

Navigating Michigan's Historic Preservation Rehabilitation Tax Credits

By Scott M. Grammer and Lance M. Werner

Introduction

Congress observed during the 1960s that the spirit of the nation was reflected in its heritage and that historically significant properties were being altered or lost at an alarming rate. Recognizing that preserving the nation's heritage was in the public interest, Congress consequently passed the National Historic Preservation Act of 1966 (NHPA).¹ The NHPA set as national policy the practice of giving federal assistance to state and local governments, as well as encouraging historic preservation at the state and local levels.

Following this model, the Michigan legislature similarly declared in 1970 that historic preservation is a public purpose. To implement the state's policy, the legislature enacted the Local Historic District Act² providing for the preservation of Michigan's local historic resources, the creation of historic district commissions, and the designation of local historic districts. In furthering the public purpose of historic preservation, the Michigan legislature recognized that historic resources are tangible links to Michigan's past. Compelled to promote and preserve Michigan's historic resources and, more recently, recognizing the role of historic preservation in economic revitalization efforts and green initiatives, the legislature enacted laws providing tax incentives for qualified rehabilitation expenditures. These incentives are designed to reward Michigan's citizenry who are willing to invest in the state's historic resources and to help preserve and revitalize local communities.

Michigan's Tax Credit Program

Two Michigan acts govern the tax credit program: the Income Tax Act of 1967 and the Michigan Business Tax Act.³ Modeled after the federal rehabilitation tax credit pro-

gram, Michigan's tax credit program is administered by the State Historic Preservation Office (SHPO) working in partnership with both the Michigan Economic Development Corporation and the Michigan Department of Treasury. Eligibility requirements generally include:

- The resource must be located in Michigan.
- The resource must be an eligible resource.
- Project work must follow the secretary of the interior's standards for rehabilitation.⁴
- Applicants must submit a three-part application to the SHPO.
- Qualified rehabilitation expenditures must be equal to or greater than 10 percent of the state equalized value of the resource.

If an applicant meets these criteria and if the project is certified, the applicant is then eligible for an income tax credit in the amount of 25 percent of the eligible qualified expenditures used for resource rehabilitation. A taxpayer is generally allowed to claim the credit in the taxable year that the completed application is approved. If the tax credit exceeds the taxpayer's liability for the tax year in which the initial claim is made, the remainder may be carried forward to the next tax year for up to 10 years.

Qualified Expenditures

Qualified expenditures are costs incurred through rehabilitation work completed on the historic resource. Qualified expenditures can also include fees that are associated with the rehabilitation as well as fees associated with architectural and structural

engineering assessments, site surveys, legal expenses, and development fees. However, qualified expenditures do not include those costs associated with acquiring or furnishing the historic resource, new additions to the historic resource, or construction of new facilities related to the historic resource. So, for example, fees paid to the architect in developing the rehabilitation plan may be qualified, whereas money spent to update kitchen appliances will not.

Pitfalls for Practitioners and Applicants

In addition to potentially including non-qualified expenditures in the credit calculation, any number of other pitfalls await an unwary applicant. In particular, applicants should be aware that the application process requires the SHPO to evaluate a historic resource's eligibility *and* certify the rehabilitation work as conforming to the standards for rehabilitation.

Ideally, the applicant will follow the three-part application process and plan the rehabilitation project accordingly before completing the rehabilitation. Part 1 of the application is an evaluation of resource eligibility for participation in the tax credit program. The SHPO reviews the application and determines whether the historic resource is a certified historic resource. Part 2 of the application requires a description of the rehabilitation to ensure that the planned rehabilitation is consistent with the historic character of the resource. The SHPO evaluates the rehabilitation plan for conformance with the standards for rehabilitation and, if necessary, advises applicants providing technical assistance and literature on appropriate historic treatments. Once rehabilitation work is completed on the historic resource, Part 3 of the application is submitted to request a certification

of completed work. If the completed project receives certification, it is approved for the tax credit program.

Applicants who fail to follow the three-step application process run the risk of losing rehabilitation credits if they proceed with the project to completion before getting SHPO input on the rehabilitation plan and execution. Although there is an appeals process available for applicants who have been denied eligibility or certification, applicants would be wise to consult with preservation professionals *before* moving forward to reduce the risk of completing inappropriate rehabilitation treatments.

Lastly, applicants must be aware that tax credits may be recaptured. The applicant must maintain ownership of the resource and agree to SHPO review before any additional construction work for five years after the year in which the tax credit was initially claimed. If not, a percentage of the tax credit is subject to recapture by the state.

Avoiding Pitfalls: Available Resources

A variety of electronic and library resources are available to assist owners of historic properties in navigating Michigan's historic rehabilitation tax credit program. Because Michigan's tax program is largely modeled after the federal program, it makes sense to start with federal historic rehabilitation electronic sources to provide the foundation for applicable preservation principles.

The National Park Service's Technical Preservation Services (TPS) has a variety of preservation-related materials available online. An introduction to the standards for rehabilitation can be found at <http://www.nps.gov/history/hps/tps/tax/rhb/stand.htm>.⁵ The page includes links to a number of introductory articles on building materials, construction, and design elements necessary to understand rehabilitation of historic resources. The page also provides a link to the TPS home page, <http://www.nps.gov/history/hps/tps/>, which provides a number of links to preservation-related articles and publications. Note that some publications at this site are available as free downloads whereas others are available for a fee. Perhaps most importantly, the TPS home page links to the secretary of the interior's standards for the treatment of historic

properties at http://www.nps.gov/history/hps/tps/standards_guidelines.htm. The standards include four interrelated approaches to historic treatments: preservation, rehabilitation, restoration, and reconstruction. These approaches provide insight into the challenges property owners face in maintaining, repairing, and replacing historic materials.

Researchers seeking guidance from past decisions can access historic preservation cases through the Georgetown Law Library website at <http://www.ll.georgetown.edu/histpres/decisions.cfm>. The Georgetown Law Library website also offers a plethora of resources for historic preservation resources at http://www.ll.georgetown.edu/histpres/other_hp_law.cfm.

Turning now to online resources provided by the state of Michigan, the Michigan Local Historic Districts Act and Tax Credit Program legislation can be accessed through the Michigan legislature's website at www.legislature.mi.gov. Specific state tax credit program information is available at www.michigan.gov/hpcredit. Many Michigan municipal historic ordinances are available through the Municipal Code Corporation website at <http://www.municode.com/Library/ClientListing.aspx?stateID=22>.

Historic preservation has been and will continue to be highly important to maintaining Michigan's rich historical past. Researching the laws pertaining to historic preservation can be accomplished with a modicum of effort by anyone who has access to the Internet. Researchers without Internet access at home or work can always find access at their local public library. ■

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Special thanks to Robbert McKay of the Michigan State Historic Preservation Office.

FOOTNOTES

1. 16 USC 470 *et seq.*
2. 1970 PA 169, § 1 *et seq.*, MCL 399.201 *et seq.*
3. 1967 PA 281, MCL 206.266 *et seq.*, and 2007 PA 36, MCL 208.1435 *et seq.*
4. The secretary of the interior's standards for rehabilitation (36 CFR 67) apply to historic buildings, construction types, and building materials. The standards apply to the interior and exterior of the building, the building's landscape, and the building site and its environment. As a general rule, the standards are to be applied to rehabilitation projects in a reasonable matter, taking into account both economic and technical feasibility.
5. The standards are codified in 36 CFR 67 for use in the Federal Historic Preservation Tax Incentives program.