

## **DEPARTMENT OF HIGHER EDUCATION**

### **Historical Society**

## **INCOME TAX CREDIT FOR QUALIFIED COSTS INCURRED IN PRESERVATION OF QUALIFIED RESIDENTIAL STRUCTURES**

### **STATEMENT OF BASIS AND PURPOSE:**

House Bill 14-1311 required the establishment and promulgation of criteria and procedures by which rehabilitation of Qualified Residential Structures qualify for a tax credit. House Bill 18-1190, which amended and reauthorized the tax credit through December 31, 2029, directed the State Historical Society of Colorado to establish and promulgate criteria, as well as to promulgate rules for standards and reporting by Certified Local Governments acting as Reviewing Entities. These Rules apply to the rehabilitation of historic residential structures under CRS § 39-22-514.5; they do not apply to the rehabilitation of historic commercial structures. Projects under CRS § 39-22-514 are governed by separate rules. See 8 CCR 1504-6.

The purpose of these Rules is to provide a uniform process for the State Historic Preservation Officer, State Historical Society of Colorado, and participating Certified Local Governments. This will ensure that taxpayers applying for tax credits for Qualified Residential Structures receive prompt and consistent review of proposed and completed rehabilitation work and that reporting of all tax credit certificates is timely and complete.

### **1. IMPLEMENTATION**

- 1.1 These criteria and procedures implement House Bill 14-1311, as amended by House Bill 18-1190, and should be used and read in conjunction with those laws (codified at CRS § 39-22-514.5). The full requirements of those laws are not repeated in these Rules.
- 1.2 The 2018 amendments to the tax credit statute made in House Bill 18-1190 shall apply to residential projects in process or commenced on or after May 30, 2018.
- 1.3 Owners with projects in a rural community should work with their Reviewing Entity, as projects in qualifying rural communities may be eligible for enhanced tax credits after January 1, 2020.

### **2. DEFINITIONS**

- 2.1 “Certified Historic Structure” with regard to a residential structure means a property located in Colorado that has been certified by the Historical Society or other Reviewing Entity because it has been:
  - (a) Listed individually on, or as a contributing property in a district included within, the national register of historic places;
  - (b) Listed individually on, or as a contributing property in a district that is included within, the state register of historic properties pursuant to the provisions of § 24-80.1-101 et seq.; or

(c) Listed individually by, or as a contributing property within a designated historic district of, a certified local government.

2.2 “Certified Local Government” means any local government that has been certified by the Historical Society in accordance with federal law.

2.3 “Certified Rehabilitation” means repairs or alterations to a Certified Historic Structure that have been certified by the Historical Society or other Reviewing Entity as meeting the standards for rehabilitation of the United States Secretary of the Interior. These Rules provide information about those standards.

2.4 “Contributing Property” means property that adds to the sense of time, place, and historical development of a historic district as determined by the Historical Society or other Reviewing Entity.

2.5 “Designated” means established by local preservation ordinance.

2.6 “Historical Society” means the State Historical Society of Colorado, also known as History Colorado, or any successor entity.

2.6 “Owner” as it applies to a residential structure means any taxpayer filing a state tax return or any entity that is exempt from federal income taxation pursuant to section 501(c) of the internal revenue code, as amended, that owns:

(a) Title to a qualified structure;

(b) Prospective title to a qualified structure in the form of a purchase agreement or an option to purchase;

(c) A leasehold interest in a qualified residential structure for a term of not less than five years.

2.7 “Qualified residential structure” means a non-income producing and owner-occupied residential property located in Colorado that is:

(a) At least fifty years old; and

(b) Listed individually on, or as a Contributing Property in a district included within, the state register of historic properties pursuant to CRS § 24-80.1-101 et seq.;

(C) Listed individually by, or as a Contributing Property that is included within a designated historic district of, a Certified Local Government.

2.8 “Rehabilitation Plan” means construction plans and specifications for the proposed rehabilitation of a Qualified Residential Structure that is in sufficient detail to enable the Reviewing Entity to evaluate whether the structure is in compliance with the standards set forth in these Rules. These Rules provide information below about the details that must be included in a Rehabilitation Plan.

2.9 “Reviewing Entity” means:

(a) A Certified Local Government that has decided to perform the duties specified in these Rules; or

(b) The Historical Society if the Qualified Residential Structure either is not located within the territorial boundaries of any Certified Local Government or is located within the territorial boundaries of a Certified Local Government that has decided not to perform the duties specified in these Rules.

### **3. CERTIFIED LOCAL GOVERNMENTS ACTING AS REVIEWING ENTITIES**

3.1 Each Certified Local Government must determine by resolution or ordinance to act as a Reviewing Entity.

3.2 Each Certified Local Government will continue to serve as a Reviewing Entity until:

(a) The determination is rescinded by the Certified Local Government by resolution or ordinance;

(b) The Certified Local Government fails to report credits issued to the Historical Society as required in Section 12 of these Rules and is notified by Historical Society of the termination of its Reviewing Entity status; or

(c) The Certified Local Government fails to attend training provided by the Historical Society for Reviewing Entities for more than 24 months and is notified by the Historical Society of the termination of its Reviewing Entity status.

3.3 A Certified Local Government may only review applications for Certified Historic Structures located within its jurisdictional boundaries.

3.4 A Certified Local Government must make publicly available any designated local preservation requirements. If local preservation ordinances or design guidelines apply to a particular project, a Certified Local Government will make compliance with the local preservation ordinances and design guidelines a condition of approval of either an application and Rehabilitation Plan or a request for final approval of qualified rehabilitation expenses.

3.5 The Historical Society may audit the process, procedures, and decisions of any CLG serving as a reviewing entity.

### **4. APPLICATION AND REHABILITATION PLAN FOR PRELIMINARY APPROVAL OF REHABILITATION WORK**

4.1 Application for preliminary approval of proposed rehabilitation work shall be made to the Reviewing Entity on a form developed by the Historical Society. The Historical Society's application form shall be used by all Reviewing Entities, and all Reviewing Entities shall make this form available to the public. The form shall include the applicant(s)' signed approval to allow the Reviewing Entity reasonable access to the property.

4.2 In addition to the Historical Society application form, an applicant must include a Rehabilitation Plan. The Rehabilitation Plan consists of a written description of work to be completed; construction plans and specifications; photographs of the current

condition of the property; and estimated, itemized costs of the proposed rehabilitation work.

- 4.3 The Rehabilitation Plan must demonstrate work in conformity with the Secretary of the Interior's Standards for Rehabilitation. These standards are contained in federal regulations issued by the National Park Service, Department of the Interior, 36 Code of Federal Regulations § 68.3(b) (current through September 27, 2018). The federal regulations are available to the public for inspection or copying at a reasonable charge at the offices of the Historical Society, 1200 Broadway, Denver, CO 80203. The federal regulations also are publicly available at <https://www.nps.gov/tps/standards/rehabilitation.htm>. These Rules do not include any later amendments or editions of the federal regulations or guidance.
- 4.4 If an application is made to a Certified Local Government, the applicant must work with the Certified Local Government to ensure that the Rehabilitation Plan addresses any requirements of local ordinances or design guidelines.
- 4.5 At the time an applicant submits an application and Rehabilitation Plan, the applicant shall pay a non-refundable, reasonable application fee.

## **5. APPLICATIONS FOR PRELIMINARY APPROVAL OF PRIOR COMPLETED REHABILITATION WORK**

- 5.1 Applications may include qualified rehabilitation expenditures incurred within 24 months prior to the submission of an application and Rehabilitation Plan.
- (a) Work undertaken within 24 months prior to submission of an application for preliminary approval may be included in the Rehabilitation Plan provided that the requirements of sections 3, 4, and 5 of these Rules are met.
- (b) Work undertaken more than 24 months prior to submission of an application for preliminary approval may not be included in the Rehabilitation Plan and those expenditures may not be submitted for credit approval.
- 5.2 Applications for prior completed rehabilitation work will be approved provided:
- (a) The applicant submits to the Reviewing Entity 1) the items required of all applicants outlined in Section 4 of these Rules, including photographs showing the condition of the Qualified Residential Structure prior to commencing any rehabilitation; 2) a written description of the condition of Qualified Residential Structure prior to commencing any rehabilitation with a declaration stating that the information provided is true and correct under penalty of perjury, signed by a person with knowledge of the structure; 3) a written description of the rehabilitation work previously completed; 4) receipts for goods and services demonstrating that qualified rehabilitation expenses for work previously completed were for qualified rehabilitation work and were undertaken within the 24 month period prior to the submission of the application; and 5) the items required of all applicants outlined in Sections 10.2 and 10.3 of these Rules for the work that was previously completed; and
- (b) The Reviewing Entity finds that the applicant's documentation for the already completed work demonstrates conformity with Section 8 of these Rules.

5.2 If the application for prior completed work is made to a Certified Local Government, the applicant must work with the Certified Local Government to ensure that the prior completed work complies with the requirements of local ordinances.

5.3 Applicants who complete rehabilitation work prior to the submission of an application and Rehabilitation Plan do so at their own risk as the prior completed work may not conform to the standards outlined in these Rules.

## **6. RESPONSE BY REVIEWING ENTITY TO APPLICATIONS FOR PRELIMINARY APPROVAL AND REHABILITATION PLANS**

6.1 Within ninety (90) calendar days of receipt of an application and Rehabilitation Plan, the Reviewing Entity shall notify the applicant in writing of its decision to: grant preliminary approval of the application and Rehabilitation Plan, deny approval, or table the application pending receipt of specified additional materials or information.

6.2 If a Reviewing Entity tables an application, the applicant must supplement with the required information within 90 days or a new application will be required.

## **7. FUNCTIONALLY RELATED STRUCTURES**

7.1 Determination for treatment of properties as a single certified historic property or multiple certified historic properties shall be based on federal regulations issued by the National Park Service, Department of the Interior, 36 Code of Federal Regulations § 67.4(e) (effective May 26, 2011) and 36 Code of Federal Regulations § 67.6(b)(4-5) (effective June 27, 2011). The National Park Service Historic Preservation Tax Incentives Program has issued additional guidance to interpret these regulations: "Functionally Related Buildings – Additional Guidance for Multiple-Building Projects." The federal guidance was issued December 2016, revised March 2017. Copies of the federal regulations and the additional guidance are available to the public at the offices of the Historical Society, 1200 Broadway, Denver, CO 80203. The federal regulations are available at <https://www.nps.gov/tps/tax-incentives/taxdocs/36cfr67.pdf>. The additional guidance from the National Park Service is available at <https://www.nps.gov/tps/tax-incentives/taxdocs/functionally-related-additional-guidance-rev-3-2017.pdf>. These Rules do not include any later amendments or editions of the federal regulations or guidance.

## **8. QUALIFIED REHABILITATION EXPENDITURES**

8.1 "Qualified rehabilitation expenditures" are defined as exterior improvements and interior improvements undertaken to restore, rehabilitate, or preserve the historic character of a Qualified Residential Structure that meet the Standards for Rehabilitation of the United States Secretary of the Interior. These standards are contained in federal regulations issued by the National Park Service, Department of the Interior, 36 Code of Federal Regulations § 68.3(b) (current through September 27, 2018). The federal regulations are available to the public for inspection or copying at a reasonable charge at the offices of the Historical Society, 1200 Broadway, Denver, CO 80203. The federal regulations also are publicly available at <https://www.nps.gov/tps/standards/rehabilitation.htm>. These Rules do not include any later amendments or editions of the federal regulations or guidance.

(a) "exterior improvements" is limited to any one or more of the following: roof

replacement or repair; exterior siding replacement or repair; masonry repair, re-pointing, or replacement; window repair or replacement; door repair or replacement; woodwork and trim repair or replacement; foundation repair or replacement; and excavation costs associated with foundation work.

(b) "interior improvements" is limited to one or more of the following: electrical repairs and upgrades; plumbing repairs and upgrades; heating, venting, and air conditioning repairs and upgrades; repair of existing interior walls, ceilings, and finishes; repair or replacement of existing woodwork and trim; insulation; refinishing or replacing historic floor materials in-kind, excluding carpeting.

(c) Reconstructing missing elements when there is sufficient historical documentation to guide the reconstruction is an allowable expenditure.

8.2 Improvements undertaken due to normal wear and tear on a property do not qualify, nor does routine or periodic maintenance, such as cleaning, routine painting, minor repairs, general periodic upkeep, redecorating or any purely cosmetic change that is not part of an overall rehabilitation or that does not enhance the property's historic character.

8.3 Rehabilitation work, on vegetative or hard surface landscaping, is not a qualified cost.

## **9. TIME PERIOD TO COMPLETE PRELIMINARILY APPROVED WORK**

9.1 Applicants do not have a particular time period in which to complete their work following the preliminary approval of an application and Rehabilitation Plan. However, no tax credit shall be available where work is completed after the expiration of the tax credit program.

## **10. REQUESTS FOR FINAL APPROVAL OF COMPLETED REHABILITATION WORK**

10.1 Within sixty (60) days of completion of the rehabilitation work described in the approved application and Rehabilitation Plan, the applicant shall submit a request for final approval of the rehabilitation work to the Reviewing Entity.

10.2 Requests for final approval of completed rehabilitation work shall be made on a form developed by the Historical Society. The Historical Society's final approval request form shall be used by all Reviewing Entities, and all Reviewing Entities shall make this form available to the public. The form shall include a certification by the applicant that qualified rehabilitation expenditures were incurred in connection with an approved Rehabilitation Plan and the applicant's signed approval to allow the Reviewing Entity reasonable access to the property.

10.3 With the form, the applicant also shall submit: "after" interior and exterior photographs documenting the completed rehabilitation work; an itemized accounting of all qualified rehabilitation expenditures incurred; and the applicant's estimate of the tax credit for which the Owner is eligible. For rehabilitations that are not part of a major disaster area or a rural community, the estimate should be twenty percent of qualified expenses up to \$50,000.

10.4 Applicants who have projects in a major disaster area or a rural community should work with their Reviewing Entity to determine whether they may qualify for a greater tax credit.

## **11. REVIEWING ENTITY'S EVALUATION OF REQUESTS FOR FINAL APPROVAL AND ISSUANCE OF TAX CREDITS**

11.1 Within ninety (90) calendar days of receipt of a complete request for final approval of completed rehabilitation work, the Reviewing Entity shall review and respond to the request for approval.

(a) If the Reviewing Entity determines that the completed rehabilitation expenses are qualified rehabilitation expenditures, the Reviewing Entity will issue a verification form. This verification form will serve as the tax credit certificate. The verification form shall be developed by the Historical Society and shall be used by all Reviewing Entities. The verification form shall include the total qualified rehabilitation expenses for the project, the project completion date, the Review Entity approval date, the percentage used to calculate the credit, the total amount of the tax credit issued and a tax credit certificate number for the specific project, which will be issued by the Historical Society.

(b) If an approval request lacks the documentation outlined in Section 10 or if the Reviewing Entity determines that additional work must be completed for the project to qualify for a tax credit, the Reviewing Entity may table the approval request and require the applicant to resubmit the request for final approval. The Reviewing Entity will have 90 days to review a resubmitted approval request.

(c) If a Reviewing Entity determines that a completed rehabilitation fails to demonstrate qualified rehabilitation expenditures, no verification form shall be issued, and the Reviewing Entity will inform the applicant in writing.

11.2 The Reviewing Entity will make a final determination on the amount of the tax credit to be issued.

11.3 For a tax credit to issue, qualified rehabilitation expenditures must exceed five thousand dollars. Projects with less than five thousand dollars in qualified rehabilitation expenditures have not engaged in substantial rehabilitation and, therefore, do not qualify for a credit.

11.4 For a tax credit to issue, a property owner shall not have received a cumulative total of greater than \$50,000 in credits for the property for which the credit is claimed within the 10-year period preceding request for final approval.

11.5 Taxpayers should retain the tax credit number specific to their project from the verification form for income tax filing purposes.

## **12. REPORTING TAX CREDITS**

12.1 All Reviewing Entities shall provide a report to the Historical Society of all tax credit certificates issued by March 1<sup>st</sup>, June 1<sup>st</sup>, September 1<sup>st</sup>, and December 1<sup>st</sup> annually.

12.2 The Historical Society shall provide a report to the Department of Revenue specifying the ownership of tax credits by March 15<sup>th</sup>, June 15<sup>th</sup>, September 15<sup>th</sup>, and December 15<sup>th</sup> annually.

### **13. APPEALS**

13.1 Any Owner or any duly authorized representative of an Owner may appeal any final determination made by a Reviewing Entity to the Historical Society including, without limitation, any denials of applications for preliminary or final approval. The Owner or the Owner's representative shall submit an appeal in writing within thirty (30) days after receipt by the Owner or the Owner's representative of the final determination at issue.

13.2 The Historical Society will review an appeal and issue its decision within ninety (90) days of receipt of the appeal.

13.3 An appeal from a decision of the Historical Society shall be reviewed by the Archaeology and Historic Preservation Committee of the Board of the State Historical Society, except for those appeals governed by section 13.4 of these Rules.

13.4 Appeals of decisions that a property is not a Contributing Property: These appeals shall follow the same timelines as other appeals. In the appeal, the applicant must provide additional information to the Reviewing Entity about the significance of the property and request a final review on the basis of the additional information. If the property at issue has never been specifically designated as a Contributing Property, but is one that falls within a designated local historic district, the appeal will be heard by the Certified Local Government. If the property at issue is one that was specifically designated as a Non-Contributing Property by local ordinance or in a State Register of Historic Properties or National Register of Historic Places nomination, then the applicant may not appeal the decision pursuant to these Rules, but must work with the entity that made the designation to amend the designation following the amendment procedures of the designating entity.