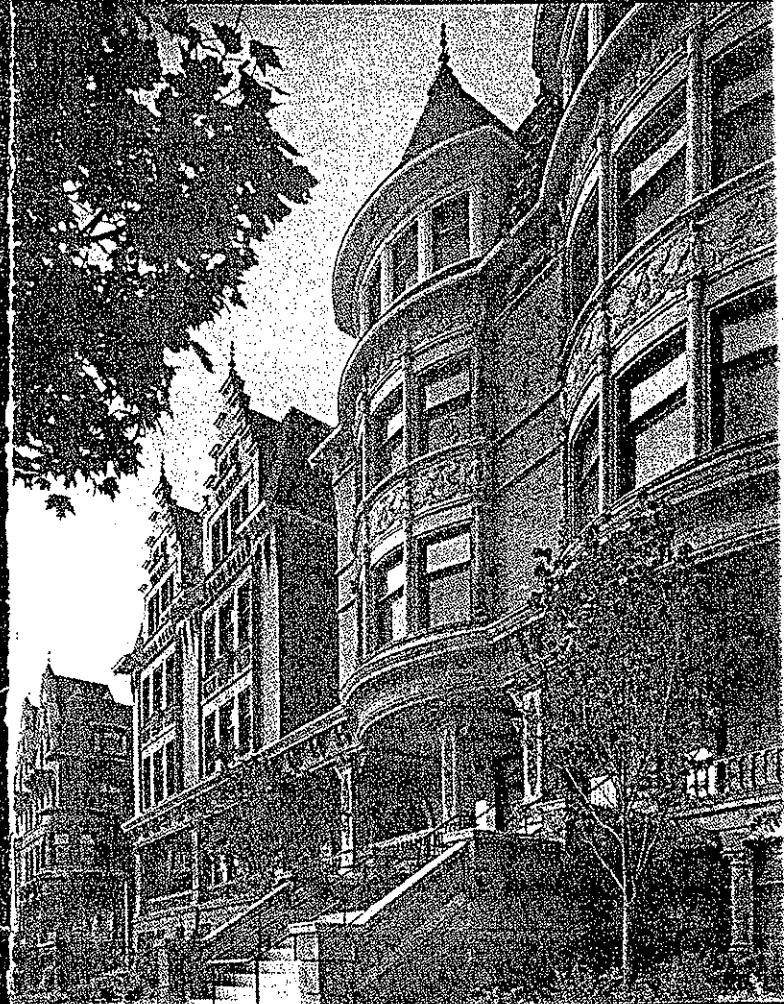
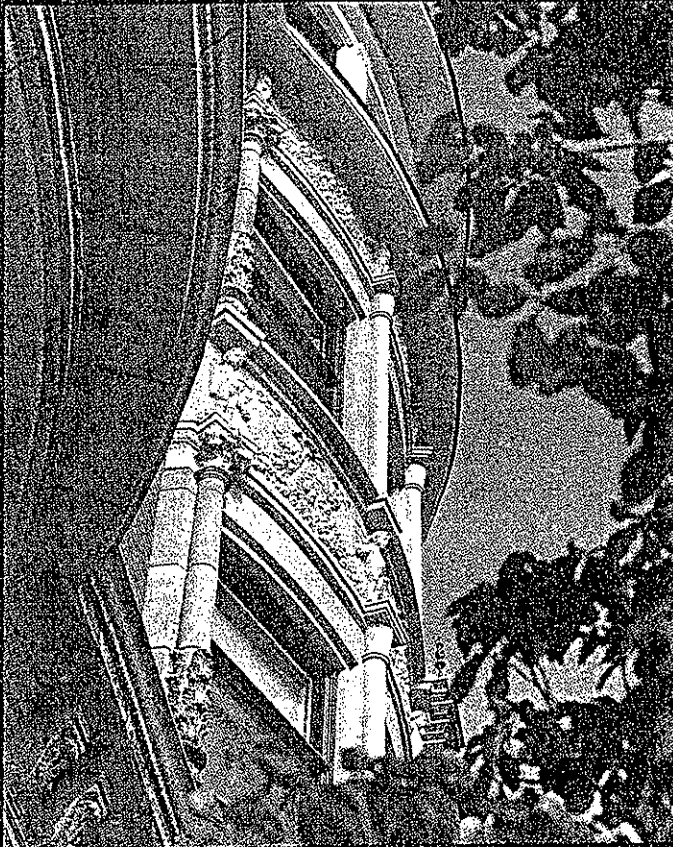


FEDERAL TAX CREDITS

Preservation Tax Incentives for Historic Buildings



U.S. Department of the Interior
National Park Service
Cultural Resources
Heritage Preservation Services

Preservation Tax Incentives

Historic buildings are tangible links with the past. They help give a community a sense of identity, stability and orientation. The Federal government encourages the preservation of historic buildings through various means. One of these is the program of Federal tax incentives to support the rehabilitation of historic and older buildings. The Federal Historic Preservation Tax Incentives program is one of the Federal government's most successful and cost-effective community revitalization programs. The Preservation Tax Incentives reward private investment in rehabilitating historic properties such as offices, rental housing, and retail stores.

Since 1976, the National Park Service has administered the program in partnership with the Internal Revenue Service and with State Historic Preservation Officers. The tax incentives have spurred the rehabilitation of historic structures of every period, size, style and type. They have been instrumental in preserving the historic places that give cities, towns and rural areas their special character. The tax incentives for preservation attract new private investment to the historic cores of cities and towns. They also generate jobs, enhance property values, and augment revenues for State and local governments through increased property, business and income taxes. The Preservation Tax Incentives also help create moderate and low-income housing in historic buildings. Through this program, abandoned or underused schools, warehouses, factories, churches, retail stores, apartments, hotels, houses, and offices throughout the country have been restored to life in a manner that maintains their historic character.

Current tax incentives for preservation, established by the Tax Reform Act of 1986 (PL 99-514; Internal Revenue Code Section 47 [formerly Section 48(g)]) include:

- a 20% tax credit for the *certified rehabilitation of certified historic structures.*
- a 10% tax credit for the rehabilitation of *non-historic, non-residential* buildings built before 1936.

For both credits, the rehabilitation must be a *substantial* one and must involve a *depreciable* building. (These terms will be explained later.)

What Is a Tax Credit?

A tax credit differs from an income tax deduction. An income tax deduction lowers the amount of income subject to taxation. A tax credit, however, lowers the amount of tax owed. In general, a dollar of tax credit reduces the amount of income tax owed by one dollar.

- The 20% rehabilitation tax credit equals 20% of the amount spent in a *certified rehabilitation of a certified historic structure.*
- The 10% rehabilitation tax credit equals 10% of the amount spent to rehabilitate a *non-historic building* built before 1936.

Amon Clarence Thomas House, New Harmony, Indiana (1899). Courtesy C. Scott McDonald.



WHAT IF MY BUILDING IS NOT YET LISTED IN THE NATIONAL REGISTER?

Owners of buildings that are not yet listed individually in the National Register of Historic Places or located in districts that are not yet registered historic districts may use the Historic Preservation Certification Application, Part 1, to request a *preliminary determination of significance* from the National Park Service. Such a determination may also be obtained for a building located in a registered historic district but that is outside the period or area of significance of the district. A preliminary determination of significance allows the owner to proceed with the rehabilitation project while the process of nominating a building or a district continues. Preliminary determinations, however, are not binding. They become final only when the building or the historic district is listed in the National Register or when the district documentation is amended to include additional periods of areas of significance.

What is a “certified rehabilitation?”

The National Park Service must approve, or “certify,” all rehabilitation projects seeking the 20% rehabilitation tax credit. A *certified rehabilitation* is a rehabilitation of a *certified historic structure* that is approved by the NPS as being consistent with the historic character of the property and, where applicable, the district in which it is located. The NPS assumes that some alteration of the historic building will occur to provide for an efficient use. However, the project must not damage, destroy, or cover materials or features, whether interior or exterior, that help define the building’s historic character.

APPLICATION PROCESS

Owners seeking certification of rehabilitation work must complete Part 2 of the Historic Preservation Certification Application—Description of Rehabilitation. Long-term lessees may also apply if their lease is 27.5 years for residential property or 39 years for nonresidential property. The owner submits the application to the SHPO. The SHPO provides technical assistance and literature on appropriate rehabilitation treatments, advises owners on their applications, makes site visits when possible, and forwards the application to the NPS, with a recommendation.

The NPS reviews the rehabilitation project for conformance with the “Secretary of the Interior’s Standards for Rehabilitation,” and issues a certification decision. The entire project is reviewed, including related demolition and new construction, and is certified, or approved, only if the overall rehabilitation project meets the Standards. These Standards appear on pages 22–23. Both the NPS and the IRS strongly encourage owners to apply *before* they start work.

After the rehabilitation work is completed, the owner submits Part 3 of the Historic Preservation Certification Application—Request for Certification of Completed Work to the SHPO. The SHPO forwards the application to the NPS, with a recommendation as to certification. The NPS then evaluates the completed project against the work proposed in the Part 2—Description of Rehabilitation. Only completed projects that meet the Standards for Rehabilitation are approved as “certified rehabilitations” for purposes of the 20% rehabilitation tax credit.

GETTING YOUR PROJECT APPROVED, OR "CERTIFIED"

Tens of thousands of projects have been approved for the historic preservation tax credit. Observing the following points will make approval of your project easier:

- *Apply as soon as possible—preferably before beginning work.* Consult with the SHPO as soon as you can. Read carefully the program application, regulations, and any other information the SHPO supplies. Submit your application early in the project planning. Wait until the project is approved in writing by the NPS before beginning work. Work undertaken prior to approval by the NPS may jeopardize certification. In the case of properties not yet designated *certified historic structures*, apply before the work is completed and the building placed in service.
- *Photograph the building inside and outside—before and after the project.* "Before" photographs are especially important. Without them, it may be impossible for the NPS to approve a project.
- *Read and follow the "Secretary of the Interior's Standards for Rehabilitation" and the "Guidelines for Rehabilitating Historic Buildings."* If you are unsure how they apply to your building, consult with the SHPO or the NPS.
- *Once you have applied, alert the SHPO and the NPS to any changes in the project.*

Claiming the 20% Rehabilitation Tax Credit

Generally, the tax credit is claimed on IRS form 3468 for the tax year in which the rehabilitated building is placed in service. For phased projects, the tax credit may be claimed before completion of the entire project provided that the substantial rehabilitation test has been met. If a building remains in service

throughout the rehabilitation, then the credit may be claimed when the substantial rehabilitation test has been met.

The IRS requires that the NPS certification of completed work (Application Part 3) be filed with the tax return claiming the tax credit. If final certification has not yet been received when the taxpayer files the tax return claiming the credit, a copy of the first page of the Historic Preservation Certification Application—Part 2 must be filed with the tax return. The copy of the application filed must show evidence that it has been received by either the SHPO or the NPS (date-stamped receipt or other notice is sufficient). If the taxpayer then fails to receive final certification within 30 months after claiming the credit, the taxpayer must agree to extend the period of assessment. If the NPS denies certification to a rehabilitation project, the credit will be disallowed.

RECAPTURE OF THE CREDIT

The owner must hold the building for five full years after completing the rehabilitation, or pay back the credit. If the owner disposes of the building within a year after it is placed in service, 100% of the credit is recaptured. For properties held between one and five years, the tax credit recapture amount is reduced by 20% per year.

The NPS or the SHPO may inspect a rehabilitated property at any time during the five-year period. The NPS may revoke certification if work was not done as described in the Historic Preservation Certification Application, or if unapproved alterations were made for up to five years after certification of the rehabilitation. The NPS will notify the IRS of such revocations.

10% Rehabilitation Tax Credit

The 10% rehabilitation tax credit is available for the rehabilitation of *non-historic buildings* built before 1936.

As with the 20% rehabilitation tax credit, the 10% credit applies only to buildings—not to ships, bridges or other structures. The rehabilitation must be *substantial*, exceeding either \$5,000 or the adjusted basis of the property, whichever is greater. And the property must be *depreciable*.

The 10% credit applies only to buildings rehabilitated for *non-residential* uses. Rental housing would thus not qualify. Hotels, however, would qualify. They are considered to be in commercial use, not residential.

A building that has been moved is ineligible for the 10% rehabilitation credit. (A moved certified historic structure, however, can still be eligible for the 20% credit.) Furthermore, projects undertaken for the 10% credit must meet a specific physical test for retention of external walls and internal structural framework:

- at least 50% of the building's walls existing at the time the rehabilitation began must remain in place as external walls at the work's conclusion, and
- at least 75% of the building's existing external walls must remain in place as either external or internal walls, and
- at least 75% of the building's internal structural framework must remain in place.

Claiming the 10% Rehabilitation Tax Credit

The tax credit must be claimed on IRS form 3468 for the tax year in which the rehabilitated building is placed in service. There is no formal review process for rehabilitations of non-historic buildings.

The 10% or 20% Credit: Which One Applies?

The 10% rehabilitation tax credit applies only to non-historic, non-residential buildings built before 1936. The 20% rehabilitation tax credit applies only to certified historic structures, and may include buildings built after 1936. The two credits are mutually exclusive. Only one applies to a given project. Which credit applies depends on the building—not on the owner's preference.

Buildings listed in the National Register of Historic Places are not eligible for the 10% credit. Buildings located in National Register listed historic districts or certified State or local historic districts are presumed to be historic and are therefore not eligible for the 10% credit. Owners of buildings in these historic districts may claim the 10% credit *only* if they file Part 1 of the Historic Preservation Certification Application with the National Park Service and receive a determination that the building does *not* contribute to the district and is *not* a certified historic structure. Owners of historic buildings denied certification for the 20% credit may not claim the 10% credit.

Alternative Minimum Tax

Taxpayers who are not required to pay tax under the regular tax system may still be liable for tax under the alternative minimum tax laws. Alternative minimum taxable income is computed from regular taxable income with certain adjustments and the addition of all appropriate tax preference items.

Nonrefundable credits, such as the rehabilitation tax credit, may *not* be used to reduce the alternative minimum tax. If a taxpayer cannot use the tax credit because of the alternative minimum tax, the credit can be carried back or forward.

Rehabilitations Involving Governments and Other Tax-Exempt Entities

Property used by governmental bodies, nonprofit organizations, or other tax-exempt entities is not eligible for the rehabilitation tax credit if the tax-exempt entity enters into a disqualified lease (as the lessee) for more than 35% of the property. A disqualified lease occurs when:

- Part or all of the property was financed directly or indirectly by an obligation in which the interest is tax-exempt under Internal Revenue Code Section 103(a) and such entity (or related entity) participated in such financing; or,
- Under the lease there is a fixed or determinable price for purchase or an option to buy which involves such entity (or related entity); or,
- The lease term is in excess of 20 years; or,
- The lease occurs after a sale or lease of the property and the lessee used the property before the sale or lease.

Other Tax Incentives for Historic Preservation

Other Federal and State tax incentives exist for historic preservation. They may be combined with the rehabilitation tax credit.

Charitable Contributions for Historic Preservation Purposes

Internal Revenue Code Section 170(h) and Department of the Treasury Regulation Section 1.170A-14 provide for income and estate tax deductions for charitable contributions of partial interests in historic property (principally easements). The Tax Reform Act of 1986 retained these provisions. Generally, the IRS considers that a donation of a qualified real property interest to preserve a *historically important land area* or a *certified historic structure* meets the test of a charitable contribution for conservation purposes. For purposes of the charitable contribution provisions only, a *certified historic structure* need not be depreciable to qualify, may be a structure other than a building and may also be a portion of a building such as a facade, if that is all that remains, and may include the land area on which it is located.

The IRS definition of *historically important land areas* includes:

- independently significant land areas, including any related historic resources that meet National Register Criteria for Evaluation;
- land areas within registered historic districts, including buildings, that contribute to the significance of the historic district; and,
- land areas adjacent to a property individually listed in the National Register of Historic Places (but not within a historic district) where physical or

The Secretary of the Interior's Standards for Rehabilitation

Rehabilitation projects must meet the following Standards, as interpreted by the National Park Service, to qualify as "certified rehabilitations" eligible for the 20% rehabilitation tax credit. The Standards are applied to projects in a reasonable manner, taking into consideration economic and technical feasibility.

The Standards (36 CFR Part 67) apply to historic buildings of all periods, styles, types, materials, and sizes. They apply to both the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment as well as attached, adjacent, or related new construction.

1. 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 site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property 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.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the 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.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. 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 property and its environment.
10. 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 property and its environment would be unimpaired.

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