

TITLE 30

State Taxes

Income, Inheritance and Estate Taxes

CHAPTER 18. LAND AND HISTORIC RESOURCE TAX CREDIT

Subchapter II. Historic Preservation And Repair

§ 1811 Statement of purpose; short title.

(a) The General Assembly finds and declares that many properties and structures associated with Delaware's history, and in some cases the history of this nation, have been steadily disappearing over the past 50 years, or longer. Once gone, they are gone forever, and can never be replaced. Each year, it seems, there are less and less. The General Assembly firmly believes that the private sector is uniquely able to be a major factor in the preservation of many of Delaware's historic structures. The General Assembly finds that historic preservation tax credits have proven to be economic drivers that result in significant job creation and growth while successfully preserving historic buildings across the state.

(b) This subchapter shall be known as the "Historic Preservation Tax Credit Act."

[73 Del. Laws, c. 6, § 3](#); [77 Del. Laws, c. 413, § 1](#);

§ 1812 Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning (singular includes plural):

(1) "Certification of Completion," "Completion Certificate" or "Certificate" shall mean the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation or, if applicable, phase thereof has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credit under § 47 of the Internal Revenue Code (26 U.S.C. § 47)

(whether or not such project would be eligible for such federal tax credit) has been obtained.

(2) "Certified historic property" shall mean property located within the State that is:

- a. Individually listed in the National Register of Historic Places;
- b. Located in a historic district listed in the National Register of Historic Places and certified by the United States Secretary of the Interior as contributing to the historic significance of that district;
- c. Individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or
- d. Located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

(3) "Certified rehabilitation" shall mean that rehabilitation of a certified historic property or portion thereof which has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation and is in conformance with the Standards of the Secretary of the Interior for Rehabilitation (36 CFR, part 67) or such other standards as the State Historic Preservation Office shall from time to time adopt.

(4) "Credit award" shall mean the amount of qualified expenditures as determined by the State Office as part of the Stage II Approval multiplied by the appropriate amount as determined in § 1813 of this title.

(5) "Delaware State Historic Preservation Officer" shall mean the person designated and appointed in accordance with 16 U.S.C. § 470a(b)(1)(a), as amended.

(6) "Fiscal year" shall mean the State's fiscal year.

(7) "Lending institution" shall mean any bank, trust company, savings and loan association, building and loan association or licensed lender that is taxable under Title 5 or taxable under Chapter 19 of this title.

(8) "Office" or "State Office" shall mean the Delaware State Historic Preservation Office.

(9) "Owner-occupied historic property" shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used (or within a reasonable period as may be determined by the Delaware Historic Preservation Office on a case-by-case basis will be used) by such taxpayer as the taxpayer's principal residence. Such property may consist of part of a multiple-dwelling or multiple-purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

(10) "Person" shall include any individual; any form of company or corporation which is lawful within the State (including limited liability companies and S corporations), whether or not for profit; any form of partnership which is lawful within the State (including limited liability partnerships); whether or not for profit; any trust or estate; and any lawful joint venture. "Person" shall also include any governmental entity, pass-through entity or person under a lease contract for 5 years or longer.

(11) "Phased rehabilitation" shall mean any certified rehabilitation of a certified historic property reasonably expected to be completed in 2 or more distinct stages of development as more fully described in Treasury Regulation 1-48-12(b)(v) or any successor provision.

(12) "Property" shall mean real estate, and shall include any building or structure, including multiple-unit structures.

(13) "Qualified expenditure" shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

- a. Acquisition of real property, or acquiring an interest in real property;

b. Any addition to an existing structure, except where the combined square footage of all additions is 20 percent or less than the total square footage of the historic portion of the property; and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

1. Preserving the character-defining features of the certified historic property;
2. Adequately differentiating the new construction from the existing structure; and
3. Complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;

c. Paving or landscaping costs which exceed 10 percent of the total qualified expenditures;

d. Sales and marketing costs; or

e. Expenditures not properly charged to a capital account, including, in the case of owner-occupied property, expenditures that would not properly be charged to a capital account where the owner is using such property in a trade or business.

(14) "Resident curator" shall mean a person who has entered into a contractual agreement with the owner of a qualified property in which the person agrees to pay for full restoration of the owner's qualifying property in exchange for a life tenancy in the property without remunerative compensation to the owner for the life tenancy.

(15) "Residential property" shall include cooperatives and condominiums.

(16) "Substantial rehabilitation" shall mean rehabilitation of a certified historic property for which the qualified expenditures, during the 24-month period or 60-month period, as applicable, selected by the taxpayer and ending with or within the taxable year exceed:

a. For income-producing property and non-income producing property other than owner-occupied historic property, the current standard required by § 47(c)(1)(C) of the Internal Revenue Code [26 U.S.C. § 47(c)(1)(C)]; and

b. For owner-occupied historic property or property under contract with a resident curator, \$5,000.

(17) "Taxpayer" shall include any "person," as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either Chapter 11 or Chapter 19 of this title.

[73 Del. Laws, c. 6, § 3](#); [73 Del. Laws, c. 240, § 1](#); [74 Del. Laws, c. 68, §§ 107\(C\), 107\(B\)](#); [74 Del. Laws, c. 388, §§ 1-4](#);

§ 1813 Preservation and repair of historic structures; tax credits.

(a) Any person incurring qualified expenditures pursuant to this subchapter in the substantial rehabilitation of any certified historic property shall be entitled to a credit against bank franchise or income taxes imposed under Title 5, or under Chapter 11 or Chapter 19 of this title, respectively, subject to limitations set forth in this section and up to a maximum of:

(1) Twenty percent of qualified expenditures made in the rehabilitation of any certified historic property which is eligible for a federal tax credit under § 47 of the Internal Revenue Code [26 U.S.C. § 47];

(2) Thirty percent of the qualified expenditures made in the rehabilitation of any certified historic property which is not eligible for a federal tax credit under § 47 of the Internal Revenue Code [26 U.S.C. § 47];

(3) One hundred percent of the qualified expenditures made in the rehabilitation of a certified historic property qualifying for credit award as a resident curatorship property regardless of eligibility for a federal tax credit under § 47 of the Internal Revenue Code [26 U.S.C. § 47].

(4) In no event shall the credit claimed pursuant to this section exceed the credit award.

(b) Any person, in order to receive a Certificate of Completion from the Delaware State Historic Preservation Officer that would entitle said person to a tax credit under this section, shall submit documentation of those qualified expenditures and project plans that would be required in order to qualify for tax credit under § 47 of the Internal Revenue Code [26 U.S.C. § 47], whether or not such project would be eligible for such federal tax credit.

(c) Any person eligible for credits under this chapter may transfer, sell or assign any or all unused credits. If a certified historic property for which a certified rehabilitation has been completed is sold or transferred, the amount of any credit not used by the time of such sale or transfer may be transferred to the person to which the structure is sold or transferred.

(d) Except as otherwise provided, if the amount of credit allowed pursuant to this subchapter exceeds that total tax liability of the taxpayer for the tax year for which the credit is claimed, the amount of the credit not used as an offset against income or franchise taxes in said tax year shall not be refunded, but may be carried forward as a credit against subsequent years' income or franchise tax liability for a period not exceeding 10 years, and shall be applied first to the earliest tax years possible.

(e) With respect to the tax credits awarded under paragraph (a)(2) of this section, no single certified rehabilitation of owner occupied historic property may receive a tax credit in excess of \$20,000. Owner-occupied historic properties may be eligible for multiple certified rehabilitations representing separate phases of rehabilitation of a certified historic property; provided, however, that following an initial credit award, any subsequent credit award shall be made not less than 24 months after any preceding credit award. With respect to tax credits awarded for qualifying expenditures by a resident curator, no single certified rehabilitation may receive a tax credit in excess of \$5,000.

(f) Whenever any part of the certified rehabilitation of a residential property is determined under regulations promulgated by the State Office to be committed to low-income housing, subsection (a) of this section shall be applied with respect to such part by substituting "30%" for "20%" and "40%" for "30%" in said subsection.

[73 Del. Laws, c. 6, § 3; 73 Del. Laws, c. 240, §§ 2, 3; 74 Del. Laws, c. 68, §§ 107\(D\), 107\(E\).](#);

§ 1814 Preservation tax credits; distribution, transfer and assignment.

(a) Any person eligible for credit under this subchapter, except a person engaged in a resident curator relationship, may transfer, sell or assign any unused credits. Any person that transfers, sells or assigns any unused portion of a tax credit shall obtain and produce to the transferee, purchaser or assignee a certificate from the Division of Revenue or the Office of the State Bank Commissioner setting forth the amount of unused credit.

(b) Credits granted to or acquired by a pass-through entity created or recognized under Delaware law, or by multiple owners of property, if not transferred, sold or assigned, may be divided among the partners, members, shareholders or owners either according to the distributive shares of income of such entity or pursuant to an executed agreement among such partners, members, shareholders or owners if such agreement documents an alternate method of distribution.

(c) Any transferee, purchaser or assignee of tax credits under this subchapter may use such acquired credits to offset state income or franchise tax liabilities imposed upon such transferee, purchaser or assignee. To claim the state tax credit, the transferee, purchaser or assignee shall attach the certificate obtained by the transferor, seller or assignor in accordance with subsection (a) of this section to the Delaware tax return against which the credit is claimed and submit such tax return to the Division of Revenue or the Office of the State Bank Commissioner with respect to income taxes in this title and Title 5 franchise taxes, respectively.

(d) If the credit allowed under this section exceeds the transferee, purchaser or assignee's tax due for the current tax year, the transferee, purchaser or assignee of the tax credit may carry forward such excess in accordance with § 1813 of this title.

(e) Credits issued to the initial assignee, or in the case of a tax-exempt assignee, to the first taxable transferee after the associated phase completion, shall be subject to revocation and repayment to the Delaware Division of Revenue or the Office of the State Bank Commissioner if, under regulations issued by the State Office, a phased rehabilitation is not completed by the agreed upon completion date demonstrates that the applicant for the credit award for the project is unable or unwilling to complete it or, in the event that the project does not meet the certification requirements previously agreed to with the State Office.

[73 Del. Laws, c. 6, § 3](#); [74 Del. Laws, c. 68, § 107\(F\)](#); [74 Del. Laws, c. 388, § 5](#);

§ 1815 Preservation tax credits; procedures and administration.

(a) The Delaware State Historic Preservation Office is hereby established within the Division of Historical and Cultural Affairs, and shall be administered by the Delaware State Historic Preservation Officer.

(b) Except where otherwise provided, the Division of Historical and Cultural Affairs may establish by regulation all requirements for implementation of the provisions of this subchapter (except tax matters), including but not limited to the following:

(1) Fees to be charged by the State Office for inspections and other expenses; and

(2) Standards for rehabilitation of historic property where those standards set forth in 36 CFR part 67 are not applicable.

(c) The Division of Historical and Cultural Affairs shall have the authority to promulgate the application and forms governing participation in the certification program.

(d) The Division of Revenue and the State Bank Commissioner may establish regulations and develop all appropriate procedures and applications or other forms for the implementation of all provisions of this subchapter which are directly tax-related or related to certifying the value of the tax credits issued under this title and Title 5, respectively. The Division of Revenue shall also by January 1, 2004, establish regulations and develop appropriate procedures specific to taxpayers who qualify as resident curators. The Division of Historical and Cultural Affairs shall have the same authority granted in section (b) of this subchapter relative to resident curators.

(e) Any person or entity seeking the historic preservation tax credit set forth in this subchapter shall apply to the Delaware State Historic Preservation Office. Each applicant shall complete the application, and all other information requested, in whole, and shall include such sketches, renderings, charts or photographs as may be requested by the State Office.

(f) The State Office shall, upon consideration of the application and such other matters as it deems appropriate, determine whether or not the property constitutes a certified historic property. If the application is for a certified historic property, the State Office shall review, approve, disapprove or suggest modifications to any proposed rehabilitation plan to insure that the rehabilitation, when completed, can be considered a certified rehabilitation. Projects requesting credits upon phase completion must present and receive approval of completion dates for all project phases, including the completion date for the entire project, from the State Office. All repairs and rehabilitation shall be consistent with those standards set forth in 36 CFR § 67.7 for federal certification, and otherwise shall comply with regulations

promulgated by the State Office. This approval by the State Office of the proposed rehabilitation plan shall be known as a "Stage II approval," and the amount of the qualified expenditures as determined by the State Office as part of the Stage II approval and in accordance with § 1813 of this title shall represent the "credit award."

(g) Upon completion of the rehabilitation or, if applicable, phase thereof, the person or entity shall notify the Delaware State Historic Preservation Officer. Upon determination by the Preservation Officer that the property is a certified historic property, that the rehabilitation or, if applicable, phase thereof of the certified historic property has been completed, and that the rehabilitation or, if applicable, phase thereof is in conformance with the requirements of this subchapter and the regulations of the State Office, and upon determination by the Division of Revenue or the State Bank Commissioner as to the value of the tax credit associated with the Certificate of Completion, the Delaware State Historic Preservation Officer shall certify such rehabilitation or, if applicable, phase thereof and shall issue a Certificate of Completion to the applicant.

(h) In the alternative, the Delaware State Historic Preservation Officer may certify such rehabilitation and issue a Stage II Approval to any applicant who has obtained a Part I and Part II certification from the federal government issued pursuant to 36 CFR part 67, where applicable.

(i) To claim the state tax credit allowed by this subchapter the applicant, any assignee, any purchaser or any transferee of the credit shall attach the Certificate of Completion to the Delaware tax return against which the credit is claimed and submit such tax return to the Division of Revenue or to the Office of the State Bank Commissioner with respect to income taxes in this title and Title 5 franchise taxes, respectively.

(j) Credits subject to revocation and repayment under § 1814(e) of this title, such shall be treated as an unpaid tax assessment, and, in pursuing the repayment of such credits, the Division of Revenue and the Office of the State Bank Commissioner shall have at their disposal all means of collection and enforcement permitted under Titles 30 and 5, respectively.

[73 Del. Laws, c. 6, § 3](#); [73 Del. Laws, c. 240, §§ 4, 5](#); [74 Del. Laws, c. 68, § 107\(G\)](#); [74 Del. Laws, c. 388, §§ 6-8](#);

§ 1816 Total amount of credits permitted in each fiscal year; allocation of such credits.

(a) The maximum amount of credit awards under this chapter in any fiscal year shall not exceed \$5,000,000. One hundred thousand dollars of the credit awards in a fiscal year must be reserved for distribution to qualified resident curators. If in any fiscal year there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to persons qualifying under § 1813(a)(1) or (2) of this title. In any 1 year, \$2,000,000 of tax credits shall be reserved for projects receiving a credit of not more than \$300,000. On April 1 of each year, any unused balance of the \$2,000,000 pool of tax credits shall be available to any eligible project. However, should a credit award exceed the actual credit claimed, the amount of the excess credit award shall not be available for a subsequent award.

(b) The State Office shall ensure that the date and time of Stage II approval is noted on the first page of the application. Credits will be awarded in chronological order based upon the date and time on which each application receives Stage II approval from the State Office. If a credit award would result in an exceedence of the \$5,000,000 limitation for the fiscal year in which it is awarded, the amount by which such credit award exceeds \$5,000,000 shall carry over to the succeeding fiscal year and shall receive priority for that year.

(c) All applicants must begin construction on the approved Stage II rehabilitation plan within 1 year of receiving the Stage II approval. If construction on the rehabilitation plan is not substantially commenced and diligently pursued within this time period, the applicant will forfeit the awarded credits, and the credits awarded to such applicant will become available for award to other applicants.

(d) Upon completion of the rehabilitation or, if applicable, phase thereof, the applicant shall obtain a Certificate of Completion from the Delaware State Historic Preservation Officer in accordance with § 1815 of this title. The applicant shall then take the necessary procedures to claim the state tax credit in accordance with this chapter. However, no such claim for state tax credit shall be made prior to the 1-year anniversary of receipt of the Stage II approval from the State Office.

(e) The Secretary of Finance shall report to the Governor and the General Assembly on the second Tuesday of every January concerning the amount of tax credits awarded pursuant to this subchapter for the previous fiscal year.

(f) On or before January 31 of every year, the Division of Historical and Cultural Affairs of the Department of State shall issue an annual report on the restoration and rehabilitation status of all tax credit projects approved during the previous calendar year. The annual report will also include a list of all tax credit projects issued in previous years which have a balance of credits which have not been claimed. The annual report shall be distributed to the Governor and the General Assembly.

[73 Del. Laws, c. 6, § 3](#); [73 Del. Laws, c. 240, § 6](#); [74 Del. Laws, c. 68, § 107\(A\)](#); [74 Del. Laws, c. 388, § 9](#); [75 Del. Laws, c. 152, §§ 1, 2](#); [77 Del. Laws, c. 413, §§ 3, 4](#);

§ 1817 Appeals.

(a) Where any taxpayer or other person who has applied for state approval or certification that a property is a certified historic property or that any repairs or improvements are certified rehabilitation, in accordance with this subchapter objects to a noncertification decision by the Delaware State Historic Preservation Officer, such person shall be entitled to appeal such decision to the Delaware Secretary of State or the Secretary's designee. Such appeal shall be filed with the Delaware Secretary of State within 60 days from the issuance of such noncertification decision. Such appeal shall be conducted in accordance with the Administrative Procedures Act, 29 Del. C. § 10101 et seq. Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with subchapter V of the Administrative Procedures Act [§ 10141 et seq. of Title 29].

(b) Where a taxpayer or other person who is or was engaged in qualified repairs in accordance with this subchapter is aggrieved by a tax decision which directly affects such person, that person shall be entitled to pursue an appeal pursuant to the administrative procedures of the Department of Finance as set forth in this title or regulations promulgated thereunder or the State Bank Commissioner as set forth in Title 5 or regulations promulgated thereunder. Where an appellant has exhausted all administrative remedies, such appellant

shall be entitled to judicial review in accordance with subchapter V of the Administrative Procedures Act.

[73 Del. Laws, c. 6, § 3.](#)