

RHODE ISLAND GENERAL LAWS

TITLE 44 Taxation

CHAPTER 33.6

HISTORIC PRESERVATION TAX CREDITS 2013

44-33.6-1. Declaration of purpose. -- The general assembly finds and declares that Rhode Island's historic structures continue to experience high vacancy rates and physical deterioration, particularly in Rhode Island's central business districts. Without adding economic incentive, these structures are not viable for the redevelopment and reuse by modern commercial, residential or manufacturing enterprises and will continue their physical deterioration. The redevelopment and reuse of these historic structures are of critical importance to the economic measures and will assist in stimulating the reuse and redevelopment of historic structures and will improve property values, foster civic beauty, create employment opportunities, enhance commerce, and promote public education, pleasure, and welfare. Furthermore, during this unprecedented economic climate, many in the building and construction trades, and related service industries, have been severely impacted. The redevelopment and reuse of these historic stimulating various other related economic benefits and business activities. The purpose of this chapter is to create economic incentives for the purpose of stimulating the redevelopment and reuse of Rhode Island's historic structures, as well as to generate the positive economic and employment activities that will result from such redevelopment and reuse.

44-33.6-2. Definitions. -- As used in this chapter:

(1) "Certified historic structure" means a property which is located in the state of Rhode Island and is:

- (i) Listed individually on the national register of historic places; or
- (ii) Listed individually in the state register of historic places; or
- (iii) Located in a registered historic district and certified by either the commission or Secretary of the Interior as being of historic significance to the district.

(2) "Certified rehabilitation" means any rehabilitation of a certified historic structure consistent with the historic character of such property or the district in which the property is located as determined by the commission guidelines.

(3) "Substantial Construction" means that: (i) the owner of a certified historic structure has entered into a contract with the division of taxation and paid the processing fee; (ii) the commission has certified that the certified historic structure's rehabilitation will be consistent with the standards set forth in this chapter; and (iii) the owner has expended ten percent (10%) of its qualified rehabilitation expenditures, estimated in the contract entered into with the division of taxation for the project or its first phase of a phased project.

(4) "Commission" means the Rhode Island historical preservation and heritage

commission created pursuant to section 42-45-2.

(5) "Exempt from real property tax" means, with respect to any certified historic

(6) "Hard construction costs" means the direct contractor costs for labor, material, equipment, and services associated with an approved project, contractors overhead and profit, and other direct construction costs.

(7) "Holding period" means twenty-four (24) months after the commission issues a certificate of completed work to the owner. In the case of a rehabilitation which may reasonably be expected to be completed in phases as described in subdivision (15) of this section, "holding period" shall be extended to include a period of time beginning on the date of issuance of a certificate of completed work for the first phase or phases for which a certificate of completed work is issued and continuing until the expiration of twenty-four (24) months after the certificate of completed work issued for the last phase.

(8) "Part 2 application" means the Historic Preservation Certification Application Part 2-Description of Rehabilitation.

(9) "Placed in service" means that substantial rehabilitation work has been completed which would allow for occupancy of the entire structure or some identifiable portion of the structure, as established in the Part 2 application.

(10) "Principal residence" means the principal residence of the owner within the meaning of section 121 of the Internal Revenue Code [26 U.S.C. 121] or any successor provision.

(11) "Qualified rehabilitation expenditures" means any amounts expended in the rehabilitation of a certified historic structure properly capitalized to the building and either:

(i) Depreciable under the Internal Revenue Code, 26 U.S.C. section 1 et seq., or

(ii) Made with respect to property (other than the principal residence of the owner) held for sale by the owner. Fees paid pursuant to this chapter are not qualified rehabilitation expenditures. Notwithstanding the foregoing, except in the case of a nonprofit corporation, there will be deducted from qualified rehabilitation expenditures for the purposes of calculating the tax credit any funds made available to the person (including any entity specified in section 44-33.5-3(a)) incurring the qualified rehabilitation expenditures in the form of a direct grant from a federal, state or local governmental entity or agency or instrumentality of government.

(12) "Registered historic district" means any district listed in the national register of historic places or the state register of historic places.

(13) "Remain idle" means that substantial work has ceased at the subject project; work crews have been reduced by more than twenty-five percent (25%) for reasons unrelated to scheduled completion of work in accordance with the project schedule, reasonably unanticipated physical conditions, or force majeure; or the project schedule that was originally submitted by the taxpayer to the commission has been extended by more than twelve (12) months for reasons other than reasonably unanticipated physical conditions or an event of force majeure (by way of example, and not in limitation, any delays, work stoppage, or work force reduction caused by issues with project funding, finances, disputes, or violation of laws shall be deemed to cause a project to remain idle).

(14) "Scattered Site Development" means a development project for which the developer seeks unified financing to rehabilitate dwelling units in two (2) or more buildings located in an area that is defined by a neighborhood revitalization plan and is not more than one mile in diameter.

(15) "Social club" means a corporation or other entity and/or its affiliate that offers its facilities primarily to members for social or recreational purposes and the majority source of its pursuant to the Internal Revenue Code section 501(c)(7).
the qualified rehabilitation expenses of the building during the twenty-four (24) month period selected by the taxpayer ending with or within the taxable year exceed the adjusted basis in such building and its structural components as of the beginning of such period. In the case of any rehabilitation, which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, the above definition shall be applied by substituting "sixty (60) month period" for "twenty-four (24) month period".

(17) "Trade or business" means an activity that is carried on for the production of income from the sale or manufacture of goods or performance of services, excluding residential rental activity.

44-33.6-3. Tax credit. -- (a) Subject to the maximum credit provisions set forth in subsections (c) and (d) below, any person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit or nonprofit) or other business entity that incurs qualified rehabilitation expenditures for the substantial rehabilitation of a certified historic structure, provided the rehabilitation meets standards consistent with the standards of the Secretary of the United States Department of the Interior for rehabilitation as certified by the commission and said person, firm, partnership, trust, estate, limited liability company, corporation or other business entity is not a social club as defined in subdivision 44-33.6-2 (13) of this chapter, shall be entitled to a credit against the taxes imposed on such person or entity pursuant to chapter 11, 12, 13, 14, 17 or 30 of this title in an amount equal to the following:

(1) Twenty percent (20%) of the qualified rehabilitation expenditures; or

(2) Twenty-five percent (25%) of the qualified rehabilitation expenditures provided that either:

(i) At least twenty-five percent (25%) of the total rentable area of the certified historic structure will be made available for a trade or business; or

(ii) The entire rentable area located on the first floor of the certified historic structure will be made available for a trade or business.

(b) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in which such certified historic structure or an identifiable portion of the structure is placed in service provided that the substantial rehabilitation test is met for such year.

(c) Maximum project credit. - The credit allowed pursuant to this chapter shall not exceed five million dollars (\$5,000,000) for any certified rehabilitation project under this chapter. No building to be completed in phases or in multiple projects shall exceed the maximum project credit of five million dollars (\$5,000,000) for all phases or projects involved in the rehabilitation of such building.

(d) Maximum aggregate credits. - The aggregate credits authorized to be reserved pursuant to this chapter shall not exceed sums estimated to be available in the historic

preservation tax credit trust fund pursuant to this chapter.

(e) Subject to the exception provided in subsection (g) of this section, if the amount of the tax credit exceeds the taxpayer's total tax liability for the year in which the substantially rehabilitated property is placed in service, the amount that exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for the succeeding ten (10) years, or until the full credit is used, whichever occurs first for the tax credits. Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property shall be passed through to the persons designated as partners, members or owners respectively pro rata or pursuant to an executed agreement among such persons designated as partners, members or owners documenting an alternate distribution method without regard to their sharing of other tax or economic attributes of such entity. Credits may be allocated to partners, members or owners that are exempt from taxation under section 501(c)(3), section (c)(4) or section 501(c)(6) of the U.S. Code and these partners, members or owners must be treated as taxpayers for purposes of this section.

(f) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or otherwise to any individual or entity, including, but not limited to, condominium owners in the event the certified historic structure is converted into condominiums and assignees of the credits that have not claimed the tax credits in whole or part may assign, transfer or convey the credits, in whole or in part, by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed pursuant to chapter 11, 12, 13, (other than the tax imposed under section 44-13-13), 14, 17 or 30 of this title. The assignee may apply the tax credit against taxes imposed on the assignee until the end of the tenth calendar year after the year in which the substantially rehabilitated property is placed in service or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may claim the credit until the expiration of the fiscal year that ends within the tenth year after the year in which the substantially rehabilitated property is placed in service. The assignor shall perfect the transfer by notifying the state of Rhode Island division of taxation, in writing, within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the division of taxation to administer and carry out the provisions of this section.

For purposes of this chapter, any assignment or sales proceeds received by the taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from this title. If a tax credit is subsequently recaptured under this chapter, revoked or adjusted, the seller's tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total amount of the sales proceeds, without proration, as a modification under chapter 30 of this title. In the event that the seller is not a natural person, the seller's tax calculation under chapters 11, 12, 13 (other than with respect to the tax imposed under section 44-13-13), 14, 17, or 30 of this title, as applicable, for the year of revocation, recapture, or adjustment, shall be increased by including the total amount of the sales proceeds without proration.

(g) Credits allowed to partners, members or owners that are exempt from taxation under section 501(c)(3), section (c)(4) or section 501(c)(6) of the U.S. Code, and only said credits, shall be fully refundable.

- (h) Substantial rehabilitation of property that either:
- (1) Is exempt from real property tax;
 - (2) Is a social club; or

(3) Consists of a single family home or a property that contains less than three (3) residential apartments or condominiums shall be ineligible for the tax credits authorized under this chapter; provided, however, a scattered site development with five (5) or more residential units in the aggregate (which may include single family homes) shall be eligible for tax credit. In the event a certified historic structure undergoes a substantial rehabilitation pursuant to this chapter and within twenty-four (24) months after issuance of a certificate of completed work the property becomes exempt from real property tax, the taxpayer's tax for the year shall be increased by the total amount of credit actually used against the tax.

(i) In the case of a corporation, this credit is only allowed against the tax of a corporation included in a consolidated return that qualifies for the credit and not against the tax of other corporations that may join in the filing of a consolidated tax return.

44-33.6-4. Administration. -- (a) To claim the tax credit authorized in this chapter, taxpayers shall apply:

(1) To the commission prior to the certified historic structure being placed in service for a certification that the certified historic structure's rehabilitation will be consistent with the standards of the Secretary of the United States Department of the Interior for rehabilitation;

(2) To the commission after completion of the rehabilitation work of the certified historic structure for a certification that the rehabilitation is consistent with the standards of the Secretary of the United States Department of the Interior for rehabilitation; and

(3) To the division of taxation after completion of the rehabilitation work of the certified historic structure for a certification as to the amount of tax credit for which the rehabilitation qualifies. The commission and the division of taxation may rely on the facts represented in the application without independent investigation and, with respect to the amount of tax credit for which the rehabilitation qualifies, upon the certification of a certified public accountant licensed in the state of Rhode Island. The applications shall be developed by the commission and the division of taxation and may be amended from time to time.

(b) Within thirty (30) days after the commission's and division of taxation's receipt of the taxpayer's application requesting certification for the completed rehabilitation work:

(1) The commission shall issue the taxpayer a written determination either denying or certifying the rehabilitation; and

(2) Division of taxation shall issue a certification of the amount of credit for which the rehabilitation qualifies. To claim the tax credit, the division of taxation's certification as to the amount of the tax credit shall be attached to all state tax returns on which the credit is claimed.

(c) No taxpayer may benefit from the provisions of this chapter unless the owner of the certified historic structure grants a restrictive covenant to the commission, agreeing that during the holding period no material alterations to the certified historic structure will be made without the commission's prior approval and agreeing that such shall be done in a manner consistent with the standards of the Secretary of the United States Department of the Interior; and, in the event the owner applies for the twenty-five percent (25%) tax credit, that either:

(1) At least twenty-five percent (25%) of the total rentable area of the certified historic structure will be made available for a trade or business; or

(2) The entire rentable area located on the first floor of the certified historic structure will be made available for a trade or business, in either case, for a period of sixty (60) months after the placed in service date of the certified historic structure or identifiable portion thereof.

(d) The division of taxation shall charge a fee equal to three percent (3%) of qualified rehabilitation expenditures. The fee shall be payable upon submission of the Part 2 application.

The fee shall be non-refundable.

(e) Notwithstanding any provisions of the general laws or regulations adopted thereunder to the contrary, including, but not limited to, the provisions of chapter 2 of title 37, the division of taxation is hereby expressly authorized and empowered to enter into contracts with persons, firms, partnerships, trusts, estates, limited liability companies, corporations (whether for profit or nonprofit) or other business entities that incur qualified rehabilitation expenditures for the substantial rehabilitation of certified historic structures or some identifiable portion of a structure. Upon payment of the portion of the fee set forth in subdivision (d) above, the division of taxation and the applicant shall enter into a contract for tax credits consistent with the terms and provisions of this chapter.

(f) Upon satisfaction of the requirements set forth herein and the payment of the fees as set forth in subdivision (d) above, the division of taxation shall, on behalf of the State of Rhode Island, guarantee the delivery of one hundred percent (100%) of the tax credit and use of one hundred percent (100%) of the tax credit in the tax year a certified historic structure is placed in service through a contract with persons, firms, partnerships, trusts, estates, limited liability companies, corporations (whether for profit or nonprofit) or other business entities that will incur qualified rehabilitation expenditures for the substantial rehabilitation of a certified historic structure or some identifiable portion of a structure.

(g) Any contract executed pursuant to this chapter by a person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit or nonprofit) or other business entity shall be assignable to:

- (1) An affiliate thereof without any consent from the division of taxation;
- (2) A banking institution as defined by subdivision 44-14-2(2) or credit union as defined in subdivision 44-15-1.1(1) without any consent from the division of taxation; or
- (3) A person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit or nonprofit) or other business entity that incurs qualified rehabilitation expenditures for the substantial rehabilitation of certified historic structures or some identifiable portion of a structure, with such assignment to be approved by the division of taxation, which approval shall not be unreasonably withheld or conditioned. For purposes of this subsection, "affiliate" shall be defined as any entity controlling, controlled by or under common control with such person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit or nonprofit) or other business entity.

(h) If information comes to the attention of the commission or division of taxation at any time up to and including the last day of the holding period that is materially inconsistent with representations made in an application, the commission may deny the requested certification or revoke a certification previously given, and in either instance all fees paid by the applicant shall be deemed forfeited. In the event that tax credits or a portion of tax credits are subject to recapture for ineligible costs and such tax credits have been transferred, assigned and/or allocated, the state will pursue its recapture remedies and rights against the applicant of the tax credits, and all fees paid by the applicant shall be deemed forfeited. No redress shall be sought against assignees, transferees or allocates of such credits provided they acquired the tax credits by way of an arms-length transaction, for value, and without notice of violation, fraud or misrepresentation.

(i) The commission, in consultation with the division of taxation, shall promulgate such rules and regulations as are necessary to carry out the intent and purpose of this chapter.

44-33.6-5. Information requests. -- The tax division and its agents, for the purpose of ascertaining the correctness of any credit claimed under the provisions of this chapter, may examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, report, or other statement, and may require the attendance of the person executing the return, report, or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine the person under oath respecting any matter which the tax administrator or his or her agent deems pertinent or material in determining the eligibility for credits claimed and may request information from the commission, and the commission shall provide the information in all cases, to the extent not otherwise prohibited by statute.

44-33.6-6. Election; Limitations. -- Taxpayers who elect and qualify to claim tax credits for the substantial rehabilitation of a certified historic structure pursuant to this chapter are ineligible for any tax credits that may also be available to the taxpayer for the substantial rehabilitation of that particular certified historic structure under the provisions of chapters 33.1 of this title, 64.7 of title 42, and/or 31 of this title. Neither taxpayers nor assignees may apply any tax credits issued in accordance with this section until fiscal year 2014.

44-33.6-7. Timing and reapplication. -- Taxpayers shall have twelve (12) months from the approval of Part 2 application to commence substantial construction activities related to the subject substantial rehabilitation. Upon commencing substantial construction activities, the taxpayer shall submit an affidavit of commencement of substantial construction to the commission, together with evidence of such requirements having been satisfied. Furthermore, after commencement of substantial construction activities, no project shall remain idle prior to completion for a period of time exceeding six (6) months. In the event that a taxpayer does not commence substantial construction activities within twelve (12) months from the approval of Part 2 application, or in the event that a project remains idle prior to completion for a period of time exceeding six (6) months, the subject taxpayer shall forfeit all fees paid prior to such date and its then-current contract for tax credits shall be deemed null and void, and shall terminate without need for further action or documentation. Upon any such forfeiture and termination, a taxpayer may re-apply for tax credits pursuant to this chapter, however, notwithstanding anything contained herein to the contrary, one hundred percent (100%) of the fees required shall be paid upon reapplication and such fees shall be non-refundable. Additionally, any taxpayer reapplying for tax credits pursuant to this section 44-33.6-7 shall be required to submit evidence with its application establishing the reason for delay in commencement or the project sitting idle, as the case may be, and provide evidence, reasonably satisfactory to the commission, that such condition or event causing same has been resolved. All taxpayers shall submit a reasonably detailed project timeline to the commission together with the Part 2 application. The provisions of this section shall be further detailed and incorporated into the form of contract for tax credits used in connection with this chapter.

44-33.6-8. Historic tax credit apprenticeship requirements. -- (a) Notwithstanding any laws to the contrary, any credit allowed under this chapter for hard construction costs valued at ten million dollars (\$10,000,000) or more shall include a requirement that any contractor and subcontractor working on the project shall have an apprenticeship program as defined herein for all apprenticeable crafts that will be employed on the project at the time of bid. The provisions of the section shall only apply to contractors and subcontractors with five (5) or more employees. For purposes of this section, an apprenticeship program is one that is registered with and approved by the United States department of labor in conformance with 29 C.F.R. 29 and 29 C.F.R.30; and

(b) The department of labor and training must provide information and technical assistance to affected governmental, quasi-governmental agencies, and any contractors awarded projects relative to their obligations under this statute.

(c) The department of labor and training may also impose a penalty of up to five hundred dollars (\$500) for each calendar day of noncompliance with this section, as determined by the director of labor and training. Mere errors and/or omissions shall not be grounds for imposing a penalty under this subsection.

(d) Any penalties assessed under this statute shall be paid to the general fund.

(e) To the extent that any of the provisions contained in section 37-13-3.2 conflict with the requirements for federal aid contracts, federal law and regulations shall control.

44-33.6-9. Reporting requirements. -- (a) Each taxpayer requesting certification of a completed rehabilitation shall report to the commission and the division of taxation the following information:

- (1) The number of total jobs created;
- (2) The number of Rhode Island businesses retained for work;
- (3) The total amount of qualified rehabilitation expenditures;
- (4) The total cost of materials or products purchased from Rhode Island businesses;
- (5) Such other information deemed necessary by the tax administrator.

(b) Any agreements or contracts entered into under this chapter by the division, the commission, or the economic development corporation and the taxpayer shall be sent to the division of taxation and be available to the public for inspection by any person and shall be published by the tax administrator on the tax division website.

(c) By August 15th of each year the division of taxation shall report the name, address, and amount of tax credit received for each credit recipient during the previous state fiscal year to the governor, the chairpersons of the house and senate finance committees, the house and senate fiscal advisors, and the department of labor and training. This report shall be available to the public for inspection by any person and shall be published by the tax administrator on the tax division website.

(d) By September 1st of each year the division of taxation shall report in the aggregate the information required under subsection 44-33.6-9(a). This report shall be available to the public for inspection by any person and shall be published by the tax administrator on the tax division website.

(e) By September 1, 2018 and biennially thereafter the division of taxation shall report in the aggregate the total number of approved projects, project costs, and associated amount of approved tax credits.

44-33.6-10. Historic preservation tax credit trust fund. -- All processing fees collected pursuant to this chapter after July 1, 2013 shall be deposited in a historic preservation tax credit restricted receipt account within the historic preservation tax credit trust fund, which shall be used, to the extent resources are available, to refund or reimburse the state for any credits certified by the division of taxation.

44-33.6-11. Sunset.-- No credits shall be authorized to be reserved pursuant to this

chapter on or after June 30, 2016 or upon the exhaustion of the maximum aggregate credits, whichever comes first.

This article shall take effect upon passage.