THE PRESERVATION OF HISTORIC STRUCTURES TAX CREDIT

PROGRAM GUIDE

COLORADO
Office of Economic Development
& International Trade

PROGRAM OVERVIEW

The Preservation of Historic Structures Credit (HPTC) (C.R.S.§39-22-514.5) is a tax credit program to owners and qualified tenants of certified historic structures that perform a certified rehabilitation of their income producing property. The Colorado Office of Economic Development and International Trade (OEDIT) and History Colorado administer this program and this document is a guide for property owners and qualified tenants wishing to apply for the HPTC program. Please visit the website for additional resources: www.choosecolorado.com/hptc

If an applicant has received or will receive a tax credit from the 1990 Colorado Historic Preservation Tax Credit (C.R.S. §39-22-514) for a current rehabilitation, they are not eligible to receive a tax credit from this program. However, a property that may have received a Colorado tax credit on previous rehabilitations on the same property may still participate in this program if a new rehabilitation has/ will commence.

The Residential Historic Preservation Tax Credit and the Federal Historic Preservation Tax Credit are not covered in this document. For information on these programs, see www.historycolorado.org/preservation-tax-credits. This program is completely separate from the Federal Historic Preservation Tax Credit. Participation or non-participation in the federal credit does not affect participation in the HPTC program.

PROGRAM FUNDING & OEDIT NEUTRALITY

Applications will be accepted through December 31, 2029, and on an annual basis, OEDIT will administer a tax credit cap of $10 million that will be divided into two funding categories separated by a $2,000,000 expenditure threshold. Once the maximum amount of tax credits for the year has been authorized, the system will not allow applicants to apply for tax credit reservations for that year. In addition, credits available but not reserved in a calendar year will be rolled-over and available in the following year. OEDIT also has the option of moving unreserved credits from one category to another. All applications that meet the statutory requirements are processed equally, on a first-come, first-served basis, according to the rules of the reviewing queue.

Once an application has been submitted, OEDIT does not discriminate between applications based on factors such as property type, location, ownership type, etc. OEDIT and History Colorado review applications independent of the amount of available funds. This means that when an application is approved, one of three scenarios will occur: (1) the entire tax credit potential will be reserved due to adequate funding; or (2) the credit will be partially reserved until funding is available, which will trigger a waitlist process; or (3) the entire tax credit potential will be placed on a waiting list until funding is available for a maximum of two years. Lastly, OEDIT has the ability to suspend futher applications once we receive 15 small rehabilitation projects with a Qualified Rehabilitation Expenditure (QRE) of $50,000 or less.

Any application with material misstatement is subject to denial. Any tax credit that is later found to be based on an application with material misstatement is subject to revocation. Please note that the issuance of this tax credit is contingent upon successful completion of the proposed rehabilitation plan within a reasonable amount of time. There is no partial credit for unfinished rehabilitations and applicants that do not or cannot finish their rehabilitation will have their reservation immediately revoked. Lastly, any appeal of a decision made by the office must be addressed by the property owner within 30 days of the originial decision date. Decisions based on statutory requirements are not appealable.

STEP 1: REVIEW OVERALL PROGRAM REQUIREMENTS

- Applicants must be taxpaying entities or individuals filing a Colorado state tax return or an entity that is exempt from federal income taxation pursuant to section 501(c) of the Internal Revenue Code.
- Applicants must have a title to the property, a purchase agreement for the property, an option to purchase, or ownership of a leasehold interest with a remaining term of 39 years or longer in non-rural areas and 5 years in rural areas.
  - "Rural" means a municipality with a population of less than fifty thousand people that is not located within the Denver Metropolitan Area; or an unincorporated area of any county the total population of which is less than fifty thousand people that is not located within the Denver Metropolitan Area.
  - "Denver Metro Area" means all of the land area within the boundaries of the counties of Adams, Arapahoe, Boulder, and Jefferson, all of the area within boundaries of the City and County of Broomfield and the City and County of Denver, and all of the area within the boundaries of the County of Douglas; except that the area within the boundaries of the town of Castle Rock and the area within the boundaries of the Town of Larkspur in the County of Douglas shall not be included in such area.
  - "Municipality" has the same meaning in Section 31-1-101(6) and also includes any unincorporated area of a county, including without limitation an unincorportated community or a census-designated place.
- The property/structure must be at least fifty years old.
- Upon completion of the rehabilitation, the structure must meet one of the following definitions of a Certified Historic Structure by the time the property owner requests issuance of the reserved tax credits: (1) a property that is listed individually or as a contributing property in a district included in a State or National Register of Historic Properties; or (2) a property that is designated as a landmark or a contributing property within a designated historic district by a certified local governments.
- Rehabilitation must meet the Standards of Rehabilitation approved by the U.S. Secretary of the Interior to receive certification from History Colorado.
- QRE must meet or exceed twenty five percent of the original purchase price less the original value of land {(25% x (original purchase price – value of land)}.
- Starting January 1, 2020, QRE must exceed $20,000.
- For completed rehabilitations, property owners have 60 calendar days to apply for a reservation of tax credits from the date the property was placed into service (certificate of completion or certificate of occupancy).
- Applicants are allowed to submit one application per calendar year, and the maximum tax credit for an application is $1,000,000.

- Applicants that separate their project into a maximum of two phases must inform the office at time of reservation application, and must meet one of the following requirements based on: (1) timing of rehabilitation work; (2) which building systems are being rehabilitated; (3) the portion of the structure or property that is being rehabilitated; and/or (4) a clearly distinguishing factor that clearly separates and creates project phases.

STEP 2: APPLY FOR THE QUALIFYING QUESTIONNAIRE

PROGRAM ELIGIBILITY

- Create an account with OEDIT through: https://oedit.secure.force.com/oedit/
- Click on the Historic Preservation Tax Credit tile
- Apply for the Historic Preservation Tax Credit Qualification
- A draft of the application with an application number will be available in the portal for applicants with successful questionnaires

STEP 3: APPLY FOR THE HPTC FULL APPLICATION

RESERVATION OF TAX CREDITS

- Submit the full application to yield a reservation amount by identifying: (1) basic information about the property; (2) the original purchase price of the property; (3) the original value of land; and (4) the estimated QRE (only these costs can be applied toward the tax credit calculation).
- An applicant filing for a reservation of tax credits at or over $250,000 must pay a $500 non-refundable review fee and/or a $250 non-refundable fee for tax credits under $250,000.
- Even though the applicant is required to estimate date of completion, the rehabilitation is not required to be completed by that date.
- Applicants with approved reservations are required, to file a progress report, highlighting progress through evidence, according to the following schedule until project completion:
  - 18 months from the date of reservation of tax credits – 20% of QRE must be expended
  - 24, 36, and 48 months from the date of reservation of tax credits – continuous progress

STEP 4: APPLY FOR AN ISSUANCE REQUEST

- The property owner must submit the request for issuance within one year after the property was placed into service and/or the certificate of occupancy or completion was issued, or the tax credit will be denied.
- The property must be a certified historic structure at the time the applicant submits their request for issuance. If the property loses its certified historic structure status or is destroyed during the rehabilitation, the tax credit reservation is subject to revocation.
- An applicant filing for an issuance request must pay 3% of the tax credit amount, and this fee must be paid prior to tax credit issuance and cannot be attributed in the form of a tax credit reduction.
- As part of the application for issuance, the owner shall provide OEDIT with a cost and expense certification, audited by a licensed certified public accountant that is not affiliated with the owner, certifying the total QRE and the total amount of tax credits for which the owner is eligible.
    - **OEDIT'S INTERPRETATION:** Property owners must submit a cost and expense certification to a licensed CPA that is not affiliated with the owner, and the licensed CPA must review all costs and categorize the expenditures in accordance to QRE as determined by the Secretary of the Interior's Standards for rehabilitation. In addition, the licensed CPA must conduct a review of receipts pertaining to the QRE. The property owner and licensed CPA must provide letters attesting to the certification of costs.
- Calculating the tax credit amount based on QRE:
    - If the property is in a non-rural area and/or a non-disaster area, the tax credit rate is 25% of the first $2,000,000 plus 20% of the remaining balance.
    - If the property is in an area that the President of the United States or the Governor of Colorado has declared to be a major disaster area, and the applicant applied for reservation within 6 years of the date of disaster declaration, then the tax credit rate is 30% of the first $2,000,000 plus 25% of the remaining balance.
    - Starting January 1, 2020, If the property is in a rural community area, then the tax credit rate is 35% of the first $2,000,000 plus 30% of the remaining balance. Prior to January 1, 2020, the tax credit rate in rural areas is 25% of the first $2,000,000 plus 20% of the remaining balance.
    - As of July, 2018 the following counties are currently declared as disaster areas: Adams, Arapahoe, Baca, Boulder, Broomfield, Chaffee, ClearCreek, Crowley, Custer, Denver, El Paso, Elbert, Fremont, Garfield, Gilpin, Grant, Hinsdale, Huerfano, Jefferson, Lake, Larimer, Las Animas, Lincoln, Logan, Minera, Moffat, Morgan, Otero, Park, Prowers, Pueblo, Rio Grande, Saguache, Sedgwick, Washington, Weld, Yuma.

STEP 5: CLAIMING, USE AND TRANSFER OF THE TAX CREDIT

- An owner may use tax credits against state income tax liability, but not against federal or local taxes.
- The tax credit may be carried forward for up to 10 years from the date of issuance.
- Any remaning balance will expire after 10 years if the credit cannot be used, sold or transferred.
- Tax credits offset tax liability only and cannot trigger a refund.

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- Any tax credits issued to a partnership, a limited liability company taxed as a partnership, or multiple owners of a property will be passed through to the partners, members, or owners, including any nonprofit entity that is a partner, member, or owner, respectively, on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method.
- An owner may transfer the full credit, or portions of the tax credit amount. The amount of tax credit available for sale is defined as the original amount of tax credits, minus any tax credit amount that has been claimed on the owner's tax return(s), minus any previous sale. The seller is responsible for making sure that they do not sell any credits that have been claimed with the Department of Revenue.
- Although not required, a tax credit broker must be either: (1) a lawyer; (2) certified public accountant; or (3) a person or organization that markets themselves as a tax credit broker.

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