

HISTORICAL DIVISION[223]

Adopted and Filed Emergency

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

The amendments to Chapter 48 clarify qualified rehabilitation costs, rehabilitation period, and substantial rehabilitation in accordance with the provisions of 2011 Iowa Acts, Senate File 521, amending Iowa Code chapter 404A.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the immediate need for the amendments to implement the provisions of 2011 Iowa Acts, Senate File 521. The application filing window begins July 1. The standard rule-making process would delay this requirement by approximately six months, making it more difficult for projects to meet their project commencement requirements, as stipulated by the Iowa Code.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective on June 22, 2011, as they confer a benefit on constituents.

These amendments are also published herein under Notice of Intended Action as **ARC 9607B** to allow for public comment. This emergency filing permits the Department to implement the new provisions of the law.

The rule making will have no fiscal impact.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 303 and chapter 404A as amended by 2011 Iowa Acts, Senate File 521.

These amendments became effective June 22, 2011.

The following amendments are adopted.

ITEM 1. Amend rule 223—48.1(303,404A) as follows:

223—48.1(303,404A) Purpose. A historic preservation and cultural and entertainment district tax credit (hereafter referred to as historic tax credit) for the substantial rehabilitation of eligible commercial property, residential property and barns located in this state is granted to approved projects, subject to availability of the credit, to apply against the income tax imposed under Iowa Code chapter 422, division II, III, or V, or Iowa Code chapter 432. Historic tax credits are restricted to rehabilitation projects for eligible properties in Iowa. Rehabilitation projects for eligible properties must be conducted in accordance with the federal Standards for Rehabilitation (36 CFR Part 67.7) as described in the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties (hereafter referred to as Standards).

ITEM 2. Amend rule **223—48.2(303,404A)**, definitions of “New permanent jobs” and “Placed in service,” as follows:

“*New permanent jobs*” means the number of new jobs that exist at an eligible property within two years ~~after~~ of the date on which the tax credit certificate is issued. New permanent jobs are calculated as those over and above the employment base.

“*Placed in service*” means ~~the date on which a building receives a certificate of occupancy from the applicable city or county official or the date on which the building is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity~~ the same as used in Section 47 of the Internal Revenue Code.

ITEM 3. Rescind the definition of “Qualified rehabilitation costs” in rule **223—48.2(303,404A)**.

ITEM 4. Adopt the following **new** definitions in rule **223—48.2(303,404A)**:

“*Rehabilitation period*” means the period of time during which an eligible property is rehabilitated commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service.

“*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 (2) in the case of residential property or barns, costs totaling at least \$25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

ITEM 5. Rescind rule 223—48.3(303,404A) and adopt the following **new** rule in lieu thereof:

223—48.3(303,404A) Eligible property. “Eligible property” means property for which a taxpayer may receive the historic preservation and cultural and entertainment district tax credit computed under this chapter and includes all of the following:

1. Property listed on the National Register of Historic Places or eligible for such listing.
2. Property designated as of historic significance 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.

ITEM 6. Rescind rule 223—48.4(303,404A) and adopt the following **new** rule in lieu thereof:

223—48.4(303,404A) Qualified and nonqualified rehabilitation costs.

48.4(1) “Qualified rehabilitation costs” means expenditures made for the rehabilitation of eligible property and includes qualified rehabilitation expenditures as defined in Section 47 of the Internal Revenue Code.

a. Qualified rehabilitation costs include amounts if they are properly includable in computing the basis for tax purposes of the eligible property.

b. Amounts treated as an expense and deducted in the tax year in which they are paid or incurred and amounts that are otherwise not added to the basis for tax purposes of the eligible property are not qualified rehabilitation costs.

c. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis for tax purposes of the eligible property.

d. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs.

48.4(2) Any submission of a part three of the application with qualified rehabilitation costs of more than \$500,000 shall include a certified statement by a certified public accountant verifying that the expenses statement includes only qualified rehabilitation costs incurred in the time period established in subrule 48.5(2).

ITEM 7. Rescind rule 223—48.5(303,404A) and adopt the following **new** rule in lieu thereof:

223—48.5(303,404A) Rehabilitation cost limits and amount of credit.

48.5(1) The amount of the tax credit equals 25 percent of the qualified rehabilitation costs incurred for the substantial rehabilitation of eligible property, subject to the provisions in subrule 48.6(8). Rehabilitation projects that do not meet the definition of a substantial rehabilitation are not eligible to receive a historic tax credit.

48.5(2) Computing the tax credit. 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 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.

48.5(3) For residential or mixed-use property, the amount of rehabilitation costs shall not exceed \$100,000 per residential unit excluding any qualified rehabilitation costs for the public or commercial space and excluding any qualified rehabilitation costs for the weather surfaces of the building envelope including exterior windows and doors. This subrule does not apply to projects for which part two of the application was approved and tax credits were reserved on or after July 1, 2009.

48.5(4) Questions concerning specific tax consequences or interpretation of the state tax code must be addressed to the department of revenue.

48.5(5) Applicants may develop subsequent projects for qualified rehabilitation costs not previously included in a tax credit application for a building which had tax credits previously reserved or awarded. Each subsequent application shall meet eligibility requirements and shall be reviewed individually and independently.

48.5(6) For applicants receiving credits through the small projects fund, the cumulative total for multiple applications for a single building shall not exceed \$500,000 in qualified rehabilitation costs. The SHPO will not accept an application for a building previously receiving credits through the small projects fund that causes the cumulative total to exceed \$500,000. The applicant may either:

a. 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

b. Apply for only the qualified rehabilitation costs up to a cumulative total of \$500,000. If the applicant has already received and claimed a tax credit certificate on the applicant's annual tax return, the applicant shall select this option.

ITEM 8. Amend rule 223—48.6(303,404A) as follows:

223—48.6(303,404A) Application and review process.

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. and *b.* No change.

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 shall be submitted within six months of the date on which the building is placed in service or, if the project is complete, part three of the application may be submitted simultaneously with part two of the application.~~ Part three of the application must include all requested information including certification in accordance with subrule ~~48.4(6)~~ 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, 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 ~~may~~ 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.

e.—An application will not be accepted for a building placed in service more than five years before part two of the application is submitted.

48.6(2) and 48.6(3) No change.

~~**48.6(4)** A part two of an application that includes the same scope of work as a rehabilitation project which qualifies for the federal rehabilitation credit under Section 47 of the Internal Revenue Code shall automatically be approved when reviewed in accordance with subrule 48.6(7) and to the extent that all historic tax credits appropriated for the fiscal year have not already been reserved.~~

48.6(4) Applicants who undertake rehabilitation projects without prior approval from the SHPO do so at their own risk.

48.6(5) Response to application parts.

a. to c. No change.

~~d.—Questions concerning specific tax consequences or interpretation of the state tax code must be addressed to the department of revenue.~~

48.6(6) to 48.6(8) No change.

48.6(9) Disaster recovery projects. An applicant may apply for the disaster recovery fund as described in subrule 48.7(3) if the project meets the following requirements:

a. The initial submittal of part two of the application shall be made no later than the first filing window (see subrule 48.8(2)) that occurs after the five-year anniversary of the disaster declaration date. ~~This time period may be waived in accordance with Iowa Code section 17A.9A. Petitions for waivers shall be directed to the Director, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319.~~

b. No change.

48.6(10) Projects creating new permanent jobs. An applicant may apply for the new permanent jobs fund as described in subrule 48.7(4) if the applicant meets the following requirements:

a. No change.

b. The applicant must provide information to SHPO documenting the creation of at least 500 new permanent jobs within two years of the date on which part three of the application is approved the tax credit certificate is issued. This information shall be verified by the Iowa department of economic development using the process outlined in 261—Chapter 188, Iowa Administrative Code. If the Iowa department of economic development is unable to verify the number of new permanent jobs required, tax credits claimed by the applicant will be subject to repayment to the department of revenue and unclaimed credits shall be unavailable; and

c. No change.

ITEM 9. Amend rule 223—48.7(303,404A) as follows:

223—48.7(303,404A) Tax credit funds.

48.7(1) to 48.7(3) No change.

48.7(4) *The new permanent jobs fund.* The SHPO shall reserve 20 percent of the tax credit allocation for any tax credit year in a new permanent jobs fund for projects that involve the creation of more than 500 new permanent jobs within two years of the date on which ~~part three of the application is approved~~ the tax credit certificate is issued.

48.7(5) to 48.7(7) No change.

ITEM 10. Amend rule 223—48.8(303,404A) as follows:

223—48.8(303,404A) Sequencing of applications for review.

48.8(1) No change.

48.8(2) *Filing window.* Part two applications for state historic tax credits received during the first ten working days of the state fiscal year shall be included in a project review sequencing system to determine the order in which they will be reviewed. The filing window for applications submitted in July 2009 2011 will be extended to August ~~7, 2009~~ 5, 2011.

48.8(3) *Initial sequencing process.* An initial sorting process based on the status of the project application at the start of the state fiscal year will be used to associate applications with the appropriate initial sequencing category. Following initial sorting into a category and subcategory, each application within the assigned category and subcategory will be sequenced in accordance with subrule 48.8(4).

a. and b. No change.

c. Category C projects are comprised of an entirely new part two of a state historic tax credit application not meeting the requirements for any other category and having been received within the specified filing window. ~~Projects may consist of parts one and two of the application, parts two and three of the application with a part one having already been submitted, or parts one, two and three of the application.~~ Category C projects must be submitted during the current year's filing window and must specify a fund pursuant to subrule 48.7(6).

48.8(4) to 48.8(7) No change.

ITEM 11. Amend rule 223—48.11(303,404A) as follows:

223—48.11(303,404A) Project completion and eligible property placed in service.

48.11(1) Once a tax credit reservation is made for a project, construction must be completed and the building eligible property must be placed in service ~~within 36 months of the date on which part two of the application is approved.~~ For projects with tax credits reserved prior to July 1, 2009, construction must be completed and the building must be placed in service on or before June 30, 2011. The applicant must submit part three of the application within six months of the date on which the building is placed in service regardless of the 36-month deadline, unless part three of the application is submitted simultaneously with part two: 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: 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.

48.11(2) In the event actual construction on a project is not completed and the building 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).

ITEM 12. Amend rule 223—48.12(303,404A) as follows:

223—48.12(303,404A) Abandonment and recapture of tax credit reservation.

48.12(1) and **48.12(2)** No change.

48.12(3) *Project abandonment at the request of an applicant.* An applicant may choose to abandon tax credits reserved in accordance with subrule 48.6(7) at any time after the date on which the tax credit was reserved. A tax credit reservation may be voluntarily abandoned for any reason, including abandonment of a reservation from the small projects fund for consideration in another fund in accordance with ~~paragraph 48.5(5)“b”~~ subrule 48.5(6) or paragraph 48.6(8)“c.” Submittal of a new application will require the submittal of a new processing fee. Processing fees for the original part two application(s) as allowed by rule 223—48.16(303,404A) will not be returned. To abandon a tax credit reservation, the applicant shall send a letter to the SHPO requesting that the tax credit project be abandoned. The SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. SHPO shall process the tax credit reservation in accordance with subrule 48.12(5).

48.12(4) and **48.12(5)** No change.

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