal parcel who is seeking tax credits shall be eligible to apply.

## **D. How to Apply**

1. The Qualified Taxpayer shall submit requests for approvals, certifications, reservation of tax credits and issuance of a tax credit certificate on forms prescribed by DCED.
2. If the Qualified Taxpayer seeks to claim the federal historic preservation investment tax credit, the Qualified Taxpayer may use Part 1 and Part 2 of the Historic Preservation Certification Application Form, as used by the National Park Service, to apply for a determination of historic structure status and for approval of a proposed rehabilitation plan, respectively, with such additional forms and information as may be required by DCED.
3. The Qualified Taxpayer may apply with DCED beginning January 11, 2018 for tax credits under the Historic Preservation Tax Credit Program, subject to the application requirements.
4. Selection of Preliminary Certification shall be made available on a first-come, first-served basis by date received, with no more than \$500,000 in tax credits to a single Qualified Taxpayer in a single fiscal year.
5. The signature of the owner or duly authorized agent on any application form is a representation to DCED and the Commission that the facts contained in the application are true and correct.

## **E. Commission Review**

1. The Commission shall review and issue a decision not more than 30 calendar days after receipt of a complete application from the DCED.
2. If an application is incomplete, not more than 30 calendar days after receipt the Commission shall notify the Qualified Taxpayer in writing and indicate what information is needed to undertake or complete review.
3. The Commission may undertake an inspection of the qualified historic structure prior to any application approvals or certifications.
4. Commission decisions are made in writing by the Director of the Bureau for Historic Preservation or other duly authorized representative of the Commission.

## **F. Limitations**

1. A Qualified Taxpayer may submit and be approved for, more than one application in any single fiscal year.
2. No Qualified Taxpayer may receive more than \$500,000 in tax credits under this program in any fiscal year.
3. A Qualified Taxpayer may not carry back or obtain a refund of all or any portion of an unused tax credit granted to the Qualified Taxpayer under this program.
4. A Qualified Taxpayer may not apply for tax credits under this program after July 1, 2020.
5. DCED shall not approve the reservation of more than \$3,000,000 in tax credits for approved applications with preliminary certification under Step 3 in any fiscal year.
6. Tax credit certificates are issued to a Qualified Taxpayer after the certification of completed work under Step 4. DCED can issue up to \$3,000,000 in tax credit certificates in a fiscal year. If the issuance of a Qualified Taxpayer's tax credit certificate will exceed the \$3,000,000 fiscal year limitation, then:
  - a. DCED will award the Qualified Taxpayer a tax credit certificate in an amount up to the \$3,000,000 cap (the "Partial Award"); and

- b. Any Qualified Taxpayer having received a tax credit certificate under A.4.a., will receive priority over any Qualified Taxpayer not having received a Partial Award, for the receipt in the subsequent fiscal year of a tax credit certificate for the remaining amount.
7. Approval of a rehabilitation plan for a certified historic structure shall not constitute certification for purposes of a reservation of tax credits as specified in Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.).

## **G. Nondiscrimination**

No assistance shall be awarded to a Qualified Taxpayer under this program unless the Qualified Taxpayer certifies that the Qualified Taxpayer shall not discriminate against any employee or against any person seeking employment by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act, which prohibits discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, or in violation of any applicable federal laws.

# **Section II – Application Process**

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## **Step 1 – Determination of Qualified Historic Structure Status**

### **A. Application Requirements**

1. If the property is individually listed on the National Register of Historic Places and only includes a single building, a State Part 1 Form is not necessary; proceed to Step 2, and follow the provisions contained therein.
2. If the property is located in a historic district, the Qualified Taxpayer shall obtain a determination of qualified historic structure status from the Commission prior to or with the filing of a request for approval of a proposed rehabilitation plan.
3. If the property is a complex, whether individually listed in the National Register of Historic Places or listed as part of a historic district, the Qualified Taxpayer shall apply for a determination of qualified historic structure status for the building that is to be rehabilitated as part of a single or multi-building project.
4. The Qualified Taxpayer shall submit a Single Application for Assistance from DCED with:
  - a.) photographs of the building and its surroundings that are keyed to corresponding site and floor plans;
  - b.) a map showing the boundaries of the complex or historic district and the location of the building; and
  - c.) a statement of historic and architectural significance.
5. The Qualified Taxpayer may satisfy the requirements for certification of qualified historic structure status under Step 1 if the Qualified Taxpayer (A) has obtained an approved Part 1 of the federal Historic Preservation Certification Application from the National Park Service; and (B) provides evidence of said approval.

6. If State or Federal Parts 1 and 2 are submitted separately by the Qualified Taxpayer, Part 1 must be submitted and approved by the Commission before Part 2 can be submitted. Rehabilitation plans will not be reviewed for unqualified buildings.

**B. Criteria for Evaluating Historic Character Within a Historic District**

A building shall be considered contributing to the historic character of the historic district in which it is located if by design, setting, materials, workmanship, integrity and association it adds to the district's sense of time and place and historical development. The building must be located within the boundaries and be constructed during the period of significance of the Historic District.

**C. Commission Review**

1. The Commission shall review and issue a decision not more than 30 calendar days after receipt of all the information and forms required under Step 1 from DCED.
2. If any information or forms required under Step 1 are missing or incomplete, the Commission shall notify the qualified taxpayer in writing, not more than 30 days after receipt of the information and forms, and indicate what information or forms are needed to comply with Step 1. The Qualified Taxpayer shall have 30 calendar days after the date of notification by the Commission to respond in writing and provide the requested information or forms.

**D. Certification as a Qualified Historic Structure:**

1. If a single building meets the above criteria under Step 1 (B) (Criteria for Evaluating Historic Character Within a Historic District), the Commission shall determine that the building is certified as a qualified historic structure.
2. If a building located in a complex meets the above criteria under Step 1 (B) (Criteria for Evaluating Historic Character Within a Historic District), the Commission shall determine that the building is certified as a qualified historic structure.
3. For purposes of evaluating whether a building in a complex contributes to the historic character of the complex, the Commission shall use the above criteria under Step 1 (B) (Criteria for Evaluating Historic Character Within a Historic District).
4. If a building located in a complex or historic district does not meet the above criteria, the Commission shall determine that the building shall not be certified as a qualified historic structure. The Commission shall provide a written explanation citing the reason for denial.

**Step 2 – Approval of the Proposed Qualified Rehabilitation Plan**

Approval of a rehabilitation plan for a qualified historic structure shall not constitute certification for purposes of a reservation of tax credits as specified in Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.).

**A. Requirements for a Qualified Rehabilitation Plan to be Approved.**

1. Before requesting a preliminary certification and reservation of tax credits under Step 3 (Preliminary Certification and Reservation of Tax Credits), the Qualified Taxpayer shall submit a rehabilitation plan for a qualified historic structure to DCED to be approved by the Commission.
2. The Qualified Taxpayer shall provide:
  - a.) a rehabilitation plan;

- b.) photographs of the interior and exterior of the qualified historic structure keyed to appropriate site and floor plans;
  - c.) a written description of the project;
  - d.) a project site plan that includes the location of the qualified historic structure, and any associated new construction, demolition and site improvements;
  - e.) such additional architectural or other drawings or technical information as are necessary to evaluate rehabilitation work;
  - f.) the estimated cost of the rehabilitation;
  - g.) evidence of qualified historic structure status for the property proposing to be rehabilitated.
3. In phased projects, the rehabilitation plan shall indicate the number of phases, the timeframe for each and include sufficient information to evaluate whether all phases of the proposed rehabilitation work meet the standards.
  4. The Qualified Taxpayer may satisfy the requirements of, Step 2(A) (Requirements for a Qualified Rehabilitation Plan to be Approved), if prior to the commencement of construction, the Qualified Taxpayer has obtained (A) approval of the Part 2 Federal Historic Preservation Certification Application from the National Park Service; and (B) provides evidence of said approval.

**B. Evaluating the Qualified Rehabilitation Plan and the Secretary of the Interior's Standards for Rehabilitation**

1. All elements of a Qualified Rehabilitation Plan shall meet the Secretary of the Interior's Standards for Rehabilitation.
2. The following standards shall be used by the Commission in evaluating proposed or completed rehabilitation work to a qualified historic structure:
  - a.) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its sites and environment.
  - b.) The historic character of a building shall be retained and preserved. The removal or alteration of features and spaces that characterize a building shall be avoided.
  - c.) Each building shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
  - d.) Changes that have acquired historic significance in their own right shall be retained and preserved.
  - e.) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a building shall be preserved.
  - f.) Deteriorated historic features shall be repaired rather than replaced. Where severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
  - g.) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used.
  - h.) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.



- i.) New additions, exterior alterations, or related new construction shall not destroy historic materials or elements that characterize the building. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the building and its environment.
- j.) New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic building and its environment will be unimpaired.

### **C. Commission Review**

1. The Commission shall review and issue a decision within 30 calendar days after receipt of all the information and forms required under Step 2.
2. If any information or forms required under Step 2 are missing or incomplete, the Commission shall notify the Qualified Taxpayer in writing, not more than 30 days after receipt of the information and forms, and indicate what information or forms are needed to comply with Step 2. The Qualified Taxpayer shall have 30 calendar days after the date of notification by the Commission to respond in writing and provide the requested information or forms.
3. Upon written request by the Qualified Taxpayer on or before the original deadline, the Commission shall grant an extension to the Qualified Taxpayer within 30 calendar days.
4. If the Qualified Rehabilitation Plan does not meet the standards identified in Step 2(B), the Commission shall notify the Qualified Taxpayer in writing what modifications to the rehabilitation plan are needed for conform to the standards.
  - a.) The Qualified Taxpayer shall have 30 calendar days after the date of notification by the Commission to respond in writing indicating how the Qualified Taxpayer intends to bring the rehabilitation work into conformance with the standards.
  - b.) Upon written request by the Qualified Taxpayer on or before the original deadline, the Commission shall grant an extension to the Qualified Taxpayer of not more than 30 calendar days.
  - c.) If the rehabilitation plan is not brought into conformance with the standards, the Commission shall deny approval and provide a written explanation citing the reason for denial.
5. If the rehabilitation work as described in the Qualified Rehabilitation Plan appears to meet the standards, but additional material is needed to document one or more items of proposed rehabilitation work, and such material is not available in the timeframe established for the Qualified Taxpayer's substantive response, the Commission may issue a conditional approval of the rehabilitation plan. The Qualified Taxpayer shall submit such additional material required to meet the condition imposed prior to requesting a preliminary certification and reservation of tax credits. If the condition has been met, the Commission shall approve the proposed rehabilitation plan. No preliminary certification and reservation of tax credits shall be issued by DCED until the condition imposed has been met.
6. The Qualified Taxpayer shall inform the Commission of any changes to the approved Qualified Rehabilitation Plan and file an amendment in accordance subpart (D), immediately below, of these Guidelines. If the Commission feels that the changes dramatically alter the scope of the work of the rehabilitation plan, a new application may be required.

#### **D. Amending an Approved Qualified Rehabilitation Plan**

1. The Qualified Taxpayer shall file an amendment with the Commission for approval of any changes to the approved Qualified Rehabilitation Plan. Such changes include, but are not limited to, deleting work items, adding new work items or modifying the details of work items already approved. All proposed changes shall meet the standards identified in Step 2(B) in order for the Qualified Taxpayer to qualify for a preliminary certification and reservation of tax credits, and for final certification.
2. Commission Review of Amendments to the Qualified Rehabilitation Plan
  - a.) The Commission shall review and issue a decision within 30 calendar days after receipt of all the information and forms required under Step 2(D).
  - b.) If any information or forms required under Step 2(D) are missing or incomplete the Commission shall notify the Qualified Taxpayer in writing and indicate what information or forms is needed to comply with Step 2(D). The Qualified Taxpayer shall have 30 calendar days after the date of notification by the Commission to respond in writing and provide the requested information or forms. Upon written request by the Qualified Taxpayer on or before the original deadline, the Commission shall grant an extension to the Qualified Taxpayer within 30 calendar days.
  - c.) If the proposed change to the rehabilitation plan meets the standards, the Commission shall approve the amendment.
  - d.) If the proposed amendment does not meet the standards, the Commission shall notify the Qualified Taxpayer in writing what modifications to the rehabilitation work are needed for conformance to the standards. The Qualified Taxpayer shall have 30 calendar days to respond in writing indicating how the Qualified Taxpayer intends to bring the proposed rehabilitation work into conformance. Upon written request by the Qualified Taxpayer on or before the original deadline, the Commission shall grant an extension to the Qualified Taxpayer within 30 calendar days.
  - e.) If the proposed change to the rehabilitation plan does not meet the standards, the Commission shall not approve the amendment and shall provide a written explanation citing the reason for denial.

### **Step 3 – Preliminary Certification and Reservation of Tax Credits**

#### **A. Requirements for Preliminary Certification and Reservation of Tax Credits**

1. The Qualified Taxpayer shall submit:
  - a.) if the Qualified Taxpayer is a business entity, a certificate of legal existence;
  - b.) documentation required under rating criteria in accordance with subpart (D) immediately below;
  - c.) an itemized budget of estimated qualified rehabilitation expenditures including:
    - i. evidence of assessed value of the qualified historic structure as indicated in legal records not more than 60 calendar days before submission of a request for the preliminary certification and reservation of tax credits;
    - ii. evidence of approval issued by the Commission in accordance with Step 2 (Approval of the Proposed Qualified Rehabilitation Plan).
2. If the Qualified Rehabilitation Plan has not received prior approval by the Commission and construction commenced prior to July 1, 2017, in accordance with Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.), the Qualified Taxpayer shall:
  - a.) submit evidence that the building is a qualified historic structure; and

- b.) provide the information required under Step 2 (Approval of the Proposed Qualified Rehabilitation Plan) and obtain approval as a Qualified Rehabilitation Plan from the Commission.
  - c.) In such cases, only qualified rehabilitation expenditures incurred after July 1, 2017, shall qualify for purposes of computing the reservation of tax credits.
3. If the rehabilitation plan has not received prior approval by the Commission and construction commenced after July 1, 2017, and is in progress at the time the Qualified Taxpayer files for a preliminary certification and reservation of tax credits, the Qualified Taxpayer shall be eligible to apply provided:
- a.) the application is for a qualified historic structure and the building has not been placed in service;
  - b.) the Qualified Taxpayer submits the information required under Step 2 (Approval of the Proposed Qualified Rehabilitation Plan) and obtains approval as a qualified rehabilitation plan from the Commission;
  - c.) the Qualified Taxpayer submits a description of all completed, ongoing and proposed rehabilitation work and indicates all phases, as applicable; and
  - d.) All elements of the Qualified Rehabilitation Plan, including completed, ongoing and proposed rehabilitation work, shall meet the standards.

## **B. Itemization of Costs**

1. Costs attributable to rehabilitation include:
- a.) in general, all interior and exterior work to a qualified historic structure necessary to execute an approved qualified rehabilitation plan;
  - b.) abatement of lead paint, asbestos or other hazardous building materials;
  - c.) removal of mold or other biological growths posing risks to human health;
  - d.) installation of new electrical, plumbing, and HVAC systems;
  - e.) construction of any handicapped access ramp which is physically connected to the qualified historic structure;
  - f.) demolition of non-historic portions of a building prior to rehabilitation of a documented historic appearance;
  - g.) reconstruction of now missing historic architectural features based on documentary, physical or pictorial evidence;
  - h.) demolition of a portion of a qualified historic structure owing to severe structural failure as documented in a structural engineer's report prepared by a qualified professional; and
  - i.) Rental equipment directly related to rehabilitation of a building, including dumpsters or scaffolding. Allowance for contractor's overhead and profit, and general requirements, shall not exceed 15 percent of the total qualified rehabilitation expenditures.
2. Costs attributable to new construction and not considered qualified rehabilitation expenditures include:
- a.) new additions;
  - b.) surface or structured parking;
  - c.) roads, driveways and sidewalks;
  - d.) fencing;
  - e.) landscaping; and
  - f.) environmental remediation of the site.

3. Provision of site utilities, and new sewer or water lines outside the envelope of the qualified historic structure shall not be considered rehabilitation.
4. Kitchen and laundry appliances are considered moveable property and shall not be considered rehabilitation.
5. Provision by the Qualified Taxpayer of blinds and shades shall not be considered qualified rehabilitation expenditures.
6. In cases where rehabilitation commenced after July 1, 2017, but prior to approval of the rehabilitation plan in accordance with Step 2 (Approval of the Proposed Qualified Rehabilitation Plan), itemization of costs shall (A) indicate as excluded those rehabilitation costs incurred prior to the date of approval of the rehabilitation plan; and (B) provide such documentation as necessary for the Commission to notify DCED of the amount of qualified rehabilitation expenditures. See Certification of Costs under Step 5 (B).

### **C. Review of Requests for Preliminary Certification and Reservation of Tax Credits**

1. Commission Review
  - a.) The Commission shall review and issue a decision within 30 calendar days after receipt of all the information and forms required under Step 3.
  - b.) If any information or forms required under Step 3 are missing or incomplete the Commission shall notify the Qualified Taxpayer in writing and indicate what information or forms are needed to comply with Step 3. The Qualified Taxpayer shall have 30 calendar days after the date of notification by the Commission to respond in writing and provide the requested information and forms.
  - c.) Upon written request by the Qualified Taxpayer on or before the original deadline, the Commission shall grant an extension to the Qualified Taxpayer within 30 calendar days.
  - d.) If the requirements under subsection (A) of this Section are met, the Commission shall notify DCED that it has verified that the building is a qualified historic structure with an approved rehabilitation plan, and recommend approval or disapproval within 30 days of receipt of the information and forms required.
2. DCED Review
  - a.) If the requirements under subsection (A) of this section are met, DCED may issue (A) a preliminary certification; and (B) a reservation of tax credits in accordance with subsection (D) of this section.
  - b.) In accordance with Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.), DCED shall assure that reservations of credits are awarded in an equitable manner to each region in this Commonwealth in a first come first served basis of complete and adequately documented applications. However, credits allocated to a region that are unclaimed shall be promptly reallocated to eligible projects in other regions.
  - c.) DCED shall notify the Qualified Taxpayer within 15 days of its determination.

### **D. Rating Criteria for Preliminary Certification**

1. Only after all the requirements of Steps 1-3 are met, will the Qualified Taxpayer be eligible for preliminary certification and reservation of tax credits.
2. DCED shall assure that credits are awarded in an equitable manner to each region of the commonwealth.

3. Selection of Preliminary Certification shall be made available on a first-come, first-served basis by date received, with no more than \$500,000 in tax credits to a single Qualified Taxpayer in a single fiscal year.
4. Full allocation of credits will be awarded to the first selected project. Should the qualified expenditures of the first selected project not meet nor exceed \$500,000 in tax credits, then a second project within the same region will be selected for full partial allocation until all available tax credits have been issued.
5. Tax credits not awarded will be held until February 1, 2015 within each region. If a region does not allocate all of its assigned credits, those outstanding credits will be promptly redistributed to other regional wait lists at the discretion of the Program Staff.
6. Should a project, awarded a reservation of a tax credit, encounter unforeseeable delays and cannot be completed with a 24 month implementation period, than the tax credit reservation will be revoked per Step 3(E) (Reservation of Tax Credits) and those credits will be reallocated.
7. All proposed projects eligible for Preliminary Certification must meet the Secretary of the Interior's Standards for Rehabilitation as evaluated by the Pennsylvania Historical and Museum Commission.

#### **E. Reservation of Tax Credits**

1. In accordance with Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.), DCED shall reserve tax credits based on the total estimated qualified rehabilitation expenditures indicated in subsection (A) (1) of this Section.
2. Reservation of tax credits shall be limited to \$500,000 per applicant and to \$3,000,000 in any state fiscal year.
3. If at the time the Commission completes review of a request for preliminary certification and reservation of tax credits, the amount of available tax credits to reserve is less than 25 percent of the qualified rehabilitation expenditures for which application is being made under subsection (A) of this Section, the Qualified Taxpayer shall be notified. DCED shall, at the request of the Qualified Taxpayer, reserve tax credits equal to the amount available but not greater than \$500,000. If additional tax credits should become available in the same fiscal year of a reservation of tax credits to the Qualified Taxpayer, the Qualified Taxpayer shall be eligible to request the balance of tax credits, provided the Qualified Taxpayer submits written confirmation that the qualified rehabilitation plan as approved remains unchanged. Such request shall not be considered a new application for preliminary certification and reservation of tax credits.
4. In any state fiscal year, if at the time of receipt of a request for preliminary certification and reservation of tax credits, no tax credits allowable under Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.) are available, DCED shall notify the Qualified Taxpayer in writing and place the application on a waiting list. No preliminary certification action shall be taken by the Commission, but the Commission shall provide the Qualified Taxpayer with an advisory review of the application. If additional tax credits should become available in the same fiscal year of an application submission by a Qualified Taxpayer, applications placed on a waiting list shall be reviewed in the order of receipt when tax credits become available in that fiscal year.

5. If in the same state fiscal year that the tax credit is reserved, the Qualified Taxpayer notifies DCED in writing that the project has been cancelled, the tax credit reservation shall be cancelled and the tax credits may be reallocated by DCED in the same state fiscal year for pending or new applications in order of their receipt.
6. The tax credit reservation shall expire 24 months from the date of issuance. Requests for final certification shall be made prior to the expiration date of the tax credit reservation.
7. Any applications submitted in any fiscal year that do not receive a reservation of tax credits, shall be deemed denied.

#### **Step 4 – Final Certification of a Completed Rehabilitation Plan**

- A. Before DCED will issue a tax credit certificate, the Qualified Taxpayer shall obtain final certification of completed work from the Commission.
- B. The Qualified Taxpayer may request a final certification for a certified historic structure in its entirety, or, in the case of phased projects, for the completed rehabilitation of an identifiable portion of the building.
- C. Final Certification Requirements
  1. The Qualified Taxpayer shall provide photographs of the interior and exterior of a qualified historic structure and its surroundings which document the completed rehabilitation directly to the Commission.
  2. The Qualified Taxpayer shall:
    - a.) indicate the date the building was placed in service or, in phased projects, indicate which phase and identifiable portion of the building was placed in service pursuant to an approved qualified rehabilitation plan under Step 2 of these Guidelines; and
    - b.) submit a copy of a certificate of occupancy issued by the municipal authority having jurisdiction.
    - c.) provide a certificate of title.
- D. Commission Review
  1. The Commission shall review and issue a decision not more than 30 calendar days after receipt of all the required information and forms.
  2. If any information or forms required under Step 4 are missing or incomplete, the Commission shall notify the Qualified Taxpayer in writing, not more than 30 days after receipt of the information and forms, and indicate what information or forms is needed to comply with Step 4. The Qualified Taxpayer shall have 30 calendar days after the date of notification by the Commission to respond in writing and provide the requested information and forms. Upon written request by the Qualified Taxpayer on or before the original deadline, the Commission shall grant an extension to the Qualified Taxpayer of not more than 30 calendar days.
- E. Certification Actions
  1. If the completed rehabilitation work conforms to the approved qualified rehabilitation plan, the Commission shall issue a final certification and notify DCED of the amount of qualified expenditures incurred by the taxpayer in connection with the completed project.

2. If the completed rehabilitation work does not meet the standards, the Commission shall notify the Qualified Taxpayer in writing what modifications to rehabilitation work are needed for conformance to the standards. The Qualified Taxpayer shall have 30 calendar days to respond in writing indicating how the Qualified Taxpayer intends to bring the rehabilitation work into conformance prior to the expiration date of the tax credit reservation. Upon written request by the Qualified Taxpayer on or before the original deadline, the Commission shall grant an extension to the Qualified Taxpayer of not more than 30 calendar days.
3. If the completed rehabilitation work is not brought into conformance with the standards before the expiration date, as set forth in Step 3(E)(6), the Commission shall deny approval of the application and provide a written explanation of the reason for denial. In such cases, the reservation of tax credits under Step 3 shall be revoked and the Qualified Taxpayer shall be so notified.
4. If the Commission has approved the Request for Final Certification, DCED shall issue the Qualified Taxpayer a tax credit certificate by April 1.
5. A tax credit certificate issued under this Section shall not exceed the amount of credit determined under the reservation of credit, or if the actual qualified expenditures are less than the estimated qualified expenditures claimed in the Preliminary Certification, the tax credit certificate will be calculated using 25 percent of the actual qualified expenditures.

## **Step 5 – Issuance of Tax Certificates**

### **A. Limitations to Award of Tax Credits**

1. No more than \$500,000 in tax credit certificates will be awarded by DCED to a single Qualified Taxpayer in a single fiscal year.
2. No more than \$3,000,000 in total tax credit certificates will be awarded by DCED to all Qualified Taxpayers in a single fiscal year.
3. Tax credit certificates shall be issued to a Qualified Taxpayer with an approved Request for Final Certification on a first come first served basis, as determined by the date of submission to the Commission by a Qualified Taxpayer of its Request for Final Certification.
4. If the issuance of a Qualified Taxpayer's tax credit certificate will exceed the \$3,000,000 fiscal year limitation, then:
  - a.) DCED will award the Qualified Taxpayer a tax credit certificate in an amount up to the \$3,000,000 cap (the "Partial Award"); and
  - b.) Any Qualified Taxpayer having received a tax credit certificate under A.4.a., will receive priority over any Qualified Taxpayer not having received a Partial Award, for the receipt in the subsequent fiscal year of a tax credit certificate for the remaining amount.

### **B. Tax Credit Certificate Issuance Requirements**

1. In order to obtain a tax credit certificate, the Qualified Taxpayer shall:
  - a.) provide a certificate of title;
  - b.) if the Qualified Taxpayer is a business entity, provide a certificate of legal existence;
  - c.) provide evidence of final certification;
  - d.) attach a copy of the reservation certificate;

- e.) submit a certification of costs in accordance with subsection (B) of this Section; and
  - f.) indicate the phase or phases for which the application is being made.
2. The Qualified Taxpayer shall request that DCED issue a tax credit certificate to:
    - a.) The Qualified Taxpayer;
    - b.) multiple Qualified Taxpayers; or
    - c.) in cases where there is a written agreement among multiple Qualified Taxpayers, a single business entity which is the limited liability partnership or limited liability company in whose name the deed to the qualified historic structure is recorded. The Qualified Taxpayer may request that the tax credits be allocated to one or more contributing taxpayers or one or more Qualified Taxpayers or both.
  3. In cases of multiple Qualified Taxpayers, in addition to the information and forms required under Step 3, the Qualified Taxpayers shall submit (A) list the names and addresses of multiple Qualified Taxpayers and indicate for each a Social Security number, taxpayer identification number, Federal Employer Identification Number (FEIN) and a Pennsylvania tax registration number, as applicable; and (B) indicate the percentage of the tax credits to be allocated to each Qualified Taxpayer.
  4. If, pursuant to a written agreement among multiple Qualified Taxpayers, DCED is requested to issue a single tax credit certificate to an assignor, the assignor's taxpayer identification number, Federal Employer Identification Number (FEIN) and a Pennsylvania tax registration number, as applicable, shall be provided.

#### **C. Certification of Costs by a CPA**

1. The Qualified Taxpayer shall submit a certification of costs prepared by an independent certified public accountant.
2. The accountant's certification shall include:
  - a.) the total of qualified rehabilitation expenditures incurred prior to the date of submission of a request for final certification under Step 4 of these Guidelines;
  - b.) separate itemization of qualified rehabilitation expenditures and costs that are not qualified rehabilitation expenditures for the certified historic structure in its entirety or, in cases of phased projects, qualified rehabilitation expenditures and costs that are not qualified rehabilitation expenditures for the identifiable portion of the building placed in service;
  - c.) verification of qualified rehabilitation expenditures by the examination of invoices, cancelled checks, settlement sheets and related documents; and
  - d.) verification that the substantial rehabilitation test as required pursuant to Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.) has been met based on the evidence of the assessed value of the qualified historic structure submitted at the time of application for preliminary certification and reservation of tax credits.
3. In cases where construction commenced prior to July 1, 2017, the certification of costs shall indicate as qualified rehabilitation expenditures costs attributable to rehabilitation incurred only after July 1, 2017.



4. In cases of phased projects, the certification of costs shall include verification that the substantial rehabilitation test has been met in accordance with Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.).
5. In cases where the qualified historic structure has been converted to non-residential as well as personal residential uses, the certification of costs shall calculate qualified rehabilitation expenditures in accordance with Step 3 (B) (2).

#### **D. DCED Actions**

1. DCED shall issue one tax credit certificate, in accordance with Article XVII-H of the Tax Reform Code of 1971 (72 P.S. 8701-H et. seq.), not more than 30 calendar days after notification from the Commission that it has verified that a project was satisfactorily completed.
2. If an application is incomplete not more than 30 calendar days after receipt DCED shall notify the Qualified Taxpayer in writing and indicate what information is needed to undertake or complete review. The Qualified Taxpayer shall have 30 calendar days after the date of notification by DCED to respond in writing and provide the requested information. Upon written request by the Qualified Taxpayer on or before the original deadline, DCED shall grant an extension to the Qualified Taxpayer of not more than 30 calendar days.
3. DCED shall issue a the Qualified Taxpayer a tax credit certificate by April 1 and shall notify the Department of Revenue of the issuance of a tax credit certificate not more than 15 calendar days after issuance.

### **Step 6 – Claiming the Credit**

#### **A. Availability of the Credit**

1. For C corporations: To utilize the credit the Qualified Taxpayer will submit a RCT-101, PA Corporate Tax Report, and a copy of the approved credit certificate to the Department of Revenue.
2. For PA S corporations, partnerships and limited liability companies filing as partnerships or PA S corporations for federal income tax purposes: To utilize the credit, the Qualified Taxpayer will submit a PA-20S/PA-65 Schedule OC and a copy of the approved credit certificate to the Department of Revenue.
3. For individuals: To utilize the credit, the Qualified Taxpayer will submit a PA-40 Schedule OC and a copy of the approved credit certificate to the Department of Revenue. Married taxpayers who claim PA-40 Schedule OC tax credits must file separate returns, even if both taxpayers claim the tax credits on their returns. Joint filing is only permitted when the tax credit is claimed by the primary taxpayer and the secondary taxpayer has no taxable income to report on the return.
4. Tax credits claimed will be first applied against the unpaid tax liability for the period in which the credit is approved. The unpaid tax liability must be satisfied before any portion of the credit can be carried forward to satisfy the tax liabilities for future years or be sold or passed through. Prior year credits will be applied on a “first in first out” basis until all tax liabilities are satisfied. Restricted credits will be applied before any cash payments.
5. The tax credit provided by this article may be carried over and applied to succeeding taxable years for not more than seven taxable years following the first taxable year for which the Qualified Taxpayer was entitled to claim the credit.
6. A Qualified Taxpayer may not carry back or obtain a refund of all or any portion of an unused tax credit granted to the Qualified Taxpayer under this program.

7. A Qualified Taxpayer, upon application to and approval by DCED may sell or assign, in whole or in part, unused credits granted to the qualified taxpayer.
8. Before an application to sell or assign tax credits will be approved, the Department of Revenue must find that the applicant has filed all required state tax reports and returns for all applicable tax years and paid any balance of state tax due as determined at settlement, assessment, or determination by the Department of Revenue.

**B. Notification Requirements for Sale or Assignment of Tax Credits**

1. A Qualified Taxpayer with unused tax credits may submit an assignment or sale application to DCED for approval to sell eligible tax credits to a buyer that may use the purchased credits to offset up to 100 percent of its own tax liability for any qualified tax liability in the year of the sale approval or thereafter.
2. The seller must have (1) filed all required Pennsylvania tax reports and returns for all applicable tax years; and (2) paid any balance of Pennsylvania tax due as determined by assessment or determination by the Department of Revenue and not under timely appeal.
3. At the time of the application for approval to sell or assign tax credits, the seller or assignor business should be prepared to identify the specific tax credits to be sold or assigned (issue date, amounts, etc.), provide information identifying the buyer to the satisfaction of DCED and the Department of Revenue, and disclose the selling price of the tax credits being sold or assigned.
4. If a business selling tax credits is selling credits to more than one buyer, a separate application should be submitted to DCED for approval to assign credits for each separate buyer of tax credits.
5. Tax credits may only be sold or assigned once. Once a sale or assignment is approved, it is final, and the seller's or assignor's right to claim the credit is terminated. Buyers may not resell or reassign tax credits.
6. The date of receipt of the application form by DCED will be used to determine the official date of approval for the sale or assignment of the tax credits. Faxed or emailed applications will be considered received on the date of the fax receipt or the date the email is sent.
7. The DCED shall notify the Department of Revenue of the transfer not more than 15 calendar days after receipt.
8. The assignee or purchaser of all or a portion of a tax credit shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit.