

Ohio Historic Preservation Tax Credit Program Legislation

Current as of January 2012

Ohio Revised Code (ORC) Sections 149.311, 5725.151, 5725.34, 5729.17, 5733.47, & 5747.76

Sec. 149.311. (A) As used in this section:

(1) “Historic building” means a building, including its structural components, that is located in this state and that is either individually listed on the national register of historic places under 16 U.S.C. 470a, located in a registered historic district, and certified by the state historic preservation officer as being of historic significance to the district, or is individually listed as a historic landmark designated by a local government certified under 16 U.S.C. 470a(c).

(2) “Qualified rehabilitation expenditures” means expenditures paid or incurred during the rehabilitation period, and before and after that period as determined under 26 U.S.C. 47, by an owner of a historic building to rehabilitate the building. “Qualified rehabilitation expenditures” includes architectural or engineering fees paid or incurred in connection with the rehabilitation, and expenses incurred in the preparation of nomination forms for listing on the national register of historic places. “Qualified rehabilitation expenditures” does not include any of the following:

(a) The cost of acquiring, expanding, or enlarging a historic building;

(b) Expenditures attributable to work done to facilities related to the building, such as parking lots, sidewalks, and landscaping;

(c) New building construction costs.

(3) “Owner” of a historic building means a person holding the fee simple interest in the building. “Owner” does not include the state or a state agency, or any political subdivision as defined in section 9.23 of the Revised Code.

(4) “Certificate owner” means the owner of a historic building to which a rehabilitation tax credit certificate was issued under this section.

(5) “Registered historic district” means a historic district listed in the national register of historic places under 16 U.S.C. 470a, a historic district designated by a local government certified under 16 U.S.C. 470a(c), or a local historic district certified under 36 C.F.R. 67.8 and 67.9.

(6) “Rehabilitation” means the process of repairing or altering a historic building or buildings, making possible an efficient use while preserving those portions and features of the building and its site and environment that are significant to its historic, architectural, and cultural values.

(7) “Rehabilitation period” means one of the following:

(a) If the rehabilitation initially was not planned to be completed in stages, a period chosen by the owner not to exceed twenty-four months during which rehabilitation occurs;

(b) If the rehabilitation initially was planned to be completed in stages, a period chosen by the owner not to exceed sixty months during which rehabilitation occurs. Each stage shall be reviewed as a phase of a rehabilitation as determined under 26 C.F.R. 1.48-12 or a successor to that section.

(8) “State historic preservation officer” or “officer” means the state historic preservation officer appointed by the governor under 16 U.S.C. 470a.

(B) The owner of a historic building may apply to the director of development for a rehabilitation tax credit certificate for qualified rehabilitation expenditures paid or incurred after April 4, 2007, for rehabilitation of a historic building. The form and manner of filing such applications shall be prescribed by rule of the director of development. Each application shall state the amount of qualified rehabilitation expenditures the applicant estimates will be paid or incurred. The director may require applicants to furnish documentation of such estimates.

The director, after consultation with the tax commissioner and in accordance with Chapter 119. of the Revised Code, shall adopt rules that establish all of the following:

(1) Forms and procedures by which applicants may apply for rehabilitation tax credit certificates;

(2) Criteria for reviewing, evaluating, and approving applications for certificates within the limitations under division (D) of this section, criteria for assuring that the certificates issued encompass a mixture of high and low qualified rehabilitation expenditures, and criteria for issuing certificates under division (C)(3)(b) of this section;

(3) Eligibility requirements for obtaining a certificate under this section;

(4) The form of rehabilitation tax credit certificates;

(5) Reporting requirements and monitoring procedures;

(6) Procedures and criteria for conducting cost-benefit analyses of historic buildings that are the subjects of applications filed under this section. The purpose of a cost-benefit analysis shall be to determine whether rehabilitation of the historic building will result in a net revenue gain in state and local taxes once the building is used.

(7) Any other rules necessary to implement and administer this section.

(C) The director of development shall review the applications with the assistance of the state historic preservation officer and determine whether all of the following criteria are met:

(1) That the building that is the subject of the application is a historic building and the applicant is the owner of the building;

(2) That the rehabilitation will satisfy standards prescribed by the United States secretary of the interior under 16 U.S.C. 470, et seq., as amended, and 36 C.F.R. 67.7 or a successor to that section;

(3) That receiving a rehabilitation tax credit certificate under this section is a major factor in:

(a) The applicant's decision to rehabilitate the historic building; or

(b) To increase the level of investment in such rehabilitation.

An applicant shall demonstrate to the satisfaction of the state historic preservation officer and director of development that the rehabilitation will satisfy the standards described in division (C)(2) of this section before the applicant begins the physical rehabilitation of the historic building.

(D)(1) If the director of development determines that an application meets the criteria in divisions (C)(1), (2), and (3) of this section, the director shall conduct a cost-benefit analysis for the historic building that is the subject of the application to determine whether rehabilitation of the historic building will result in a net revenue gain in state and local taxes once the building is used. The director shall consider the results of the cost-benefit analysis in determining whether to approve the application. The director shall also consider the potential economic impact and the regional distributive balance of the credits throughout the state. The director may approve an application only after completion of the cost-benefit analysis.

(2) A rehabilitation tax credit certificate shall not be issued for an amount greater than the estimated amount furnished by the applicant on the application for such certificate and approved by the director. The director shall not approve more than a total of sixty million dollars of rehabilitation tax credits per fiscal year but the director may reallocate unused tax credits from a prior fiscal year for new applicants and such reallocated credits shall not apply toward the dollar limit of this division.

(3) For rehabilitations with a rehabilitation period not exceeding twenty-four months as provided in division (A)(7)(a) of this section, a rehabilitation tax credit certificate shall not be issued before the rehabilitation of the historic building is completed.

(4) For rehabilitations with a rehabilitation period not exceeding sixty months as provided in division (A)(7)(b) of this section, a rehabilitation tax credit certificate shall not be issued before a stage of rehabilitation is completed. After all stages of rehabilitation are completed, if the director cannot determine that the criteria in division (C) of this section are satisfied for all stages of rehabilitations, the director shall certify this finding to the tax commissioner, and any rehabilitation tax credits received by the applicant shall be repaid by the applicant and may be collected by assessment as unpaid tax by the commissioner.

(5) The director of development shall require the applicant to provide a third-party cost certification by a certified public accountant of the actual costs attributed to the rehabilitation of the historic building when qualified rehabilitation expenditures exceed two hundred thousand dollars.

If an applicant whose application is approved for receipt of a rehabilitation tax credit certificate fails to provide to the director of development sufficient evidence of reviewable progress, including a viable financial plan, copies of final construction drawings, and evidence that the applicant has obtained all historic approvals within twelve months after the date the applicant received notification of approval, and if the applicant fails to provide evidence to the director of development that the applicant has secured and closed on financing for the rehabilitation within eighteen months after receiving notification of approval, the director may rescind the approval of the application. The director shall notify the applicant if the approval has been rescinded. Credits that would have been available to an applicant whose approval was rescinded shall be available for other qualified applicants. Nothing in this division prohibits an applicant whose approval has been rescinded from submitting a new application for a rehabilitation tax credit certificate.

(E) Issuance of a certificate represents a finding by the director of development of the matters described in divisions (C)(1), (2), and (3) of this section only; issuance of a certificate does not represent a verification or certification by the director of the amount of qualified rehabilitation expenditures for which a tax credit may be claimed under section 5725.151, 5725.34, 5729.17, 5733.47, or 5747.76 of the Revised Code. The amount of qualified rehabilitation expenditures for which a tax credit may be claimed is subject to inspection and examination by the tax commissioner or employees of the commissioner under section 5703.19 of the Revised Code and any other applicable law. Upon the issuance of a certificate, the director shall certify to the tax commissioner, in the form and manner requested by the tax commissioner, the name of the applicant, the amount of qualified rehabilitation expenditures shown on the certificate, and any other information required by the rules adopted under this section.

(F)(1) On or before the first day of April each year, the director of development and tax commissioner jointly shall submit to the president of the senate and the speaker of the house of representatives a report on the tax credit program established under this section and sections 5725.151, 5725.34, 5729.17, 5733.47, and 5747.76 of the Revised Code. The report shall present an overview of the program and shall include information on the number of rehabilitation tax credit certificates issued under this section during the preceding fiscal year, an update on the status of each historic building for which an application was approved under this section, the dollar amount of the tax credits granted under sections 5725.151, 5725.34, 5729.17, 5733.47, and 5747.76 of the Revised Code, and any other information the director and commissioner consider relevant to the topics addressed in the report.

(2) On or before December 1, 2015, the director of development and tax commissioner jointly shall submit to the president of the senate and the speaker of the house of representatives a comprehensive report that includes the information required by division (F)(1) of this section and a detailed analysis of the effectiveness of issuing tax credits for rehabilitating historic

buildings. The report shall be prepared with the assistance of an economic research organization jointly chosen by the director and commissioner.

(G) There is hereby created in the state treasury the historic rehabilitation tax credit operating fund. The director of development is authorized to charge reasonable application and other fees in connection with the administration of tax credits authorized by this section and sections 5725.151, 5725.34, 5729.17, 5733.44, and 5747.76 of the Revised Code. Any such fees collected shall be credited to the fund and used to pay reasonable costs incurred by the department of development in administering this section and sections 5725.151, 5725.34, 5729.17, 5733.44, and 5747.76 of the Revised Code.

The Ohio historic preservation office is authorized to charge reasonable fees in connection with its review and approval of applications under this section. Any such fees collected shall be credited to the fund and used to pay administrative costs incurred by the Ohio historic preservation office pursuant to this section.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 6/30/2011.

Effective Date: 04-04-2007; 2007 HB119 09-29-2007; 2008 HB554 06-12-2008

Sec. 5725.151. (A) As used in this section, "certificate owner" has the same meaning as in section 149.311 of the Revised Code.

(B) There is allowed a credit against the tax imposed by section 5707.03 and assessed under section 5725.15 of the Revised Code for a dealer in intangibles subject to that tax that is a certificate owner of a rehabilitation tax credit certificate issued under section 149.311 of the Revised Code. The credit shall equal twenty-five per cent of the dollar amount indicated on the certificate, but the amount of the credit allowed for any dealer for any year shall not exceed five million dollars. The credit shall be claimed in the calendar year specified in the certificate. If the credit exceeds the amount of tax otherwise due in that year, the excess shall be refunded to the dealer but, if any amount of the credit is refunded, the sum of the amount refunded and the amount applied to reduce the tax otherwise due in that year shall not exceed three million dollars. The dealer may carry forward any balance of the credit in excess of the amount claimed in that year for not more than five ensuing years, and shall deduct any amount claimed in any such year from the amount claimed in an ensuing year.

(C) A dealer in intangibles claiming a credit under this section shall retain the rehabilitation tax credit certificate for four years following the end of the year in which the credit was claimed, and shall make the certificate available for inspection by the tax commissioner upon the request of the tax commissioner during that period.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 1/1/2012.

Effective Date: 04-04-2007; 2008 HB554 06-12-2008

Sec. 5725.34. (A) As used in this section, “certificate owner” has the same meaning as in section 149.311 of the Revised Code.

(B) There is allowed a credit against the tax imposed by section 5725.18 of the Revised Code for an insurance company subject to that tax that is a certificate owner of a rehabilitation tax credit certificate issued under section 149.311 of the Revised Code. The credit shall equal twenty-five per cent of the dollar amount indicated on the certificate, but the amount of the credit allowed for any company for any year shall not exceed five million dollars. The credit shall be claimed in the calendar year specified in the certificate and in the order required under section 5725.98 of the Revised Code. If the credit exceeds the amount of tax otherwise due in that year, the excess shall be refunded to the company but, if any amount of the credit is refunded, the sum of the amount refunded and the amount applied to reduce the tax otherwise due in that year shall not exceed three million dollars. The company may carry forward any balance of the credit in excess of the amount claimed in that year for not more than five ensuing years, and shall deduct any amount claimed in any such year from the amount claimed in an ensuing year.

(C) An insurance company claiming a credit under this section shall retain the rehabilitation tax credit certificate for four years following the end of the year in which the credit was claimed, and shall make the certificate available for inspection by the tax commissioner upon the request of the tax commissioner during that period.

Added by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Sec. 5729.17. (A) As used in this section, “certificate owner” has the same meaning as in section 149.311 of the Revised Code.

(B) There is allowed a credit against the tax imposed by section 5729.03 of the Revised Code for an insurance company subject to that tax that is a certificate owner of a rehabilitation tax credit certificate issued under section 149.311 of the Revised Code. The credit shall equal twenty-five per cent of the dollar amount indicated on the certificate, but the amount of the credit allowed for any company for any year shall not exceed five million dollars. The credit shall be claimed in the calendar year specified in the certificate and in the order required under section 5729.98 of the Revised Code. If the credit exceeds the amount of tax otherwise due in that year, the excess shall be refunded to the company but, if any amount of the credit is refunded, the sum of the amount refunded and the amount applied to reduce the tax otherwise due in that year shall not exceed three million dollars. The company may carry forward any balance of the credit in excess of the amount claimed in that year for not more than five ensuing years, and shall deduct any amount claimed in any such year from the amount claimed in an ensuing year.

(C) An insurance company claiming a credit under this section shall retain the rehabilitation tax credit certificate for four years following the end of the year in which the credit was claimed, and shall make the certificate available for inspection by the tax commissioner upon the request of the tax commissioner during that period.

Added by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Sec. 5733.47. (A) As used in this section, “certificate owner” has the same meaning as in section 149.311 of the Revised Code.

(B) There is allowed a refundable credit against the tax imposed under section 5733.06 of the Revised Code for a taxpayer that is a certificate owner of a rehabilitation tax credit certificate issued under section 149.311 of the Revised Code. The credit shall equal twenty-five per cent of the dollar amount indicated on the certificate, but shall not exceed five million dollars. The credit shall be claimed for the tax year specified in the certificate and in the order required under section 5733.98 of the Revised Code. For purposes of making tax payments under this chapter, taxes equal to the amount of the refundable credit shall be considered to be paid to the state on the first day of the tax year.

(C) A taxpayer claiming a credit under this section shall retain the rehabilitation tax credit certificate for four years following the end of the tax year to which the credit was applied, and shall make the certificate available for inspection by the tax commissioner upon the request of the tax commissioner during that period.

(D) If, pursuant to division (G) of section 5733.01 of the Revised Code, a taxpayer no longer pays a tax under this chapter, the taxpayer may nonetheless file an annual report under section 5733.02 of the Revised Code and claim the refundable credit authorized by this section. Nothing in this division allows a taxpayer to claim the credit under this section more than once.

(E) Nothing in this section limits or disallows pass-through treatment of the credit if the certificate owner is a pass-through entity. If the certificate owner is a pass-through entity, the amount of the credit allowed for the entity shall not exceed five million dollars, and the credit may be allocated among the entity’s equity owners in proportion to their ownership interests or in such proportions or amounts as the equity owners mutually agree.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 04-04-2007; 2008 HB554 06-12-2008

Sec. 5747.76. (A) As used in this section, “certificate owner” has the same meaning as in section 149.311 of the Revised Code.

(B) There is allowed a credit against the tax imposed under section 5747.02 of the Revised Code for a taxpayer that is the certificate owner of a rehabilitation tax credit certificate issued under section 149.311 of the Revised Code. The credit shall equal twenty-five per cent of the dollar amount indicated on the certificate, but the amount of credit allowed for any taxpayer shall not exceed five million dollars. The credit shall be claimed for the taxable year specified in the certificate and in the order required under section 5747.98 of the Revised Code.

(C) Nothing in this section limits or disallows pass-through treatment of the credit if the certificate owner is a pass-through entity. If the certificate owner is a pass-through entity, the amount of the credit allowed for the pass-through entity shall not exceed five million dollars. If the certificate owner is a pass-through entity, the credit may be allocated among the entity’s

equity owners in proportion to their ownership interests or in such proportions or amounts as the equity owners mutually agree.

(D) If the credit allowed for any taxable year exceeds the tax otherwise due under section 5747.02 of the Revised Code, after allowing for any other credits preceding the credit in the order prescribed by section 5747.98 of the Revised Code, the excess shall be refunded to the taxpayer but, if any amount of the credit is refunded, the sum of the amount refunded and the amount applied to reduce the tax otherwise due for that year shall not exceed three million dollars or, if the certificate owner is a pass-through entity, shall not exceed the taxpayer's distributive or proportionate share, as allocated under division (C) of this section, of three million dollars. The taxpayer may carry forward any balance of the credit in excess of the amount claimed for that year for not more than five ensuing taxable years, and shall deduct any amount claimed for any such year from the amount claimed in an ensuing year.

(E) A taxpayer claiming a credit under this section shall retain the rehabilitation tax credit certificate for four years following the end of the taxable year to which the credit was applied, and shall make the certificate available for inspection by the tax commissioner upon the request of the tax commissioner during that period.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 04-04-2007; 2008 HB554 06-12-2008