

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Department of Education and the Arts
AGENCY: Division of Culture and History

TITLE NUMBER: 82

CITE AUTHORITY WVC 11-21-8g

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 4

TITLE OF RULE BEING PROPOSED: Rehabilitation of Certified Historic
Residential Structures Tax Credit

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


David Ice, Secretary of the Department of
Education and the Arts 8/4/99

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 5, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Historic Preservation Office
Division of Culture and History
Department of Education and the Arts
The Cultural Center
1900 Kanawha Boulevard East
Charleston, WV 25305
558-0220

LEGISLATIVE RULE TITLE: Title 82, Series 4: Rehabilitation of Certified
Historic Residential Structures Tax Credit

1. Authorizing statute(s) citation WVC 11-21-8g

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 2, 1999

b. What other notice, including advertising, did you give of the hearing?

Notice of draft rules and discussion at Meeting of Archives and

History Commission on June 28, 1999

c. Date of Public Hearing(s) *or* Public Comment Period ended:

August 2, 1999

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received XX

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 5, 1999

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Susan Pierce, Director

State Historic Preservation Office

Phone: 558-0220

The Cultural Center

1900 Kanawha Boulevard East

Fax: 558-2779

Charleston, WV 35305

E-mail: pierce_s@wvlc.wvnet.edu

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Jim Wilson

State Historic Preservation Office

E-mail: wilson_j@wvlc.wvnet.edu

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation: N/A

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

**Summary of
Title 82
Legislative Rules
Division of Culture and History**

**Series 4
Rehabilitation of Certified Historic Residential Structures Tax Credit**

This legislative rule establishes general rules and provides procedures and guidelines for the review of an application to determine if a particular residential rehabilitation project qualifies to apply for the tax credit granted by the State Tax Department for the rehabilitation of certified historic residential structures. The rule explains the application process, provides certain definitions and provides information regarding appropriate application forms.

Circumstances Requiring This Rule
Title 82
Legislative Rules
Division of Culture and History

Series 4
Rehabilitation of Certified Historic Residential Structures Tax Credit

This legislative rule is necessary to clarify and effectively implement the legislation establishing the income tax credit for the rehabilitation of certified historic structures. The rule is necessary to establish the appropriate application process, to provide definitions, to establish parameters for use of the credit, to establish the authorized fee structure and to establish an appropriate appeals process.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 82, Series 4, Rehabilitation of Certified Historic Residential Structures Tax Credit

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency Division of Culture and History

Address The Cultural Center

1900 Kanawha Boulevard, East

Charleston, WV 25305-0300

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 11,000	\$ 0	\$ 0	\$ 11,000	\$ 15,000
PERSONAL SERVICES	10,000	0	0	10,000	14,000
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	1,000	0	0	1,000	1,000
OTHER	0	0	0	0	0

2. Explanation of above estimates:

Review of applications will be carried out by existing staff using existing equipment and facilities. A moderate increase in applications is expected as the public becomes aware of the program. This will cause some increase in staff time to be devoted to the program. Expenses will be partially offset by fees charged to review the applications.

3. Objectives of these rules:

To provide guidance and direction to homeowners in applying for certification of their rehabilitation work as eligible for the newly established income tax credit.

Rule Title: Title 82, Series 4. Rehabilitation of Certified Historic Residential Structures Tax Credit

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Cost of administration of the application process should be offset by review fees.

Tax credit to be applied against state income tax would be \$120,000 based on 20 projects at an average cost of \$30,000.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Rehabilitation work will benefit homeowners by improving the quality of building stock and increasing property values. Contractors and other components of the building industry will have increased work.

C. Economic Impact on Citizens/Public at Large.

This will improve the visual appearance of individual buildings and communities and assist in improving quality of life and economic development.

Date: 6-30-99

Signature of Agency Head or Authorized Representative



Renay Conlin, Commissioner

558-0220

LEGISLATIVE RULE

**REHABILITATION OF CERTIFIED HISTORIC RESIDENTIAL
STRUCTURES TAX CREDIT**

**TITLE 82
REHABILITATION OF CERTIFIED HISTORIC RESIDENTIAL
STRUCTURES TAX CREDIT**

SERIES 4

FILED
AUG 5 2 12 PM '99
OFFICE OF THE SECRETARY OF REVENUE
WEST VIRGINIA

§82-4-1. General

1.1. Scope. This legislative rule provides guidelines and procedures for the review of an application to determine eligibility for an income tax credit for investment in qualified rehabilitation of an historic residential building. The tax credit is granted and administered by the State Tax Department. This rule is filed pursuant to §11-21-8g.

1.2. Authority. West Virginia Code §11-21-8g.

1.3. Filing Date.

1.4. Effective Date.

§82-4-2. Definitions

2.1. "Certification by the National Park Service" means actual certification by the National Park Service or a written waiver of such certification and designation by the National Park Service of the State Historic Preservation Officer as its designee for certifying qualified rehabilitated residential buildings for historic preservation in this state.

2.2. "Material rehabilitation" means improvements or reconstruction consistent with the "Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings," the actual cost of which amounts to at least twenty percent of the assessed value of a certified historic structure for ad valorem real estate tax purposes for the tax year before such rehabilitation expenses were incurred, exclusive of the assessed value of the land. The allowable costs may be accumulated over a twenty four month period.

2.3. "Placed in service" means the property is placed in a condition or state of readiness and availability for use as owner occupied housing. (See U. S. Treasury Regulation 1.46-3(d))

2.4. Definitions found in §11-21-8g of the West Virginia Code are included by reference in this rule and are applicable to it.

§82-4-3. Credit for Qualified Rehabilitated Residential Buildings Investment

3.1. The West Virginia Division of Culture and History administers the historic preservation program for the state. The Division reviews the application to establish that the building is a certified historic structure. The office also reviews the application for eligible expenditures and to determine whether appropriate rehabilitation has been undertaken. Approval of the application by the West Virginia State Historic Preservation Officer allows the owner to apply for the credit when filing West Virginia income tax forms.

3.2. The application to establish that the property is eligible to receive the credit for qualified rehabilitated residential buildings investment consists of three parts. The *Historic Preservation Certification Application Part 1 - Evaluation of Significance*, the *Historic Preservation Certification Application Part 2 - Description of Rehabilitation* and the *Historic Preservation Certification Application Request for Certification of Completed Work* must be submitted to the West Virginia State Historic Preservation Office with the required attachments consisting of photographs, plans, specifications and other information as required by the West Virginia State Historic Preservation Office. All work described in the application will be inspected by staff of the West Virginia State Historic Preservation Office to insure that it conforms to the "Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings."

3.3. The *Historic Preservation Certification Application Part 1 - Evaluation of Significance* must be submitted to and approved by the State Historic Preservation Officer prior to work on the building being undertaken. The *Historic Preservation Certification Application Part 1 - Evaluation of Significance* need not be submitted if the building is individually listed on the National Register of Historic Places. It must be submitted for each building listed on the National Register of Historic Places as a contributing building in a National Register Historic District. It must also be submitted for each building that has not completed the listing process for the National Register of Historic Places.

3.4. The *Historic Preservation Certification Application Part 2 - Description of Rehabilitation* must be submitted to and approved by the State Historic Preservation Officer prior to work on the building being undertaken. Part 1 and Part 2 of the application need not be submitted simultaneously.

3.5. The *Historic Preservation Certification Application Request for Certification of Completed Work* must be submitted at the conclusion of the project before a final approval letter can be issued. The *Historic Preservation Certification Application Request for Certification of Completed Work* will not be reviewed if the building is not listed on the National Register of Historic Places individually or as a contributing building in an historic district listed on the National Register of Historic Places at the time the *Historic Preservation Certification Application Request for Certification of Completed Work* is submitted for approval to the West Virginia State Historic Preservation Officer.

3.6. Eligible rehabilitation expenses are those expenses incurred in connection with rehabilitation of a qualified building for items properly charged to a capital account. Only expenditures directly related to rehabilitation of an approved building are included. Acquisition costs, landscaping, additions, new construction outside the existing building envelope, sidewalks, drainfields, septic systems and similar work items are not allowable expenses. The West Virginia State Historic Preservation Office will determine which rehabilitation expenses are eligible rehabilitation expenses.

3.7. The amount expended to meet the “material rehabilitation” test must be spent within a 24 month period ending on December 31 of the year for which the credit is taken. Expenditures not occurring within the 24 month period are not eligible expenditures for the purpose of calculating the credit.

3.8. A tax credit under the provisions of this rule is available from the State Tax Department to a new owner of a property if the approved property is acquired by the new owner prior to the property being “placed in service” as that term is defined in section 2.3 of this rule. The credit will be available to the new owner only if the previous owner has not claimed the credit for the approved expenditures. The credit will be based on the eligible expenses of the original owner.

3.9. A fee will be charged by the Division of Culture and History to review each *Historic Preservation Certification Application Part 2 - Description of Rehabilitation* when the application is submitted to the State Historic Preservation Officer for review. For all projects with a “material rehabilitation” cost of \$10,000 or less the review fee will be \$50. For projects with a “material rehabilitation” cost of \$10,001 to \$100,000 the review fee will be \$100. For projects with a “material rehabilitation” cost greater than \$100,001 the review fee will be \$500.

§82-4-4. Appeal Process

4.1. Any person adversely affected by a decision of the State Historic Preservation Officer with regard to interpretation of the Secretary of the Interior's Standards and eligibility for this credit may appeal the decision of the State Historic Preservation Officer to the Archives and History Commission at its next regularly scheduled meeting. The request to appeal an adverse decision must be made in writing to the Secretary of the Archives and History Commission by certified letter no more than 60 days after the date of the decision by the State Historic Preservation Officer. The person appealing the adverse decision or a representative of that person designated in writing must appear before the next regularly scheduled meeting of the Archives and History Commission to appeal the decision.

4.2. The decision of the Archives and History Commission is the final administrative determination of the matter. An appeal of a decision of the Archives and History Commission is to the Circuit Court of the county in which the building is located.

DEPARTMENT OF EDUCATION AND THE ARTS

Office of the Secretary

State Capitol Bldg. 5, Room 205
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Telephone: (304) 558-2440
Fax: (304) 558-1311

Cecil H. Underwood
Governor

David R. Ice
Cabinet Secretary

August 4, 1999

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Hechler:

I hereby approve for filing with the Secretary of State and the Legislative Rule Making Review Committee for their review, the following Legislative Rule entitled "Rehabilitation of Certified Historic Residential Structures Tax Credit" administered by the Division of Culture and History:

Title 82, Series 4: Rehabilitation of Certified Historic Residential Structures Tax Credit.

The appropriate copies of the rule are attached.

Sincerely,



David R. Ice,
Secretary of the Department of Education and the Arts

cc Renay Conlin,
Commissioner, Division of Culture and History