



Ohio

Historic Preservation

Tax Credit

**Program Administrative Code**

~~Current as of June~~ Draft Changes October 2012

*Ohio Administrative Code (OAC) Sections 122:19-1-01 to 122:19-1-08*

**122:19-1-01: Definitions.**

Capitalized terms used in rules 122:19-1-01 to 122:19-1-08 shall have the following meaning:

(A) “Amendment” means any modification to the project, as described in an approved application including, but not limited to, changes in ~~ownership~~applicant, scope of the project, timeline for completion, changes in financing, the rehabilitation activities or end use.

(B) “Application period” means the time period established in the program policies for which an application for a historic preservation tax credit may be submitted by the applicant and reviewed by the director.

(C) “Applicable rehabilitation standards” means the secretary of the interior’s standards for rehabilitation prescribed under 16 U.S.C. 470, et seq., dated October 15, 1966 as amended, and 36 C.F.R. 67.7, dated February 26, 1990.

(D) “Detailed scoring criteria” means the attributes of historic preservation projects that are identified in the program policies employed to evaluate historic preservation tax credit for the appropriateness of tax credit assistance including, but not limited to, such measures as the potential economic impact of the project and regional distributive balance of the credits throughout the state of Ohio.

(E) “Director” means the director of the ~~department of~~ development services agency of the state of Ohio.

(F) “High qualified rehabilitation expenditure application” means an application submitted for a historic preservation tax credit with estimated qualified rehabilitation expenditures above the average of the prior five calendar years rehabilitation costs of all federal historic preservation tax credit investment projects certified in the state of Ohio.

(G) “Low qualified rehabilitation expenditure application” means an application submitted for a historic preservation tax credit with estimated qualified rehabilitation expenditures at or less than the average of the prior five calendar years rehabilitation costs of all federal historic preservation tax credit investment projects certified in the state of Ohio.

(H) “Major factor” means the tax credits are essential in the decision to rehabilitate the historic building or substantially increase the investment made by the applicant in the project.

(I) “Officer” or “State Historic Preservation Officer” means the state historic preservation officer appointed by the governor under 16 U.S.C 470a, dated May 26, 2000.

(J) “Program policies” means the detailed guidelines for the Ohio historic preservation tax credit program approved by the director.

(K) “Project” means the activities to be undertaken and costs identified as part of an application submitted for a historic preservation tax credit. The activities and costs include both qualified rehabilitation expenditures as defined in division (A)(2) of section 149.311 of the Revised Code and other rehabilitation costs that do not satisfy the definition of qualified rehabilitation expenditures identified in connection with the rehabilitation of a historic building. Consistent with federal regulation 36 C.F.R. 67, dated February 26, 1990 , a project may include more than one building, such as an industrial or agricultural complex, provided there is historical evidence that the buildings functioned together during their time period of significance to serve an overall purpose. Row houses that were designed and constructed as a single building or complex shall be considered a single project provided the applicant owns each building included in the application. A project may include more than one historic building if the historic buildings are in close proximity and rehabilitation activities and costs undertaken by the same ~~owner~~ applicant under the same rehabilitation period. Each historic building in a multiple building project is subject to the eligibility requirements of a single historic building.

(L) “Tax commissioner” means the commissioner of the department of taxation of the state of Ohio.

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**122:19-1-02: Application schedule and procedures.**

(A) During an application period, an owner or a qualified lessee of a historic building under section 149.311 of the Revised Code, may apply to the director on a form as approved and made available by the director. Specific application submission schedules shall be established by the director in the program policies published not less than three months prior to the beginning of each application period.

(B) The applicant must submit an application that complies with the program policies as established by the director to be evaluated for an historic preservation tax credit.

(C) The director shall review applications for completeness and may request that applicants provide missing or additional information following their application submission. An applicant may only submit missing information upon request from the director. If an application is incomplete and the applicant does not submit the requested information within a timeframe established in the program policies, the director shall notify the applicant that the application has been rejected.

(D) A rejection issued by the director for a specific application period does not prohibit an applicant from submitting an application in a future application period.

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**122:19-1-03:** Historic preservation tax credit eligibility.

(A) Only the owner of a historic building or a qualified lessee of a historic building under section 149.311 of the Revised Code may apply for an historic preservation tax credit for that building.

(B) An application for the historic preservation tax credit must include evidence, reasonably acceptable to the director, that the applicant is the current owner in fee simple title of the historic building or a qualified lessee pursuant to section 149.311 of the Revised Code.

(C) An application for the historic preservation tax credit must include documentation that the subject building is a historic building.

(D) All rehabilitation identified in the historic preservation tax credit application must meet applicable rehabilitation standards. An application for the historic preservation tax credit shall include, in a format acceptable to the officer and director, a description of the proposed project rehabilitation activities sufficient to determine whether the applicable rehabilitation standards will be met if the rehabilitation is undertaken as proposed in the application.

(E) An application for the historic preservation tax credit must include evidence, reasonably acceptable to the director, that the tax credit is a major factor in the applicant's decision to rehabilitate the historic building or to increase the level of the owner's-applicant's investment in such rehabilitation.

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**122:19-1-04:** Selection of approved applications.

(A) An application will be rated and considered by the director according to detailed scoring criteria published in the program policies.

(B) The director shall ensure that a mix of both high qualified rehabilitation expenditure and low qualified rehabilitation expenditure applications are approved in accordance with division (B)(2) of section 149.311 of the Revised Code. To fulfill this requirement, the director may consider an applicant's estimate of qualified rehabilitation expenditures set forth in the application in addition to the detailed scoring criteria in the program policies when making a final determination.

(C) The director shall prepare and evaluate a cost-benefit analysis in accordance with division (D)(1) of section 149.311 of the Revised Code for each application. The cost-benefit analysis will evaluate factors relating to construction and operation of rehabilitating and reusing the historic building to determine the economic impact and impact on state and local government tax revenues. As part of the application the applicant shall provide project information and data to be used in this cost-benefit analysis. No application shall be approved without completion of a cost-benefit analysis.

(D) If at any time following approval of an application, but prior to project certification, the owner or the qualified lessee of a project changes and the director has not approved an amendment changing the ownership applicant within the application, the director may rescind the application approval. The director may reissue the application approval for an application that has been submitted during the current application period for the same project, retain the application for a future application period, or make tax credits available for the current or a future application period.

(E) The director shall notify each applicant in writing of the status of its application upon completion of the relevant application period.

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**122:19-1-05:** Amendments.

(A) The director shall establish and make available the form to request amendments to an application.

(B) For a change to be effective, an applicant must request and receive approval of the director for any amendment to the application.

(C) The director has the discretion to reject or approve, in whole or part, an amendment request and may issue a conditional approval of an amendment requiring additional materials or progress by a deadline established in the amendment determination. The director will notify the applicant in writing of the amendment notification. If the applicant does not meet the conditions of approval by the deadline established in the amendment determination, the amendment will be deemed to have been rejected for failure of the approval conditions. The director may, but shall not be obligated to, give written notice of rejection following failure of the approval.

(D) If an application has been approved with a rehabilitation period not exceeding twenty-four months as provided in division (A)(7)(a) of section 149.311 of the Revised Code, that application shall not be amended to a rehabilitation period not exceeding sixty months as provided in division (A)(7)(b) of section 149.311 of the Revised Code.

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**122:19-1-06:** Tax credit certificates.

(A) Within ninety calendar days after the project completion date or completion of a project stage, the owner or the qualified lessee of the historic building must notify the director in a format acceptable to the director that the project or project stage is complete in accordance with the application and request that the director issue a historic preservation tax credit certificate.

(B) The director may issue a historic preservation tax credit certificate to the owner or qualified lessee of a project approved during an application period once the owner or the qualified lessee has provided the following evidence to the director:

(1) Proof of ownership or leasehold interest by the applicant of the historic building;

(2) The certified amount of qualified rehabilitation expenditures paid or incurred during the rehabilitation period documented in a third-party cost certification by a certified public accountant in accordance with division (D)(5) of section 149.311 of the Revised Code . The cost certification shall include an itemization of the rehabilitation activities, the actual costs, and the portion eligible as qualified rehabilitation expenditures as determined under 26 U.S.C. 47;

(3) Information concerning the tax status of the owner or the qualified lessee of the historic building, including but not limited to the type of entity, individual, partnership or corporation. Pass through entities such as partnership, S-corporation, limited liability company (LLC), or other such pass through entity shall provide a list of partners or members, including for each the correct legal name, taxpayer identification number, and proportion of ownership interest in the entity for allocation of the tax credit.

The owner or the qualified lessee may provide written evidence of a mutually agreed upon alternative distribution or special allocation to its members for allocation of the tax credit;

(4) All required approvals from the state historic preservation officer, including that the project has been completed in compliance with the secretary of the interior's standards for rehabilitation;

(5) Documentation that the historic building meets all required state and local regulations pertaining to the health and safety of occupants; and

(6) Any additional information as may be required by the program policies.

(C) The certificate issued by the director shall include the name of the owner or the qualified lessee, the address and location of the project, the amount of qualified rehabilitation expenditures as certified by the applicant owner to the director, the amount of the historic preservation tax credit (which may be less than the certified qualified rehabilitation expenditures) and any additional information as established in the program policies for the application period.

(D) The historic preservation tax credit is not transferable to any individual or entity.

(E) The credit is to be applied to the tax liability of the owner or the qualified lessee, or if the owner or the qualified lessee is a pass through entity, to the partners or members of the pass through entity, as provided under section 5725.151, 5725.34, 5729.17, 5733.47 or 5747.76 of the Revised Code.

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#### **122:19-1-07: Monitoring and reporting.**

(A) During the rehabilitation period, the director and/or the state historic preservation officer may, upon reasonable notice of not less than three business days, conduct a site visit to the project to inspect and evaluate the rehabilitation.

(B) During the rehabilitation period, the director may, upon reasonable notice of not less than thirty days, request a status report, in a format established by the director, from the applicant consisting of information and updates relevant to the status of the project. Status reports shall not be requested more than twice during a calendar year.

(C) An applicant must provide the director sufficient evidence of reviewable progress as required in division (D)(4) of section 149.311 of the Revised Code and in accordance with the program policies.

(D) The amount of the qualified rehabilitation expenditures identified in the owner's or the qualified lessee certification of completion and reflected on the historic preservation tax credit certificate issued by the director is subject to inspection, examination and audit by the tax commissioner or the tax commissioner's employees.

~~(E)~~ For a period of ~~four~~ three years following the owner's certification of completion, the director may request no more than once annually a owner shall file an annual project status report ~~with the director~~ on a form approved by the director.

~~(E)(F)~~ The owner-applicant shall establish and maintain for a period of at least four years from the certification of project completion date such records as required by the director. Such records include, but are not limited to, records documenting project expenditures and compliance with the secretary of interior's standards for rehabilitation. The owner-applicant shall make such records available for review and verification by the director or tax commissioner or appropriate staff of the director or the tax commissioner as well as other appropriate state agencies. In the event the director determines an owner-applicant has submitted an annual report information containing erroneous information or data not supported by records established and maintained under this rule, the director may, after providing notice, require the owner-applicant to submit revised and accurate reports.

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### **122:19-1-08: Fees.**

(A) Each applicant shall submit an application fee in an amount established annually by the director and officer in a schedule of historic preservation tax credit program fees with each historic preservation tax credit application. An application will not be considered by the director unless the application fee is paid to the director. Application fees are non-refundable even if an application is withdrawn or incomplete.

(B) Each applicant that is approved for a historic preservation tax credit shall pay a servicing fee in an amount established annually by the director and officer in a schedule of historic preservation tax credit fees. The servicing fee will be payable in full within ninety days of the award notice. No application approval shall be effective unless the servicing fee has been paid to the director. Servicing fees are non-refundable even if an application is withdrawn or rescinded.

(C) Each applicant that is approved for a historic preservation tax credit shall pay a certification fee at the time the applicant notifies the director of project completion or completion of a project stage. The certification fee shall be in accordance the amounts established annually by the director and officer in a schedule of historic preservation tax credit fees. A tax credit certificate will not be issued by the director unless the certification fee is paid. Certification fees are nonrefundable.

(D) The director and state historic preservation officer shall establish the schedule of historic preservation tax credit program fees as set forth in this rule for each state fiscal year. The schedule of the application, servicing and certification historic preservation tax credit program fees shall be published by the director on the Ohio ~~department of~~ development services agency's website. All fees shall be collected by the director and allocated between the Ohio ~~department of~~ development services agency and Ohio historic preservation office as determined by the director and officer.

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