THE COMMERCIAL HISTORIC PRESERVATION TAX CREDIT PROGRAM POLICY

(Last Revised: 04/15/24)

BACKGROUND

The Preservation of Commercial Historic Structures Program (otherwise known as HPTC or the Historic Preservation Tax Credit) encourages the rehabilitation of historic commercial structures to support economic revitalization as authorized under C.R.S. 39-22-514.5. The credit is a Colorado income tax credit.

This is an economic development program. The goal is to preserve Colorado's historic structures and to support economic vitality. The program is assessed on its impact on job creation, quality wages, investment, and tax revenue. At the conclusion of a project eligible for this tax credit, the commercial structure must be open for business.
A set amount of tax credits is made available each calendar year to reserve funds for qualified rehabilitation projects on a first come, first served basis. The program sunset date requires that reservations for this tax credit be made prior to 12/31/2029.

This incentive program is jointly administered by OEDIT and History Colorado; rehabilitation requirements conform to the Secretary of the Interior's Standards for Rehabilitation. In addition to this Colorado income tax credit - sometimes referred to as the "2014 Credit" - there is also a residential historic preservation tax credit authorized by C.R.S. 29-22-514.5 and administered by History Colorado. Taxpayers claiming historic preservation tax credits should make sure to identify the appropriate tax credit on the tax credit form DR 0112CR for Corporations or DR 0104CR for Individual tax returns.

AVAILABLE FUNDING

The program is allocated $10 million in tax credits each calendar year that may be reserved for qualified projects on a first come, first served basis.

- $5,000,000 is available for "small" projects where qualified rehabilitation expenses (QRE) are less than $2,000,000
- $5,000,000 is available for "large" projects where QRE are $2,000,000 and greater

Funds remaining will roll into the next program year and may be shifted from one funding pool to another at the discretion of History Colorado and OEDIT.

First Come, First Served

Applications for Reservation of a Tax Credit are reviewed on a first come, first served basis per statutory requirement. We recommend applying for reservation of the tax credit when you are planning the project and will be starting work within a year. Please note that an applicant is not permitted to submit more than one reservation application for the same property during the same calendar year.

Applications will be reviewed within 90 days from the date they are submitted in the on-line application system.

If the application for reservation of the tax credit is complete and is approved:

- the entire tax credit potential will be reserved if credits are available in the tax credit pool, or
- if the credits remaining in the pool are not sufficient to reserve the full amount of the credit, the tax credit may be partially reserved and partially placed on a waitlist until funds are available in the new program year, or
- if there are no credits remaining in the pool, the tax credit will be placed on a waiting list until funding is available.
- Applications may sit on a waitlist for a maximum of two years.
- If the amount waitlisted for either pool reaches $10M, the application system will be closed and will not be reopened until at least February 1st of the following calendar year after the funding pool allotment and overall fund availability has been determined.

OEDIT may, at its discretion, suspend applications for microprojects where the expected QRE are $50,000 or less if there are 15 or more such applications submitted for review.

If an application is incomplete (i.e., all required or necessary information to approve the reservation application was not submitted), the application will be marked “incomplete”, and the applicant will have the opportunity to edit or add the required information. An “incomplete” application is put to the side so the next application submitted may be reviewed and approved, if complete. Once an incomplete application is edited and re-submitted, it will be placed at the end of the queue of submitted applications. The 90-day review period begins once the application is resubmitted.

ELIGIBILITY

Entity

Applicants must be taxpaying entities or individuals filing a Colorado state tax return or an entity that is exempt from federal income taxation pursuant to section 501(c) of the Internal Revenue Code. Governmental entities that are not a 501(c) or taxpaying entities are not eligible for the credit.

Property Control

You can apply for the Commercial Historic Preservation Tax Credit if you are the property’s:

- owner (you hold title to the property)
  - If there are multiple owners of a property, the application must include documentation indicating that all owners support the application. Additionally, there must be

documentation of ownership shares or other pro-ration of the tax credit. C.R.S. 39-22-514.5, (12), (c), states: "Any tax credits issued under this section to a partnership, a limited liability company taxed as a partnership, or multiple owners of a property must be passed through to the partners, members, or owners, including any nonprofit entity that is a partner, member, or owner, respectively, on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method."

- tenant with a lease of at least 39 years in urban areas or five years in rural areas
  - The lease must be in effect, and the application can be made at any point-in-time during the lease term.
- holder with the property under contract (you have a purchase agreement, option to purchase)

Historic Designation

- Your property needs to be at least 50 years old.
- Your property needs to be a certified historic structure at the Local, State, or Federal level by the time that the Issuance Application is submitted.
- Your completed project must meet the Standards for Rehabilitation of the US Secretary of the Interior.

Commercial Use

- Qualified properties are located in Colorado and meet the historic designation requirements above.
- A property must further qualify as "commercial" to be eligible for this State income tax credit. CRS 39-22-514.5 (2)(a)(II) states that a certified historic structure is either residential or commercial. A Qualified residential structure is defined in (2)(l) as a non-income producing and owner-occupied residential property.
  - Applicants for residential properties may be asked to attest that the property use will produce income and will not be used as a personal residence for the applicant/owner or their immediate family.
  - If any residential portion of a building is to be used as a personal residence for the applicant/owner or their immediate family after the project's completion, it *may* be eligible for a commercial tax credit if the portion to be occupied is 50% or less of the building's total square footage. Please note that qualified restorative expenses will only apply to the portion of the property that is used for commercial purposes and may affect "substantial remodel" eligibility requirements. If this applies to your property, please reach out to OEDIT to verify eligibility prior to filing an application.
  - Religious and private club facilities are considered "commercial" if the space is available for rent to the general public.

Timeliness

- **Reservation of a Tax Credit** -If the rehabilitation project is already complete when you apply for reservation of the tax credit, your application must be submitted within 120 days from the project's end-date to be eligible.
  - If additional information is requested from the applicant after an application has been submitted, the applicant will have 10 business days to provide the information and preserve priority standing. If it has not been received by this time, the application will be reset to "incomplete" until such time that the information has been entirely provided, as requested, before again being considered "submitted." This allows the Office to review the next application(s) in cue while allowing time for new information to be submitted by the applicant. This is to accommodate C.R.S. 39-22-514.5, (7), (a), "… office must reserve tax credits in the order in which it receives completed applications and rehabilitation plans."
- **Qualified Costs** - You may consider project costs as qualified if those costs were incurred no more than 24 months prior to submission of the application for reservation of the tax credit.
- **Issuance Application** - The application for Issuance of the tax credit must be submitted within 1 year of the project's end date. See, "Acceptable Project End Dates" related to issuance of the tax credit
- **Progress Reports** - (from the date the application for reservation of the tax credit was approved), at:
  - 18 Months – at least 20% of the estimated project cost must be incurred. If unmet, the application will be revoked
  - Every 12-months, following the 18-month report

Substantial Remodel

- The substantial rehabilitation standard is based on the application date.
- Applications submitted on or after 1/1/2020 require QRE of at least $20,000.
- Applications submitted prior to 1/1/2020 must have QRE of 25% of (the original purchase price less the current value of the land).
  - For determining the original purchase price, if you are the owner, use the original purchase price. If option holder, the option strike price. If lessee, the owner's original purchase price. If contract holder, list contract price.
- The current land value can be obtained from the county tax assessor record.

Eligible Expenses

Qualified rehabilitation expenditures (QREs) are expenses necessary to restore a building for commercial use. Colorado generally follows the national standards but has a model cost worksheet outlining qualified and non-qualified costs – please check our webpage for the most recent version. Generally, hard construction costs are qualified. Certain soft costs are qualified if capitalized. Acquisition, legal, accounting, and tax credit costs are not eligible.

In general, all expenses must be incurred by the applicant/property owner to be considered qualified expenses. Under the provisions of C.R.S. 39-22-514.5 Qualified Rehabilitation Expenses are qualified expenses incurred by the applicant owner subsection (8)(a) *"Any owner receiving a reservation of tax credits under subsection (7)(a) of this section shall incur not less than twenty percent of the estimated costs of rehabilitation…"*, and (b) that requires that the property owner "*shall certify the qualified rehabilitation costs and expenses*." Additionally, C.R.S. 39-22-514.5 subsection (2)(k)(I) defines "qualified rehabilitation expenditures": "*With respect to a qualified commercial structure, any expenditure as defined under section 47 (c)(2)(A) of the internal revenue code, as amended, and the related regulations thereunder.*" IRC 47 (c)(2)(A) defines qualified rehabilitation expenditures: "*In general. The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account…*"

Expenses associated with additions are not eligible, for further guidance consult Treasury Regulation 1.48-12(c)(10). Acquisition, legal, accounting, and tax credit costs are not eligible. Reference the HPTC – Qualified Cost Worksheet and US Treasury regulations for additional details.

PROGRAM AWARDS

Maximum Credit and Multiple Projects or Phases

The maximum tax credit that may be reserved for any one commercial structure in a calendar year is $1,000,000. Additionally, no more than $1,000,000 in tax credits will be issued for any one commercial structure in a single calendar year.

If an applicant is considering submitting multiple applications for any one commercial structure (in phases) or multiple projects for related structures, they should discuss the rehabilitation plans with OEDIT and History Colorado in advance. The consequence could be that an applicant will only be allowed a single project application with a maximum tax credit of $1,0000,000.

A project is associated with a commercial structure and is defined by time and scope. OEDIT and History Colorado will determine whether a project encompasses a single or multiple commercial structures based on the current county property assessor's records, the use of associated structures in the period of historic significance, or the planned commercial use of historic structures following a planned preservation project, the degree to which structures are associated by physical proximity.

Projects/Phasing for a Commercial Structure

If an applicant plans to "phase" the rehabilitation of a commercial structure, be aware that phasing allowed under the national standards may not be allowed as unique projects for the Colorado program. **Please talk to OEDIT and History Colorado in advance**. Phases or multiple projects (applications) may be approved for the same commercial structure if the projects are distinct in terms of timing and/or scope.

Projects/Applications/Phases:

- Have defined start and end dates
- Do not overlap in time

- Have distinctly trackable costs
- At completion have the structure at least partially open for business
- May earn a maximum tax credit of $1M

Applicants may not have more than one application for reservation of a tax credit for the same commercial structure open at the same time. Once an issuance application/report has been submitted for a reserved tax credit, another reservation application for a second or phased project may be submitted.

Overage

A tax credit is set aside from the annual tax credit allowance when the application for reservation of the tax credit is approved. The amount reserved is based on the project work plan and expected Qualified Rehabilitation Expenses (QRE) submitted by the applicant. If the actual QRE incurred to complete the work plan exceeds that estimated at the reservation application was submitted, program staff will create an associated application to reserve and issue an additional tax credit to fully compensate the applicant for the qualified work expense. The overage application will fall to the back of the queue.

Application Fees

Applicants are assessed an application fee when submitting their application to Reserve a Tax Credit.

- Projects with an estimated credit of under $250,000 are assessed a $250 application fee
- Projects with an estimated credit of $250,000 or more are assessed a $500 application fee

Applicants are assessed another fee once the QRE on their application for issuance of the tax credit have been verified. The issuance fee is 3% of the tax credit value.

Issuance fees may be paid by electronic check or credit card. Applicants that choose to submit payment via credit card are charged a processing fee by the State's vendor. The fee is currently 3% of the amount paid. The State does not receive a record of that credit card processing fee, but the applicant will receive notice during the payment process.

Tax Credit Issuance Requirements

- The commercial structure must meet the Secretary of the Interior standards for historic rehabilitation
- The commercial structure must be listed on a local, state, or national historic register
- Project work completed must be within the scope documented on the application for reservation of the tax credit
  - Acceptable Placed-In-Service or Project End Dates
    - Certificate of Occupancy is the most common milestone and most easily verified. The building has been inspected and is safe to occupy

        - Work has been substantially completed. This standard is generally acceptable for bank financing. It often encompasses cosmetic work that may continue following the Certificate of Occupancy
        - When all work is completed, and costs incurred for the planned project
    - If a COO is not submitted, the following may document evidence of completion and the structure's "open for business" status:
        - news articles/photos showing the property being used
        - an advertisement for business activity
        - an advertisement offering the property for lease
- Project costs must be incurred and paid by the applicant (the qualified owner or lessee).
- Qualified costs may be incurred no earlier than 24 months preceding the date the application for reservation of the tax credit was submitted.
- The application for issuance must be submitted within 1 year of the project's end date
- The project must be complete and the structure open for business.
- Project Costs must be "audited" by a third-party CPA
    - The statutorily required audit must be conducted by a licensed certified public accountant that is not affiliated with the owner.

      The audit certifies that the expenses documented in the worksheet:
        - are associated with the rehabilitation project plan as outlined in the full/reservation application - work outside of the approved project plan cannot be submitted
        - were paid by the applicant
        - are categorized appropriately as qualified or non-qualified following the Secretary of the Interior's Standards
    - The audit letter:
        - describes the scope of testing conducted in accordance with General Auditing Standards
        - documents the project start and end dates. The end date may be the date that the final project cost was incurred, the certificate of occupancy date, or another date that marks the completion of the project
        - declares that the project's costs comply with the standards for rehabilitation adopted by the Department of the U.S. Interior and Colorado Revised Statutes 39-22-514.5 ***or***
        - declares that the project's costs comply as specified in Internal Revenue Code § 47 and Colorado Revised Statutes 39-22-514.5
- The tax credit issued is based on the actual QRE incurred
    - A tax credit will be issued based on the actual QRE incurred, and up to the amount reserved (based on the QRE estimated when the application for reservation of the tax credit was submitted).
    - If actual QREs exceed the amount reserved, OEDIT will issue an "overage" for the difference up to the $1M maximum credit per project.
- If ownership of the commercial structure has changed between the reservation and issuance stages, the tax credit will still be honored so long as the project is completed according to the work plan. OEDIT will work with the original applicant to finalizing the project and issue

the credit and may issue the credit to the new owner or honor a transfer to the new owner at the direction of the original applicant.

DENIALS AND APPEALS

Issuance of a tax credit is contingent upon all issuance requirements being met. If an application is not approved, then an application may be denied or re-opened for revisions if it's determined that the requirements may not be met, or additional information is needed to substantially fulfill the requirements.
Any application with material misstatement is subject to denial. Any tax credit that is later found to be based on an application with material misstatement is subject to revocation.

If an application is recommended for denial, the applicant will be notified of specific issues; the application will remain in submitted status for up to thirty days before the status is changed to "rejected compliance." The applicant has 30 days from the notice date to notify OEDIT of their desire to appeal the denial. After the 30-day period, the status will be set to "rejected compliance" and the reserved tax credit will be released. If the completed project does not meet the Secretary of the Interior's standards, the application should not be revoked until after the 30-day appeal period.

Decisions based on statutory requirements are not appealable.

If an issuance application is denied because it is determined to not meet the Secretary of the Interior standards for historic rehabilitation, and appeal will be considered by the Archaeology and Historic Preservation Committee (AHPC) under History Colorado for a final decision.

TAX CREDIT RATES

	Qualified Rehabilitation Expense	
Credit Rate	1st $2M	> $2M
Standard	25%	20%
Disaster	30%	25%
Rural	35%	30%

The standard tax credit rate is 25% of the first $2,000,000 in QREs and 20% on QRE exceeding $2,000,000

Example calculation of tax credit in a Standard Area:
If QREs are $2,000,000 then the tax credit is $500,000.00 {.25($2M) = $500,000}
If QREs are $3,000,000 then the tax credit is $700,000.00 {.25($2M) + .20($1M) = $700,000}

The disaster designation tax credit rate is available to projects where the project commenced on or after the designation date and within the 6-year period following that designation. Disaster designations are provided to counties by either the State or Federal Government and remain in

effect for 6 years following the declaration date. Please click link for a workbook containing designations with status beginning and ending dates.
In a disaster area, the tax credit amount is 30% of the first $2,000,000 in QREs plus 25% of any additional QREs.

Example for calculation of tax credit in a Disaster Area:
If QREs are $2,000,000 then the tax credit is $600,000.00 {.30($2M) = $600,000}
If QREs are $3,000,000 then the tax credit is $850,000.00 {.30($2M) + .25($1M) =$850,000}

For projects located in <u>rural</u> CO, the date of the reservation application sets the tax credit rate. Applications submitted on or after 1/1/2020 in rural areas will earn 35% (35% on the first $2M in QRE, and 30% on QRE over $2M). Please click link for a worksheet identifying areas with rural designation. Designation is based on population figures on the decennial census.

Example for calculation of tax credit in a Rural Area: (applicable 1/1/2020)
If QREs are $2,000,000 then the tax credit is $700,000.00{.35($2M) = $700,000}
If QREs are $3,000,000 then the tax credit is $1,000,000.00{.35($2M) + .30($1M) =$1,000,000)

Tax Credit Claim Date, Life, and Transfers

- The entity that earned the credit has up to 10 years (from the date issued) to use and/or transfer the tax credit. The initial tax credit will expire.
- The taxpayer may claim the HPTC tax credit as early as the tax year that the property was placed in service (or project completed) even if the credit was issued in a later year.
- A transfer can be initiated by either the holder of the tax credit or by a third-party broker).
- A notarized transfer agreement signed by both parties must be submitted to OEDIT to complete a transfer of a tax credit
- Once a tax credit is transferred, it may be carried forward until it is fully utilized. It may also be transferred any number of times.
- The transferee may claim the tax credit as early as the year that the property was placed in service.
- The HPTC credit is not refundable.

APPLICANT STEPS

Applications for the Commercial Historic Preservation Tax Credit must be completed in the OEDIT Application Portal available at oedit.colorado.gov/HPTC

Step 1: Submit the Qualifying Questionnaire.

Step 2: Apply for the Reservation of Tax Credits prior to the start of the project, or at least within 120 days of the completion. The application will be reviewed within 90 days of submission.

Step 3: Approval of the Reservation - Once a tax credit has been reserved, the applicant must submit Progress Reports at 18, 24, 36, and 48 months from the date of submission (*in Step* 2)

Step 4: Apply for Issuance of Reserved Tax Credits - When the project is complete, and the structure is open for business, apply within 1 year of the project's completion date.

Step 5: Claim, Use, and/or Transfer the Tax Credits