

**701—42.54 (404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after July 1, 2014, and before August 15, 2016.** For projects registered before August 15, 2016, the department of cultural affairs is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—42.19(404A,422). The department of revenue's provisions for projects registered on or after July 1, 2014, and before August 15, 2016, are found in this rule. The department of cultural affairs' rules related to this program may be found at 223—Chapter 48.

2016 Iowa Acts, House File 2443, amended the program and transferred primary responsibility for its administration to the economic development authority effective August 15, 2016. Effective August 15, 2016, the program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The department of revenue's provisions for projects registered on or after August 15, 2016, are found in rule 701—42.55(404A,422). The economic development authority's rules related to the program may be found at 261—Chapter 49. When adopted, the department of cultural affairs' rules related to the program will be found in 223—Chapter 48.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—42.19(404A,422). Projects registered on or after July 1, 2014, but before August 15, 2016, shall be governed by 2014 Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule. Projects registered on or after August 15, 2016, shall be governed by 2016 Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443; by 261—Chapter 49; and by rule 701—42.55(404A,422).

**42.54(1) *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.*** Taxpayers that want to claim an income tax credit for completing a qualified rehabilitation project must submit an application for approval of the project. The application forms and instructions for the historic preservation and cultural and entertainment district tax credit are available on the department of cultural affairs' Web site. Once a project is registered, the taxpayer must enter into an agreement with the department of cultural affairs to be eligible for the credit.

**42.54(2) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.*** The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the department of cultural affairs and the department of revenue following project completion, up to the amount specified in the agreement between the taxpayer and the department of cultural affairs.

**42.54(3) *Qualified rehabilitation expenditures.*** "Qualified rehabilitation expenditures" means the same as defined in rule 223—48.22(404A) of the historical division of the department of cultural affairs. In general, the department of cultural affairs evaluates whether expenditures comply with the prescribed standards for rehabilitation while the department of revenue evaluates whether expenditures comply with the tax requirements to be considered qualified rehabilitation expenditures, including whether the

expenditures are in accordance with the requirements of Internal Revenue Code Section 47 and its related regulations.

*a. Type of property and services eligible.* In accordance with Iowa Code section 404A.1(6), the types of property and services claimed for the state tax credit must be “qualified rehabilitation expenditures” in accordance with Internal Revenue Code Section 47. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) shall be considered “qualified rehabilitation expenditures” if they are for “structural components,” as that term is defined in Treasury Regulation § 1.48-1(e)(2), and for amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees and other construction-related costs.

*b. Effect of financing sources on eligibility of expenditures.* Qualified rehabilitation expenditures do not include 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 a nonprofit organization as defined in Iowa Code section 404A.1(4) that is not eligible for the federal rehabilitation credit, or another person 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.

**42.54(4) Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return.** After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and the department of revenue verify the taxpayer’s eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate.

*a. Claiming the credit.* For the taxpayer to claim the credit, the certificate must be included with the taxpayer’s income tax return for the tax year in which the rehabilitation project is completed or the income tax return for any tax year within the five years following the tax year of project completion. Taxpayers that elect to delay claiming the credit to a later tax year return as described in this paragraph are subject to the carryforward limitations described in paragraph 42.54(4) “d” below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

*b. Information required.* The tax credit certificate shall include the taxpayer’s name, the taxpayer’s address, the taxpayer’s tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 42.54(4) “c” below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.54(5). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

*c. Refundability.* A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer’s tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the department of cultural affairs. Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. See department of cultural affairs’ 223—Chapter 48. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 42.54(5).

*d. Carryforward.* If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 42.54(4) “b,” the amount in excess of the taxpayer’s tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 42.54(4) “a,” the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

*e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust.* A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the estate or trust.

**42.54(5) Transfer of the historic preservation and cultural and entertainment district tax credit.** The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than \$1,000 shall not be transferable.

*a. Transfer process—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee’s name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

*b. Consideration.* Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes.

Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

*c. Unlimited number of transferees and subsequent transfers.* There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than \$1,000.

*d. Carryforward limitations on transferees.* The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 42.54(4) “d” shall apply.

**42.54(6) Appeals.** Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.11D.

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