

CHAPTER 48
HISTORIC PRESERVATION AND CULTURAL AND
ENTERTAINMENT DISTRICT TAX CREDITS

223—48.1(303,404A) Purpose. A historic preservation and cultural and entertainment district tax credit (hereafter referred to as historic tax credit) for 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).

223—48.2(303,404A) Definitions. The definitions listed in Iowa Code section 17A.2 and rules 223—1.2(17A,303), 223—1.6(303), 223—13.2(303), 223—22.2(303), and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, the following definitions apply:

“*Assessed value*” means the amount of the most current property tax assessment.

“*Commercial property*” means a building used for retail, office, or other business uses not otherwise classified as residential use pursuant to the Iowa state building code.

“*Historic tax credit(s)*” means the historic preservation and cultural and entertainment district tax credit established in Iowa Code chapter 404A.

“*Mixed-use property*” means a property that includes three or more residential units and may also contain a commercial property component in the same building.

“*Qualified rehabilitation costs*” means qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

“*Reserved tax credit*” means the amount of tax credits set aside from the available tax credit fund for an approved project.

“*Residential property*” means a building with two or fewer residential units.

“*Standards*” means the Standards for Rehabilitation as described in the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties.

“*Tax basis*” means the same as defined in department of revenue 701—subrule 42.15(3).

“*Tax credit year*” means the tax year in which a tax credit certificate holder is eligible to redeem a tax credit certificate based on the availability of tax credit funds for an eligible project.

223—48.3(303,404A) Eligible properties. The following properties are eligible for the historic tax credit:

1. Property verified as listed on the National Register of Historic Places or determined eligible for such listing through the established procedures of the state historic preservation office (SHPO);
2. Property designated as a building contributing to the historic significance of a district listed on the National Register of Historic Places or contributing to the historic significance of a district determined eligible for such listing through the established procedures of the SHPO;
3. A property or district designated as a local landmark by a city or county ordinance; or
4. A barn constructed prior to 1937.

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

48.4(1) Qualified rehabilitation costs are as defined in Section 47, rehabilitation credit, of the Internal Revenue Code. To view Section 47 online, visit www.nps.gov/history/local-law/FHPL_RehabCredit%20.pdf.

48.4(2) Costs deducted as expenses in the tax year in which they are paid or incurred are nonqualified rehabilitation costs for determination of historic tax credits.

48.4(3) Architectural and engineering fees, site survey fees, legal fees, insurance premiums, development fees and other construction-related expenses are qualified rehabilitation costs for determination of historic tax credits to the extent they increase the tax basis of the eligible property.

48.4(4) Sidewalk, parking lot and landscaping expenses are nonqualified rehabilitation costs for determination of historic tax credits.

48.4(5) Only qualified rehabilitation costs incurred during the 24-month period immediately prior to the project completion date may be used for determination of historic tax credits, excluding any costs incurred prior to inception of this program.

a. Qualified rehabilitation costs incurred prior to approval by the SHPO of part two of the application (see rule 223—48.6(303,404A)) may be considered in the determination of historic tax credits.

b. Owners who undertake rehabilitation projects without prior approval from the SHPO do so at their own risk.

48.4(6) 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 48.4(5).

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

48.5(1) For commercial or mixed-use property, the amount of rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the land, prior to rehabilitation.

48.5(2) For residential property or for barns, the amount of rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value of the property, excluding the land, prior to rehabilitation, whichever is less.

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 commercial space and excluding any qualified rehabilitation costs for the weather surfaces of the building envelope including exterior windows and doors.

48.5(4) The historic tax credit for a project shall equal 25 percent of the qualified rehabilitation costs.

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 as stated in subrules 48.5(1) to 48.5(4) and shall be reviewed individually and independently. The cumulative total for applications for buildings funded through the small projects funding queue shall not exceed \$500,000. Any application for a building previously funded through the small projects funding queue that causes the cumulative total for that building to exceed \$500,000 may be considered for funding in accordance with rule 223—48.8(303,404A).

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

48.6(1) All applications for historic tax credits shall be on forms and in accordance with instructions provided by the SHPO. 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 following Web site: www.state.ia.us/government/dca/shsi/preservation/financial_assistance/state_tax_credit/ia_state_tax_credit.html.

a. Part one of the application identifies the eligibility of the property for the historic tax credit. Part one of the application must include all requested information. SHPO staff shall notify the applicant in writing 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 must include all requested information. SHPO staff shall notify the applicant in writing 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 must include all requested information including certification in accordance with subrule 48.4(6). SHPO staff shall notify the applicant in writing 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—48.11(303,404A).

d. Amendments to applications. An applicant may 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.

48.6(2) SHPO staff trained by the National Park Service for reviewing rehabilitation projects to ensure compliance with Standards will review part two and part three of each submitted application.

48.6(3) SHPO staff shall review and respond in writing to part two or part three of each completed application or to amendments to part two of an application (see rule 223—48.8(303,404A)) within 90 days of receipt.

a. If an applicant submits more than one part of an application simultaneously, SHPO staff shall review each part sequentially.

b. If an applicant submits more than one part of an application simultaneously, SHPO staff shall respond in writing to each completed application part sequentially, within 90 days of approval of the previous part of the application.

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 submitted in accordance with rule 223—48.8(303,404A) and to the extent that all historic tax credits appropriated for the fiscal year have not already been reserved.

48.6(5) Response to application parts.

a. Review of part one of the application shall result in one of two responses:

- (1) The property is eligible for the historic tax credit; or
- (2) The property is not eligible for the historic tax credit.

b. Review of part two of the application shall result in one of three responses which may be provided to the department of revenue:

(1) The rehabilitation described in the application is consistent with the historic character of the property or the district in which it is located, and the project meets the Standards. The initial review of part two is a preliminary determination only. A formal certification of rehabilitation shall be issued only after rehabilitation work is completed;

(2) The rehabilitation or proposed rehabilitation described in part two of the application will meet the Standards if the stipulated conditions are met; or

(3) The rehabilitation described in part two of the application is not consistent with the historic character of the property or the district in which it is located, and the project does not meet the Standards.

c. Review of part three of the application shall result in one of two responses which may be provided to the department of revenue:

(1) The completed rehabilitation meets the Standards and is consistent with the historic character of the property or the district in which it is located. Effective on the date of approval of part three of the application, the project shall be designated a “certified rehabilitation”; or

(2) The rehabilitation is not consistent with the historic character of the property or the district in which it is located, and the project does not meet the Standards.

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

48.6(6) Approval of part one of the application. Upon approval of part one of the application, an applicant may proceed to submission of part two of the application. If the applicant submitted part two of the application simultaneously, the SHPO shall complete review of part one of the application before reviewing part two of the application.

48.6(7) Approval of part two of the application.

a. Upon approval of part two of the application with no conditions, the SHPO shall reserve tax credits for the project in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the next available tax credit year, and the applicant may proceed to implement the project.

b. Upon approval of part two of the application with conditions, the SHPO shall reserve tax credits for the project in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the next available tax credit year. The applicant may proceed to implement the project, and the applicant shall document compliance with the conditions.

c. An authorized representative of the SHPO, with due notice to the applicant, may inspect projects to determine if the work meets the Standards.

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.

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 return any unused tax credits to the available tax credit pool for other projects in the same funding queue.

b. If the 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 a tax credit certificate to the applicant in an amount equal to 25 percent of the documented qualified rehabilitation costs that exceed the qualified rehabilitation costs estimated in part two of the application for the next available tax credits in the same funding queue from which tax credits were initially awarded according to procedures established in rule 223—48.8(303,404A).

223—48.7(303,404A) Funding queues.

48.7(1) The SHPO shall reserve 10 percent of available tax credits for any tax credit year in a small projects funding queue for single projects with estimated qualified rehabilitation costs totaling \$500,000 or less.

a. At the end of each state fiscal year, any funds in the small projects funding queue that have not been reserved for small projects shall be transferred to the statewide funding queue for other projects.

b. If the small projects funding queue is fully reserved before the end of a state fiscal year, any applications for small projects received after full reservation of the small projects funding queue may be eligible for the cultural and entertainment district (CED) funding queue or the statewide funding queue.

48.7(2) The SHPO shall reserve 40 percent of available tax credits for any tax credit year in a CED funding queue for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C.

a. At the end of each state fiscal year, any funds in the CED funding queue that have not been reserved for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C shall be transferred to the statewide funding queue for other projects.

b. If the CED funding queue is fully reserved before the end of a state fiscal year, any applications for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C received after full reservation of the CED funding queue shall be eligible for the statewide funding queue.

48.7(3) The SHPO shall reserve 50 percent of available tax credits in a statewide funding queue for any tax credit year, which is to be used for eligible projects throughout the state of Iowa.

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

48.8(1) Order of review. The SHPO anticipates the receipt of a large number of applications for historic tax credits for projects with qualified rehabilitation costs in excess of \$500,000 at the beginning of each state fiscal year. At the start of each state fiscal year, the SHPO will utilize a project review sequencing system to establish the order in which applications will be reviewed. Applications for projects with qualified rehabilitation costs under \$500,000 making application for credits from the small project funding queue will be accepted and reviewed throughout the calendar year until all available credits from that funding queue are reserved. When all available credits are reserved from the small project funding queue, subsequent applications will be accepted utilizing the procedures in subrules 48.8(1) to 48.8(6) for projects with qualified rehabilitation costs in excess of \$500,000.

48.8(2) Filing window. Projects with qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) “b” and 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.

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, each application within the assigned category will be sequenced in accordance with rule 223—48.8(303,404A).

a. Category A projects are comprised of projects with qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) “b” and which could not be otherwise reserved from available credits in the appropriate funding queue.

b. Category B projects are comprised of a state historic tax credit application submitted during any previous year’s filing window, and was included in that year’s sequencing system, and did not receive a tax credit reservation. Category B projects must be resubmitted during the present year’s filing window.

c. Category C projects are comprised of a state historic tax credit application that includes the same scope of work approved for federal rehabilitation tax credits, as documented by a signed part two of the federal tax credit application approved prior to the first business day of the state fiscal year, and applications with rehabilitation costs in excess of \$500,000 which are not eligible for the federal program. Applications eligible for this category must include one of the following:

- (1) A new part two of the application with part one of the application already on file;
- (2) New parts one and two of the application; or
- (3) New parts one, two and three of the application.

d. Category D projects are comprised of an entirely new 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.

48.8(4) Secondary sequencing process. Using a random number generator, SHPO staff will assign unique, random numbers to all applications that are eligible for inclusion in the review sequencing system within each category of the initial sequencing system. Applications within each category shall then be placed in numeric order from lowest to highest. SHPO staff shall then create a master review sequence list, with category A applications reviewed first, category B applications reviewed next, category C applications reviewed next, and category D applications reviewed last.

48.8(5) Random number generator. SHPO staff shall use a random number generator utility found in Microsoft Excel 2003 or the current version of Microsoft Excel generally used by the department of cultural affairs.

48.8(6) Outside observer. The initial sequencing process, the secondary sequencing process, and the development of the master review sequence list will be observed and certified by an official state witness.

223—48.9(303,404A) Reserved tax credits.

48.9(1) Upon written approval of part two of the project application, the SHPO shall reserve an estimated tax credit under the name of the applicant(s) in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the next available tax credit year.

48.9(2) If the amount of estimated qualified rehabilitation costs changes during the course of project implementation, the applicant may include those costs in part three of the application.

48.9(3) The SHPO shall not reserve tax credits for more than two state fiscal years beyond the current state fiscal year.

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

48.10(1) Once a tax credit reservation is made for a project, actual construction must begin on the project prior to the end of the state fiscal year in which the SHPO approved part two of the application. The applicant shall notify the SHPO of the commencement date of actual construction and, if the estimated qualified rehabilitation costs for the project exceed \$500,000, shall submit a certified statement by a certified public accountant confirming expenditure of at least 10 percent of estimated qualified rehabilitation costs prior to the end of the state fiscal year in which the SHPO approved part two of the application.

48.10(2) In lieu of commencement of actual construction prior to the end of the state fiscal year in which the SHPO approved part two of the application, an applicant may notify the SHPO that the project identified in part two of the application was awarded low income housing tax credits (LIHTC) from the Iowa finance authority in the same fiscal year in which the SHPO approved part two of the application.

48.10(3) In the event actual construction on a project does not commence prior to the end of the state fiscal year in which the SHPO approved part two of the application in accordance with subrule 48.10(1) or 48.10(2), the SHPO shall recapture the tax credit reservation and utilize those tax credit funds for additional applications in accordance with the provisions of rule 223—48.8(303,404A).

223—48.11(303,404A) Abandonment of tax credit reservation.

48.11(1) If there has been no contact with the SHPO by the applicant between project commencement confirmed in accordance with rule 223—48.10(303,404A) and the estimated project completion date shown on the approved part two of the application, the SHPO shall, by registered U.S. mail sent to the last-known address of the applicant, request that a status report be filed with the SHPO within 30 days of the date of the letter. The SHPO shall notify an applicant that the project will be considered abandoned and the SHPO will recapture the tax credit reservation unless the applicant submits a status report that documents actual construction on the project within 30 days of the date of the letter.

48.11(2) If the SHPO has not received a status report that documents actual construction on a project by the deadline, then the SHPO shall notify an applicant by registered U.S. mail sent to the applicant's last-known address that the project has been abandoned and the tax credit reservation has been recaptured because the conditions of subrule 48.11(1) have not been met.

48.11(3) The SHPO shall return any recaptured tax credit reservations to the appropriate funding queue in the pool of tax credits available for other rehabilitation projects.

48.11(4) This rule shall also apply to any project that received approval for part two of the application on or before June 30, 2007.

223—48.12(303,404A) Submission deadline.

48.12(1) No later than six months after the estimated project completion date on the approved part two of the application, or upon project completion, the applicant shall submit a complete part three of the state historic tax credit application to the SHPO.

48.12(2) If the SHPO has not received a complete part three of the state historic tax credit application by the deadline, then the SHPO shall notify an applicant by registered U.S. mail sent to the applicant's last-known address that the project has been abandoned and the tax credit reservation has been recaptured because the conditions of subrule 48.12(1) have not been met.

48.12(3) The SHPO shall return any recaptured tax credits to the pool of tax credits available for other rehabilitation projects.

48.12(4) This rule shall also apply to any project that received approval for part two of its application on or before June 30, 2007.

223—48.13(303,404A) Transfer of tax credit certificate. The applicant may transfer the tax credit certificate to one or more parties in accordance with department of revenue 701—subrule 42.15(6).

223—48.14(303,404A) Redemption of tax credit certificate. The tax credit holder shall attach the tax credit certificate and a copy of the signed part three of the application to the taxpayer's state income tax return and submit these documents to the department of revenue in the tax year for which the tax credit certificate is valid.

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) and 701—52.18(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.

223—48.16(303,404A) Application processing fees. A nonrefundable fee for application processing of parts two and three of an application will be charged for review of requests for certification of a rehabilitation project for historic tax credits. An initial review fee will be due with the filing of part two of an application. An additional fee for review of completed rehabilitation work will be due with the filing of part three of an application. Fees will be based on the amount of qualified rehabilitation costs. The fee schedule is as follows:

Part 2 Review Fee	For projects with qualified rehabilitation cost of:	
Residential (1-2 units) & barns	Under \$50,000	No cost
Residential (1-2 units) & barns	\$50,000 and over	\$250
Commercial or mixed-use properties (includes residential 3+ units)	Any amount	\$500
Part 3 Review Fee	For projects with qualified rehabilitation cost of:	
Residential (1-2 units) & barns	Under \$50,000	No cost
Residential (1-2 units) & barns	\$50,000 and over	\$250
Commercial or mixed-use properties (includes residential 3+ units)	Under \$50,000	\$250
Commercial or mixed-use properties (includes residential 3+ units)	\$50,000 to \$1,000,000	.5 percent (.005) of qualified rehabilitation costs
Commercial or mixed-use properties (includes residential 3+ units)	Over \$1,000,000	\$5,000

223—48.17(303,404A) Appeals.

48.17(1) Applicants may appeal a decision of the state historic preservation office on any of the following bases:

- a. Action was outside statutory authority;
- b. Decision was influenced by a conflict of interest;
- c. Action violated state law or administrative rules;
- d. Insufficient public notice was given; or
- e. Alteration of the review and certification process was detrimental to the applicant.

48.17(2) Appeals in writing shall be delivered to the director of the department of cultural affairs within 30 days of the decision giving rise to the appeal. All appeals shall be directed to the Director, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319; telephone (515)281-7471.

48.17(3) All appeals shall contain:

- a.* The facts of the case;
- b.* Argument(s) in support of the appeal; and
- c.* The remedy sought.

48.17(4) The director of the department of cultural affairs shall consider and rule on an appeal after receiving all documentation from the appellant and shall notify the appellant in writing of the decision within 30 days. The decision of the director of the department of cultural affairs shall be final except as provided in Iowa Code sections 17A.19 and 17A.20.

These rules are intended to implement Iowa Code chapters 303 and 404A.

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