

404A.3 Application and registration — agreement — compliance and examination.**1. Application and fees.**

a. An eligible taxpayer seeking historic preservation tax credits provided in [section 404A.2](#) shall make application to the authority in the manner prescribed by the authority.

b. The authority may accept applications on a continuous basis or may accept applications, or one or more components of an application, during one or more application periods.

c. The application shall include any information deemed necessary by the authority, in consultation with the department, to evaluate the eligibility under the program of the applicant and the rehabilitation project, the amount of projected qualified rehabilitation expenditures of a rehabilitation project, and the amount and source of all funding for a rehabilitation project. An applicant shall have the burden of proof to demonstrate to the authority that the applicant is an eligible taxpayer and the project is a qualified rehabilitation project under the program.

d. The authority may establish criteria for the use of electronic or other alternative filing or submission methods for any application, document, or payment requested or required under this program. Such criteria may provide for the acceptance of a signature in a form other than the handwriting of a person.

e. (1) The authority may charge application and other fees to eligible taxpayers who apply to participate in the program. The amount of such fees shall be determined based on the costs of the authority and the department associated with administering the program.

(2) Fees collected by the authority pursuant to this paragraph shall be deposited with the authority notwithstanding [section 303.9, subsection 1](#).

(3) A portion of the fees collected shall be directed by the authority to the department.

2. Registration.

a. Upon review of the application by the authority, the authority may register a qualified rehabilitation project under the program. If the authority registers the project, the authority shall make a preliminary determination as to the amount of tax credits for which the project qualifies.

b. After registering the qualified rehabilitation project, the authority shall notify the eligible taxpayer of successful registration under the program within a period of time established by the authority by rule. The notification shall include the amount of tax credits under [section 404A.2](#) for which the qualified rehabilitation project has received a tentative award and a statement that the amount is a preliminary determination only.

3. Agreement.

a. Upon successful registration of a qualified rehabilitation project, the eligible taxpayer shall enter into an agreement with the authority for the successful completion of all requirements of the program.

b. The agreement shall contain mutually agreeable terms and conditions which, at a minimum, provide for the following:

(1) The amount of the tax credit award. An eligible taxpayer has no right to receive a tax credit certificate or claim a tax credit until all requirements of the agreement and [subsections 4 and 5](#) have been satisfied. The amount of tax credit included on a tax credit certificate issued under [this section](#) shall be contingent upon verification by the authority of the amount of final qualified rehabilitation expenditures.

(2) The rehabilitation work to be performed. An eligible taxpayer shall perform the rehabilitation work consistent with the United States secretary of the interior's standards for rehabilitation, as determined by the department.

(3) The budget of the qualified rehabilitation project, including the projected qualified rehabilitation expenditures, allowable cost overruns, and the source and amount of all funding received or anticipated to be received. The amount of allowable cost overruns provided for in the agreement shall not exceed the following amount:

(a) For a qualified rehabilitation project with final qualified rehabilitation expenditures of not more than seven hundred fifty thousand dollars, fifteen percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(b) For a qualified rehabilitation project with final qualified rehabilitation expenditures of more than seven hundred fifty thousand dollars but not more than six million dollars, ten percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(c) For a qualified rehabilitation project with final qualified rehabilitation expenditures of more than six million dollars, five percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(4) The commencement date of the qualified rehabilitation project, which shall not be later than the end of the fiscal year in which the agreement is entered into.

(5) The completion date of the qualified rehabilitation project, which shall be within thirty-six months of the commencement date.

(6) The date on which the agreement terminates, which date shall not be earlier than five years from the date on which the tax credit certificate is issued.

4. *Compliance.*

a. The eligible taxpayer shall, for the length of the agreement, annually certify to the authority compliance with the requirements of the agreement. The certification shall be made at such time as the authority shall determine in the agreement.

b. The eligible taxpayer shall have the burden of proof to demonstrate to the authority that all requirements of the agreement 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.

c. (1) 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, the authority may find the taxpayer in default under the agreement and may revoke the tax credit award.

(2) 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 [chapter 422](#), and reasonable attorney fees and litigation costs, except that the liability of the transferee shall not exceed an amount equal to the amount of the tax credits acquired by the transferee. The department of revenue, upon notification or discovery that a tax credit certificate was issued to an eligible taxpayer by way of a prohibited activity, shall revoke any outstanding tax credit and seek repayment of the value of any tax credit already claimed, and the failure to make such a repayment may be treated by the department of revenue in the same manner as a failure to pay the tax shown due or required to be shown due with the filing of a return or deposit form. A qualifying transferee is not subject to the liability, revocation, and repayment imposed under this subparagraph.

(3) For purposes of this paragraph:

(a) "*Control*" means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

(i) Owns, controls, or has the power to vote fifty percent or more of any class of voting securities or voting membership interests of another person.

(ii) Controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of another person.

(iii) Has the power to exercise a controlling influence over the management or policies of another person.

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

(c) "*Qualifying transferee*" means a transferee who acquires a tax credit certificate issued under [this chapter](#) for value, in good faith, without express or implied notice of a prohibited activity of the eligible taxpayer who was originally issued the tax credit, and without express

or implied notice of any other claim to or defense against the tax credit, and which transferee is not associated with the eligible taxpayer by being one or more of the following:

(i) An owner, member, shareholder, or partner of the eligible taxpayer who directly or indirectly owns and controls, in whole or in part, the eligible taxpayer.

(ii) A director, officer, or employee of the eligible taxpayer.

(iii) A relative of the eligible taxpayer or a person listed in subparagraph subdivision (i) or (ii) or, if the eligible taxpayer or an owner, member, shareholder, or partner of the eligible taxpayer is a legal entity, the natural persons who ultimately own such legal entity.

(iv) A person who is owned or controlled, in whole or in part, by a person listed in subparagraph subdivision (i) or (ii).

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

5. *Examination of project.*

a. An eligible taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the project in accordance with the American institute of certified public accountants’ statements on standards for attestation engagements. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the 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, [this chapter](#), and all rules adopted pursuant to [this chapter](#) have been satisfied. The authority shall adopt rules governing examinations required under this subsection.

b. Notwithstanding paragraph “a”, the authority may waive the examination requirement in [this subsection](#) if all the following requirements are satisfied:

(1) The final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the authority, do not exceed one hundred thousand dollars.

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

c. Upon review of the examination, if applicable, the authority shall verify that all requirements of the agreement, [this chapter](#), and all rules adopted pursuant to [this chapter](#) have been satisfied and shall verify the amount of final qualified rehabilitation expenditures. If the authority determines that all requirements of the agreement, this chapter, and all rules adopted pursuant to this chapter have been satisfied and it has verified the amount of final qualified rehabilitation expenditures, the authority shall issue a tax credit certificate to the eligible taxpayer stating the amount of the credit under [section 404A.2](#) the eligible taxpayer may claim.

6. *Waivers.* Notwithstanding any other provision of [this chapter](#) to the contrary, the authority may waive the requirements of [subsections 1 through 4](#), except the requirements relating to allowable cost overruns in [subsection 3](#), paragraph “b”, subparagraph (3), and the requirements in [subsection 4](#), paragraphs “b” and “c”, for qualified rehabilitation projects with final qualified rehabilitation expenditures of seven hundred fifty thousand dollars or less and may establish by rule different application, registration, agreement, compliance, or other requirements relating to such projects.

7. *Amendments.* The authority may for good cause amend an agreement.

2000 Acts, ch 1194, §5, 20; 2002 Acts, ch 1119, §162; 2005 Acts, ch 150, §22; 2009 Acts, ch 98, §2; 2011 Acts, ch 99, §3, 6; 2013 Acts, ch 112, §2, 4, 5; 2014 Acts, ch 1118, §4, 12; 2016 Acts, ch 1109, §20 – 28, 35, 36; 2017 Acts, ch 29, §116

Referred to in §404A.1, 404A.2, 404A.4