

# Frequently Asked Questions about the Commercial Tax Credit Program

## The Review Process

### Is there an application review fee?

**Answer:** There is no fee for Part 1. The fee for certification of Part 2 is 3% of the anticipated credit. If the project is selected to receive the credit MHT will notify you by mail of the amount due and the due date. Certification of Part 2 cannot occur until the fee has been paid.

### Can I begin the rehabilitation even though I have not submitted an application or received state certification?

**Answer:** No. You must wait to begin the work until Part 2 has been certified. This will occur sometime after August 31, 2011. However, applications that have already received an approved plan of work under the **Federal Historic Preservation Tax Credit program** and begun work may still apply to the Sustainable Communities Rehabilitation Tax Credit program, however only those costs incurred after the State Part 2 application is signed are considered eligible costs under this program.

### Last year, I completed a rehabilitation project but only recently heard about the state commercial tax credit program. Can I still apply for the credit?

**Answer:** Unfortunately, no. Completed projects cannot be accepted. Additionally, MHT cannot accept projects that have been substantially started unless a project has already received an approved plan of work under the Federal Historic Preservation Tax Credit program. However, in these cases, only those costs incurred after the State Part 2 application is signed are considered eligible costs under this program.

### My local historic preservation commission has already approved my rehabilitation project and I'm anxious to get started. Do I also need to get MHT's approval in order to receive the tax credits?

**Answer:** Absolutely. MHT must review all applications for the tax credit program. MHT is the only government agency charged with the administration of the tax credit program and is solely responsible for certifying that both proposed and completed projects meet the Secretary of the Interior's *Standards for Rehabilitation*.

### Can I apply for the federal credit as well? What about any local tax credits or property tax freezes that might be available?

**Answer:** Yes. There are no restrictions on applying for other credits.

## **If I'm going to apply for the federal credit and the state credit, should I submit three (3) complete applications?**

**Answer:** You need to submit two (2) complete federal applications to MHT (a complete application includes the application itself, photographs and any other pertinent information/documentation such as plans or specifications) and the State application only, including the Worksheet, for the State credit. It is not necessary to provide MHT with a third copy of the photographs or plans.

## **Eligibility for the Credit**

### **How do I find out if my property contributes to the significance of a National Register or local historic district?**

**Answer:** This is the purpose of Part 1, "Certification of Significance." Nomination forms for both National Register and local historic districts may list contributing properties within the district boundaries. Look online or contact MHT's Office of Research, Survey and Registration at 410-514-7644 or your local planning office as appropriate to request historic district documentation. Whether or not a structure contributes to the significance of a historic district is ultimately determined by the MHT based on all available documentation.

### **I am working on getting my property designated, but want to get started on the rehabilitation project now. Can I submit Parts 1 and 2 before my property is officially designated?**

**Answer:** The tax credit program's statute requires that the structure be officially designated, either by the local government or the National Register, by the end of the calendar year in which the rehabilitation project was completed. Failure to receive this designation by the required deadline negates an owner's ability to claim a tax credit or refund for the completed project. You may apply for the tax credit if the designation is in progress and sufficient documentation can be provided.

### **The government actually owns the property, but I have a long term lease. Can I still apply for the tax credit?**

**Answer:** Possibly. The tax credit program's statute provides that the tax credit is available for qualified expenditures incurred for rehabilitation of a "Certified Historic Structure" or "Qualified Rehabilitated Structure." However, the definition of Certified Historic Structures and Qualified Rehabilitated Structures expressly excludes "a structure that is owned by the State, a political subdivision of the State, or the federal government." For such structures to become eligible for the tax credit program, any lease of property owned by the State, a political subdivision of the State, or the federal government to a non-public entity must make clear that the structure to be rehabilitated using the tax credit is owned by the non-public entity, and may become the property of the government only after the end of the useful life of any improvements financed through the tax credit. Therefore, MHT has advised that, for a structure on publicly-owned land to be eligible for the tax credit, any lease of the land must include at least the following or substantially similar language:

"Throughout the term of the Lease and any renewals, Lessee shall be the owner of all improvements on the property and may, if it elects, remove such improvements at the end of the Lease term. Any improvements not so removed will revert to the Lessor along with the underlying interest in the land."

In addition, 1) the term of the lease (excluding any future extensions or renewals) must exceed the useful life (as determined under State tax law) of the rehabilitation work to be financed through the tax credit; 2) the public owner of the land may not finance any of the rehabilitation work which will be financed in part through the tax credit; and 3) the public owner of the land may not be responsible for any costs associated with care, maintenance, repair, or replacement of the structure.

**We are a nonprofit organization, but are not classified as a 501(c)(3) under the Internal Revenue Code. Are we eligible to take advantage of the tax credit/refund program for the rehabilitation of our structure even though we are not a 501(c)(3) organization?**

**Answer:** Yes. Even though the statute specifically mentions 501(c)(3) organizations, all classifications of non-profit organizations are eligible to participate in the program.

**As a 501(c)(3) organization, what level of rehabilitation expenditure must we meet in order to qualify for the tax credits/refunds?**

**Answer:** Rehabilitation expenditures for certified historic structures owned by 501(c)(3) organizations must meet the same requirements as other commercial projects.

**My structure is historic and it isn't listed or designated, but it is located in a Certified Heritage Area (CHA). Can I apply for the credit?**

**Answer:** Non-listed, non-designated historic structures as well as non-historic structures located within Certified Heritage Area Target Investment Zones are eligible for the tax credit if the structure has been certified by the Maryland Heritage Areas Authority as contributing to the significance of the CHA. However, non-historic structures in Target Investment Zones can qualify only if the rehabilitation significantly enhances the overall architectural, historical, or cultural quality of the heritage area and the visitor experience. Contact MHT for details.

## Questions about Qualifying Rehabilitation Work

**I understand that qualified work must be undertaken within a 24 month period. When does that start?**

**Answer:** When you begin the work, not when MHT certifies the Part 2. Commercial projects must be completed within 30 months of the date the Part 2 was certified; however, those expenses cannot be claimed for the entire 30 month period, only for a 24 month period ending with or within the taxable year. The MHT Director may postpone the expiration of the Part 2. Requests for expiration extensions must be made in writing to the Director and must cite a reasonable cause for the delay.

**Is there a specific time frame by which the project must be started?**

**Answer:** Yes. MHT must receive written notification that the rehabilitation has begun within 18 months after the initial credit certificate was issued (Part 2 approval) or the credit shall expire and the initial credit certificate will be withdrawn.

### **Are architectural fees eligible?**

**Answer:** Yes. Architectural, engineering, and similar consultant fees, including tax credit consulting fees, are eligible. Expenses incurred in order to prepare the application (such as architect's or engineer's fees) are the only examples of eligible costs that may be incurred prior to Part 2 certification; however, these fees must be incurred within the selected 24-month period.

### **What about acquisition costs, financing charges and building permit fees?**

**Answer:** No.

### **Are plumbing, HVAC and electrical systems costs eligible?**

**Answer:** Yes.

### **Are landscaping and site work costs eligible?**

**Answer:** The costs associated with the restoration of significant historic landscape features, such as parterre gardens, walls, or garden walks, may be eligible when there is adequate documentation about the feature's historic significance. All other landscaping features, such as driveways and retaining walls, are not eligible.

### **Are additions or similar new construction eligible?**

**Answer:** No.

### **Are rehabilitation costs for barns, garages, and other outbuildings eligible for tax credits?**

**Answer:** Possibly. If these structures are historically associated with the structure and contribute to the significance of the property, the rehabilitation costs may qualify. Non-historic separate structures are not eligible for this credit.

### **Are interior finishes eligible?**

**Answer:** Capital expenditures are eligible for the credit. For the interior, this usually means finishes that become part of the structure. Eligible costs may include repair or restoration of wainscoting, mantles, interior shutters, molding, floors, plaster, and paint. For commercial rehabilitation projects only, kitchen appliances and cabinets are also eligible. Items that are not eligible include, but are not limited to, carpeting, drapery, pictures and furniture. Consult MHT staff for a final determination of eligibility.

### **If the building is damaged and I am reimbursed by my insurance company to pay for repairs/restoration, can I include those expenses in my Total Allowable Project Costs on Part 3 and claim a credit on them?**

**Answer:** No. Expenses reimbursed by an insurance company cannot be claimed.

**If I will be receiving additional funding to help with the rehabilitation of my property from any State or local agencies, such as grants, loans, or energy tax credits, can I claim these expenses as well toward the credit?**

**Answer:** No. Additional funding such as grants or loans from State or local government agencies or tax credits from a State agency are not eligible and must be backed out of the total qualified rehabilitation expenditure cost on the Part 3. This must be documented in the financial materials submitted with the Part 3 application.

## Questions about Part 3

**I decided not to undertake some of the work approved in the Part 2. What should I do before turning in Part 3?**

**Answer:** You should include a Continuation/Amendment Sheet with your Part 3 application which describes what portions of the approved proposed project you did not undertake.

**Should I submit proof of rehabilitation costs with the Part 3?**

**Answer:** Yes. Please submit a copy of the CPA Cost Certification of Receipts for the work undertaken in the 24-month period for which the tax credits are being claimed.

## Claiming the Credit

**Is the credit fully refundable? Do I just get a check back?**

**Answer:** To the extent the credit exceeds the taxpayer's tax liability, the credit is refundable. You must file for the credit yourself with the Comptroller of Maryland in the tax year in which the project was completed. Use Maryland Form 502H specific to the year in which you are filing; the certified Part 3 must be attached.

## Recapture Rule

**I have received tax credits for a rehabilitation project certified by MHT one year ago. If I plan to do additional work this year that will not conform to the requirements of the program, do I risk losing my previous credit?**

**Answer:** Yes. If disqualifying work is undertaken on a property that has received tax credits within the past five years, the credits will be recaptured. If the disqualifying work is performed during the same year in which the rehabilitation was completed, 100% of the credit will be recaptured; if during the first full year after the rehabilitation was completed, 80% will be recaptured; if during the second full year, 60% will be recaptured; if during the third full year, 40% will be recaptured; and after the fourth full year, 20% will be recaptured. After five years the credit is not subject to recapture.

### **Can I sell the property after claiming the state credit?**

**Answer:** No, not within five years after the tax credits are received. If a property, that has received tax credits, is disposed of (sold) during the year in which the rehabilitation was completed, 100% of the credit will be recaptured; if during the first full year after the rehabilitation was completed, 80% will be recaptured; if during the second full year, 60% will be recaptured; if during the third full year, 40% will be recaptured; and after the fourth full year, 20% will be recaptured. After five years the credit is not subject to recapture.

### **Will I have to pay Federal taxes on the state tax credit refund?**

**Answer:** Possibly. The IRS considers it taxable income.