

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW
DIVISION**

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Culture and History TITLE NUMBER: 82

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 RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Procedures for Submission of Historic Residential
Tax Credit Application

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4221

SECTION 64-4-1, PASSED ON March 17, 2000

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: August 1, 2000


Authorized Signature

FILED

TITLE 82
LEGISLATIVE RULE
DIVISION OF CULTURE AND HISTORY

MAY 1 10 32 AM '00

SERIES 4
PROCEDURES FOR SUBMISSION OF HISTORIC RESIDENTIAL
TAX CREDIT APPLICATION

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§82-4-1. General.

1.1. Scope. -- This legislative rule outlines the application process necessary to receive the credit for qualified rehabilitation owner occupied residential buildings investment. It provides guidelines and procedures to determine eligibility of a material rehabilitation of an owner occupied 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 approval of a completed rehabilitation by the National Park Service or a written waiver of such an approval and designation of the State Historic Preservation Officer by the National Park Service for approving qualified rehabilitated owner occupied residential buildings for historic preservation in this state.

2.2. "Certified Historic Structure" means any owner occupied residential building located in this state that is listed individually on the National Register of Historic Places or contributing to a National Register listed historic district and has been approved by the State Historic Preservation Officer as meeting the Criteria of the National Register of Historic Places for the purposes of receiving this tax credit. (See Appendix A)

2.3. "Eligible Rehabilitation Expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property's basis for income tax purposes.

2.4. "Historic District" means a group of buildings, structures, or sites that taken together make up a coherent whole with similar historic and/or architectural meaning according to the Criteria of the National Register of Historic Places.

2.5. "Historic Preservation Application" means application forms published by the National Park Service, United States Department of the Interior, Parts 1, 2 and 3, Form No. 1-168, or its successor.

2.6. “Material Rehabilitation” means improvements or rehabilitation consistent with the “Secretary of the Interior’s Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings”(See Appendix B), 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.

2.7. “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))

2.8. “Residential Certified Historic Structure” means any certified historic structure that is either classified as Class II Property for levy purposes for the year in which the rehabilitation expenses are incurred, or not classified as Class II property for levy purposes for the year in which the rehabilitation expenses are incurred, but will satisfy the requirements for classification as Class II for real property assessment purposes as of the first day of July of the year following the year in which the rehabilitation expenses are incurred.

2.9. “Secretary of the Interior Standards for Rehabilitation (Standards)” means standards and guidelines adopted and published by the National Park Service, United States Department of the Interior, for rehabilitation of historic properties.

2.10. “State Historic Preservation Officer (SHPO)” means the West Virginia state official designated by the governor to carry out the provisions of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470 et seq.), and as defined in West Virginia Code §29-1-6.

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

3.1. The West Virginia Division of Culture and History, State Historic Preservation Office administers the historic preservation program for the state. The Division’s role in the application procedure shall be identical, or substantially similar, to that in 36 C.F.R. Part 67 and 26 C.F.R. Part 1, to the extent applicable. The Division also reviews the application for eligible expenditures and determines whether the rehabilitation meets the Standards. Approval of the application by the SHPO allows the owner to apply for the certified historic residential structure’s tax credit when filing West Virginia annual 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 application may be obtained from the Division of Culture and History, Cultural Center, 1900 Kanawha Boulevard East, Charleston, WV 25305.

3.2.a. *Historic Preservation Certification Application Part 1 - Evaluation of Significance.* Review and approval of a completed Part 1 application establishes that the building is a certified historic structure. This application must be completed and submitted to the SHPO regardless of the current National Register eligibility status of the building. Part 1 applications may be submitted before work is planned for a particular building. Approval of the Part One

application is strongly recommended, but not required, prior to commencement of work on the building. Subsequent to certification, the building must be formally nominated to the National Register of Historic Places. Final completion of the National Register nomination process must occur prior to approval of the Part 3 Application.

3.2.b. *Historic Preservation Certification Application Part 2 - Description of Rehabilitation.* Part 2 of the application describes the proposed work. The applicant must describe the existing condition of each work item prior to activity and list all work items considered to be capital investment. The applicant must also describe the proposed or completed work for each item. Documentation should be complete so that the SHPO can fully review the rehabilitation project. Documentation must include written descriptions of work, photographs, and sketch plans showing location of work. Supporting documentation may also include plans and elevations-to-scale, as well as specifications.

3.2.b.A. All work described in the application will be reviewed by SHPO staff to insure that it conforms to the "Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Rehabilitation of Historic Buildings." Although it is not required that the Part 2 application be submitted prior to the commencement of work, it is strongly recommended. Work completed prior to submission of the Part 2 application will not be excluded from adherence to the Secretary of the Interior's Standards for Rehabilitation and could be determined as not meeting the Standards.

3.2.b.B. 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 SHPO for review. The Part 2 application will not be reviewed prior to payment. 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.

3.2.c. *Historic Preservation Certification Part 3 Application - Request for Certification of Completed Work* must be submitted at the conclusion of the project before a final approval letter can be issued. It must include thorough photographic documentation of the completed work. 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 prior to its submission to the SHPO for approval, the Part 3 application will not be reviewed.

3.3. 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, drain fields, septic systems and similar work items are not allowable expenses. The SHPO will determine which rehabilitation expenses are eligible rehabilitation expenses.

3.4. 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.

3.5. 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. 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.

§82-4-4. Appeal Process

4.1. Any person adversely affected by a decision of the SHPO with regard to interpretation of the Secretary of the Interior's Standards and eligibility for this credit may appeal the decision of the SHPO 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 SHPO. 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 may be made to the Circuit Court of the county in which the building is located.