

ALABAMA HISTORICAL COMMISSION
ADMINISTRATIVE CODE

Chapter 460-x-23
ALABAMA HISTORIC REHABILITATION TAX CREDIT

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460-X-23-.01 Alabama Historic Rehabilitation Tax Credit. The Purpose of Act 2013-241 of the Alabama legislature and its amendments and successor legislation is to provide a tax credit to Alabama taxpayers for the rehabilitation of historic and certain non-historic buildings in Alabama. This rule shall become effective December 20, 2013.

Author: Chloe Mercer, David Schneider

Statutory Authority: Act 2013-241

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013.

460-X-23-.02 Definitions.

- (a) Act. Act 2013-241 of the Alabama legislature and its amendments and successor legislation.
- (b) Aggregate Tax Credit Allocation Amount. The cumulative limit on tax credit allocations as set forth in the Act per ~~fiscal~~ calendar year. As of October 1, 2013, the aggregate amount shall be twenty million dollars (\$20,000,000) per year.
- (c) Applicant. For the purpose of this Program, the Applicant shall be the Owner of the Qualified Structure for which tax credits are being applied.
- (d) Application. The Application shall consist of three parts:
Part A: Evaluation of Significance, to be used by the Commission for making a determination whether a building is a Certified Historic Structure, a Certified Historic Residential Structure, or a Qualified Non-historic

Structure; Part B: Description of Rehabilitation, to be used by the Commission for reviewing proposed Projects for compliance with the Secretary of the Interior's Standards (Standards); and Part C: Request for Certification of Completed Work, to be used by the Commission for reviewing completed Projects for compliance with the work approved under Part B. The Commission staff will develop the Application and may modify it as needed over time. All required forms, including Applications, Part A, B, C and amendment forms, are available from the Commission at no cost.

- (e) Certified Historic Structure. A building located in Alabama that is certified by the Commission as being individually listed in the National Register, eligible for listing in the National Register, or certified by the Commission as contributing to the significance of a Registered Historic District. For the purpose of this Program, the term "structure" means a building or any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes, among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity, such as bridges, windmills, and towers, are not eligible to be Certified Historic Structures under this definition.
- (f) Certified Historic Residential Structure. A Certified Historic Structure located in Alabama which is or will be used as a single family, owner occupied residential structure, either free standing or supported by party walls, but not to include individual units within a multi-residential structure such as a condominium or cooperative.
- (g) Certified Rehabilitation. Repairs or alterations to a Certified Historic Structure or a Certified Historic Residential Structure that is certified by the Commission as meeting the Standards, and to Qualified Non-historic Structures that are certified by the Commission as meeting the Standards and the following requirements during rehabilitation: at least fifty percent (50%) of the existing external walls shall remain in place as external walls, at least seventy-five percent (75%) of the existing external walls shall remain in place as either external or internal walls, and at least seventy-five percent (75%) of the internal structural framework shall remain in place.

- (h) Commencement of Rehabilitation. The date on which actual physical work contemplated by the Rehabilitation Plan submitted with the Application will begin. The Applicant shall incur no less than 20 percent of the estimated costs of rehabilitation described in the Application within eighteen (18) months of receiving a Tax Credit Allocation Reservation.
- (i) Commission. The Executive Director and staff of the Alabama Historical Commission, a state agency, and or any successor to the Alabama Historical Commission. For the purpose of notifications or filing of any Applications or other correspondence, delivery shall be made to: Alabama Historic Rehabilitation Tax Credit Program, Alabama Historical Commission, 468 South Perry Street, Montgomery, Alabama 36130-0900 (U.S. Mail) or 36104 (courier delivery).
- (j) Complete Application. Submission of completely filled out Parts A and B of the Application that are signed and dated by the Applicant and accompanied by photographs and site plan(s), floor plan(s), and elevation drawings and any other supporting exhibits necessary to accurately convey to the Commission the scope of all work that is proposed to the building. The Commission shall also make a determination that the building is a Certified Historic Structure, a Certified Historic Residential Structure, or a Qualified Non-historic Structure before the Application is considered to be complete.
- (k) Condition of Information. A qualifier for the approval of proposed work based on the Commission staff's review of an Application where the staff determines that additional information is needed on certain aspects of the rehabilitation Project before a determination can be made to approve or deny the Application.
- (l) Condition of Work. A qualifier for the approval of proposed work based on the Commission staff's review of an Application where the staff determines that certain aspects of the proposed rehabilitation Project shall be modified or deleted before a determination can be made to approve the Application.
- (m) Department. The Alabama Department of Revenue.
- (n) National Register. The National Register of Historic Places, which is the official list of the nation's historic places worthy of preservation authorized by the National Historic Preservation Act of 1966 and administered by the National Park Service, a bureau of the U.S. Department of the Interior.

- (o) Owner. A taxpayer filing a State of Alabama tax return or any entity that is exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code, as amended, that owns title to a Qualified Structure or owns a leasehold interest in a Qualified Structure for a term of not less than 39 years.
- (p) Project. A Project includes all work to a Property for which rehabilitation tax credits are sought, the scope of which is fully described in an Application Part B and a Rehabilitation Plan. For the purpose of these Regulations, all work completed on a building in addition to all work to a Property for which rehabilitation tax credits are sought is subject to review for compliance with the Standards during the period beginning six (6) months before the Application is submitted and continuing through the end of the recapture period for any tax credits used.
- (q) Program. The Alabama Historic Rehabilitation Tax Credit Program as authorized by the Act and described in these regulations.
- (r) Property. A Qualified Structure located in Alabama and its site and landscape features.
- (s) Qualified Rehabilitation Expenditures. Any expenditure as defined under Section 47(c)(2)(A) of the Internal Revenue Code, as amended, and the related regulations thereunder, and other reasonable expenses and costs expended in the rehabilitation of a Qualified Structure. For Certified Historic Residential Structures, this term shall mean expenses incurred by the taxpayer in the Certified Rehabilitation of a Certified Historic Residential Structure, including: preservation and rehabilitation work done to the exterior of a Certified Historic Residential Structure; repair and stabilization of historic structural systems; restoration of historic plaster; energy efficiency measures except insulation in frame walls; repairs or rehabilitation of heating, air conditioning, or ventilation systems; repairs or rehabilitation of electrical or plumbing systems exclusive of new electrical appliances and electrical or plumbing fixtures; and architectural, engineering, and land surveying fees. Qualified rehabilitation expenditures do not include the cost of acquisition of the Qualified Structure, the personal labor by the Applicant, enlargement of the Qualified Structure, or any cost associated with the rehabilitation of an outbuilding of the Qualified Structure, unless the outbuilding is certified by the Commission to contribute to the historical significance of the Qualified Structure.

- (t) Qualified Non-historic Structure. A non-historic building located in Alabama built before 1936 that is certified by the Commission as not meeting the eligibility requirements as a Certified Historic Structure or a Certified Historic Residential Structure and that is certified by the Commission as meeting the requirements contained in Section 47(c)(1)(a) and (b) of the Internal Revenue Code, as amended. For the purposes of these regulations, non-historic structures built before 1936 shall not include residential buildings.
- (u) Qualified Structure. Certified Historic Structures; Certified Historic Residential Structures; and Qualified Non-historic Structures.
- (v) Rehabilitation. Rehabilitation means the process of returning a building or buildings to a state of enhanced utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant as defined by Part A of the Application approved by the Commission.
- (w) Rehabilitation Plan. Descriptions, construction plans, and specifications for the proposed rehabilitation of a Qualified Structure in sufficient detail to enable the Commission to evaluate compliance with the Standards.
- (x) Registered Historic District. Any district listed in the National Register or any district which is: a) designated under Alabama or local law certified by the U.S. Secretary of the Interior as containing criteria which substantially achieves the purpose of preserving and rehabilitating buildings of historic significance to the district; or b) certified by the U.S. Secretary of the Interior as meeting substantially all of the requirements for the listing of districts in the National Register of Historic Places.
- (y) Request for a Tax Credit Allocation Reservation. The submittal of Parts A and B of the Application for a Qualified Structure.
- (z) Reservation Priority List. A list prepared and maintained by the Commission of the order in which completed Applications are received for review and reviewed.
- (aa) Standards. The Secretary of the Interior's Standards for Rehabilitation as defined by Title 36 Code of Federal Regulations (CFR) Part 67.7.
- (bb) Substantial Rehabilitation. Rehabilitation of a Qualified Structure for which the qualified rehabilitation expenditures exceed 50 percent of the Owner's original

purchase price of the Qualified Structure or twenty-five thousand dollars (\$25,000), whichever is greater. For the purpose of these regulations, the Owner's original purchase price of the Qualified Structure shall mean the original purchase price of the Property minus the value of the underlying land and any buildings other than the Qualified Structure for which rehabilitation tax credits are being applied.

- (cc) Tax Credit Allocation. The dollar amount of tax credits apportioned for the substantial rehabilitation of a Qualified Structure based on a Rehabilitation Plan approved by the Commission.
- (dd) Tax Credit Allocation Reservation. The reservation of a tax credit allocation issued by the Commission via a written form or letter for a Project for which a complete Part A and B of the Application has been submitted, which entitles the owner to a tax credit provided that the owner complies with all of the requirements of the Act for the issuance of a Tax Credit Certificate. For the purpose of the definition, Part A of the Application shall also have been reviewed and a determination made by the Commission that the building is a Certified Historic Structure, a Certified Historic Residential Structure, or a Qualified Non-historic Structure.
- (ee) Tax Credit Certificate. A certificate issued by the Commission via a written form or letter to the Applicant providing information about the Project and the amount of its Tax Credit Allocation to be filed with the Applicant's Alabama state ~~income~~ tax return. If there are multiple owners of a property, or if the owner is a partnership or limited liability company ~~taxed as a partnership~~, the Tax Credit Certificate will contain a section to be completed by the ~~Applicant-Owner~~ that provides the percentage or amount of credit that will be allocated to each partner, member or owner, and such completed Certificate may be provided to the department to transfer all or any portion of the tax credits passed through to the partner, member, or owner in accordance with 460-X-23-.03(6). a-A copy of which the completed Certificate shall be filed with their the partner's, member's, or owner's respective Alabama tax return. The aggregate credits claimed by the partners, members, or owners may not exceed the total amount of the credit set forth in the Applicant's Tax Credit Certificate.

Author: Chloe Mercer, David Schneider, Jennifer Bailey

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(1) A tax credit of twenty-five percent (25%) of qualified rehabilitation expenditures is available against any state tax due that is specified in the Act for the Certified Rehabilitation of Certified Historic Structures and Certified Historic Residential Structures. This credit is available for both income-producing buildings and owner-occupied residential buildings.

(2) A tax credit of ten percent (10%) of qualified rehabilitation expenditures is available against any state tax due that is specified in the Act for the Certified Rehabilitation of Qualified Non-historic Structure. This credit is available for non-residential income-producing buildings only.

(3) Rehabilitation of a Qualified Structure shall be substantial as defined by the term Substantial Rehabilitation contained in section 460-X-23-.02.

(4) The tax credit may be used by the Owner of the Certified Historic Structure, Certified Historic Residential Structure, or a Qualified Non-historic Structure.

(5) Eligible expenditures include reasonable expenses and costs expended in the Certified Rehabilitation of a Qualified Structure as defined by the term Qualified Rehabilitation Expenditures in section 460-X-23-.02. Eligible expenditures do not include: the cost of acquiring any interest in a Qualified Structure or its Property; any expenditure attributable to the enlargement of an existing building; and site work expenditures, including any landscaping, sidewalks, parking lots, paving, decks, outdoor lighting remote from the building, fencing, retaining walls, or similar expenditures because they are not considered made in connection with the rehabilitation of a Qualified Structure.

(6) The Applicant shall not be permitted to request the review of another property in the place of the property contained in the Application. ~~Up until the building is placed in service as defined by these regulations, the Applicant may add or remove partners, members, or shareholders as part of its ownership structure, so long as at least fifty percent (50%) of the ownership remains the same. If the ownership of the Qualified Structure is changed due to a foreclosure, deed in lieu of a foreclosure, or a transfer in bankruptcy or receivership, the foregoing provisions restricting a change in ownership structure are not applicable, provided that the successor Owner of the Qualified Structure furnishes sufficient documentation to the Commission as evidence of the foreclosure, deed in lieu of foreclosure or bankruptcy or receivership.~~ All or any portion of the tax credits under this act shall be transferable and assignable, subject to any notice and verification requirements to be determined by the department, without the requirement of transferring any ownership interest in the qualified structure. However, once a credit is transferred, only the transferee may utilize such credit and the credit cannot be transferred again. A transferee of the tax credits

may use the amount of tax credits transferred to offset any state tax due under Chapters 16 and 18 of Title 40.

(7) For the purpose of these regulations, dates of notification or issuance of any decisions, actions, requests for information, billing for fees, and other correspondence by the Commission shall be in writing and the date of the notification or issuance shall be stated. The notification or issuance is effective as of the stated date and not the date of receipt by the Applicant.

Author: Chloe Mercer, David Schneider, Jennifer Bailey

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460-X-23-.04 Restrictions on Previous Work. Before beginning any substantial rehabilitation work on a Qualified Structure, the Applicant shall submit an Application and Rehabilitation Plan to the Commission and an estimate of the qualified rehabilitation expenditures under the Rehabilitation Plan. The Applicant may incur qualified rehabilitation expenditures no earlier than six months before the submission of the Application and Rehabilitation Plan that are limited to architectural, engineering, and land surveying fees and related soft costs and any costs related to the protection of the Qualified Structure from deterioration. All such work shall be described in Part B of the application and shall meet the Standards. If the Commission determines that any of said work is not consistent with the Standards, the Part B will be denied. For the purpose of these regulations, the protection of the Qualified Structure from deterioration shall mean emergency or temporary measures necessary to prevent water penetration, deter vandalism, or stabilize building components likely to otherwise collapse.

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460-X-23-.05 Application Requirements.

(1) A complete Application, including both Parts A and B, shall be submitted to the Commission for all Projects before commencing rehabilitation and as a requisite for the Commission issuing a Tax Credit Allocation Reservation. Part C of the Application shall be completed at the completion of work and is a requisite for the Commission issuing a Tax Credit Certificate. Applications are available from the Alabama Historical Commission. The Applicant shall sign each part of the Application and shall certify that the information provided is, to the best of the Applicant's knowledge, correct. Specific Application requirements are included in the Instructions and on each part of the Application.

(a) Application Part A - Evaluation of Significance: Part A of the Application certifies that a building is a Certified

Historic Structure, a Certified Historic Residential Structure, or a Qualified Non-historic Structure and shall be completed for all buildings to be included in the Project. Part A of the Application is evaluated against criteria for significance and integrity issued by the National Park Service for the National Register. Areas of significance include an association with events, activities, or developments that were important in the past or; with the lives of people who were important in the past or; with significant architectural history, design, or engineering achievements.

- (1) An Applicant may file Part A of the Application with the Commission at any time before or simultaneously with the Part B.
 - (2) Part A shall include enough information to determine whether a building is eligible for designation as a Certified Historic Structure, a Certified Historic Residential Structure, or a Qualified Non-historic Structure. The Part A shall include, among other information: an accurate street address or description of the location of the building; the name of the building's Applicant and the Applicant's address and telephone number; a description of the general setting and an architectural description of the building, including the exterior and the interior; a brief history of the building; a statement describing why the building is eligible for designation as a Certified Historic Structure, a Certified Historic Residential Structure, or a Qualified Non-historic Structure; color photographs printed on photographic paper showing general views and all features discussed in the description; and a map indicating the location of the building.
 - (3) Applicants are encouraged to contact Commission staff in the development of Part A of the Application when buildings have not been previously determined to be eligible for the National Register.
- (b) Application Part B - Description of Rehabilitation: Part B of the Application certifies that proposed rehabilitation work is consistent with the Standards and shall be completed for all Projects. Part B may only be submitted with Part A of the Application or after Part A of the Application has been submitted to the Commission. The Commission shall issue a Tax Credit Allocation Reservation via a written form or letter upon submission of a complete Part B of the Application along with a Commission determination that the building is a Certified Historic Structure, a Certified Historic Residential Structure, or a

Qualified Non-historic Structure based upon a review of Part A of the Application.

- (1) Part B of the Application shall include, among other information: an accurate street address or description of the location of the building; the name of the Applicant and the Applicant's address and telephone number; a Rehabilitation Plan including drawings of the site plan and the building's floor plans showing existing conditions and all proposed work with elevation drawings if applicable to illustrate any new construction, alterations, or additions; and additional photos printed on photographic paper, as necessary, to completely illustrate all areas of the building that will be affected by the Rehabilitation Plan. Drawings of the existing building condition and drawings of proposed Project are necessary to review Part B of the Application for all Projects. For Qualified Non-historic Structures applying for the ten percent (10%) credit, drawings shall show that fifty percent (50%) or more of the existing external walls remain as external walls; that seventy-five percent (75%) or more of the existing external walls remain in place as internal or external walls and; and that seventy-five percent (75%) or more of the existing internal structural framework is retained in place.
- (2) Part B of the Application shall also state the timeframe by which all work included in the Project will be completed. The Application will state a projected starting date and completion date for the Project. The difference between the two dates will be the timeframe by which the project shall be completed. All work must be completed based on that timeframe calculated from the actual starting date.
- (3) Part B Rehabilitation Plans are reviewed by the staff of the Commission for consistency with the Standards. The Standards are as follows:
 - (i) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
 - (ii) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
 - (iii) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development,

such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

- (iv) Most properties change over time; those changes that have acquired historical significance in their own right shall be retained and preserved.
 - (v) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
 - (vi) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, or other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
 - (vii) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
 - (viii) Significant archaeological resources affected by a Project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
 - (ix) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize a property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
 - (x) New Additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.
- (c) Application Part C - Request for Certification of Completed Work: Part C of the Application certifies the completed work follows the Standards and the Rehabilitation Plan as approved by the Commission in the Part B review. Part C may be submitted when the substantial rehabilitation is

complete. Part C of the Application shall include, among other information: an accurate street address or description of the location of the building; the name of the building's Applicant and the Applicant's address, telephone number, and taxpayer identification number or social security number; and photographs printed on photographic paper of completed work showing similar views of the photographs provided in Parts A and B. A complete Part C also requires the submittal by the Owner of cost and expense certification and an appraisal as more fully described in Section 460-x-23.08.

(2) Amendment Sheet. Changes to the Project not anticipated in the original Application shall be submitted to the Commission on an Amendment Sheet. The Amendment Sheet shall include, among other information: an accurate street address or description of the location of the building; the name of the building's Applicant and the Applicant's address, telephone number, and taxpayer identification number or social security number; indication regarding which part or parts of the Application is being amended; and photographs printed on photographic paper or other drawings or exhibits that illustrate the proposed changes to the Project.

(3) Functionally Related Structures. For rehabilitation projects involving more than one Qualified Structure where the structures are judged by the Commission to have been functionally related historically to serve an overall purpose, these buildings will be treated and reviewed as functionally related structures per guidance provided in applicable Department of the Interior regulations Title 36 Code of Federal Regulations (CFR) Part 67.4 relating to functionally related structures.

Author: Chloe Mercer, David Schneider

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460-X-23-.06 Application Review Process.

(1) Delivery. Applications for the Program will be accepted beginning on October 1, 2013 and continuously thereafter. Applications should be delivered to the Commission.

(2) Project Review Priority. Applications for Tax Credit Allocation Reservations are placed on a Reservation Priority List in the order in which they are received and will be reviewed in that order. Complete Applications that include Parts A and B and all attachments will be eligible for a Tax Credit Allocation Reservation in that same priority order. Incomplete Applications will be removed from the list. Applications received on the same day will be ordered in a lottery. All Applications received on or before 5:00 p.m. Central Daylight Time on October 1, 2013 will be considered to have been received on that date. The lottery shall be conducted by assigning

sequential numeric characters to the Applications. The same sequential numeric characters will be written on identical white plastic balls measuring approximately 1.5 inches in diameter (a standard table tennis ball) and placed in a box of sufficient size to allow for the mixing of the balls when the box is shaken. Afterward, a member of the Commission staff shall blindly and randomly select one ball at a time and its corresponding number will be sequentially entered onto the Reservation Priority List. Three Commission staff persons will be present at the drawing, and the order of the numeric characters drawn will be witnessed and recorded by staff. The Commission's executive director will certify the review priority order of the lottery for assignment on the Reservation Priority List.

(a) Staff Review Order. The staff of the Alabama Historical Commission will review requests for Tax Credit Allocation Reservations in the following manner until the Aggregate Tax Credit Allocation is reached:

1. The staff will review Parts A and B of the Application to make certain that all information requested on the forms has been provided. If all the forms are complete, the staff will proceed to the next review step. If either of the forms is incomplete, the Application will be determined to be incomplete, and the Application will be removed from the Reservation Priority List. The Applicant will be notified of the Incomplete Application and may reapply, but it will be considered to be a new Application.
2. The staff will then review Part A of the Application as more fully described below to determine whether or not the building in question is a Certified Historic Structure, a Certified Historic Residential Structure, or a Qualified Non-historic Structure. After this determination is made, and complete Parts A and B of the Application have been received, the Commission will issue a Tax Credit Allocation Reservation within ninety (90) days and the staff will proceed to the next review step. If the Applicant submits only Part A of the Application, the Commission will notify the Applicant in writing of its determination.
3. The staff will then review Part B of the Application as more fully described below for the Project's compliance with the Standards.

(3) Application Part A. Part A of the Application will be reviewed by a Determination of Eligibility Committee composed of professional staff of the Commission. The committee will determine if a property is eligible for designation as a Certified Historic

Structure, Certified Historic Residential Structure, or a Qualified Non-historic Structure. The Applicant shall be responsible for providing sufficient information to the Commission by which the Commission's staff may make a determination. For the purpose of buildings that are individually listed in the National Register, the Determination of Eligibility Committee may appoint a single staff member to make the determination on Part A of the Application. The Commission shall notify the Applicant in writing of any determination it makes after completing the review of Part A of the Application, including as part of the Tax Credit Allocation Reservation notification.

- (a) If all requested information is not provided or if insufficient information is provided to make a determination that a building is eligible for designation as a Certified Historic Structure, Certified Historic Residential Structure, or a Qualified Non-historic Structure, the Application is incomplete and will be returned to the Applicant. If an incomplete Part A is submitted with Part B of the Application, placement in the Reservation Priority List will be lost and any subsequent Application for the Project shall be considered a new Application.

- (b) There is no fee to review Part A of the Application.

(4) Application Part B. An Application fee is charged before the review of Part B of the Application for its compliance with the Standards based on the amount of estimated Qualified Rehabilitation Expenditures listed by the Applicant on the Part B Application. The fee is not refundable. Applicants will be invoiced for the fee upon the issuance by the Commission of a Tax Credit Allocation Reservation. If the invoice is not paid within thirty (30) calendar days of the Commission's issuance of the invoice, the Tax Credit Allocation Reservation will be rescinded. The Application may be resubmitted but it shall be considered a new Application. The fee is set at one percent (1%) of Qualified Rehabilitation Expenditures, except that the fee shall not exceed ten thousand dollars (\$10,000.00).

- (a) The Commission shall notify the Applicant in writing of any determination it makes upon completing the review of Part B of the Application. In reviewing Part B of the Application, the Commission shall determine if the Part B and the Rehabilitation Plan are:
 1. consistent with the Standards;
 2. consistent with the Standards with specific Conditions of Information; Applications found to be consistent with the Standards with Conditions of Information shall correct all the conditions within thirty (30) days of receipt of the Commission review by submitting said corrections to the

Commission; otherwise the Application will be determined to be not consistent with the Standards;

3. consistent with the Standards with specific Conditions of Work; Applications found to be consistent with the Standards with Conditions of Work shall provide written acceptance to the Commission of all Conditions of Work within thirty (30) days of receipt of the Commission review, otherwise the Application will be determined to be not consistent with the Standards; Applications found to be consistent with the Standards with Conditions of Work may proceed with work but will only be eligible for the credits if the conditions listed are met as part of the rehabilitation work but failure to follow the conditions may result in a determination by the Commission that the project is not consistent with the Standards; or
4. not consistent with the Standards; Applications found to be not consistent with the Standards at any time will be considered to be incomplete Applications and the Tax Credit Reservation for the Project will be rescinded and the Project will be removed from the Reservation Priority List; the Commission shall make recommendations to the Applicant that might bring the Project into compliance with the Standards, however no warranty is made that the recommendations will bring the Project into compliance with the Standards; the Applicant may reapply and it will be treated as a new Application and will be subject to a new Application fee.

(5) Application Part C. The Applicant shall file Part C of the Application upon completion of the Project. The Commission shall review and approve Part C, and the Project shall meet all other requirements of these regulations before the Commission can issue a Tax Credit Certificate for the Project.

- (a) The Commission will review the Part C and will verify compliance with the Approved Rehabilitation Plan. If the completed Project is found to be in compliance with the Approved Rehabilitation Plan and any conditions, and with the Standards, the Commission shall approve the Project. The Commission shall notify the Applicant in writing of any determination it makes upon completing the review of Part C of the Application.
- (b) Within ninety (90) days, the Commission shall issue to the Applicant a Tax Credit Certificate via a written

form or letter in an amount equivalent to the lesser of the amount of the Tax Credit Allocation Reservation or twenty-five percent (25%) of the actual qualified rehabilitation expenses for Certified Historic Structures or Certified Historic Residential Structures, or ten percent (10%) of the actual qualified rehabilitation expenses for Qualified Non-historic Structures.

- (c) If the submitted Part C is not consistent with the approved Rehabilitation Plan and the Project cannot, in the opinion of the Commission, be brought into compliance, then the Commission shall deny the Project and the Tax Credit Allocation Reservation will be rescinded. No refund of fees shall be allowed.
- (d) If the submitted Part C is not consistent with the approved Rehabilitation Plan and the Project can, in the opinion of the Commission, be brought into compliance, the Commission may issue remedial conditions that will bring the Project into compliance with the Approved Rehabilitation Plan. The Applicant shall complete the remedial work and file an amended Part C within ninety (90) days of the issuance by the Commission of the conditions for remedial work or within a time period agreed upon by the Commission and Applicant. If the remedial work is completed so that the Qualified Rehabilitation is consistent with the Approved Rehabilitation Plan, then the Commission shall, within ninety (90) days, issue a Tax Credit Certificate in an amount equivalent to the lesser of their amount of the Tax Credit Allocation Reservation or twenty-five percent (25%) of the actual qualified rehabilitation expenses for Certified Historic Structures or Certified Historic Residential Structures, or ten percent (10%) of the actual qualified rehabilitation expenses for Qualified Non-historic Structures.

(6) Amendment Sheet. Changes to the Project not anticipated in the original Application shall be submitted to the Commission on an Amendment Sheet and must be approved by the Commission as consistent with the Standards before they are included in the Project. The Commission shall review the Amendment Sheet and issue a determination in writing regarding whether or not the proposed change in the Project is consistent with the Program.

(7) Scope of Review. For purposes of the review of Applications for this Program, the Project scope includes the entire building, along with any historically associated property under the same ownership. Individual condominiums or commercial spaces within a larger historic building are not considered individual properties

apart from the whole. The scope of review for a Project is not limited to the work that qualifies as an eligible expense. The review encompasses the building's site and environment, as well as any buildings that were functionally related historically. Therefore, any new construction and site improvements occurring on the historic property are considered part of the Project. Likewise, all work completed six (6) months before the submission of the Application and Rehabilitation Plan is considered part of the Project, as is any work completed during the recapture period for the credit.

(8) Commission Review Not Binding on Other Programs.

Determinations that a building is a Certified Historic Structure utilizing Part A and that a Project is a Certified Rehabilitation utilizing Parts B and C apply only to the Alabama Rehabilitation Tax Credit Program and are not binding on any other local or federal tax credit program. Determinations made by the National Park Service for National Register eligibility or for compliance with the Secretary of the Interior's Standards for federal rehabilitation tax credit Projects are likewise not binding on the Commission although the Commission may take the determinations into consideration as part of their review of a Project.

Author: Chloe Mercer, David Schneider

Statutory Authority: Act 2013-241

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013

460-X-23-.07 Tax Credit Allocation Reservation.

(1) Once the Commission has determined that Parts A and B of the Application are complete, the Commission will issue a Tax Credit Allocation Reservation in the amount based on the estimated qualified rehabilitation expenditures provided by the Applicant on the Part B of the Application. Tax Credit Allocation Reservations will be issued in the order that its request is listed on the Reservation Priority List.

(2) Supplemental Tax Credit Allocation Reservation. In the event the amount of qualified rehabilitation expenditures incurred by the Owner exceeds the amount of qualified rehabilitation expenditures estimated on Part B of the Application for the purpose of establishing the Tax Credit Allocation Reservation, the Applicant may, at any time after Part B of the Application has been approved for compliance with the Standards but before the issuance of a Tax Credit Certificate, apply to the Commission for a reservation of a supplemental Tax Credit Application Reservation in an amount equal to the excess. Applications for a supplemental Tax Credit Application Reservation shall be made on a form prescribed and available from the Commission at no cost and shall be issued subject to availability based on the Aggregate Tax Credit Allocation Amount and the placement on the Reservation Priority List. For the purpose of placement on the Reservation Priority List, the request will be considered a new Application and will added to the next available position on the list. Applicants who receive a Supplemental Tax Credit Allocation Reservation will be invoiced for a

fee in the amount of one percent (1%) of the amount of the excess qualified rehabilitation expenditures unless the Applicant has paid the maximum ten thousand dollar (\$10,000.00) fee for the same Project.

(3) Commission Tracking. The Commission shall track the cumulative amount of Tax Credit Allocation Reservations and will discontinue issuing Tax Credit Allocation Reservations once the total has reached the Aggregate Tax Credit Allocation Amount. When the Aggregate Tax Credit Allocation Amount has been reached, no further Tax Credit Allocation Reservations will be made until: 1) additional amounts are returned through the rescission of Tax Credit Allocation Reservations; or 2) a new Aggregate Tax Credit Allocation Amount becomes available under the terms of these regulations. If an Applicant has applied for a Tax Credit Allocation Reservation that exceeds the remaining allocation available under Aggregate Tax Credit Allocation Amount, the Commission shall issue a Tax Credit Allocation Reservation in the amount of the available partial allocation (the "Partial Allocation"), and the amount requested by the Application that exceeds the Partial Allocation (the "Excess Allocation") shall remain in the first position on the Reservation Priority List until additional amounts are available pursuant to the previous sentence, at which time the Commission shall issue a Tax Credit Allocation Reservation in the amount of the Excess Allocation.

(4) Aggregate Tax Credit Allocation Amount Limits. The availability of Tax Credit Allocation Reservations is limited to the Aggregate Tax Credit Allocation Amount per tax year beginning on ~~October 1, 2013~~ May 15, 2013 and extending through the Expiration of tax credits as defined in Section 460-X-23.13. If all of the Aggregate Tax Credit Allocation Amount for any tax year is not requested and reserved, any unreserved tax credit allocations may be utilized by the Commission in awarding tax credits in subsequent years. No tax credit claimed for any Qualified Rehabilitation Expenditures may exceed five million dollars (\$5,000,000) for all allowable property types except Certified Historic Residential Structures and fifty thousand dollars (\$50,000) for Certified Historic Residential Structures. Applications for the reservation of tax credits will be accepted beginning October 1, 2013, but no tax credit may be credited before the taxpayer's return for the taxable year 2014. All Applications under this Program shall be received before May 15, 2016.

(5) Projects Not Likely to Receive a Reservation. The Commission shall notify Applicants in writing of the status for Projects that are not likely to receive a Tax Credit Allocation Reservation because of the Project's place on the Reservation Priority List. Applicants will be notified in writing of any eligibility determination and the Project's place in the priority order. The Applicant will have thirty (30) days to notify the Commission in writing that the Applicant desires to have the Project remain on the Reservation Priority List. If so, the Project will remain on the priority list for up to two years from the date the Application was made. Failure to notify the Commission will result in the Project

being removed from the Reservation Priority List. The Applicant may re-apply for the Project, but it will be treated as a new Application.

(6) All Requirements Shall be Met. A Tax Credit Allocation Reservation reserves a credit in the name of the applicant only. However, no actual Certificate of Credit which can be used by the applicant will be issued until all the requirements of the program have been satisfied as certified by the Commission.

(7) Rescission. If a Tax Credit Allocation Reservation is rescinded, its tax credit allocation will be returned to the Aggregate Tax Credit Allocation Amount available. Any Applicant whose Tax Credit Allocation Reservation is rescinded shall be notified in writing of the rescission by the Commission. A new Application may be submitted, but it will be treated as a new Application and will be charged a new Application fee.

- (a) If, at any time, the Commission determines that the proposed or ongoing rehabilitation work is not consistent with the Standards, the reservation of tax credits for the Applicant may be rescinded.
- (b) If, at any time, the Commission has reason to believe that a Project has become inactive or that it is not likely that it will be able to meet any or all of the requirements of the Program, it shall notify the Applicant by registered or certified mail of the Commission's intent to rescind the Tax Credit Allocation Reservation. If the Applicant fails to respond within thirty (30) calendar days receipt of the notice that the Project is still active, the Commission may rescind the Tax Credit Allocation Reservation.

Author: Chloe Mercer, David Schneider, Jennifer Bailey

Statutory Authority: Act 2013-241; Act 2014-452

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013.

460-X-23-.08 Tax Credit Certificate. A Tax Credit Certificate may only be issued by the Commission once its staff has reviewed Part C and determined that the substantial rehabilitation follows the Standards and has been completed in accordance with the Rehabilitation Plan approved by the Commission. In addition, a Tax Credit Certificate may only be issued by the Commission once its staff has determined that expenditures incurred with respect to the Approved Rehabilitation Plan appear to be consistent with a cost and expense certification: prepared by a licensed certified public accountant that is not an affiliate of the Owner, certifying the total qualified rehabilitation expenditures and the total amount of tax credits against any state tax due; and, if the qualified rehabilitation expenditures exceed two hundred thousand dollars (\$200,000), a cost and expense certification

audited by the licensed certified public accountant. For the purposes of these regulations, the affiliate shall mean independence for accounting purposes. The cost and expense certification shall include a certification by the licensed certified public accountant that the costs and expenses meet the requirements of this Program. The Commission shall issue a Tax Credit Certificate once it has received an appraisal of the Property after rehabilitation prepared by an independent appraiser who is a Member of the Appraisal Institute (MAI) and is a licensed real estate appraiser. A separate Tax Credit Certificate shall be issued for any supplemental Tax Credit Allocation Reservations that have been granted by the Commission for the Project.

The Commission shall issue a Tax Credit Certificate once it has received all Application fees due and the Applicant has met all other requirements of these regulations. **Author:** Chloe Mercer, David Schneider

Statutory Authority: Act 2013-241

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013.

460-X-23-.09 Project Commencement and Completion.

(1) Applicants shall commence their plan of work and shall have spent no less than twenty percent (20%) of the estimated cost of qualified rehabilitation expenditures within eighteen (18) months of the date of the issuance of the letter from the Commission granting the Tax Credit Allocation Reservation ["anniversary"]. The Applicant will notify the Commission in writing no later than thirty (30) calendar days after the anniversary that twenty percent (20%) of the estimated cost of rehabilitation was expended by the anniversary. Failure to so notify the Commission will terminate the Project and the Tax Credit Allocation Reservation will be rescinded. The Applicant may re-apply for the Program, but the Application will be considered to be a new Application.

(2) A Project's completion will be the date that it is placed in service in accordance with these regulations. The completion date must occur within the timeframe specified in Part B of the application. The Applicant shall submit Part C of the Application in accordance with these regulations and with the appropriate cost and expense certification within thirty (30) days of completion.

Author: Chloe Mercer, David Schneider

Statutory Authority: Act 2013-241

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013.

460-X-23-.10 Taking the Tax Credit.

(1) The Alabama Department of Revenue (Department) shall grant a tax credit against any state tax due which is specified in this law to an Owner, or transferee, holding a Tax Credit Certificate issued by the Commission, or its partners, members, or multiple owners as set forth in the portion of the Tax Credit Certificate completed by the

Applicant. This credit shall be applicable to tax due and payable to the Department by the owner, or transferee, partner, or member under Title 40, chapters 16 and 18, Code of Alabama 1975, in the amount stated in the Tax Credit Certificate. The Department shall apply such credits claimed by the taxpayers only against the portion of such taxes retained, deposited or distributed to the State of Alabama. To receive the credit, the Owner of the completed Project will file the Tax Credit Certificate with the taxpayer's Alabama state tax return. For the purposes of these regulations, a Project's completion will be the date that it is placed in service. For the purpose of these regulations, placed in service generally means that all work described in an approved Part B Application has been completed, and the appropriate work has been completed that would allow occupancy of either the entire building or some identifiable portion of the building. A Certificate of Occupancy is one means of verifying the placed in service date for the entire building (or part thereof).

(2) The Department shall have the right to audit and reassess any credit improperly obtained by the Owner. This right extends ~~only~~ to the Owner initially awarded the tax credit certificate, and not any subsequent ~~owner~~ transferee of the tax credit certificate or person to whom tax credits have been passed through pursuant to Section 40-9F-4(d).

(3) The entire tax credit may be taken in the taxable year in which the Certified Rehabilitation is placed in service. If taxes owed by the taxpayer are less than the credit, the amount of the credit may be carried forward for up to ten (10) additional years. The taxpayer shall not be entitled to claim any unused credits as a tax refund.

(4) Tax credits granted to a partnership, limited liability company ~~taxed as a partnership~~, or multiple Owners shall be passed through to members or Owners, including any not-for-profit entity which is a partner, respectively pro rata or pursuant to an executed agreement among the partners, members, or Owners who have an alternate distribution method, as indicated on the Tax Credit Certificate to be completed by the Applicant.

(5) Recapture of any credit shall apply against the taxpayer who utilizes the credit, (unless the credit was improperly obtained, then the recapture would be against the owner initially awarded the credit) and required adjustments of basis due to recapture shall be governed by Title 26, Section 50 of the Internal Revenue code. ~~Only the Owner initially awarded the Tax Credit Certificate shall be liable for any amount of recapture.~~

Author: Chloe Mercer, David Schneider, Jennifer Bailey

Statutory Authority: Act 2013-241; 2014-452

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013.

460-X-23-.11 Appeals. Applicants or their duly authorized representatives may appeal any official decisions made by the

Commission. This includes all reservations, approvals, and denials, made by the Commission with regard to an Application and Rehabilitation Plan submitted under these regulations. Appeals are an administrative review and not an adjudicative proceeding. Appeals must be requested in writing by the Applicant or duly authorized representative within thirty (30) days of the receipt by the owner or the owner's duly authorized representative of the decision being appealed. The Executive Director of the Commission or his designee shall determine if a hearing is necessary and if so the appeal will be scheduled within sixty (60) days of the request. The Executive Director or his designee will coordinate with the Applicant a date and time that would be mutually acceptable to both parties. All appeals will be held at the Alabama Historical Commission offices. The Applicant will have a reasonable opportunity to present information in support of its appeal. The Executive Director of the Commission or his designee will then have thirty (30) days to issue a decision in writing as to whether or not to grant the request made in the appeal.

Author: Chloe Mercer, David Schneider

Statutory Authority: Act 2013-241

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013.

460-X-23-.12 Commission Reporting.

(1) In the year in which the Certified Rehabilitation is placed into service, the Commission shall provide notice of the Certified Rehabilitation to the taxing authority responsible for the assessment of ad valorem taxes, along with a copy of the appraisal provided by the Owner. Upon notification, the taxing authority responsible for assessing ad valorem taxes shall complete a new assessment of ad valorem taxes for the tax year in which the building is placed in service.

(2) The Commission shall, in consultation with the department, report to the Legislature in the third year following passage of this act, and annually thereafter, on the overall economic activity, usage, and impact to the state from the substantial rehabilitation of Qualified Structures for which tax credits have been allowed.

Author: Chloe Mercer, David Schneider

Statutory Authority: Act 2013-241

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013.

460-X-23-.13 Expiration of the Tax Credits. The Program shall expire on May 15, 2016. Projects that have received a Tax Credit Allocation Reservation on or before that date will still be eligible to receive tax credits as long as the Project meets all other requirements of the Program.

Author: Chloe Mercer, David Schneider

Statutory Authority: Act 2013-241

History: **Emergency Rule:** Filed August 22, 2013. **New Rule:** Filed December 13, 2013; effective December 20, 2013.

