

HISTORICAL DIVISION[223]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3, 303.1A, and 404A.6, the Department of Cultural Affairs hereby amends Chapter 48, “Historic Preservation and Cultural and Entertainment District Tax Credits,” Iowa Administrative Code.

In 2014 Iowa Acts, House File 2453, the General Assembly made changes to the Historic Preservation and Cultural and Entertainment District Tax Credit Program. This program is administered by the Department of Cultural Affairs with the assistance of the Department of Revenue. These amendments are necessary to implement new program requirements for the aspects of the program that are administered by the Department of Cultural Affairs (the Department). (See also Department of Revenue Adopted and Filed amendments published herein as **ARC 1968C** for the amendments and new rules relating to this program.)

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1836C** on January 21, 2015. A public hearing was held on February 11, 2015. Several public comments were received regarding the proposed amendments. Due to the volume of comments and the fact that many of them are related both to **ARC 1836C** and to **ARC 1837C** (the Department of Revenue’s Notice of Intended Action), the Department of Cultural Affairs and the Department of Revenue compiled all of the comments received into an appendix and created a document of combined responses to those comments. Both the appendix and the responses are available at <https://tax.iowa.gov/comments-administrative-rules>.

Among the many comments received, several were in regard to the registration application scoring criteria. The Department has not made any substantive changes to the scoring criteria because the scoring criteria are supported by the statute, but the Department has made a change to clarify that certain criteria are only used as tiebreaker criteria. Based on the comments, this issue appeared to be a point of confusion, and the change should alleviate some of the commenters’ concerns.

The Department has made changes to the proposed amendments based upon comments requesting minor clarifications, more specific language on amendments to applications, and changes to the length and requirements of the closing period that applicants have between registration and entering into an agreement with the Department. The Department has also revised the proposed amendments to specify the application fees based on a recommendation from the Legislative Services Agency.

These amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department of Cultural Affairs adopted these amendments on March 27, 2015.

After analysis and review of this rule making, the Department finds that there may be a positive impact on jobs as a result of program changes.

These amendments are intended to implement 2014 Iowa Acts, House File 2453.

These amendments will become effective May 20, 2015.

The following amendments are adopted.

ITEM 1. Add the following **new Division I** heading before rule 223—48.1(303,404A):

DIVISION I
PROJECTS FOR WHICH APPLICATIONS WERE APPROVED AND

TAX CREDITS WERE RESERVED PRIOR TO JULY 1, 2014

ITEM 2. Amend subrule 48.5(2) as follows:

48.5(2) Computing the tax credit. The state historic preservation office (hereinafter referred to as SHPO) shall compute the tax credit based on the final qualified rehabilitation costs documented on part three of the application and shall issue a tax credit certificate pursuant to subrule 48.6(8).

a. For projects for which part two of the application was approved and tax credits were reserved before July 1, 2009: The only costs which may be included on part three of the application are the qualified rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date on which part two of the application was approved must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

b. For projects for which part two of the application was approved on or after July 1, 2009: The only costs which may be included on part three of the application are those qualified rehabilitation costs incurred for the rehabilitation of eligible property during the rehabilitation period, provided that any costs incurred prior to the date on which part two of the application was approved must be qualified rehabilitation expenditures as defined in Section 47(c)(2) of the Internal Revenue Code.

ITEM 3. Amend subrule 48.6(1) as follows:

48.6(1) All applications for historic tax credits shall be on the current state fiscal year's forms and in accordance with the current state fiscal year's instructions provided by the SHPO. All applications must be complete and include all required supporting documentation before being considered for review and before beginning the review periods outlined in subrule 48.6(3). Application forms are available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. Applications may also be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

a. Part one of the application identifies the eligibility of the property for the historic tax credit. Part one of the application is accepted year-round. Part one of the application must include all requested information. SHPO staff shall notify the applicant if part one of the application is incomplete. Incomplete applications will not be processed.

b. Part two of the application provides a detailed description of the rehabilitation project. Part two of the application is accepted when tax credits are available for the fund specified by the applicant pursuant to subrule 48.7(6) or, if no tax credits are available, in accordance with rule 223—48.8(303,404A). Part two of the application must include all requested information. SHPO staff shall notify the applicant if part two of the application is incomplete. Incomplete applications will not be processed.

c. Part three of the application provides the information and documentation required to request certification of project completion and includes an economic impact questionnaire. Part three of the application must include all requested information including certification in accordance with subrule 48.4(2). SHPO staff shall notify the applicant if part three of the application is incomplete. Incomplete applications will not be processed. Incomplete applications may be subject to abandonment as outlined in rule 223—48.12(303,404A).

(1) For projects for which part two of the application was approved and tax credits reserved before July 1, 2009, part three of the application shall be submitted within 6 months of the date on which the building is placed in service.

(2) For projects for which part two of the application was approved and tax credits reserved on or after July 1, 2009, and before July 1, 2014, part three of the application shall be submitted within 24 months of the date on which the rehabilitation period ends.

d. Amendments to applications. An applicant shall amend an approved part one of the application or an approved part two of the application if the property changes ownership or if the applicant's name or address changes. An applicant shall amend an approved part two of the application to notify SHPO of, and to request review of, modifications to the original description of the rehabilitation project.

Amendments to part two of the application shall not include modification of the rehabilitation costs estimated in the originally approved part two of the application. Amendments to part two of the application shall not result in the reservation of additional tax credits for a project. Amendments to part two will not be accepted after SHPO has approved part three of the application pursuant to subrule 48.6(8). An applicant may amend an approved part three of the application. Any amendment to part three shall meet all requirements applicable to part three. The total application processing fee charged for part three under rule 223—48.16(303,404A) is based on the final qualified rehabilitation costs as reported on the part three amendment.

ITEM 4. Amend subrule 48.6(8) as follows:

48.6(8) Approval of part three of the application. Upon approval of part three of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the qualified rehabilitation costs as estimated in part two of the application for the tax credit year originally reserved for the project upon approval of part two of the application, unless the qualified rehabilitation costs in part three of the application differ from the estimated qualified rehabilitation costs in part two of the application. Notwithstanding anything contained in this chapter to the contrary, the eligibility for the tax credit and the amount of the tax credit remain subject to audit by the department of revenue in accordance with Iowa Code chapters 421 and 422.

a. If the qualified rehabilitation costs documented in part three of the application are less than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue a certificate in an amount equal to 25 percent of the final qualified rehabilitation costs and return any unused tax credits to the tax credit fund from which they were reserved. Notwithstanding the foregoing, tax credits that were reserved for a project but not used for that project may be used in accordance with Iowa Code chapter 404A as in effect beginning July 1, 2014, and Division II of this chapter.

b. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs of \$750,000 or less: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

c. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs over \$750,000: The SHPO shall notify the applicant that the applicant may either:

(1) Apply for the cumulative total of qualified rehabilitation costs under any other fund for which the project is eligible. If the applicant receives a tax credit reservation from another fund, the applicant shall abandon the entirety of the applicant's tax credit reservation in the small projects fund in accordance with rule 223—48.12(303,404A); or

(2) Claim only the final qualified rehabilitation costs up to \$750,000. If the applicant chooses this option, the SHPO shall issue tax credit certificates totaling no more than \$187,500 for the project, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

d. For projects with tax credits reserved from any other fund: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs in the same fund from which tax credits were initially awarded, with the initial tax credit certificate issued for the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the appropriate fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

e. Transition provisions. Notwithstanding anything to the contrary in paragraphs 48.6(8) "b," "c" and "d" above, beginning on and after July 1, 2014, the taxpayer shall not be eligible for a reservation on any credits awarded in excess of the reservation amount, but shall be eligible to receive credits as they

become available, in the small projects fund or otherwise, in accordance with the procedures developed from time to time by the SHPO. Such procedures shall give preference to taxpayers that had a reservation prior to July 1, 2014.

ITEM 5. Amend subrule 48.7(1) as follows:

48.7(1) *The small projects fund.* The SHPO shall reserve 10 percent of the tax credit allocation for any tax credit year in a small projects fund for projects with final qualified rehabilitation costs totaling \$750,000 or less.

~~a. At the end of each state fiscal year, any credits in the small projects fund that have not been reserved for small projects shall be available for small projects in subsequent fiscal years.~~

~~b. If the small projects fund is fully reserved, any applications for small projects received after full reservation of the small projects fund may be eligible for the statewide fund.~~

ITEM 6. Amend paragraph **48.7(7)“c”** as follows:

~~c. For purposes of this subrule, the phrase “in any fiscal year” refers to each of the three fiscal years for which credits may be reserved pursuant to Iowa Code section 404A.4(5) as amended by 2009 Iowa Acts, Senate File 481, section 3.~~

ITEM 7. Adopt the following **new** subrule 48.7(8):

48.7(8) *Transition provisions.* Notwithstanding anything contained in this chapter to the contrary, no tax credits shall be reserved under these administrative rules after July 1, 2014. See Iowa Code chapter 404A in effect beginning July 1, 2014, and Division II of this chapter.

ITEM 8. Amend subrule 48.8(7) as follows:

48.8(7) *Prioritization of review according to fund.* Once the master sequence list is set, the projects will be reviewed by fund in the sequential order in which they fall on the list.

a. Category A projects will be reviewed and reserved first. SHPO shall reserve the remaining credits for the project from the same tax credit fund selected by the applicant pursuant to subrule 48.7(6) if a selection was made. Otherwise, SHPO shall reserve the remaining credits for the project from the same tax credit fund from which the original reservation came or from another fund for which the project is eligible.

b. Following review of category A projects, tax credit funds will be reviewed in the following order:

- (1) Small projects fund, CED-GP fund, and new permanent jobs fund.
- (2) Disaster recovery fund.
- (3) Statewide fund.

c. Any tax credits that have not been reserved in a particular fund will be transferred, if applicable, to the appropriate fund as outlined in rule 223—48.7(303,404A). If a fund is exhausted before the completion of reviews for that fund, all remaining projects in that fund shall be eligible for the statewide fund and will be considered in the order shown on the master sequence list.

d. Notwithstanding the foregoing, no projects will be sequenced pursuant to this subrule on or after July 1, 2014.

ITEM 9. Adopt the following **new** subrule 48.9(5):

48.9(5) Notwithstanding the foregoing, no credits will be reserved under this rule on or after July 1, 2014.

ITEM 10. Amend rule 223—48.10(303,404A) as follows:

223—48.10(303,404A) Project commencement.

48.10(1) Once a tax credit reservation is made for a project, rehabilitation must begin before the end of the state fiscal year in which the SHPO approved part two of the application. The applicant shall submit to the SHPO a project commencement report and cover letter certifying the commencement date of rehabilitation and outlining expenditure of qualified rehabilitation costs. This report and cover letter are due within the first ten working days of the next state fiscal year. Information about the project commencement report is available from the Tax Incentives Program Manager, State Historic Preservation

Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. It may also be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

48.10(2) In the event rehabilitation on a project does not begin before the end of the state fiscal year in which the SHPO approved part two of the application, the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A). Beginning on and after July 1, 2014, the recaptured reserved tax credit amount shall only be available for award to the extent provided by Iowa Code chapter 404A as in effect beginning July 1, 2014, and Division II of this chapter.

ITEM 11. Amend subrule 48.11(1) as follows:

48.11(1) Once a tax credit reservation is made for a project, construction must be completed and the eligible property must be placed in service as follows:

a. For projects for which part two of the application was approved and tax credits reserved before July 1, 2009: The project shall be completed and the building shall be placed in service on or before June 30, 2011.

b. For projects for which part two of the application was approved and tax credits were reserved on or after July 1, 2009, and before July 1, 2014: The project shall be completed and the eligible property shall be placed in service within 60 months of the date on which part two of the application was approved or 72 months of the date on which part two of the application was approved if more than 50 percent of the qualified rehabilitation costs are incurred within 60 months of the date on which part two of the application was approved and the applicant requests the 12-month extension in writing from the SHPO.

(1) If the applicant requests the 12-month extension from the SHPO to complete the project and place the building in service, the applicant must complete a qualified rehabilitation costs schedule and cover letter documenting the expenditure of more than 50 percent of the qualified rehabilitation costs estimated in part two of the application. This report and cover letter are due within 30 days of the end of the 60-month period. Information about the qualified rehabilitation costs schedule is available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. The qualified rehabilitation costs schedule may be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

(2) If the applicant does not request the additional 12 months from the SHPO, the applicant will be held to the requirement that the building be placed in service within 60 months of the date on which part two of the application was approved.

ITEM 12. Amend subrule 48.11(2) as follows:

48.11(2) In the event actual construction on a project is not completed and the eligible property is not placed in service within the time period allowed in accordance with subrule 48.11(1), the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A). Beginning on and after July 1, 2014, the recaptured reserved tax credit amount shall only be available for award to the extent provided by Iowa Code chapter 404A as in effect beginning July 1, 2014, and Division II of this chapter.

ITEM 13. Amend subrule 48.12(5) as follows:

48.12(5) *Tax credit return to appropriate fund.* The SHPO shall return any recaptured tax credit reservations to the tax credit fund from which they were reserved. Beginning on and after July 1, 2014, the recaptured reserved tax credit amount shall only be available for award to the extent provided by Iowa Code chapter 404A as in effect beginning July 1, 2014, and Division II of this chapter.

ITEM 14. Amend rule 223—48.15(303,404A) as follows:

223—48.15(303,404A) Tax credits in excess of tax liability.

48.15(1) An applicant whose tax credit exceeds the tax liability in the tax year for which the tax credit may be redeemed is entitled to a refund of the excess tax credit with interest under Iowa Code section 422.25. See also administrative rules of the department of revenue, particularly rules 701—42.15(422) 701—42.19(404A,422) and 701—52.18(404A,422).

48.15(2) In lieu of a refund, the applicant may have the excess tax credit applied to the tax liability for the following year.

ITEM 15. Amend **223—Chapter 48, Division I**, implementation sentence, as follows:
These rules are intended to implement Iowa Code ~~chapter~~ chapters 303 and ~~chapter~~ 404A as amended by ~~2009 Iowa Acts, Senate File 481.~~

ITEM 16. Reserve rules **223—48.18** to **223—48.20**.

ITEM 17. Add the following **new Division II** heading before rule 223—48.21(303,404A):

DIVISION II
PROJECTS FOR WHICH PART 2 APPLICATIONS WERE APPROVED AND AGREEMENTS
WERE ENTERED INTO ON OR AFTER JULY 1, 2014

ITEM 18. Adopt the following **new** rules 223—48.21(303,404A) to 223—48.37(303,404A):

223—48.21(303,404A) Purpose. A historic preservation and cultural and entertainment district tax credit (hereinafter referred to as “historic tax credit”) may be applied against the income tax imposed under Iowa Code chapter 422, division II, III, or V, or Iowa Code chapter 432 for qualified rehabilitation projects that have entered into and complied with an agreement with the department of cultural affairs (hereinafter referred to as “the department”) and complied with all applicable terms, laws, and rules. The program is administered by the department with the assistance of the department of revenue. The general assembly has mandated that the department and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department evaluates whether projects comply with the prescribed standards for rehabilitation. The department shall make determinations on applications submitted to the program. The department may consult with the department of revenue on any matters related to Iowa Code chapter 404A, the administrative rules of the department, and any agreement entered into under Iowa Code chapter 404A, including but not limited to issues related to whether projects or claimed expenditures comply with the tax aspects of the program. After consulting with the department of revenue and verifying whether the requirements of the program and any agreement have been fulfilled, the department shall make the determination on an eligible taxpayer’s tax credit claim. This chapter sets forth the administration of the program by the department. The administrative rules for the department of revenue’s administration of the program can be found in rules 701—42.19(404A,422), 701—42.54(404A,422), 701—52.18(404A,422), and 701—58.10(404A,422).

223—48.22(404A) Definitions. The definitions listed in rules 223—1.2(17A,303) and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, for purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means an agreement between an eligible taxpayer and the department concerning a qualified rehabilitation project as provided in Iowa Code section 404A.3(3) and rule 223—48.32(404A).

“*Applicant*” means an eligible taxpayer described in rule 223—48.27(404A).

“*Assessed value*” means the value of the eligible property on the most current property tax assessment at the time that the relevant application or agreement is submitted or the agreement is signed, as applicable.

“*Barn*” means an agricultural building or structure, in whatever shape or design, which was originally used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

“*Certificate*” means a historic preservation and cultural and entertainment district tax credit certificate issued pursuant to Iowa Code section 404A.3(5).

“*Commencement date*” means the date set forth in the agreement, which date shall not be later than the end of the fiscal year in which the agreement is entered into.

“*Commercial property*” means property classified as commercial, industrial, railroad, utility, or multiresidential for property tax purposes under rules 701—71.1(405,427A,428,441,499B), 701—76.1(434), and 701—77.1(428,433,437,438).

“*Completion date*” means the date on which property that is the subject of a qualified rehabilitation project is placed in service, as that term is used in Section 47 of the Internal Revenue Code.

“*Department*” means the department of cultural affairs.

“*Director*” means the director of the department of cultural affairs.

“*Eligible taxpayer*” means the fee simple owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under Section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project.

“*Federal rehabilitation credit*” or “*federal credit*” means the tax credit allowed under Section 47 of the Internal Revenue Code.

“*Federal standards*” means the U.S. Secretary of the Interior’s standards for rehabilitation set forth in 36 CFR Section 67.7.

“*Government funding*” or “*funding originating from a government*” includes but is not limited to:

1. Any funding the applicant received from a government; or
2. Funding from a third party or a series of third parties where those funds originally came from a government or were derived from a government payment, grant, loan, tax credit or rebate or other government incentive; or
3. Funding from a third party or a series of third parties where those funds are derived from, secured by, or otherwise received in anticipation of a government payment, grant, loan, tax credit or rebate or other government incentive.

“*Historically significant*” means a property that is at least one of the following:

1. Property listed on the National Register of Historic Places or eligible for such listing.
2. Property designated as contributing to a district listed in the National Register of Historic Places or eligible for such designation.
3. Property or district designated a local landmark by a city or county ordinance.
4. A barn constructed prior to 1937.

“*Large project*” means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$750,000.

“*Noncommercial property*” means property other than “commercial property” as defined in this rule. “Noncommercial property” includes barns constructed prior to 1937.

“*Nonprofit organization*” means an organization described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503, or 504 of the Internal Revenue Code. “Nonprofit organization” does not include a governmental body, as that term is defined in Iowa Code section 362.2.

“*Placed in service*” means the same as used in Section 47 of the Internal Revenue Code.

“*Program*” means the historic preservation and cultural and entertainment district tax credit program set forth in this chapter.

“*Property*” means the real property that is the subject of a “qualified rehabilitation project” or that is the subject of an application to become a qualified rehabilitation project.

“*Qualified rehabilitation expenditures*” or “*QREs*” means the same as defined in Section 47 of the Internal Revenue Code. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered “qualified rehabilitation expenditures” if they are any of the following:

1. Expenditures made for structural components, as that term is defined in Treasury Regulation § 1.48-1(e)(2).
2. Expenditures made for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, and development fees.

“Qualified rehabilitation expenditures” does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code.

“Qualified rehabilitation expenditures” may include expenditures incurred prior to the date an agreement is entered into under Iowa Code section 404A.3(3).

For more information, consult department of revenue 701—subrule 42.54(2).

“*Qualified rehabilitation project*” or “*project*” means a project for the rehabilitation of property in this state that meets all of the following criteria:

1. The property is historically significant as defined in this rule.
2. The property meets the federal standards as defined in this rule.
3. The project is a substantial rehabilitation as defined in this rule.

“*Related entities*” means any entity owned or controlled in whole or in part by the applicant; any person or entity that owns or controls in whole or in part the applicant; or any entity owned or controlled in whole or in part by any current or prospective officer, principal, director, or owner of the applicant.

“*Related persons*” means any current or prospective officer, principal, director, member, shareholder, partner, or owner of the applicant.

“*Small project*” means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of \$750,000 or less.

“*Substantial rehabilitation*” means qualified rehabilitation costs that meet or exceed the following:

1. In the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation or at least \$50,000, whichever is less; or
2. In the case of noncommercial property, costs totaling at least \$25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

“*Tax credit*” or “*historic tax credit*” means the historic preservation and cultural and entertainment district tax credit established in Iowa Code chapter 404A.

This rule is intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

223—48.23(404A) Amount of the tax credit. An eligible taxpayer that has entered into and complied with an agreement under Iowa Code section 404A.3(3) and has complied with the program statute and rules is eligible to claim a historic preservation and cultural and entertainment district tax credit of 25 percent of the qualified rehabilitation expenditures of a qualified rehabilitation project that are specified in the agreement. Notwithstanding any other provision in Iowa Code chapter 404A, this chapter, or any provision in the agreement to the contrary, the amount of the tax credits shall not exceed 25 percent of the final qualified rehabilitation expenditures verified by the department pursuant to Iowa Code section 404A.3(5) “c.”

This rule is intended to implement Iowa Code section 404A.2 as amended by 2014 Iowa Acts, House File 2453.

223—48.24(404A) Management of annual aggregate tax credit award limit. The department shall not register, as described in rule 223—48.31(404A), more projects in a given fiscal year for tentative awards than there are tax credits available for that fiscal year under Iowa Code section 404A.4. The department will determine the projects for which sufficient tax credits are available based on the estimated qualified rehabilitation expenditures identified in the registration application, plus allowable cost overruns as described in paragraph 48.32(1) “c.”

48.24(1) Registration scoring. If applicants’ total tax credit requests from a fiscal year allocation exceed the tax credit allocation for that fiscal year, the department will prioritize its determinations based on the applicants’ registration scores. If, after determining the projects for which sufficient tax credits are available, the department determines there are insufficient tax credits in the fiscal year allocation to fully award the next highest scoring project, then to maximize the use of the available tax credits, the department in its sole discretion may register the project with the next highest score whose tentative tax credit award amount, including allowable cost overruns as described in paragraph 48.32(1) “c,” would not cause the department to exceed the annual aggregate tax credit award limit, so long as the project meets the minimum score as described in rule 223—48.31(404A). If there are no more projects that meet the minimum score described in rule 223—48.31(404A) that can be fully funded, the department in its sole discretion may make the remaining tax credits available for small projects or allow the remaining tax credits for the fiscal year to carry forward to the succeeding fiscal year to the extent permitted by Iowa Code section 404A.4.

48.24(2) Registrations for future tax credit allocations. Registrations for future tax credit allocations require a new application. When registering projects for a particular fiscal year, the department shall not

award, reserve, or register tax credits from future fiscal years' tax credit allocations. An applicant whose project is not registered due to an insufficient score or noncompliance with the application or the program statute or rules may submit future applications for future fiscal year tax credit allocations.

48.24(3) *Reallocation or rollover of available tax credit awards.* Tax credits may be reallocated or rolled over into future fiscal years to the extent permitted by Iowa Code section 404A.4.

This rule is intended to implement Iowa Code section 404A.4 as amended by 2014 Iowa Acts, House File 2453.

223—48.25(404A) Application and agreement process, generally.

48.25(1) All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the department from time to time. The current forms and instructions will be posted to the department's Web site.

48.25(2) An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

48.25(3) The application and agreement process consists of six steps:

a. The applicant submits a Part 1 application, which is used to evaluate the property's integrity and significance.

b. Unless the Part 1 application is denied, the applicant participates in a preapplication meeting with the department to discuss what to expect for the remainder of the application process.

c. If the Part 1 application is approved and the preapplication meeting is completed, the applicant submits a Part 2 application, which is used to evaluate the proposed rehabilitation work.

d. If the Part 2 application is approved, the applicant submits a registration application, which is used to score the applicant's rehabilitation plan and financial readiness. If the project is awarded a sufficient registration score, satisfies other requirements of the application and program, and sufficient tax credits are available, the department may register the project.

e. If the project is registered, the applicant may enter into an agreement with the department that establishes the maximum amount of the tax credit award and the terms and conditions that must be met to receive the tax credits. An applicant must enter into and comply with an agreement in order to participate in the program and claim any tax credits.

f. Once the project is completed and the property is placed in service, the applicant submits a Part 3 application, which is used to evaluate whether the completed work meets the federal standards and the other requirements of the agreement, laws, and regulations of the program.

A more detailed description of each step is provided in rules 223—48.28(404A) through 223—48.33(404A).

This rule is intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

223—48.26(404A) Small projects. Projects with anticipated final qualified rehabilitation expenditures of more than \$750,000 will be evaluated as large projects. Projects with \$750,000 or less in anticipated final rehabilitation expenditures will be evaluated as small projects. If an applicant anticipates that the final qualified rehabilitation expenditures will exceed \$750,000, the applicant may only submit its application as a large project. The department will not permit a small project applicant to submit additional or amended applications that would cause the final qualified expenditures to exceed \$750,000.

48.26(1) *Small project fund.* The department shall allocate at least 5 percent of its annual fiscal year tax credit award limit to small projects.

48.26(2) *Aggregate award limit.* For applicants that receive credits from the small project allocation, the cumulative total award for multiple applications for a single property shall not exceed \$750,000 in qualified rehabilitation expenditures plus any allowable cost overruns as described in paragraph 48.32(1) "c," regardless of the final qualified rehabilitation expenditures. The department will not accept an application by the same owner for a property for which credits were previously received through the small project fund if the application causes the cumulative total to exceed \$750,000, plus any allowable cost overruns as described in paragraph 48.32(1) "c."

48.26(3) Application and agreement process. The Part 1, Part 2, and Part 3 application process and the agreement requirements are the same for small projects as for large projects. The registration process for small projects differs from that for large projects. See subrule 48.31(9) for more information on the registration process for small projects.

This rule is intended to implement Iowa Code section 404A.4 as amended by 2014 Iowa Acts, House File 2453.

223—48.27(404A) Who may apply for the tax credit. Only an eligible taxpayer may apply for the tax credit. To be an eligible taxpayer, the applicant must be either (1) the fee simple owner or (2) a person that will ultimately qualify for the federal rehabilitation credit with respect to the qualified rehabilitation project. A nonprofit organization as described in rule 223—48.22(404A) may apply for the tax credit if the nonprofit organization is the fee simple owner of the property.

48.27(1) Applicants that are fee simple owners. If the applicant qualifies as an eligible taxpayer on the basis that the applicant is the fee simple owner of the property, the applicant will be expected to provide proof of title as described in subrule 48.28(2).

48.27(2) Applicants that will qualify for the federal credit. If the applicant qualifies as an eligible taxpayer on the basis that the applicant will qualify for the federal rehabilitation credit with regard to the property, the applicant will be asked to provide increasingly substantial evidence as described in rule 223—48.30(404A) that the applicant will qualify for the federal credit, culminating with proof of actual fee simple ownership or a long-term lease that meets the requirements of the federal rehabilitation credit before the agreement is entered into with the department. Applicants that are eligible to apply under this subrule must obtain from the fee simple owner of the property a written statement which indicates that the owner is aware of the application and has no objection and include the statement with the application.

48.27(3) Who may not apply. Government bodies as defined in Iowa Code section 362.2 may not apply. Additionally, an applicant may not initiate the application process to apply for tax credits by submitting a Part 1 application on a project if all of the work has been completed and the qualified rehabilitation project has already been placed in service.

This rule is intended to implement Iowa Code sections 404A.1 and 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.28(404A) Part 1 application—evaluation of significance. The Part 1 application is used to determine whether the property is eligible to be a qualified rehabilitation project.

48.28(1) Types of property that are eligible. The property must meet the federal standards for historical significance.

48.28(2) Proof of status as eligible taxpayer. The Part 1 application may be submitted by an eligible taxpayer as described in rule 223—48.27(404A).

a. To prove the applicant is the fee simple owner, the applicant will be expected to provide title documentation. If the title is held in the name of an entity, the application must be accompanied by documentation which indicates that the signatory is the authorized representative of the entity.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the approved federal Part 1 application, unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit, and the applicant must provide proof of permission from the fee simple owner as described in subrule 48.27(2).

48.28(3) Submission period. Part 1 applications may be submitted year-round.

48.28(4) Required information. Applicants must provide the department a site plan, photographs of the property, a copy of the county assessor's statement for the property, and such other information as the department may require.

48.28(5) Review process. The department will evaluate the appearance and condition of the building and verify the information provided by the applicant. The department will notify the applicant if the Part 1 application is incomplete. Generally, the department will review fully completed Part 1 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible;

however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department must request additional information, the 90-day review period will restart when the requested information is received by the department. The application may be rejected if any requested information is not provided.

48.28(6) *Response from department.* Upon completion of the review, the department shall issue a determination regarding whether the property meets the requirements to be considered historically significant.

48.28(7) *Period of validity.* A determination that the property meets the requirements to be considered historically significant shall be valid for five years from the issuance of the determination provided that the property is maintained in a manner consistent with the federal standards and that the fee simple owner of the property remains the same during such period. Changes to the property that are not approved by the department shall automatically invalidate the determination of historical significance, and reestablishment of the historical significance of the property as well as submittal of a new Part 1 application for a determination that the property is eligible shall be required.

48.28(8) *Amendments.* An applicant shall amend an approved Part 1 application if the property changes ownership or if the applicant's name or address changes prior to submission of a Part 2 application.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.29(404A) *Preapplication meeting.* The purpose of the preapplication meeting is to provide feedback to the applicant and other interested parties that will enable the applicant to better plan and prepare for submission of the Part 2 and registration applications.

48.29(1) *Meeting requests.* Once the completed Part 1 application is submitted, the applicant may request a preapplication meeting by using the form available on the department's Web site.

48.29(2) *Timing of the preapplication meeting.* The meeting must take place no fewer than 30 days after the submission of the Part 1 application and prior to submission of the Part 2 application. Meetings may be held by teleconference at the department's discretion.

48.29(3) *Required information.* The applicant must bring at least the following items to the meeting: preliminary drawings, photographs of the exterior (all elevations) and interior, a preliminary list of character-defining features and treatments or a draft Part 2 application, and a list of questions for which specific guidance is needed. The department may request additional information. If the preapplication meeting will be held by telephone, the required documents must be submitted electronically at least one week prior to the meeting date.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.30(404A) *Part 2 application—description of rehabilitation.* The purpose of the Part 2 application is to determine whether the proposed rehabilitation work meets the federal standards. The applicant must describe the rehabilitation work to be undertaken on the property. The review of the Part 2 application is a preliminary determination only and is not binding upon the department. A formal certification of rehabilitation shall be issued only after the rehabilitation work is completed.

48.30(1) *Proof of status as eligible taxpayer.* The Part 2 application must be submitted by an eligible taxpayer as described in rule 223—48.27(404A).

a. An applicant that is the fee simple owner does not need to provide any additional information regarding ownership unless there has been a change in ownership since the Part 1 application was approved.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the signature page of the approved federal Part 2 application signed by the National Park Service. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit and must provide proof of permission from the fee simple owner as described in subrule 48.27(2).

48.30(2) *Submission period.* Part 2 applications may be submitted at any time after the project has received an approved Part 1 and the applicant has participated in the preapplication meeting.

48.30(3) *Required information.*

a. The applicant must provide any information requested by the department, including but not limited to:

- (1) A detailed description of the rehabilitation;
- (2) An estimate of the total costs related to the rehabilitation and other work to be completed on the property, regardless of whether the costs will ultimately be qualified rehabilitation costs;
- (3) An estimate of the qualified rehabilitation expenditures; and
- (4) Photographs.

b. The applicant must also identify whether the applicant plans to submit a registration application as a small project or a large project. For more information on the differences in the registration application process for large and small projects, see rule 223—48.26(404A).

48.30(4) *Review process.* The department will evaluate the proposed work to determine whether the proposed project, including any new construction, is consistent with the federal standards, the historic character of the property and, where applicable, the registered or potential district in which the property is located. The department will notify the applicant if the Part 2 application is incomplete. Generally, the department will review fully completed Part 2 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department must request additional information, the 90-day review period will restart when the requested information is received by the department. The application may be rejected if any requested information is not provided.

48.30(5) *Response from the department.* The review of the complete Part 2 application shall result in one of three responses:

a. The project is eligible to submit a registration application because the proposed rehabilitation described in the application is consistent with the historic character of the property or the district in which the property is located and the project, as proposed, appears to meet the federal standards;

b. The project is eligible to submit a registration application because the proposed rehabilitation described in the application will likely meet the federal standards if the stipulated conditions are met; or

c. The rehabilitation described in Part 2 of the application is not consistent with the historic character of the property or the district in which the property is located and the project does not meet the federal standards. The project is ineligible for registration. The project may amend its Part 2 application or submit a new Part 2 application for the property.

48.30(6) *Amendments.* Deviation from the original rehabilitation proposal could result in the denial of final project approval and revocation of the tax credit award. An applicant shall amend an approved Part 2 application to notify the department of, and to request review of, modifications to or deviations from the original rehabilitation proposal. Applicants that undertake any work not in the original approved Part 2 application without department approval do so at their own risk. Amendments to the Part 2 application shall not result in the awarding of additional tax credits for the project and may result in a reduction in the tax credit award specified in the agreement if the department determines that the work is not consistent with the federal standards or does not otherwise comply with the requirements of the agreement. Amendments to the Part 2 application will not be accepted after the department has approved the Part 3 application pursuant to rule 223—48.33(404A). Amendments must be submitted on forms approved by the department and available on the department's Web site.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.31(404A) *Registration application.* If the department has approved Part 1 and Part 2 applications for a project, the applicant may submit a historic tax credit registration application during the applicable registration period. The registration application is used to determine whether the project is ready to proceed both financially and logistically. The registration application is also used to confirm whether the proposed work will meet the substantial rehabilitation test and whether the project is a small

project or a large project. The registration application is also used to obtain background information, including information that may disqualify an applicant from participating in the program, as well as other information about the applicant, related persons, and related entities. Though the application process is largely the same for small projects as it is for large projects, there are some differences. For details on those differences, see rule 223—48.26(404A).

48.31(1) *Proof of status as eligible taxpayer.* An eligible taxpayer as defined in rule 223—48.22(404A) may submit a registration application.

a. An applicant that is the fee simple owner must notify the department of any changes in ownership status since the Part 2 application was filed.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant's application will be scored based on the steps taken toward ownership as described in subrule 48.31(6). The applicant must certify that the applicant understands that the applicant will not qualify for any state historic tax credit if the applicant is not the fee simple owner or not otherwise an eligible taxpayer. The applicant must also provide proof of permission from the fee simple owner as described in subrule 48.27(2).

48.31(2) *Submission period.* In general, applications for registration will only be accepted during the established application period, or periods, as identified by the department from time to time on its Web site. However, applications for small project registration will be accepted year-round.

48.31(3) *Required information.* The registration application must include the following information as well as any additional information the department or the department of revenue may request: total project cost, an estimated schedule of qualified rehabilitation expenditures and a schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

48.31(4) *Certification and release of information.* The applicant must identify and list all related persons and related entities, as those terms are defined in rule 223—48.22(404A). The applicant must release information requested by the department regarding the applicant, related persons, and related entities. The applicant must also certify that all representations, warranties, documents, or statements made or furnished in connection with the registration application are true and accurate. The certification and release of information are intended to identify information that will disqualify an applicant from participating in the program or that may have an adverse impact on the project. The certification and release of information are also intended to provide the department with information regarding the economic, ownership, and management realities related to the project by providing information about the actual persons and businesses affiliated with the applicant, the actual persons and businesses that will derive financial benefits from the project, as well as other businesses affiliated with the individuals involved with the project.

a. The department shall reject an application for registration if any of the following occurs or exists:

(1) The applicant fails to answer the questions and provide all requested information and documents in a timely manner as required by the rules or the application or in a timely manner as otherwise requested by the department.

(2) The applicant provides false or inaccurate information or documents to the department.

(3) The applicant, a related person, or a related entity has not filed any local, state, or federal tax returns that are due. This provision shall not apply to an applicant, related person, or related entity that has timely filed an extension to file a local, state or federal tax return.

(4) The applicant, a related person, or a related entity has any overdue local, state, or federal tax liability, including any tax, interest, or penalty.

(5) The applicant, a related person, or a related entity is currently in default, has an uncured breach, or is otherwise not in compliance with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(6) The applicant, a related person, or a related entity has any past-due amounts owed to the state of Iowa, any agency of the state of Iowa, any other entity or instrumentality of the state of Iowa, or any person or entity that is eligible to submit claims to the state offset system under Iowa Code section 8A.504.

(7) The department determines, in its sole discretion, that registering the project, entering into an agreement with the department, or permitting the applicant's tax credit claim would cause the applicant or another person to default on, breach, or otherwise not comply with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(8) The department determines, in its sole discretion, that the applicant will not be able to provide representations, warranties, conditions, or other terms of an agreement that would be acceptable to the department.

(9) Information is disclosed to the department that would cause the department, in its sole discretion, to decline to enter into an agreement with the applicant.

b. Scope of inquiry. The department may ask the applicant to disclose information and documents about other entities affiliated with the applicant, a related person, or a related entity if the department determines that the information regarding the applicant, related persons, and related entities does not adequately disclose to the department the economic, ownership, and management structure and realities related to a project.

48.31(5) Review period. In general, the department and the department of revenue will review fully completed registration applications within 30 calendar days of receipt. The 30-day review period will be adhered to as closely as possible; however, it is not mandatory. If any answers, responses, explanations, documents, or other information submitted in connection with the certification and release of information changes after the applicant has submitted this information to the department, the applicant must supplement its response to the certification and release of information in writing within 10 business days of the change. If the application is incomplete when submitted or if for any other reason the department or the department of revenue must request additional information, the 30-day review period will restart when the requested information is received by the department or the department of revenue, as the case may be. The department will reject an application if any requested information is not provided.

48.31(6) Scoring process. All completed applications will be reviewed and scored. In order for a project to be considered for registration, the application must meet a minimum score as established from time to time by the department and set forth in the current registration application. Scoring of the application will take into account readiness criteria, which may include the following:

a. Rehabilitation planning and project readiness. Projects will be scored based on whether the Part 2 application was approved with or without conditions.

b. Secured financing. Weighted preference will be given to projects that have financing or equity or both in place.

c. Steps taken towards ownership. Weighted preference will be given to the projects of applicants that are currently fee simple owners of the property.

d. Local government support. Weighted preference will be given to projects that have received support from their local jurisdiction.

e. Rehabilitation time line. Weighted preference will be given to projects that will be completed in the shortest amount of time.

f. Zoning and code review. Weighted preference will be given to the projects of applicants that can demonstrate a determination by the authority having jurisdiction that the project complies with the guidelines for construction permitting.

g. Such other information as the department may find relevant and request on the registration application.

48.31(7) Tiebreaker criteria. If the estimated maximum tax credit awards for all projects that scored above the minimum-score threshold based on the criteria in subrule 48.31(6) exceed the fiscal year tax credit allocation and there is a tie between two or more projects and the department does not have sufficient tax credits to allocate to the two or more projects that have the same score, the department will use the following criteria to evaluate those projects that are tied for the lowest score:

a. Statewide economic priorities. Weighted preference will be given to projects that address statewide economic priorities, including: permanent job creation; whether the project is in a federal or state disaster area; and whether the project is in a cultural and entertainment district or specifically mentioned in a great places contract.

b. Vacant property. The department will consider whether the properties are underutilized or not occupied and give preference to those projects on properties that are the most underutilized.

c. Preservation of rural resources. The department will evaluate projects based on the population size of the surrounding community with preference given to projects in communities with the lowest number of residents.

d. Previous application. The department will give weighted preference to projects for which the registration application had been successfully completed and which met the minimum score threshold during a previous application period but were not registered due to lack of available tax credits.

e. Other criteria. The department may give preference to projects based on such other criteria as the department may find relevant and request in the registration application.

48.31(8) Registration. Upon reviewing and scoring all applications that are part of the application period, the department may register the qualified rehabilitation projects to the extent sufficient tax credits are available based on the estimated qualified rehabilitation costs identified in the registration applications. Only projects that meet the minimum score established by the department may be registered. As described in rule 223—48.24(404A), in the case of insufficient funding, preference will be given to the projects with the highest registration score based on the criteria in subrules 48.31(6) and 48.31(7). At the time the project is registered, the department shall make a preliminary determination as to the amount of tax credits for which the project qualifies. The department shall make best efforts to notify the applicant within 45 calendar days after the close of the registration period as to whether the applicant's project has been registered. The registration notice shall include the amount of the applicant's tentative tax credit award, along with a notice that the amount is a preliminary, nonbinding determination only. The department will notify applicants whose projects were not registered and state whether the failure to register the project was due to the failure of the project to meet the minimum score, the lack of available tax credits, or another reason. A list of registered applicants will be posted on the department's Web site.

48.31(9) Small project registration application. The department may establish for small projects a registration application form and process that differ from the application form and process used for large projects. The forms will be available on the department's Web site. Small projects may submit registration applications year-round; however, the registration application must be submitted no later than 180 calendar days after receipt of approval of the Part 2 application from the department. Small project registration applications will be evaluated on a first-come, first-served basis, subject to the availability of tax credits.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.32(404A) Agreement. Upon successful registration of the project as described in subrule 48.31(8), the eligible taxpayer shall have 120 calendar days or until the end of the fiscal year, whichever is less, to purchase or lease the property, if applicable, and enter into an agreement with the department. Nothing in these rules shall affect the department's ability to comply with the annual award limitations described in Iowa Code section 404A.4. A condition precedent to any agreement will be proof that the eligible taxpayer is the actual fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit. An eligible taxpayer shall not be eligible for historic tax credits unless the eligible taxpayer enters into an agreement with the department concerning the

qualifying rehabilitation project and satisfies the terms and conditions that must be met to receive the tax credit award.

48.32(1) Terms and conditions. The agreement shall contain mutually agreeable terms and conditions, which shall, at a minimum, provide for the following:

a. The maximum amount of the tax credit award. Notwithstanding anything in this chapter to the contrary, no tax credit certificate shall be issued until the department and the department of revenue verify the amount of final qualified rehabilitation expenditures and compliance with all other requirements of the agreement, Iowa Code chapter 404A, and the applicable rules.

b. The rehabilitation work to be performed.

c. The budget of the qualified rehabilitation project, including the projected qualified rehabilitation expenditures, and those expenditures not qualified, and allowable cost overruns. The amount of allowable cost overruns provided for in the agreement shall not exceed the following amounts:

(1) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of not more than \$750,000, 15 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(2) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$750,000 but not more than \$6 million, 10 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(3) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$6 million, 5 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

d. A schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

e. The commencement date.

f. The completion date.

g. The agreement termination date, which shall not be earlier than five years from the date on which the tax credit certificate is issued.

h. Such other terms, conditions, representations, and warranties as the department may determine are necessary or desirable to protect the interests of the state.

48.32(2) Amendments. The department may for good cause amend an agreement. However, the department may not amend an agreement to allow cost overruns in excess of the amount described in paragraph 48.32(1)“c.” In addition, the commencement date, completion date, and agreement termination date may not be amended if such an amendment would violate the statutorily prescribed time limits as described in Iowa Code section 404A.3(3). Any amendment approved by the department shall be signed by both parties.

48.32(3) Authority. Only the director or deputy director may enter into agreements on behalf of the department. Any agreement entered into on behalf of the department by a person other than the director or deputy director shall be void.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.33(404A) Part 3 application—request for certification of completed work and verification of qualified rehabilitation expenditures. Part 3 of the application is used to determine whether the project has complied with the terms of the agreement as well as with applicable laws, rules and regulations.

48.33(1) Submission period. The fully completed Part 3 application must be submitted no more than 180 calendar days after the project completion date as defined in the agreement.

48.33(2) Required information. The Part 3 application must include the following information:

a. Certification that the eligible taxpayer is the fee simple owner or is qualified for the federal rehabilitation credit and has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit.

b. Using the qualified rehabilitation expenditures schedule form provided on the department’s Web site, a schedule of total expenditures for the project, which shall identify in detail the final qualified rehabilitation expenditures and those expenditures that are not qualified.

c. A schedule of all funding sources used to finance the project, including those funding sources used to finance or reimburse both qualified rehabilitation expenditures and expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated from any government, whether federal, state, or local.

d. CPA examination. An eligible taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the project in accordance with the American Institute of Certified Public Accountants’ statements on standards for attestation engagements. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the department, along with a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the department or the department of revenue in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied. The department may waive the examination requirement for projects if all of the following requirements are satisfied:

(1) The final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the department, do not exceed \$100,000.

(2) The qualified rehabilitation project is funded exclusively by private funding sources.

e. Any information the department or the department of revenue may require for program evaluation.

48.33(3) Review period. The department and the department of revenue will make best efforts to review Part 3 applications within 90 calendar days after the application is filed. However, this time frame is not binding upon either the department or the department of revenue. The department and the department of revenue shall review the information submitted by the eligible taxpayer and determine whether a tax credit certificate may be issued. See rule 223—48.36(404A) for more information on certificate issuance.

223—48.34(404A) Fees. Applicants must pay a nonrefundable fee for the processing of Parts 2 and 3 of an application. The review fee for Part 2 will be due with the filing of the Part 2 application and will be based on the estimated qualified rehabilitation costs. The fee for review of Part 3 will be due with the filing of the Part 3 application and will be based on the final qualified rehabilitation expenditures. The fee schedule is as follows:

For projects with qualified rehabilitation expenditures of:	Part 2 Processing Fee	Part 3 Processing Fee
\$50,000 or less	No cost	No cost
\$50,001 to \$100,000	\$250	\$250
\$100,001 to \$750,000	\$500	\$500
\$750,001 to \$6,000,000	\$1,000	0.5 percent of final qualified rehabilitation expenditures
Over \$6,000,000	\$1,500	\$30,000

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.35(404A) Compliance.

48.35(1) Annual reports. The eligible taxpayer shall, for the length of the agreement, annually certify to the department compliance with the requirements of the agreement. The certification shall be due each year on the anniversary of the date upon which the agreement was entered into. Instructions and forms shall be made available on the department's Web site.

48.35(2) Burden of proof. The eligible taxpayer shall have the burden of proof to demonstrate to the department that all requirements of the agreement, Iowa Code chapter 404A, and the applicable rules are satisfied. The taxpayer shall notify the department in a timely manner of any changes in the qualification of the rehabilitation project or in the eligibility of the taxpayer to claim the tax credit provided under this chapter, or of any other change that may have a negative impact on the eligible taxpayer's ability to successfully complete any requirement under the agreement.

48.35(3) Events of default, revocation, recapture. If, after entering into the agreement but before a tax credit certificate is issued, the eligible taxpayer or the qualified rehabilitation project no longer meets the requirements of the agreement, Iowa Code chapter 404A, and the applicable rules, the department may find the taxpayer in default and may revoke the tax credit award.

a. Voluntary abandonment. An applicant may choose to irrevocably decline the tax credit that is the subject of the agreement at any time after the agreement is entered into. To irrevocably decline the tax credit, the applicant shall send a letter to the department stating the applicant's decision to irrevocably decline the tax credit. The department shall notify the applicant by certified U.S. mail or courier that the tax credit has been irrevocably declined. The tax credit shall be reallocated to the extent permitted by Iowa Code section 404A.4. If the applicant wishes to apply for a tax credit on the same qualified rehabilitation project at a later date, the applicant must complete the application process as though the project is a new project.

b. Revocation and recapture for prohibited activity; liability of certain transferees. If an eligible taxpayer obtains a tax credit certificate from the department by way of a prohibited activity, the eligible taxpayer and any transferee shall be jointly and severally liable to the state for the amount of the tax credits so issued, interest and penalties allowed under Iowa Code chapter 422, and reasonable attorney fees and litigation costs, except that the liability of the transferee shall not exceed an amount equal to the amount of the tax credits acquired by the transferee. The department of revenue, upon notification or discovery that a tax credit certificate was issued to an eligible taxpayer by way of a prohibited activity, shall revoke any outstanding tax credit and seek repayment of the value of any tax credit already claimed, and the failure to make such a repayment may be treated by the department of revenue in the same manner as a failure to pay the tax shown due or required to be shown due with the filing of a return or deposit form. A qualifying transferee is not subject to the liability, revocation, and repayment imposed under this paragraph. For purposes of this paragraph:

(1) "Prohibited activity" means a breach or default under the agreement with the department, the violation of any warranty provided by the eligible taxpayer to the department or the department of revenue, the claiming of a tax credit issued under this chapter for expenditures that are not qualified rehabilitation expenditures, the violation of any requirements of Iowa Code chapter 404A or rules adopted pursuant to Iowa Code chapter 404A, misrepresentation, fraud, or any other unlawful act or omission.

(2) "Qualifying transferee" means a transferee who acquires a tax credit certificate issued under this chapter for value, in good faith, without actual or constructive notice of a prohibited activity of the eligible taxpayer who was originally issued the tax credit, and without actual or constructive notice of any other claim to or defense against the tax credit, and which transferee is not associated with the eligible taxpayer by being one or more of the following:

1. An owner, member, shareholder, or partner of the eligible taxpayer who directly or indirectly owns or controls, in whole or in part, the eligible taxpayer.
2. A director, officer, or employee of the eligible taxpayer.
3. A relative of the eligible taxpayer or a person listed in paragraph "1" or "2" of this subparagraph or, if the eligible taxpayer or an owner, member, shareholder, or partner of the eligible taxpayer is a legal entity, the natural persons who ultimately own such legal entity.

4. A person who is owned or controlled, in whole or in part, by a person listed in paragraph “1” or “2” of this subparagraph.

(3) “Relative” means an individual related by consanguinity within the second degree as determined by common law, a spouse, or an individual related to a spouse within the second degree as so determined, and includes an individual in an adoptive relationship within the second degree.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.36(404A) Certificate issuance; claiming the tax credit. After consultation with the department of revenue to determine whether the terms of the agreement, Iowa Code chapter 404A, and the applicable rules have been met, the department shall issue a tax credit certificate to the eligible taxpayer stating the amount of tax credit under Iowa Code section 404A.2 the eligible taxpayer may claim, or the department shall issue a notice that the eligible taxpayer is not eligible to receive a tax credit certificate. The department shall issue the tax credit certificate or the notice not later than 60 days following the completion of the examination review, if applicable, and the verifications and consultation required under this rule. Notwithstanding the foregoing, the eligibility of the tax credit remains subject to audit by the department of revenue in accordance with Iowa Code chapters 421 and 422. For information on how to claim the tax credit, see department of revenue rules 701—42.54(404A,422), 701—52.47(404A,422), and 701—58.10(404A,422).

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.37(303,404A) Appeals. Any person wishing to contest an application denial, the amount of the tax credit award, award revocation, or any department action that entitles the person to a contested case proceeding shall file an appeal, in writing, within 30 days of the department action giving rise to the appeal. Any person who does not seek an appeal within 30 days of the department action that gives rise to a right to a contested case proceeding shall be precluded from challenging the department action. Appeals will be governed by the procedures set forth in this rule, together with the process set out in Iowa Code sections 17A.10 to 17A.19. Challenges to an action by the department of revenue related to tax credit transfers, claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to department of revenue 701—Chapter 7.

48.37(1) Contents. The appeal shall contain the following in separate numbered paragraphs:

- a. A statement of the department action giving rise to the appeal.
- b. The date of the department action giving rise to the appeal.
- c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
- d. Reference to the particular statutes, rules, or agreement terms involved, if known.
- e. A statement setting forth the relief sought.
- f. The signature of the person or that person’s representative and the mailing addresses, telephone numbers, and e-mail addresses of the person and the person’s representative.

48.37(2) Contested case proceedings. The presiding officer in any contested case proceeding shall be an administrative law judge who specializes in tax matters.

These rules are intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

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