

**Chapter 813: HISTORIC REHABILITATION TAX CREDIT**

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**SECTION 1. GENERAL**

Title 27, section 511 instructs the Director of the Maine Historic Preservation Commission (Director); in consultation with the Department of Administrative and Financial Services, Bureau of Revenue Services, to administer a program in support of state rehabilitation tax credits for income-producing historic structures. The Director is further instructed to certify information necessary for applicants to demonstrate eligibility for the income tax credit provided under Title 36 §5219-BB. The Director may also develop instructions and guidelines, and application and certification forms as necessary in support of the program, and must issue reports evaluating the program.

These rules provide guidelines for the application process and the administration of a program for state rehabilitation tax credits. The credits are comprised of the Substantial Rehabilitation Credit, the Small Project Rehabilitation Credit, and the Affordable Housing Rehabilitation Credit Increase, as defined below.

**SECTION 2. DEFINITIONS**

The following terms used in this rule shall be defined as below:

1. **“Affordable Housing Rehabilitation Credit Increase”** means the increased credit amount allowed for the creation of affordable housing pursuant to Title 36.
2. **“Certified Historic Structure”** means any building (and its structural components) which:
  - A. Is individually listed in the *National Register of Historic Places*, or
  - B. Is located in a Registered Historic District and is certified by the Secretary of the Interior or Director as being of historic significance to the district.
    - (1) For purposes of the Substantial Rehabilitation Credit only the Secretary of the Interior may certify a historic structure as being of historic significance to a Registered Historic District.
    - (2) For purposes of the Small Project Rehabilitation Credit only the Director may certify a historic structure as being of historic significance to a Registered Historic District.
3. **“Certified Qualified Rehabilitation Expenditure”** means a qualified rehabilitation expenditure, as defined by the federal *Internal Revenue Code*, section 47(c)(2), made between January 1, 2008 and December 31, 2013 and used in the Certified Rehabilitation of a Certified Historic Structure. For purposes of the Small Project Rehabilitation Credit, Qualified Rehabilitation Expenditures incurred in the Certified Rehabilitation of a

Certified Historic Structure located in the State do not include a requirement that the Certified Historic Structure be substantially rehabilitated.

*(APA Office Note: Title 36 §5219-BB(1)(C) was amended in 2011 to change the sunset date to December 31, 2023. P.L. 2011, c. 453, §7 (eff. Sept. 28, 2011).)*

4. “**Certified Rehabilitation**” means any Rehabilitation of a Certified Historic Structure which the Secretary of the Interior or Director has certified as being consistent with the historic character of such property and, where applicable, the district in which such structure is located.
  - A. For purposes of the Substantial Rehabilitation Credit, only the Secretary of the Interior may certify a Rehabilitation.
  - B. For purposes of the Small Project Rehabilitation Credit, only the Director may certify a Rehabilitation.
5. “**Commission**” means the Maine Historic Preservation Commission.
6. “**Director**” means the director of the Commission.
7. “**Federal Historic Rehabilitation Tax Credit**” means the tax credit allowed pursuant to Section 47 of the *Internal Revenue Code*.
8. “**Inspection**” means a visit by an authorized representative of the Director to a property for the purposes of reviewing and evaluating the significance of the building and the proposed, ongoing or completed Rehabilitation work.
9. “**National Register of Historic Places**” or “**National Register**” means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the Secretary of the Interior is authorized to expand and maintain pursuant to section 101(a)(1) of the *National Historic Preservation Act of 1966*, as amended.
10. “**Owner**” means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person or entity recognized by the *Internal Revenue Code* for purposes of the applicable tax benefits (as defined by 36 CFR 67.2).
11. “**Placed in Service**” has the same meaning as is ascribed to the term under 26 CFR 1.46-3(d).
12. “**Property**” means a building and its site and landscape features.
13. “**Qualified Rehabilitation Expenditures**” has the same meaning as is ascribed to the term under 26 CFR 1.48-12(c).
14. “**Registered Historic District**” means:
  - A. Any district listed in the *National Register of Historic Places*, and
  - B. Any district;

- (1) which is designated under a statute of the appropriate local government, if such statute is certified by the Secretary of the Interior as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district pursuant to 36 CFR 67.8; and
  - (2) which is certified by the Secretary of the Interior as meeting substantially all of the requirements for listing of districts in the National Register pursuant to 36 CFR 67.9.
15. **“Rehabilitation”** as defined by the Secretary of the Interior’s *Standards for Rehabilitation*, means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.
16. **“Small Project Rehabilitation Certification Application”** means Parts 1, 2 and 3 of the application forms for each stage of the certification process, as more fully set forth herein.
17. **“Small Project Rehabilitation Credit”** means the State tax credit allowed a taxpayer equal to 25% of the Certified Qualified Rehabilitation Expenditures of a taxpayer who incurs not less than \$50,000 and up to \$250,000 in Certified Qualified Rehabilitation Expenditures in the rehabilitation of a Certified Historic Structure located in the State and who does not claim the Federal credit with regard to those expenditures. This credit does not require that the Certified Historic Structure be substantially rehabilitated.
18. **“Standards for Rehabilitation”** or **“Standards”** means the United States Secretary of the Interior’s *Standards for Rehabilitation* set forth in 36 CFR 67.7.
19. **“Substantial Rehabilitation Credit”** means the State tax credit allowed a taxpayer equal to 25% of the Certified Qualified Rehabilitation Expenditures for which a Federal tax credit is claimed under Section 47 of the *Internal Revenue Code* for a Certified Historic Structure located in the State.

### SECTION 3. APPLICATION GUIDELINES

#### 1. Certifications of Historic Significance and Rehabilitation – General

##### A. Forms

- (1) **National Park Service Historic Preservation Certification Application (HPCA)**. For purposes of the Substantial Rehabilitation Credit, all requests for preliminary determinations and certifications shall be made on the HPCA forms in accordance with the HPCA instructions. In addition, Parts A and B of the Maine State Rehabilitation Tax Credit Reporting Form must be submitted to the Director in accordance with Part 1.A(3) of this Section.

- (2) **Small Project Rehabilitation Certification Application (SPRCA).** For purposes of the Small Project Rehabilitation Credit, requests for certifications of buildings in Registered Historic Districts as Certified Historic Structures, requests for preliminary determinations of individual buildings as Certified Historic Structures, requests for review of proposed Rehabilitations, and requests for certifications of completed rehabilitation projects shall be made on the SPRCA forms in accordance with the SPRCA instructions. In addition, Parts A and B of the Maine State Rehabilitation Tax Credit Reporting Form must be submitted to the Director in accordance with Part 1.A(3) of this Section.
- (3) **Maine State Rehabilitation Tax Credit Reporting Form.** Parts A and B of the Maine State Rehabilitation Tax Credit Reporting Form must be submitted to the Director in order to claim any credit allowable pursuant to 36 MRSA §5219-BB. Part A of the Reporting Form must be submitted with Part 2 of either the HPCA or SPRCA, whichever is applicable. Part B of the Reporting Form must be submitted with Part 3 of either the HPCA or SPRCA, whichever is applicable.

- B. **Review Period.** The Director generally completes reviews of tax credit applications within 30 business days of receiving a complete, adequately documented application. Where adequate information is not provided, the Director will notify the applicant of the additional information needed to complete the review. The Director will adhere to this time period as closely as possible, but failure to complete a review within the designated period does not waive or alter any certification requirement or imply approval.
- C. **Director Decisions; Reliance on Application.** The Director only makes Rehabilitation certification determinations for purposes of the Small Project Rehabilitation Credit. Certification determinations are only given on the Small Project Rehabilitation Certification Application forms signed by the Director or other duly authorized representative. Decisions with respect to certifications are made on the basis of the information contained in the applications and other available information. The Owner's signature on any application form is a representation to the Director that the facts contained therein are true and correct, and the Director is entitled to rely thereon. If information comes to the attention of the Director at any time that is materially inconsistent with representations made in an application, the Director may deny the requested certification, revoke a certification previously given, and/or notify the Maine Revenue Services of the situation. Such denials or revocations may be appealed pursuant to the procedures set forth in Section 3, Parts 2.C.7 and 3.B.9. For purposes of the Substantial Rehabilitation Credit, only the Secretary of the Interior may certify a historic structure or Rehabilitation.

## 2. **Certifications of Historic Significance**

- A. **Consultation.** Any person may consult with the Director to determine whether a building is a Certified Historic Structure, or whether a Property could potentially qualify as a Certified Historic Structure.

- B. **Application for Certification of Historic Structure.** Buildings individually listed in the National Register are Certified Historic Structures for purposes of both the State and Federal historic preservation tax credits, and a Part 1 application is not necessary. If a building is not individually listed in the National Register:
- (1) Owners applying for the Substantial Rehabilitation Credit shall prepare Part 1 of the Federal Historic Preservation Certification Application form in accordance with the instructions accompanying the application.
  - (2) Owners applying for the Small Project Rehabilitation Credit shall prepare Part 1-*Evaluation of Significance* of the Small Project Rehabilitation Certification Application in accordance with the instructions accompanying the application.
- C. **Review of the Small Project Rehabilitation Certification Application Part 1 - *Evaluation of Significance***
- (1) All determinations made by the Director pursuant to this Part 2.C shall be in accordance with the *National Register of Historic Places* “Criteria for Evaluation” contained in 36 CFR 60.4 and, where applicable, the “Standards for Evaluating Significance within Registered Historic Districts” set forth in 36 CFR 67.5.
  - (2) **Scope of Review.** The Director will determine if the building is:
    - (a) located in a Registered Historic District, retains its historic integrity and contributes to the historic significance of the district; or
    - (b) located in an unlisted, but potentially eligible historic district, retains its historic integrity and contributes to the historic significance of the district; or
    - (c) eligible as an individual listing; or
    - (d) not a certifiable historic structure.
  - (3) **Multiple Buildings or Complex.** For purposes of a determination of historic significance, Properties containing more than one building, where the Director determines that the buildings have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, the buildings will be treated as a single Certified Historic Structure, whether the Property is individually listed in the National Register or is located within a Registered Historic District, when rehabilitated as part of an overall project. Buildings that are functionally related historically are those which have functioned together to serve an overall purpose during the property’s period of significance.
  - (4) **Determination of Significance to District.** Properties within Registered Historic Districts will be evaluated to determine if they contribute to the historic significance of the district. The Director’s determination

regarding whether a building contributes to the significance of a Registered Historic District shall be the final certification determination regarding eligibility for the Small Project Rehabilitation Credit, regardless of any previous designation by prior surveys or district nominations.

- (5) **Preliminary Determination of Individual Eligibility for Listing a Property; Historic Structure Certification.** Owners of Properties that are not listed in the National Register may request a signed opinion from the Director as to whether the Property meets the criteria for listing in the National Register. Owners of Properties that the Director considers to be eligible for listing may apply for preliminary certification of their buildings, pursuant to Part 2.B. of this Section. Preliminary certifications will become final, and the Properties will become Certified Historic Structures, as of the date of listing in the National Register. Owners proceed with Rehabilitation projects at their own risk; preliminary certification of a historic structure does not obligate the Commission to nominate the Property. Preliminary determinations of individual eligibility will not become final until the Property is listed in the National Register by the Keeper of the *National Register of Historic Places*. A preliminary determination of individual eligibility of a historic Property by the Director, or nomination of a historic Property by the Commission, does not guarantee that the Property will be listed by the Keeper.
- (6) **Preliminary Determination of Eligibility for Properties within Potential Historic Districts; Historic Structure Certification.** Owners of Properties that are located in potential historic districts may request a signed opinion from the Director as to whether the potential historic district meets the criteria for being listed in the National Register. Owners of Properties located in districts that the Director considers to be eligible for listing may apply for preliminary certification of their buildings. Applications for preliminary certification of buildings within eligible historic districts must show how the district meets the criteria for being listed in the National Register as a historic district, and how the building contributes to the significance of that district. Preliminary certifications will become final, and the buildings will become Certified Historic Structures, as of the date of listing the district as a Registered Historic District. Owners proceed with Rehabilitation projects at their own risk; issuance of a preliminary determination of eligibility does not obligate the Commission to nominate the potential district. Preliminary determinations will not become final until the district is listed as a Registered Historic District by the Keeper of the *National Register of Historic Places*. A preliminary determination of eligibility of a historic district by the Director, or nomination of a historic district by the Commission, does not guarantee that the district will be listed by the Keeper.
- (7) **Appeal Procedure.** An Owner may appeal any final historic structure certification determination that is made by the Director by submitting a *National Register of Historic Places* Registration Form to the Keeper of the National Register in accordance with the procedures set forth in 36 CFR 60.12. If the Keeper issues a response sustaining the Owner's

appeal, the Director shall revise the certification determination to reflect the decision of the Keeper. If the Keeper issues a response sustaining the Director's determination, the Director's original certification determination shall be final.

### 3. Certifications of Rehabilitation

- A. **Substantial Rehabilitation Credit.** The certification standards, application process and forms shall be identical to the Federal Rehabilitation Tax Credit standards, application process and forms; the only addition being the submission to the Director of completed Parts A and B of the Maine State Rehabilitation Tax Credit Reporting Form concurrently with Parts 2 and 3 of the National Park Service Historic Preservation Certification Application, respectively. Certification of a Rehabilitation by the Secretary of the Interior pursuant to 36 CFR 67.6 shall serve to certify the Rehabilitation for purposes of this credit.

It is strongly recommended that work associated with Rehabilitation projects not commence until the Owner has received Part 2 comments and determinations from the Secretary of the Interior.

- B. **Small Project Rehabilitation Credit.** Owners who want Rehabilitation projects for Certified Historic Structures to be certified by the Director as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is located, thus qualifying as a Certified Rehabilitation, shall submit Parts 1, 2 and 3 of the Small Project Rehabilitation Certification Application (SPRCA) in accordance with the application instructions and the procedures below:

- (1) **Part 1 - Evaluation of Significance.** Part 1 of the SPRCA, if necessary, shall be submitted to the Director prior to or concurrently with submission of a completed Part 2 of the SPRCA. If Part 1 of the SPRCA is required, it must be submitted to the Director before the rehabilitated building is placed in service. See Part 2.C. of this Section for additional information regarding the Director's review of Part 1 of the SPRCA.
- (2) **Part 2 - Description of Rehabilitation.** To request a review of a proposed Rehabilitation, Part 2 of the SPRCA and Part A of the Maine State Rehabilitation Tax Credit Reporting Form shall be submitted to the Director in accordance with the instructions accompanying the application. **Applicants are strongly encouraged to request the Director's review before beginning any demolition or construction associated with a Rehabilitation project.**
- (3) **Determinations Regarding the Part 2 - Description of Rehabilitation.** The Director shall notify the Owner within the timeframe described in Section 3, Part 1.B. with a determination indicating whether the proposed Rehabilitation meets the Standards. If the project does not meet the Standards, the Owner shall be advised of that fact in writing and, where possible, will be advised of necessary revisions or conditions to meet such Standards.

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- (4) **Part 3 – Request for Certification.** To request certification of a completed Rehabilitation, the Owner shall submit Part 3 of the SPRCA and Part B of the Maine State Rehabilitation Tax Credit Reporting Form according to the instructions accompanying the application, and provide documentation that the completed project is consistent with the work described in Part 2 of the SPRCA. The appropriate level of documentation shall be determined at the Director’s discretion on a project-by-project basis.
- (5) **Determinations Regarding the Part 3 - Request for Certification.** After receipt of a complete Part 3-*Request for Certification* form, the Director shall notify the Owner either denying or certifying the Rehabilitation. A determination that the completed rehabilitation of a Property not yet designated a Certified Historic Structure meets the Standards does not constitute a Certified Rehabilitation unless the Property is listed in the National Register within 30 months of being Placed in Service.
- (6) **Scope of Rehabilitation.** For purposes of all reviews and certification, a Rehabilitation project encompasses all work on the interior and exterior of the Certified Historic Structure and its site and environment, as well as related demolition, new construction or rehabilitation work that may affect the historic qualities, integrity, site, landscape features, and environment of the Property. The Director will determine if such work is consistent with the Standards regardless of whether a credit is claimed for those costs.
- (a) All elements of the Rehabilitation project shall be consistent with the Standards. Portions of a project that are not in conformance with the Standards may not be exempted from review, and may result in denial of certification for the overall Rehabilitation. In general, an Owner undertaking a Rehabilitation will not be held responsible for rehabilitation work not part of the current project that occurred more than five years before the current project began, or Rehabilitation work not part of the current project that was undertaken by previous owners.
- (b) Consistency with the Standards will be determined on the basis of the application documentation and other available information by evaluating the property, as it existed before the beginning of the Rehabilitation.
- (7) **Determination of Consistency with the Standards for Rehabilitation.** The Director, upon receipt of the complete application describing the Rehabilitation project, shall determine if the project is consistent with the Standards. If the project does not meet the Standards, the Director shall advise the Owner of that fact in writing. Where possible, the Director will advise the Owner of necessary revisions to meet the Standards.
- (8) **Changes after Determination.** Once a proposed or ongoing project has been approved, substantive changes in the work as described in the



application shall be brought promptly to the attention of the Director by written amendment to the application to ensure continued consistency with the Standards. Failure to bring such changes to the Director's attention prior to commencing work may result in denial of the credit.

(9) **Appeal Procedure**

- (a) **Appeal Requests.** An Owner may appeal any denial or revocation of certification. A request for an appeal shall be made in writing to the Director within 30 days of receipt of the decision which is the subject of the appeal. Any such appeal must be in writing and shall set forth the manner in which the aggrieved claims the denial or revocation of certification was arbitrary or unreasonable, and present all the information that the Owner wishes to be considered by the appeals committee.
- (b) **Appeals Committee.** The appeals committee shall be composed of the Historical Architect and Architectural Historian members of the Commission, as well as one of the public members appointed by the Commission Chair. The committee shall meet within 60 days of the filing of an appeal to conduct its review.
- (c) **Decisions.** In considering appeals, the appeals committee may take into account new information not previously available or submitted; alleged errors in professional judgment; or alleged prejudicial procedural errors. The Director shall implement the decision of the appeals committee, which may:
- (i) Reverse the appealed decision; or
  - (ii) Affirm the appealed decision; or
  - (iii) Resubmit the matter to the Commission program staff for further consideration.
- (d) **Final Administrative Remedy.** The decision of the appeals committee, as implemented by the Director, shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Director has issued a final administrative decision in writing in response to this section. The Director shall notify the Maine Revenue Services in writing of any denial or revocation of a certification and of the final administrative decision on the appeal.
- (e) **Owner Notification.** The Director shall provide written notification of the appeals committee decision to the aggrieved Owner within 30 days of the appeals committee meeting.

- C. **Standards for Rehabilitation.** The intent of the Standards is to promote the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of the buildings. They also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a Rehabilitation project must be determined by the Secretary or the Director, whichever is applicable, to be consistent with the historic character of the structure(s), and where applicable, the district in which it is located.

Prior approval of a project by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes, or by the Director for State tax purposes. The Standards take precedence over other regulations and codes in determining whether the Rehabilitation project is consistent with the historic character of the Property and, where applicable, the district in which it is located.

- D. **Quality of Materials and Work.** The quality of materials, craftsmanship, and related new construction in a Rehabilitation project should be commensurate with the quality of materials, craftsmanship, and design of the Certified Historic Structure in question. This standard will be applied in a reasonable manner taking into account economic and technical feasibility. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate Rehabilitation measures include, but are not limited to: excessively abrasive paint removal; improper masonry repointing techniques; improper exterior masonry cleaning methods; improper introduction of insulation where damage to historic fabric would result; and incompatible additions and new construction on historic Properties. In almost all situations, these measures and treatments will result in denial of certification.
- E. **Structural Matters.** In certain limited cases, it may be necessary to dismantle and rebuild portions of a Certified Historic Structure to stabilize and repair weakened structural members and systems. In these cases, the Director will consider this extreme intervention as part of a Certified Rehabilitation if:
- (1) The necessity for dismantling is justified in supporting documentation;
  - (2) Significant architectural features and overall design are retained; and
  - (3) Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

These standards will be applied in a reasonable manner taking into account economic and technical feasibility.

4. **All Available Information Used in Determination.** The qualities of a Property and its environment which qualify it as a Certified Historic Structure are determined taking into account all available information, including information derived from the physical and

architectural attributes of the building; these determinations are not limited to information contained in the National Register or related documentation.

#### **SECTION 4. INSPECTION RIGHTS**

**Director's Inspection Rights.** Completed projects may be inspected by an authorized representative of the Director to determine if the work meets the Standards for Rehabilitation. The Director reserves the right to make inspections at any time up to five years after completion of the rehabilitation and to revoke a certification, after giving the owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented by the owner in his or her application and supporting documentation, or the owner, upon obtaining certification, undertook further unapproved project work inconsistent with the Secretary's Standards for Rehabilitation.

#### **SECTION 5. EFFECTIVE DATES AND TRANSITION RULES**

Owners whose Rehabilitation projects commenced before January 1, 2008, but were not completed until after January 1, 2008, may apply for certification of their Rehabilitation in accordance with these Regulations. However, only expenditures incurred after January 1, 2008 can be Certified Qualified Rehabilitation Expenditures eligible for the credit.

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#### **APPENDIX**

Maine Revised Statutes, Title 27, chapter 17, subsection 511

Maine Revised Statutes, Title 36

Internal Revenue Code, 26 United States Code, Section 47 (1990)

26 Code of Federal Regulations, 1.46-3 (2008)

26 Code of Federal Regulations, 1.48-12 (2008)

National Historic Preservation Act of 1966 (as amended through 2006), 16 United States Code, Title 1, Section 101

36 Code of Federal Regulations, Chapter 1, Part 60 (2008)

36 Code of Federal Regulations, Chapter 1, Part 67 (2008)

*Copies of all reference materials are available upon request from the Maine Historic Preservation Commission.*

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STATUTORY AUTHORITY: 27 M.R.S.A. §511

EFFECTIVE DATE:

January 10, 2009 – filing 2009-15

CORRECTION:

August 13, 2014 – APA Office Note added to Section 2 noting a change in statute re: sunset.