



FACT SHEET #14: FAQ ABOUT REHABILITATION TAX CREDITS

Federal and Oklahoma state tax law currently provide attractive incentives for the rehabilitation of historic and older buildings. These special benefits encourage revitalization of historic districts as well as individual buildings. To qualify for the federal tax incentives, requirements of both the Internal Revenue Service and the U.S. Department of the Interior must be met. To qualify for the Oklahoma state tax incentives, projects must qualify for the federal tax credits. The State Historic Preservation Office (SHPO) participates in the review of proposed rehabilitation projects and is the initial point of contact for applicants. The U.S. Department of the Interior, National Park Service (NPS), is the agency responsible for certifying historic structures and rehabilitation work. Following are brief answers to frequently asked questions about eligibility for the credits, the application process, the standards that must be met in the rehabilitation work, how the numbers work, and where additional information can be obtained.

General Information about the Federal and State Rehabilitation Tax Credits

Which federal and state statutes authorize the rehabilitation tax credits?

The federal tax credits are authorized under the Tax Reform Act of 1986 (Section 47 of Title 26 of the United States Code). The state tax credits are authorized under State Statute 68-2357.41.

Which regulations and rules govern use of the federal and state tax credits?

The federal tax credits program is governed by two sets of regulations, including the Internal Revenue Service Code "Section 47, Rehabilitation Credit" and the U.S. Department of the Interior's "36 CFR Part 67 – Historic Preservation Certifications Pursuant to Section 48(G) and Section 170(H)" of the Internal Revenue Code of 1986. The state tax credits program is administered pursuant to Oklahoma Tax Commission Rules (Chapter 50, "Income") Section "710:50-15-108. Credit for qualified rehabilitation expenditures."

How much are the tax credits worth?

Both the federal and state tax credits provide a 20% tax credit for the certified rehabilitation of a certified historic structure. The value of the credit is 20% of a project's qualified expenditures.

What is a tax credit?

A tax credit reduces the taxpayers tax liability. That is, the amount of the credit is subtracted from the amount the taxpayer owes the IRS and the OTC. A credit differs from a deduction as the latter reduces taxable income rather than tax liability.



Sharp's Pawn Shop, Bartlesville, Washington County



Dale Hotel, Guymon, Texas County

Can I get tax credits for rehabilitation work to my historic home?

The IRS requires that the building be used for the generation of income. Historic homes are only eligible for the tax credits in as much as the home is used for an income producing purpose, for example, a rental property. If the historic home is the principal residence of the homeowner and not used as an income producing property, then the federal and state tax credits are not available to offset the cost of rehabilitation. If a portion of the building is used as the owner's principal residence and business, then the IRS or your professional tax advisor should be contacted for further guidance.

Which Internal Revenue Service (IRS) and Oklahoma Tax Commission (OTC) forms are needed to attach to my tax returns to claim the rehabilitation tax credits?

For purposes of the federal tax return, you must attach IRS Form 3468 and may need to attach a copy of an approved "Historic Preservation Certification Application, Part 2 or Part 3" (as appropriate to the project). IRS Form 3468 is available on line at www.irs.gov/pub/irs-pdf/f3468.pdf. For purposes of the State tax return, you must attach OTC Form #511 CR which is available at www.ok.gov/tax/documents/511CR-16.pdf. You should verify that the form year is the same as the year for which your tax return is being prepared.

Are there special terms I should use that will improve my communication with the IRS, OTC, SHPO, and NPS?

Yes. A quick and easy way to learn the critical terminology is to review the instructions provided with the Historic Preservation Certification Application, the NPS form used to obtain certification for the 20% tax credits. Additionally, you will find definitions of terms throughout this SHPO fact sheet and in other guidance from the SHPO, IRS and NPS. Take particular note of terms such as "certified historic structure," "certified rehabilitation," "contributing resource," "noncontributing resource," "qualified expenditures," and "substantial rehabilitation test."

How do the numbers work?

Basically, using the 20% tax credit as an example, 20% of the amount that an owner spends rehabilitating a building will come back to the owner as a federal tax credit. An additional 20% of the cost of rehabilitating the building will come back to the owner as a state tax credit. Together the

federal and state tax credits will offset the cost of the building rehabilitation by 40%.

If a project's total qualified expenditures for a building rehabilitation equal \$100,000, then \$20,000 will be the amount of the federal tax credit available plus \$20,000 for the amount of the state tax credit available, for a total of \$40,000 of available tax credits, offsetting the cost of the project by 40%. The IRS uses a similar question and answer format to address specific questions related to what project costs do and do not qualify toward the credits. They also address issues related to alternative minimum tax and passive activity restrictions. You may find this FAQ online at www.nps.gov/tps/tax-incentives/before-apply/irs.htm.

How much work do I have to do in order to qualify for the credits?

The work on the building must be enough to render the building able to be placed in service, in other words, safely able to be occupied and used for the production of income. This requirement would include the ability to obtain a certificate of occupancy that may be required by your local jurisdiction. In addition to this physical measurement, the IRS requires that the rehabilitation project meet a particular definition of "substantial." The definition of substantial is expressed as a dollar amount. The dollar amount is arrived at by calculating the adjusted basis of the building and its structural components. The formula to calculate the adjusted basis is: The purchase price of the property, minus the value of the land, plus improvements already made, minus depreciation already taken. In order to meet the substantial rehabilitation test the total of qualified expenditures must exceed the result of the formula by at least one dollar. In cases where the adjusted basis is less than \$5,000, then at least one dollar more than \$5,000 must be expended. The substantial rehabilitation test must be met during a 24-month measuring period for a single phased project and a 60-month measuring period for a multiple phased project. Further guidance related to the IRS requirements can be obtained from the "IRS Info" accessed through the NPS website at www.nps.gov/tps/tax-incentives/before-apply/irs.htm.

It is possible that the cost of replacing a roof for a historic building could be enough to meet the dollar value required to meet the substantial rehabilitation test; however, if a new roof alone is not enough to render the building usable for an income producing purpose (for example, an inadequate electrical or plumbing system), then your project would need to include more work.

Are there consultants who help figure out the financing for a tax credit project?

Yes. The SHPO suggests that you talk with your tax professional, attorney, or banker for guidance in obtaining such professional services.

Can I "sell" the tax credits, and what does that mean to me?

The rules governing who is entitled to claim a rehabilitation tax credit differ between the federal tax credit and the state tax credit. Several financial institutions, corporate entities, and others "buy and sell" tax credits. In order to utilize the federal preservation tax incentives, one must retain an ownership interest in the property that has benefited from a rehabilitation project. The ownership entity must be in place before the rehabilitated building is placed in service (see IRS definition of placed in service). Certain investors, corporations, and institutions are interested in joining in

ownership of buildings that will qualify for federal preservation tax incentives in order to reduce their overall tax liability.

It is very important that a building owner interested in pursuing the federal preservation tax incentives seek advice from the IRS or their professional tax consultant before pursuing a project to make sure that their personal financial situation is one that will allow them to actually claim the credit. If a situation exists that will not allow the owner to utilize the credit in a way that they had expected, that owner may wish to seek partners that can utilize the credits. To claim the federal tax credits, such partners must be part of the ownership entity before the rehabilitated building is placed in service. The state tax credits may be freely transferred to another party that has no other interest in the rehabilitated building except to purchase the right to utilize the state tax credits to reduce their state tax liability. Such transfer transactions may take place after the rehabilitation project is completed and usually discount the value of the tax credit to cover administrative costs of the transfer. It is essential that a taxpayer obtain qualified professional advice to arrange any transactions that will authorize others to utilize the federal or state tax credits.

The Oklahoma Statutes indicate that the state credits are "freely transferable." Why is this so significant?

The federal tax credits are not "freely transferable." However, the Oklahoma rehabilitation credits are. This is significant because the entity that acquires the credits does not have to establish an ownership interest in the rehabilitated property to use them.

Where can I go for more information about the regulations governing the federal and state tax incentives?

The SHPO website with more information and links to the NPS website can be accessed at www.okhistory.org/shpo/taxcredits.htm. The NPS website with more information can be accessed at www.nps.gov/tps/tax-incentives.htm. The NPS website also contains a link to the IRS regulations at www.nps.gov/tps/tax-incentives/before-apply/irs.htm. The Oklahoma Tax Commission can be accessed at www.ok.gov/tax/.



Vandever's Department Store, Tulsa, Tulsa County

Qualifying for the 20% Federal and State Tax Credits

What is a certified historic structure?

A certified historic structure is defined as a building that is individually listed in the National Register of Historic Places OR a building that is located in a registered historic district and certified by the NPS as contributing to the historic significance of that district. The structure must be a building – not a bridge, ship, railroad car, or dam. A state or local historic district may also qualify as a registered

historic district if the district and the enabling statute are certified by the Secretary of the Interior.

How do I confirm that my building is a certified historic structure?

A complete list of individual properties and historic districts located in Oklahoma that are listed in the National Register of Historic Places is available from the SHPO as a bound paper copy or at the SHPO website at www.okhistory.org/shpo/nrhandbook.htm. SHPO staff can check the original National Register nomination for any historic district, and, unless the nomination is an extremely old one, it will contain a list of the contributing and noncontributing resources (in the case of the tax credits, resources is defined as buildings). In order to confirm whether your building is contributing to the historic district, SHPO staff will need the building's street address.

To receive NPS certification that a building within a registered historic district is a certified historic structure (regardless of how it was classified in the original National Register nomination) or of an individual property that is not currently listed in the Register, you must complete the "Historic Preservation Certification Application Part 1 – Evaluation of Significance" and submit it to the SHPO.

Does it matter when I obtain confirmation that my building is either individually eligible for the National Register of Historic Places or is a contributing resource to a historic district?

Yes. You are required to submit Form #10-168, "Historic Preservation Certification Application Part 1 – Evaluation of Significance" before the building is placed in service.

If my building was identified as a noncontributing resource in a historic district, is there any possibility that I could qualify for the 20% tax credits?

Yes. The contributing/noncontributing status of any building can change as the result of alterations to the building, the passage of time, and changing interpretations of history. So, it is possible that the building's status could have changed. There is also the possibility that the building could be individually eligible for the National Register even though it is not a contributing resource to the district in which it is located. You should not hesitate to contact the SHPO to help you assess your particular situation.

What is a certified state or local district?

It is a local historic preservation district certified by NPS as containing sufficient requirements for documentation and evaluation of a property's significance to ensure that a district designated under the local ordinance could also be listed in the National Register of Historic Places. This is not the same thing as qualifying for Certified Local Government (CLG) status. Certification of the ordinance for tax credit purposes is a completely separate process. There are no certified state or local districts in Oklahoma at this time. It is important to note that any Historic Preservation Certification Application for a property in a district designated under a certified state or local district must be accompanied with National Register level documentation for the district.

What is a certified rehabilitation?

A certified rehabilitation is a rehabilitation project for which all work has been completed in accordance with the Secretary of the Interior's Standards for Rehabilitation and is certified by the NPS

as such. The NPS conveys certification by signing off on the bottom of the “Historic Preservation Certification Application Part 3,” which the owner completes and transmits to the SHPO for submission to the NPS. A Part 3 application must be submitted in order to document the completion of the project seeking the 20% federal and the 20% state tax credit. If a taxpayer claims the credit without completing the Part 3 application process, the credit may be revoked by the IRS.

What are the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings and where can I find them?

The Secretary of the Interior's Standards for Rehabilitation are the ten basic principles established by the Secretary of the Interior which are recommended in the planning and execution of projects which alter historic buildings. Together these ten principles create a framework for making decisions related to appropriate rehabilitation work. The Standards can be obtained in hard copy from the SHPO or accessed on the SHPO's website at www.okhistory.org/shpo/taxcredits.htm or at the NPS website at www.nps.gov/tps/standards.htm. The Guidelines for Rehabilitating Historic Buildings explain in more specific detail related to building materials, features, and components, how to apply the Secretary's Standards to specific work items often contemplated when pursuing a rehabilitation project. The Guidelines can also be accessed at the noted website locations for the SHPO and the NPS.



Fox Building, Tulsa, Tulsa County



Severs Block, Muskogee, Muskogee County

How do I obtain certification of my rehabilitation work?

Before beginning your rehabilitation project, it is strongly advised that you complete the “Historic Preservation Certification Application Part 2” and obtain preliminary certification of your proposed project work. When your project is finished, you complete the “Historic Preservation Certification Application Part 3” to obtain final certification of completed work. Each application phase is to be submitted to the SHPO. The SHPO will process the application and forward it to the NPS for review and approval. The NPS is the only agency that can certify the rehabilitation work.

Will using the 20% tax credit restrict my rehabilitation work?

The 20% investment tax credit is an incentive to encourage the retention of character defining historic materials, features and details important in determining the building's historic integrity. A rehabilitation project that meets the Standards for Rehabilitation is said to be an appropriate

rehabilitation of a historic building. For the tax credit project to be certified, the work MUST meet the Secretary of the Interior's Standards for Rehabilitation, and the taxpayer must receive certification of compliance with the Standards from NPS. The Standards consist of ten common sense items, which can be taken into consideration with some thought and advance project planning. Project planning is important to undertake in order to complete the application process and obtain certification. You may not be able to do every work item the way you originally anticipated, but the Standards are flexible and projects are evaluated in a reasonable manner taking into consideration economic and technical feasibility. When you follow the application process as set forth in NPS guidance and work closely with the SHPO, there is no reason to feel as though your project was restricted.

How much time does it take to obtain preliminary certification of my rehabilitation work?

The SHPO has 30 days from receipt of project documentation to complete its review. If everything needed for review is contained in the application, the SHPO forwards it to the NPS with comments. The NPS then has 30 days to complete its review process. The total amount of time required for a tax credit project is largely controlled by the owner/developer and is directly related to how long the owner/developer takes to assemble the documentation needed to describe the project in detail and complete the application forms.

I have already started rehabilitation work before filling out any application forms or making submittal to the SHPO, can I still qualify for the 20% tax credit?

Yes, but having already started the work may mean you have jeopardized your eligibility for the credit. You can still file the application for a project that is already in progress or that is completed. However, you must have good documentation of the building's condition prior to the beginning of your construction work (usually in the form of photographs, at a minimum), and your work must still meet the Secretary's Standards for Rehabilitation. You are strongly discouraged from starting your project without benefit of SHPO review and NPS certification of the proposed project plans. You should also consult your tax advisor and the IRS regulations. Timing for completion and the date that the building was placed in service may also jeopardize your ability to qualify for the credits.

What forms do I need to complete to obtain certification of my proposed rehabilitation work for the 20% tax credits?

You complete NPS Form #10-168a, "Historic Preservation Certification Application Part 2 – Description of Rehabilitation." Technically, the proposed scope of work approved during review of the Part 2 is considered a preliminary certification, as a final certification cannot be determined until the work is completed. If the building is already individually listed in the National Register of Historic Places, then you do not complete Part 1 of the HPCA.

For all other situations, you must complete Form #10-168, "Historic Preservation Certification Application Part 1 – Evaluation of Significance." For all projects, you must complete Part 2 of the HPCA to obtain preliminary certification of the proposed work.

What do I do when my rehabilitation work is completed and I need to obtain final certification of the project?

When project work is finished, you will complete NPS Form #10-168c, "Historic Preservation Certification Application – Request for Certification of Completed Work" (also known as "Part 3") and submit it to the SHPO. SHPO staff will conduct an on-site inspection of the completed project and forward the Part 3 to NPS. NPS will issue the final certification of completed work provided that all items were executed in accordance with the approved Part 2 and any subsequently approved amendments.

What do I do if I need to revise my plans for rehabilitation work after I have received NPS preliminary certification?

Contact the SHPO to discuss your needs to revise the project plans. If the revision still seems necessary, then complete NPS Form #10-168b, "Continuation/Amendment Sheet" of the Historic Preservation Certification Application. It will be processed in the same manner as the original Part 2.

What happens if I decide to do additional rehabilitation work after I receive final certification of completed work from NPS?

If the work is to take place during the first five years following final certification of the rehabilitation work, you must contact the SHPO for guidance in filing an amendment. Remember that work done during this initial five-year period that does not meet the Secretary's Standards may result in the recapture of your tax credits. Work done after the initial five-year period is not subject to any review process.

Should I consult local code officials about my rehabilitation project?

It is customary for construction projects to need a building permit. You should consult your city government to find out what permits may be required and what building codes must be met. You may also need to contact the State Fire Marshal's office to see if there are code requirements that need to be met. It is important that you let the code officials know that you are pursuing preservation tax credits for your project. The SHPO can help you communicate with state and local code officials to make sure that the Secretary's Standards and IRS requirements are considered and your project can still qualify for the credits. Sometimes it may seem that historic materials, details and features would need to be sacrificed to meet current building codes. There are usually options that will allow you to keep historic fabric in tact AND meet the state and local code requirements. Architects and construction contractors are accustomed to working with state and local building code officials and may benefit your project in this regard.

Should I retain an architect to develop my rehabilitation project plans?

NPS regulations for review of proposed rehabilitation projects do not include a requirement for the applicant to retain an architect. However, Oklahoma Statutes do stipulate which projects require the use of an architect for building projects, including tax credit rehabilitation projects. You should contact your local building official or city government offices to help you determine if an architect is required by state law. The SHPO encourages applicants to use the services of qualified design professionals

because they can help an owner/developer achieve a project that can proceed more smoothly and can effect an efficient tax credit review and certification process. The use of an architect can lead to a higher quality finished project and a lower total project cost.

Getting Information and Assistance with Project Planning, the Application Process, Project Financing, and Related Regulations and Rules

Who should I contact first for general information about the tax credits and for guidance about the rehabilitation standards and certification process?

The SHPO should be your first contact. We can send you a hard copy of all the information and materials you need to get started, or you can access the information on line at our website at www.okhistory.org/shpo/taxcredits.htm. The SHPO also annually presents two one-day workshops on the tax credits, and the schedule of these sessions is found on the SHPO's website at www.okhistory.org/shpo/shpocalendar.htm. Contacting the SHPO early in your project planning can save you time and money. There are many myths and misconceptions about the requirements of the tax credits program and the application process. Be careful about the comments and advice freely given by third parties.

Who should I contact with my questions about the Internal Revenue Service's regulations?

The SHPO encourages every applicant to confer with their own tax professional about these issues. Also, you and your tax professional should not hesitate to contact the IRS for information, and currently the contact person is Colleen Gallagher at 763-347-7361 (Bloomington, MN).

Who should I contact with my questions about the Oklahoma Tax Commission's rules?

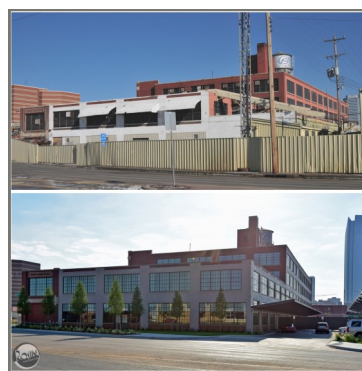
Again, the SHPO stresses the importance of consulting your own tax professional. For guidance, you or your tax professional may need to contact the OTC's Tax Policy Division at 405-521-3133 or www.ok.gov/tax/OTC_Phone_Numbers.html.

Are there other sources of information about the rehabilitation tax credits for me to consult?

The NPS website is another very helpful source of information. Visit them at www.nps.gov/tps/tax-incentives.htm.



Bill White Chevrolet Complex,
Tulsa, Tulsa County



OKC Ford Motor Company Assembly
Plant, Oklahoma City, Oklahoma County