

MICHIGAN STRATEGIC FUND

STATE HISTORIC PRESERVATION OFFICE

HISTORIC PRESERVATION CERTIFICATION

Filed with the Secretary of State on _____

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the State Historic Preservation Office by sections 266a(13) and 676(13) of the Income Tax Act of 1967, Act 281 of 1967, MCL 206.266a and 206.676)

R 206.201, R 206.202, R 206.203, R 206.204, R 206.205, R 206.206, R 206.207, R 206.208, R 206.209, R 206.210 and R 206.211 are added as follows:

R 206.201 Purpose.

Rule 201. The purpose of these rules is to prescribe the procedures whereby a qualified taxpayer may request (1) a certification of historic significance, (2) a rehabilitation plan, and (3) a completed rehabilitation of a historic resource in order to qualify for a tax credit under the Income Tax Act of 1967.

R 206.202 Definitions.

Rule 202. (1) As used in these rules:

(a) "Add Back" means the percentage of claimed credit that is added back to a qualified taxpayer's tax liability during the Compliance Period in the event the qualified taxpayer either (x) sells or transfers their interest in the historic resource or (y) has their certificate of completed rehabilitation revoked.

(b) "Act" means the Income Tax Act of 1967, Act 281 of 1967, MCL 206.1 *et seq.* Terms defined in the Act have the same meanings when used in these rules.

(c) "Applicant" a qualified taxpayer(s) making application for the tax credits.

(d) "Compliance Period" means the five (5) year period beginning on the date a certificate of completed rehabilitation is issued.

(e) "Federal Secretary" means the United States secretary of the interior, or a designee authorized by the secretary, in the course of carrying out the secretary's responsibilities to certify historic significance, rehabilitation plans, and rehabilitation work under federal law.

(f) "Inspection" means a visit by an authorized representative of the office to a certified or potentially certified historic resource for the purposes of reviewing and evaluating the significance of the historic resource or the ongoing or completed rehabilitation or for the purpose of determining whether an unapproved alteration to the completed rehabilitation was made during the five (5) years after the tax year in which a

tax credit was claimed.

(g) "In writing" means written comments provided via first class, certified mail or e-mail.

(h) "MOAHR" means the Michigan Office of Administrative Hearings and Rules

(i) "Project Types" means owner-occupied residential resources, small nonresidential historic resources, and large nonresidential historic resources as defined in the Act.

(j) "Rehabilitation" means the process of returning a building, structure, or other historic resource to a useful state, through repair or alteration, which makes possible an efficient or a functional use while preserving the portions and features of the historic resource that are significant to its historical, architectural, and cultural values.

(k) "Standards and Guidelines" mean the Federal Secretary's standards for rehabilitation and guidelines for rehabilitating historic buildings set forth in, and authorized by, 36 CFR 67.

(l) "Tax credit" means a credit against a federal tax as allowed by section 47(a)(2) of the internal revenue code of 1990, 26 USC section 47, or against a state tax as allowed by section 266(a), or section 676 of the Act.

(m) "Year" means a calendar year beginning January 1 and ending December 31.

R 206.203 Preliminary information.

Rule 203. A qualified taxpayer who owns or holds a long-term lease for a resource which they believe to be a historic resource and which, if rehabilitated, could qualify them for a tax credit may communicate with the office and request information on a preliminary basis with respect to whether the resource appears to be historic, whether a rehabilitation plan appears to conform with Standards and Guidelines, or whether completed rehabilitation appears to conform with Standards and Guidelines. Preliminary comments are not binding on the office, nor do they replace any formal reviews prescribed by these rules.

R 206.204 Certification; historic significance.

Rule 204. (1) An Applicant shall first submit an application to the office for certification of historic significance of the possible historic resource. If the applicant is eligible to claim a federal tax credit, or both federal and state tax credits, then they shall apply on a historic preservation certification application prescribed by the national park service and also file a state part 1 application, remit the state fee as prescribed in R 206.208 and any other project information prescribed by the office. If the applicant is eligible to claim a state tax credit exclusively, then they shall apply only on a historic preservation certification application prescribed by the office and also file one (1) copy of the part 1 application and declaration form, if appropriate.

(2) A part 1 application shall not be complete unless it contains all of the following information:

(a) Applicant name, business entity name, mailing address, phone number and email of each owner or long-term lessee, if any, seeking the credit.

(b) Common modern name and historic name, if any, of the resource.

(c) Address of the resource.

(d) Name of any historic district in which the resource is located, if applicable.

- (e) Current Photographs of the resource detailing the following:
 - (i) Photographs of the building or structure, site, and landscaping before alteration.
 - (ii) Photographs showing the resource in conjunction with adjacent properties and structures along the streetscape.
 - (iii) A photograph of all interior spaces, such as a room, and each significant interior feature.
 - (f) A brief description of the resource, including major alterations, distinctive features and spaces, and dates of construction activity.
 - (g) A brief statement of significance, summarizing how the resource reflects historical values, including the values that may give a designated historic district its distinctive character.
 - (h) A map clearly locating the resource in a local unit or in an established historic district.
 - (i) The social security number or federal taxpayer identification number of each applicant.
 - (j) The signature of each applicant.
 - (k) A completed declaration form if the resource is located within a local historic district.
 - (l) Any other Information requested by the office.
- (3) In addition to the application, an applicant shall also only submit those attachments that the office deems necessary to perform its evaluation and a determination. The office shall notify an applicant, in writing, if additional information or materials are required and the office shall refrain from processing the application until the requested information or materials have been furnished by the applicant to the satisfaction of the office.
- (4) Upon receipt of a complete and adequately documented application, the office shall review the submission to determine the eligibility of a possible historic resource for participation in the federal or state tax credit program, or both.
- (5) Within 120 days of its receipt of a complete application, the office shall provide written notification to the applicant of its determination on the application for historic significance certification.

R 206.205 Certification; rehabilitation plan.

Rule 205. (1) To initiate a review of a rehabilitation plan for certification purposes, an applicant with an approved state part 1 application shall submit a state part 2 application to the office for the historic resource. If the applicant is eligible to claim a federal tax credit or both federal and state tax credits, then they shall apply on a historic preservation certification application prescribed by the national park service and also file a state part 2 application, remit the state fee as prescribed in R 206.208 and any other project information prescribed by the office. If the applicant is eligible to claim a state tax credit exclusively, then they shall apply only on a historic preservation certification application prescribed by the office and also file one (1) copy of the state application and verification of state equalized value form, if appropriate.

(2) a part 2 application shall include:

(a) Photographs deemed sufficient by the office to document the interior and exterior appearance of a structure, its site, and environment before the commencement of

rehabilitation.

- (b) Verification of the resource's state equalized value.
- (c) Any plans for adjacent, attached, or related new construction.
- (d) The social security number or federal taxpayer identification number of each applicant.
- (e) Any additional documentation, such as window surveys or masonry cleaning specifications, requested by the office.
- (f) The signature of each applicant.
- (g) Any other documents the office or its governing agency require or deem necessary.

(3) Upon receipt of a complete and adequately documented part 2 of an application as described in this rule, the office shall review the submission to determine whether the applicant's rehabilitation plan meets the Standards and Guidelines. If the office deems that additional information or documentation is needed to evaluate the submission, then the office shall notify the applicant in writing and shall refrain from processing the application until the information or documents, or both, have been furnished. To qualify for certification, a proposed rehabilitation plan shall comport with each element of the Standards and Guidelines, to the extent applicable.

(4) Within 120 days of its receipt of a complete part 2 application, the office shall notify the applicant in writing whether the rehabilitation plan meets the Standards and Guidelines. If the office determines that the rehabilitation plan meets the Standards and Guidelines, the office will issue a credit reservation letter and a project priority project number to the applicant; If the office determines that the rehabilitation plan does not meet the Standards and Guidelines, it shall advise the applicant of any revisions necessary for the rehabilitation plan to meet the Standards and Guidelines. An applicant may submit a revised rehabilitation plan to the office. The office shall refrain from processing the application further until the necessary revisions have been made and furnished.

R 206.206 Certification; Credit Reservation Priority.

Rule 206. (1) Applications will be reviewed, and credit reservations made based on the date that a complete and adequately documented application was received by the office. The office may use factors such as geographic distribution of the resources, the remaining credits available to particular project types, the number of other existing credit reservations an applicant has, or other factors the office deems appropriate when issuing credit reservations.

(2) In any year, if (x) the maximum amount of credit allocated to a specific project type or (y) the annual maximum credit limit for the Program is reached, the office will:

(a) Notify the public via its website that it will no longer accept any additional applications for that project type or the Program for the remainder of the fiscal year.

(b) Assign a priority project number to all remaining complete applications that did not receive a credit reservation. Priority project numbers will be assigned to each application date the completed application was received by the office.

(c) Allow applicants who submitted incomplete applications to submit a revised application. In the event a revised application is deemed complete, it will be assigned a priority project number based on the date the revised application was received by the office.

(d) In the last month of each year, the office will review all applications that have been assigned priority project numbers and:

(i) Issue credit reservations for any recaptured, unclaimed or returned credits from previous years to other applications within that Project Type based on priority project numbers. If there are no applications within that specific Project Type that will accept the recaptured, unclaimed or returned credit, then it shall be made available to any approved application, regardless of Project Type, based on priority project number.

(ii) Notify any applicants who have not received a credit reservation and that have a priority project number that was issued at least two years prior to the review date that (x) their application has expired, (y) they will no longer be eligible for any available credit, and (z) they will need to submit a new application if they want to continue to seek a credit.

(iii) Determine which projects will receive funding in the next year based on priority project number and Project Types.

(iv) Post on its website the total amount of credit per Project Type that will be available to new applications in the subsequent year.

(3) On the first business day of the new year the office shall begin accepting new applications for that year for all Project Types until any or all of conditions in sub-rule 2 are met.

R 206.207 Certification; completed rehabilitation.

Rule 207. (1) To initiate a review of a completed rehabilitation, an applicant with an approved state part 1 and 2 application shall submit a state part 3 application to the office. If the applicant is eligible to claim a federal tax credit or both federal and state tax credits, then they shall apply on a historic preservation certification application prescribed by the national park service and also file a state part 2 application, remit the state fee as prescribed in R 206.208 and any other project information prescribed by the office. If the applicant is eligible to claim a state tax credit exclusively, then they shall file one (1) copy of the historic preservation certification application prescribed by the office.

(2) The part 3 application shall include:

(a) The project completion date.

(b) The social security number or federal taxpayer identification number of each applicant.

(c) A signed statement that the completed rehabilitation (x) is consistent with the approved part 2 application and (y) meets the Standards and Guidelines.

(d) Photographs adequate to document the completed renovation.

(3) Upon receipt of a complete and adequately documented request for certification of completed work and other items as described in this rule, the office shall perform a review to determine whether the completed rehabilitation conforms with the rehabilitation plans and plan amendments, if any, and meets the Standards and Guidelines. The office shall determine conformance to the Standards and Guidelines on the basis of application documentation and other available information showing the historic resource as it existed in its historic setting. To qualify for certification, the completed rehabilitation work shall comport with each element of the Standards and Guidelines, to the extent applicable.

(4) Within 120 days of the receipt of the part 3 application, the office shall notify the

applicant of its determination in writing. The office may require changes in the completed rehabilitation that enable it to meet the Standards and Guidelines. The office shall refrain from processing the application any further until the required changes in the completed rehabilitation have been made by the applicant.

(5) If the office determines that the completed rehabilitation meets the Standards and Guidelines, then the office shall notify both the applicant and the Michigan department of treasury of its determination.

(6) The office will not issue a certificate of completed rehabilitation for an amount in excess of the amount specified in the credit reservation letter.

R 206.208 Fees.

Rule 208. (1) An applicant who submits a historic preservation certification application prescribed by the national park service by itself, or in conjunction with a historic preservation certification application prescribed by the office, is responsible for the payment of fees to the national park service in the amount prescribed in 36 C.F.R. section 67.11.

(2) An applicant who submits a historic preservation certification application prescribed by the office by itself, or in conjunction with a historic preservation certification application prescribed by the national park service, is responsible for payment of fees in the amount, and to the office, prescribed in sub-rules (3), (4) and (5) of this rule. The office shall not make a certification decision until the appropriate fee has been received. Upon request of the office, the applicant shall remit the appropriate fee by check or other instrument payable to the "State of Michigan." All fees are nonrefundable.

(3) An applicant shall remit the following part 1 fees to the office based on property type:

- (a) Owner-occupied residential properties \$50.00.
- (b) All other properties \$100.00.

(4) An applicant shall remit the following part 2 fees to the office based on property type and amount of qualified expenditures:

- (a) Owner-occupied residential properties:
 - (i) \$100.00 if anticipated qualified expenses are \$20,000.00 or less.
 - (ii) Two percent (2.0%) of the credit reservation if anticipated qualified expenses greater than \$20,000.
- (b) All other properties:
 - (i) \$200.00 if anticipated qualified expenses are \$40,000.00 or less.
 - (ii) Two percent (2.0%) of the credit reservation if anticipated qualified expenses are greater than \$40,000.

(5) An applicant shall remit part 3 fees to the office on the basis of the following fee schedule:

- (a) Owner-occupied residential properties:
 - (i) \$100.00 if anticipated qualified expenses are \$20,000.00 or less.
 - (ii) Two percent (2.0%) of the credit reservation if anticipated qualified expenses greater than \$20,000.
- (b) All other properties:
 - (i) \$200.00 if anticipated qualified expenses are \$40,000.00 or less.
 - (ii) Two percent (2.0%) of the credit reservation if anticipated qualified

expenses are greater than \$40,000.

(6) Sale or transfer agreement processing:

(a) \$1,000.00.

(7) The office reserves the right to charge a \$35.00 processing fee for all checks returned for insufficient funds.

R 206.209 Inspection; revocation.

Rule 209. (1) The office may conduct an inspection of a historic resource during the rehabilitation process and during the Compliance Period.

(2) The office may, after giving the qualified taxpayer 30 days' written notice, issue a revocation of a certificate of completed rehabilitation if the office determines that a rehabilitation was either (x) not undertaken in conformity with the Standards and Guidelines or (y) if during the Compliance Period either the historic resource was damaged, altered or substantially changed or the applicant undertook further unapproved work inconsistent with the Standards and Guidelines. The office shall notify the department of treasury of a revocation issued under this sub-rule. The department of treasury shall determine the Michigan tax consequences to the qualified taxpayer of a revocation of certification in accordance with MCL 206.266a(9).

R 206.210 Appeals.

Rule 210. (1) An applicant may appeal a denial of an application for certification submitted under these rules. If the appeal involves a historic preservation certification application prescribed by the national park service by itself, or in conjunction with a historic preservation certification application prescribed by the office, then the appellant shall follow the procedures set forth in 36 CFR section 67.10 to appeal the federal portion of the credit. If the appeal involves an application for certification prescribed by the office by itself, or in conjunction with a historic preservation certification application prescribed by the national park service then the applicant shall follow the procedures prescribed in this rule for the state portion of the credit.

(2) To file an appeal under this rule, an applicant shall submit a written appeal to the State Historic Preservation Officer c/o the office within sixty (60) days from the date of the denial. The request shall state "APPEAL" on its header, state the reason(s) the applicant believes the denial should be reversed and include all information, records, and other materials the applicant wants considered.

(3) The State Historic Preservation Officer, or their delegate, shall submit a hearing request to the Michigan Office of Administrative Hearings and Rules (MOAHR). MOAHR shall schedule a hearing and assign an administrative law judge to conduct the hearing. Upon the conclusion of the hearing, the administrative law judge shall submit a proposal for decision to the person designated by the office or its governing agency.

(4) Upon receipt of the proposal for decision, the Fund Manager shall issue a Final Order that (1) upholds, (2) rejects, or (3) modifies the findings of the administrative law judge. Once a Final Order has been issued, an applicant shall be deemed to have exhausted all of their administrative remedies.

R 206.211 Sale or transfer of resource; effect of revocation.

Rule 211. (1) If, during the Compliance Period, a qualified taxpayer either (x) sells or

transfers the qualified taxpayer's interest in the historic resource or (y) is subject to revocation of their certificate of completed rehabilitation, then that taxpayer shall be subject to the Add Back in accordance with sub-rule 2 below. A qualified taxpayer shall notify the office and the department of treasury in writing of its intent to sell or transfer their interest in the historic resource not less than six (6) months prior to the proposed sale or transfer.

(2) A qualified taxpayer's Add Back shall be calculated by the department according to this sub-rule in the event either of the following occurs during the Compliance Period: (x) the qualified taxpayer sells or transfers their interest in the historic resource or (y) the qualified taxpayer's certificate of completed rehabilitation is revoked. The Add Back shall be calculated as follows:

(a) 100% if sale or revocation takes place less than one (1) year from the date of the certificate of completed rehabilitation.

(b) 80% if sale or revocation takes place at least one (1) year but less than two (2) years from the date of the certificate of completed rehabilitation.

(c) 60% if sale or revocation takes place at least two (2) years but less than three (3) years from the date of the certificate of completed rehabilitation.

(d) 40% if sale or revocation takes place at least three (3) years but less than four (4) years from the date of the certificate of completed rehabilitation.

(e) 20% if sale or revocation takes place at least four (4) years but less than five (5) years from the date of the certificate of completed rehabilitation.

(f) 0% if sale or revocation takes place at least five (5) or more years from the date of the certificate of completed rehabilitation.

(3) Notwithstanding sub-rule 2 above, a qualified taxpayer who sells a historic resource during the Compliance Period may avoid the Add Back if they enter into a written agreement with the office that provides the following to the satisfaction of the office:

(a) Reasonable assurance that, subsequent to transfer, the property will remain a historic resource during the five (5) year period after the certificate of completed rehabilitation is issued.

(b) A method that the department can recover an amount from the qualified taxpayer equal to the percentage and amount described in sub-rule 2 above.

(c) An encumbrance on the title to the historic resource being sold remains a historic resource during the Compliance Period

(d) A provision for the payment by the qualified taxpayer of all legal and professional fees associated with the drafting, review, and recording of the written agreement.