

CHAPTER 49
HISTORIC PRESERVATION TAX CREDIT

FOR PROJECTS REGISTERED ON OR AFTER AUGUST 15, 2016

261—49.1(303,404A) Purpose. Pursuant to Iowa Code chapters 303 and 404A, the historic preservation tax credit program is administered by the authority with the assistance of the department of cultural affairs and the department of revenue. This chapter sets forth the administration of the program by the authority. The administrative rules for the department of cultural affairs' administration of the program can be found in 223—Chapter 48. The administrative rules for the department of revenue's administration of the program may be found in rules 701—304.19(404A,422), 701—304.55(404A,422), 701—501.48(404A,422), and 701—601.10(404A,422).

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.2(404A) Program transition and applicability. For projects registered prior to August 15, 2016, the program is administered by the department of cultural affairs and the department of revenue pursuant to the statutes and rules that apply to projects registered prior to August 15, 2016. On or after August 15, 2016, the program is administered by the economic development authority in consultation with the department of cultural affairs pursuant to Iowa Code chapter 404A. Chapter 49 applies to projects that are registered on or after August 15, 2016.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.3(404A) Definitions. For purposes of this chapter, unless the context otherwise requires:

“Agreement” means an agreement between an eligible taxpayer and the authority concerning a qualified rehabilitation project as provided in Iowa Code section 404A.3(3) and rule 261—49.12(404A).

“Applicant” means an eligible taxpayer described in rule 261—49.9(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.

“Authority” means the economic development authority.

“Authority’s website” means the information and related content found at www.iowaeda.com and may include integrated content at affiliate sites.

“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 tax credit certificate issued pursuant to Iowa Code section 404A.3(5).

“Commencement date” means the date by which the qualified rehabilitation project must begin.

“Commercial property” means property classified as commercial, industrial, railroad, utility, or residential for property tax purposes under rules 701—102.1(405,427A,428,441,499B), 701—106.1(434), and 701—107.1(428,433,437,438). “Commercial property” does not include property classified as residential property under 701—subparagraph 102.1(4)“c”(1).

“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 economic development authority.

“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*” includes but is not limited to:

1. Any funding the applicant received from a federal, state, or local 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.

“*National Register of Historic Places*” means the same as defined in rule 223—35.2(303).

“*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.

“*Part 1 application*” means an application submitted to SHPO to determine whether a property is historically significant.

“*Part 2 application*” means an application submitted to SHPO to determine whether the proposed rehabilitation work meets the federal standards.

“*Part 2B application*” means an application submitted to the authority, after a Part 2 application has been approved by SHPO but before a Part 3 application is submitted, to determine whether a project should be registered for a tentative tax credit award.

“*Part 3 application*” means an application submitted to the authority, after a Part 2B application is approved, to determine whether a project has complied with the terms of an agreement as well as with applicable laws, rules and regulations, including federal standards, and is therefore eligible for issuance of a tax credit certificate.

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

“*Program*” means the historic preservation 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 expenditures that meet the definition of “qualified rehabilitation expenditures” in Section 47 of the Internal Revenue Code and as described in rule 261—49.4(404A).

“*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.

“*SHPO*” means the state historic preservation office of the department of cultural affairs.

“*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 tax credit established in Iowa Code chapter 404A.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.4(404A) Qualified rehabilitation expenditures.

49.4(1) *Expenditures incurred by nonprofit organizations.* Notwithstanding the definition in rule 261—49.3(404A), expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered “qualified rehabilitation expenditures” if they are any of the following:

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

49.4(2) *What expenditures qualify.* “Qualified rehabilitation expenditures” may include:

- a. For projects registered on or after January 1, 2023, expenditures incurred within five years prior to the date an agreement is entered into under Iowa Code section 404A.3(3).
- b. Reasonable developer fees. The authority may establish limits on developer fees and may adjust those limits. Any adjustment made to the established limit shall take effect 24 months after the adjustment is published on the authority’s website. Developer fees that are qualified rehabilitation expenditures and that meet the limits effective at the time the Part 2B application is submitted shall be deemed reasonable by the authority.

49.4(3) *Government financing.* “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. For an eligible taxpayer that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.5(404A) Historic preservation tax credit.

49.5(1) *Tax credit.* An eligible taxpayer who has entered into and complied with an agreement under Iowa Code section 404A.3(3) and has complied with the program statutes and rules is eligible to claim a historic 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 credit shall not exceed 25 percent of the final qualified rehabilitation expenditures verified by the authority pursuant to Iowa Code section 404A.3(5)“c.”

49.5(2) *How to claim the tax credit.* To receive the tax credit, a taxpayer shall file a claim in accordance with any applicable administrative rules adopted by the department of revenue.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.6(404A) Management of annual aggregate tax credit award limit. The authority shall not register 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 authority will determine the projects for which

sufficient tax credits are available based on the estimated qualified rehabilitation expenditures identified in the Part 2B application, plus allowable cost overruns as described in paragraph 49.12(1)“c.”

49.6(1) *Registration scoring.* If applicants’ total tax credit requests from a fiscal year allocation exceed the tax credit allocation for that fiscal year, the authority will prioritize its determinations based on the applicants’ registration scores. If there are no more projects that meet the minimum score as described in rule 261—49.11(404A), the authority 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.

49.6(2) *Registrations for future tax credit allocations.* Registrations for future tax credit allocations require a new Part 2B application. When registering projects for a particular fiscal year, the authority 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.

49.6(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.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.7(404A) Applications.

49.7(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 SHPO and the authority. Information about the program, including a link to the online applications and instructions, may be obtained by visiting the authority’s website.

49.7(2) An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.8(404A) Small projects. If an applicant anticipates that the final qualified rehabilitation expenditures will exceed \$750,000, the applicant shall not submit its application as a small project. The authority will not permit a small project applicant to submit additional or amended applications that would cause the final qualified expenditures to exceed \$750,000.

49.8(1) *Small project fund.* The authority shall allocate at least 5 percent of its annual fiscal year tax credit award limit to small projects.

49.8(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 49.12(1)“c,” regardless of the final qualified rehabilitation expenditures. The authority 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 49.12(1)“c.”

49.8(3) *Small project Part 2B applications.* Small project application forms may be obtained by visiting the authority’s website. Small project Part 2B applications may be accepted on a continuous basis or may be accepted during one or more application periods. Small project Part 2B applications may be evaluated on a first-come, first-served basis, subject to the availability of tax credits.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.9(404A) Who may apply for the tax credit. Only an eligible taxpayer as defined in rule 261—49.3(404A) may apply for the tax credit. A nonprofit organization as defined in rule 261—49.3(404A) may apply for the tax credit if the nonprofit organization is the fee simple owner of the property.

49.9(1) *Preliminary documentation.* At the time a Part 1 application or Part 2 application is submitted, an applicant will be expected to provide preliminary documentation of the applicant’s status as an eligible taxpayer.

a. An applicant that is the fee simple owner shall provide title documentation. If the title is held in the name of an entity, the applicant shall also provide documentation that indicates that the signatory is the authorized representative of the entity.

b. An applicant that is not the fee simple owner but plans to apply for the federal rehabilitation credit shall 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. The applicant must obtain from the fee simple owner of the property a written statement that indicates that the owner is aware of the application and has no objection and include the statement with the application.

49.9(2) *Final documentation.* At the time an eligible taxpayer enters an agreement with the authority pursuant to rule 261—49.12(404A), the eligible taxpayer must provide documentation that the eligible taxpayer is a fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit.

49.9(3) *Who may not apply.* Governmental bodies as defined in Iowa Code section 362.2 may not apply.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.10(404A) Part 1 and Part 2 applications. An eligible taxpayer shall submit preliminary applications to SHPO to evaluate, in consultation with the authority, whether the property is historically significant (Part 1) and whether the proposed rehabilitation work meets the federal standards (Part 2). Part 1 and Part 2 applications will be submitted and evaluated in accordance with the SHPO's rules in 223—Chapter 48. The authority will evaluate Part 1 and Part 2 applications to ensure applicants are eligible taxpayers. An applicant must submit a Part 1 application prior to the project being completed and placed in service.

[ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.11(404A) Part 2B application. If SHPO has approved Part 1 and Part 2 applications for a project, the applicant may submit a Part 2B application to the authority during the registration application period as announced on the authority's website.

49.11(1) *Proof of status as eligible taxpayer.* An eligible taxpayer as defined in rule 261—49.3(404A) may submit a Part 2B application.

a. An applicant that is the fee simple owner must notify the authority 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 49.11(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 a written statement that indicates that the owner is aware of the application and has no objection.

49.11(2) *Submission period.* The authority may accept Part 2B applications on a continuous basis or may accept applications during one or more application periods.

49.11(3) *Required information.* The Part 2B application must include the following information as well as any additional information the authority 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 261—49.3(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

49.11(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 261—49.3(404A). The applicant must release information requested by the authority 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 Part 2B application are true and accurate. The certification and release of information are intended to identify information that may 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 authority 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, and other businesses affiliated with the individuals involved with the project.

a. The authority may reject an application for registration if:

(1) The applicant fails to answer the questions and provide all requested information and documents in a timely manner.

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

(3) The applicant, a related person, or a related entity is not in good standing with any local, state, or federal taxing authority. 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 is currently in default, has an uncured breach, or is otherwise not in compliance with any entity or instrumentality of the state of Iowa.

(5) The applicant, a related person, or a related entity has any overdue 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.

(6) The authority determines that the applicant will not be able to provide representations, warranties, conditions, or other terms of an agreement that would be acceptable to the authority.

(7) Information is disclosed to the authority that would cause the authority to decline to enter into an agreement with the applicant.

b. Scope of inquiry. The authority 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 authority determines that the information regarding the applicant, related persons, and related entities does not adequately disclose to the authority the economic, ownership, and management structure and realities related to a project.

c. In determining whether to reject an application in accordance with this subrule, the authority will consider factors including, but not limited to, the nature of the information disclosed and whether the applicant has a record of violations of law over a period of time that tends to show a consistent pattern.

49.11(5) Review period. In general, the authority, in consultation with SHPO, will review fully completed Part 2B applications within 60 calendar days of receipt. The 60-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 authority must request additional information, the 60-day review period will restart when the requested information is received by the authority. The authority may reject an application if any requested information is not provided.

49.11(6) Scoring process. All completed applications will be reviewed and scored. Scoring of the application will take into account readiness criteria, including, but not limited to, 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 timeline. 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 authority may find relevant and request.

49.11(7) Registration. Upon reviewing and scoring all applications that are part of the application period, the authority may register the qualified rehabilitation projects to the extent sufficient tax credits are available based on the estimated qualified rehabilitation costs identified in the Part 2B applications. As described in rule 261—49.6(404A), in the case of insufficient funding, preference will be given to the projects with the highest registration score based on the criteria in subrule 49.11(6). At the time the project is registered, the authority shall make a preliminary determination as to the amount of tax credits for which the project qualifies. The authority shall make best efforts to notify the applicant within 60 calendar days after the close of the application 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. Small projects may submit Part 2B applications year-round; however, the application must be submitted no later than 12 months after receipt of approval of the Part 2 application.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.12(404A) Agreement. Upon successful registration of the project as described in subrule 49.11(7), the eligible taxpayer shall have 90 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 authority. Nothing in these rules shall affect the authority's ability to comply with the annual award limitations described in Iowa Code section 404A.4. The authority shall not enter an agreement until it receives 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 authority concerning the qualifying rehabilitation project and satisfies the terms and conditions that must be met to receive the tax credit award.

49.12(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 authority verifies 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. An eligible taxpayer shall perform the rehabilitation work consistent with the U.S. Secretary of the Interior's standards for rehabilitation, as determined by the department.

c. The budget of the qualified rehabilitation project. The budget should include 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 261—49.3(404A).

- e.* The commencement date.
- f.* The completion date.
- g.* The agreement termination date.
- h.* Such other terms, conditions, representations, and warranties as the authority may determine are necessary or desirable to protect the interests of the state.

49.12(2) *Agreement timeline.* The commencement date indicated in the agreement shall be no later than the end of the fiscal year in which the agreement is entered into. The completion date indicated in the agreement shall be no later than 36 months from the commencement date. The agreement termination date indicated in the agreement shall not be earlier than five years from the date on which the tax credit certificate is issued.

49.12(3) *Amendments.* The authority may for good cause amend an agreement. However, the authority may not amend an agreement to allow cost overruns in excess of the amount described in paragraph 49.12(1) “*c.*” Any amendment approved by the authority shall be signed by both parties.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.13(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, including federal standards.

49.13(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. The authority may extend this deadline under extenuating circumstances.

49.13(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 by the authority, 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. The qualified rehabilitation expenditures schedules form may be obtained by contacting the authority or by visiting the authority’s website.

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 261—49.3(404A).

d. CPA examination.

(1) 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. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the authority, along with a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the authority 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.

(2) The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA’s professional judgment, the qualified rehabilitation expenditures claimed are eligible pursuant to the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A in all material respects. The documents reviewed by the CPA should be readily available to the

authority upon request. The applicant should generally be able to provide the requested documents within ten business days of a request from the authority.

(3) The examination requirement is waived for an eligible taxpayer if the final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the authority, do not exceed \$100,000 and the qualified rehabilitation project is funded exclusively by private funding sources. The authority reserves the right to request any additional information necessary to verify the final qualified rehabilitation expenditures and, if deemed necessary by the authority, to require that such an eligible taxpayer engage a CPA to conduct an examination of the project pursuant to paragraph 49.13(2)“d.”

e. Any other information deemed necessary by the authority 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 or any other information the authority may require for program evaluation.

f. Election to receive either a refundable or a nonrefundable tax credit.

49.13(3) Review period. The authority will make best efforts to review Part 3 applications within 60 calendar days after the application is filed. However, this time frame is not binding upon the authority. The authority, in consultation with SHPO, shall review the information submitted by the eligible taxpayer and determine whether a tax credit certificate may be issued, including whether the eligible taxpayer has complied with federal standards.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.14(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

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.15(404A) Compliance.

49.15(1) Annual reports. The eligible taxpayer shall, for the length of the agreement, annually certify to the authority compliance with the requirements of the agreement.

49.15(2) Burden of proof. The eligible taxpayer shall have the burden of proof to demonstrate to the authority that all requirements of the agreement, Iowa Code chapter 404A, and the applicable rules are satisfied. The taxpayer shall notify the authority 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.

49.15(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 authority may find the taxpayer in default and may revoke the tax credit award.

a. Voluntary abandonment. To irrevocably decline the tax credit, the applicant shall send a letter to the authority stating the applicant's decision to irrevocably decline the tax credit. The authority shall acknowledge, in writing, 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. Pursuant to Iowa Code section 404A.3(4) "c," if an eligible taxpayer obtains a tax credit certificate from the authority 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.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.16(404A) Certificate issuance; claiming the tax credit. After determining whether the terms of the agreement, Iowa Code chapter 404A, and the applicable rules have been met, the authority 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 authority shall issue a notice that the eligible taxpayer is not eligible to receive a tax credit certificate. To receive the tax credit, an eligible taxpayer shall file a claim in accordance with any applicable administrative rules adopted by the department of revenue. 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.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

261—49.17(303,404A) Appeals. Appeals will be governed by 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.

[ARC 2944C, IAB 2/15/17, effective 3/22/17; ARC 6728C, IAB 12/14/22, effective 1/18/23]

These rules are intended to implement Iowa Code chapter 404A.

[Filed ARC 2944C (Notice ARC 2774C, IAB 10/12/16), IAB 2/15/17, effective 3/22/17]

[Filed ARC 6728C (Notice ARC 6546C, IAB 9/21/22), IAB 12/14/22, effective 1/18/23]