TOURISM, ARTS AND HERITAGE CABINET
Heritage Council
(Amended at ARRS Committee)

300 KAR 6:011. Historic rehabilitation tax credit certifications.

RELATES TO: KRS 171.396, 171.3961, 171.3963, 171.397, **42 U.S.C. 12101,** 54 U.S.C. 300101, **36 C.F.R. 67,** 36 C.F.R. 800,~~[42 U.S.C. 12101]~~

STATUTORY AUTHORITY: KRS 171.397(12), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.397(12) and (14) **authorize**~~[authorizes]~~ the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for tax credit applications. This administrative regulation establishes the application process to determine a taxpayer's eligibility to claim a certified historic structure rehabilitation tax credit.

Section 1. Definitions.

(1) "Act" means the enabling legislation for the historic rehabilitation tax credit, KRS 171.396 **through**~~[to]~~ 171.397.

(2) "Adjusted basis of the structure" means the purchase price of the property, minus the cost of land, plus improvements already made, minus allowable depreciation.

(3) "Certified historic structure" is defined by KRS 171.396(1).

(4) "Certified rehabilitation" is defined by KRS 171.396(2).

(5) "Certified rehabilitation credit cap" is defined by KRS 171.396(3).

(6) "Complete and adequately documented" means the applicant has provided all elements **established**~~[outlined]~~ in the Part 1, 2, 3 or **KHC Form**TC-4~~[application]~~, fee payment, adequate photo documentation **prior to rehabilitation**~~[at the time of purchase]~~ and **documentation of**~~[documenting]~~ any subsequent changes by current owner, photo key, maps, and related architectural renderings or construction documents.

(7) "Completed rehabilitation project" means any certified historic structure **that**~~[which]~~ has been substantially rehabilitated and, after the completion date, has been submitted by the applicant to the council for final certification of rehabilitation under the Act.

(8) "Completion date" means:

(a) For owner-occupied residential property, the month, date, and year in which the last eligible rehabilitation expense is incurred; or

(b) For all other property, the month, date, and year **in which**~~[when]~~ the rehabilitation project is completed to allow occupancy of the entire building or some identifiable portion of the building and, if applicable, a certificate of occupancy has been issued.

(9) "Department" means the Kentucky Department of Revenue.

(10) "Director" means the executive director of the Kentucky Heritage Council.

(11) "Disqualifying work" is defined by KRS 171.396(5).

(12) "Exempt entity" is defined by KRS 171.396(6).

(13) "File" or "filed" means physical receipt by the council of an application for certification along with the tender of the appropriate review fee.

(14) "Final amount of credit approved" means the individual credit awarded for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.3961 or KRS 171.397, whichever is applicable, **upon filing of**~~[when]~~ the Certificate of Rehabilitation-Part 3~~[is filed]~~ and **upon approval**~~[approved]~~ by the council.

(15) "Inspection" means a visit by the director or an authorized representative of the council to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

(16) "Meaningful consultation" **means**~~[is]~~ the opportunity to consult with a historic building owner prior to the removal of historic fabric or work that does not meet the Secretary of the Interior's Standards for Rehabilitation **as established in Section 4(2) of this administrative regulation**.

(17) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the U. S. Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, 54 U.S.C. 300101, and implemented through 36 C.F.R. Part 800.

(18) "Owner" means:

(a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the department for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, whichever is applicable; or

(b) A lessee, if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property or thirty-nine (39) years for all other property.

(19) "Owner-occupied residential property" is defined by KRS 171.396(8).

(20) "Preliminary tax credit allocation" means the maximum individual credit available for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397, on April 29 of the year in which the Certificate of Rehabilitation-Parts 1 and 2 are filed and approved by the council.

(21) "Property" means a building and its site and landscape features.

(22) "Qualified rehabilitation expense" is defined by KRS 171.396(9).

(23) "Rehabilitation" means the process of returning a building or buildings to a state of 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 **that**~~[which]~~ are significant to its historic, architectural, **or**~~[and]~~ cultural values~~[as determined by the director]~~.

(24) "Rehabilitation plan" means a plan pursuant to which a certified historic structure will be substantially rehabilitated.

(25) "Rehabilitation project" means any certified historic structure, submitted by the applicant to the council, for certifications of rehabilitation under the Act.

(26) "Standards for rehabilitation" mean the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67.7, as established by the U. S. Department of Interior and restated in Section 4(2) of this administrative regulation.

(27) "Starting date" means the date upon which the applicant applies for the building permit for work proposed by the rehabilitation plan or the date upon which actual physical work contemplated by the plan of rehabilitation begins.

(28) "Substantial rehabilitation" is defined by KRS 171.396(10).

(29) "Taxpayer" is defined by KRS 171.396(11).

Section 2. Certifications of Rehabilitation.

(1) For tax credits under KRS 171.3961, a request for certification of historic significance and of rehabilitation under the Act shall be a five (5) stage process that requires the filing of the~~[following forms]~~:

(a) Certification Application-Intent to Apply for ***Major Certified Rehabilitation***~~*[Expanded Credit]*~~;

(b) Certification Application Part 1-Evaluation of National Register Status;

(c) Certification Application Part 2-Description of Rehabilitation;

(d) Certification Application Part 3-Request for Certification of Completed Work; and

(e) ~~[Certification Application-]~~Summary of Investment and Election of Credit.

(2) For tax credits under KRS 171.397, a request for certification of historic significance and of rehabilitation under the Act shall be a four (4) stage process that requires the filing of the~~[following forms]~~:

(a) Certification Application Part 1-Evaluation of National Register Status;

(b) Certification Application Part 2-Description of Rehabilitation;

(c) Certification Application Part 3-Request for Certification of Completed Work; and

(d) Certification Application-Summary of Investment and Election of Credit.

(3) Intent to Apply for Expanded Credit shall be a request for certification of an applicant's intent to claim a tax credit established by KRS 171.3961 for a proposed rehabilitation project.

(4) Part 1 shall be a request for certification of historic significance.

(5) Part 2 shall be a request for certification of a proposed rehabilitation project.

(6) Part 3 shall be a request for certification of a completed rehabilitation project.

(7) Summary of Investment and Election of Credit shall be actual cost, square footage, and use attributed to the rehabilitation work and an irrevocable election by the taxpayer to receive a refundable credit or transfer the credit.

(8) Certification of applications shall be filed with the council as**established in paragraphs (a) through (c) of this subsection.**~~[follows:]~~

(a)

1. Part 1 and Part 2 shall be filed with the council on or before April 29 for a preliminary determination of maximum credit eligibility for a credit under KRS 171.397.

2. Part 1, Part 2, and Intent to Apply for Expanded Credit shall be filed with the council on or before June 30, 2015, for a credit under KRS 171.3961.

(b)

1. Part 1 and Part 2 may be filed after rehabilitation has commenced, but an applicant who begins rehabilitation prior to receiving Part 2 certification **shall assume**~~[assumes]~~ the risk that certification may be denied.

2. If rehabilitation has commenced prior to receiving Part 2 certification, the applicant **shall**~~[is required to]~~ check a corresponding box on the Part 2 form that may prompt an inspection by council staff to determine level of completeness.

3. If it is determined that demolition **or**~~[and/or]~~ rehabilitation has progressed beyond the point **at which**~~[where]~~ "meaningful consultation" can be carried out, the council shall notify the applicant within thirty (30) days of inspection that a foreclosure on the agency's opportunity to comment on the rehabilitation plan has occurred and the application is closed.

4. Application ~~[Any application]~~ or review fees that have been paid **shall**~~[may]~~ be refunded.

5. A taxpayer may appeal a determination of foreclosure**.**

a. An appeal shall be submitted by filing an appeal in writing within thirty (30) days of notification to the council board.

b. The council board shall either confirm the determination or reverse the determination **based on compliance with this administrative regulation,**with instructions to return the application to council staff for standard processing and review.

c. The council shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is considered at the regularly scheduled council meeting **if**~~[where]~~ a quorum is present.

(c) Part 3 and Summary of Investment and Election of Credit shall be filed with the council after the completion date of a completed rehabilitation project for a final determination of credit.

(9) If at any stage an application is not approved by the council, the rehabilitation project shall not qualify as a certified rehabilitation for purposes of the Act.

Section 3. Certifications of Historic Significance-Part 1.

(1) Application. The Certification Application Part 1-Evaluation of National Register Status form shall be **~~[timely]~~**filed with the council for certification of historic significance.

(a) Property individually listed in the National Register of Historic Places. Individually listed property shall be considered a certified historic structure for purposes of the Act subject to confirmation by the council**based of compliance with the requirements established in this administrative regulation**. The following information shall be provided by the applicant:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces to ensure that the listed property has not lost the characteristics **that~~[which]~~** caused it to be listed on the National Register of Historic Places;
4. Descriptions of all the buildings within the listing if the property contains more than one (1) building for the purpose of determining which of the buildings are of historic significance to the property;
5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;
6. Brief statement of significance summarizing how the property reflects the values that give its distinctive historical and visual character, and explaining any significance attached to the property itself;
7. A copy of a map indicating where the subject property is located. If an individually-listed property is also located in a historic district listed in the National Register of Historic Places, a copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district shall also be included; and
8. Signatures of owners requesting confirmation of listing in the National Register of Historic Places or concurring in the request if the owners are not the applicants.

(b) Property located in a historic district listed in the National Register of Historic Places. **If the property is located in historic district listed in the National Register of Historic Places,** an applicant shall request that the property be certified by the council as a historic structure contributing to the significance of a historic district**and provide the~~[. The following information shall be provided]~~**:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Name of historic district;
4. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces, and photographic documentation of adjacent properties and structures on the street showing significance to the historic district;
5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;
6. Brief statement of significance summarizing how the property reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself;
7. A copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the

district; and

8. Signatures of owners requesting certification or concurring in the request if the owners are not the applicants.

(2) Multiple structures. A property containing more than one (1) building shall be treated as a single certified historic structure if the council determines that the buildings have been **functionally related**~~[functionally-related]~~ historically to serve an overall purpose, whether the property is individually listed in the National Register or is located within a registered historic district. Buildings that are functionally related historically shall be those **that**~~[which]~~ have functioned together to serve an overall purpose during the property's period of significance.

(3) Standards for evaluating significance.

(a) In addition to the existing National Register documentation, an application for certification of historic significance shall contain documentation with information about the significance of the specific buildings and structures.

(b) A property located within a historic district listed in the National Register of Historic Places shall be evaluated for contribution to the historic significance of the district by applying the ~~[following]~~standards **established in subparagraphs 1. through 3. of this paragraph.**~~[:]~~

1. A property contributing to the historic significance of a district shall be a property **that**~~[which]~~ by location, design, setting, materials, workmanship, **concept**~~[feeling]~~, and association adds to the district's sense of time and place and historical development**.**~~[;]~~

2. A property not contributing to the historic significance of a district shall be a property **that**~~[which]~~ does not add to the district's sense of time and place and historical development; or **a property in which**~~[where]~~ the location design, setting, materials, workmanship, **concept**~~[feeling]~~ and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost**.**~~[; and]~~

3. If the building was built within the past fifty (50) years, it shall not be considered to contribute to the significance of a district, unless a strong justification concerning its historical or architectural merit is given or the historical attributes of the district are considered to be less than fifty (50) years old.

(c) An evaluation of historic significance shall be made based upon the appearance and condition of the property before rehabilitation was begun.

(d) The qualities of a property and its environment **that**~~[which]~~ qualify it as a certified historic structure shall be determined taking into account all available information, including information derived from the physical and architectural attributes of the building, and shall not be limited to information contained in the National Register nomination reports.

(e) If a nonhistoric surface material obscures a façade, it may be necessary to remove the surface materials prior to requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the historic district, it shall be determined to be a certified historic structure.

(4) Review of Part 1 Applications.

(a) A complete and adequately-documented Certification Application Part 1-Evaluation of National Register Status form shall be reviewed by the council to determine if the property contributes to the historic significance of the district by applying the standards established in subsection (3) of this section.

(b) After consideration of the information contained in the application and other available information, the council shall approve the application if:

1. The property meets the standards for evaluating for significance established in subsection (3) of this section; or

2. The director confirms that the property is individually listed in the National Register of Historic Places.

(5)

(a) If the application is not adequate to complete the review, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) The applicant's failure to respond **shall**~~[may]~~ result in ~~[denial of]~~the application**being closed**.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) An applicant shall notify the council of any substantial damage, alteration, or changes to a property that occurs after issuance of a Certification of Part 1-Evaluation of National Register Status. The council may, upon thirty (30) days written notice to the applicant, withdraw a certification of historic significance and may seek to have the property removed from the National Register under 36 C.F.R. 800.

Section 4. Certifications of Rehabilitation-Part 2.

(1) Applications.

(a) A Certificate of Application Part 2-Description of Rehabilitation form shall be ~~[timely]~~filed with the council for certification that a rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(b) A rehabilitation project shall be done according to a rehabilitation plan.

(c) The burden shall be upon the applicant to supply sufficient information to the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation **established in subsection (2) of this section**.

(d) An application shall include the~~[following information]~~:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Designation of whether the application is for owner-occupied residential property or other property;

4. Information sufficient to establish the proposed use of the structure;

5. **Adjusted** ~~[The adjusted]~~ basis for the property if other than owner-occupied residential or owned by an exempt entity;

6. Proposed starting date and completion date;

7. Projected qualified rehabilitation expenses;

8. Numbered photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment before rehabilitation that correspond to numbered positions on existing plans;

9. **Taxpayer** ~~[The taxpayer]~~ identification number or Social Security number;

10. Written detailed description of existing features and their conditions, and a written description of proposed rehabilitation work and the impact on existing features;

11. Plans for any attached, adjacent, or related new construction, if applicable; and

12. Signatures of owners requesting certification or concurring in the request if the owners are not the applicant.

(2) Standards for rehabilitation.

(a) The standards for rehabilitation shall be the criteria used to determine if the rehabilitation qualifies as a certified historic rehabilitation. Rehabilitation shall be

consistent with the historic character of the structure or structures and, if applicable, the district in which it is located.

(b) A rehabilitation project shall meet all of the standards for rehabilitation established in this paragraph.

1. 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.

2. 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.

3. Each property shall be recognized as a physical record of its time, place, and use. A change that creates a false **impression~~[sense]~~** of historical development, such as adding a conjectural feature or architectural element from another building, shall not be undertaken.

4. Changes to the property that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated architectural features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing architectural features shall be substantiated by documentary, physical, or pictorial evidence.

7. 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.

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources shall be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the 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.

10. 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)

1. The quality of materials, craftsmanship, and related new construction in rehabilitation shall match the quality of materials, craftsmanship, and design of the historic structure~~[in question]~~.

2. Certain treatments, if improperly applied, or certain materials by their physical properties, **can~~[may]~~** cause or accelerate physical deterioration of historic buildings, and use of these treatments or materials shall result in denial of certification.

3. The burden shall be upon the applicant to consult with the council for a determination as to what rehabilitation measures are appropriate for the structure.

4. Inappropriate rehabilitation measures on historic properties shall include:

a. ~~[1.]~~ Improper masonry repointing materials and techniques;

b. ~~[2.]~~ Improper exterior masonry cleaning methods;

c. ~~[3.]~~ Improper introduction of insulation if damage to historic fabric would result; and

d. ~~[4.]~~ Incompatible additions and new construction.

(d) The council may consider the dismantling and rebuilding of a portion of a certified historic structure to stabilize and repair weakened structural members and systems as a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;
2. Significant architectural features and overall design are retained; and
3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(3) Substantial rehabilitation. A rehabilitation project shall be a substantial rehabilitation only if the requirements of KRS 171.396(9) and (10) are met. To determine **if**~~[whether]~~ a rehabilitation project is a substantial rehabilitation, the conditions established in this subsection shall apply.

(a) Increases to the adjusted basis of the structure shall include capital improvements to the structure, legal fees incurred for perfecting title, and zoning costs. Any depreciation previously claimed for the structure shall be subtracted from this figure.

(b) If a cost only partially qualifies as an eligible rehabilitation expense because some of the cost is attributable to the enlargement of the building, the expenditures shall be apportioned proportionately between the original portion of the building and the enlargement.

(c) In addition to the expenses listed in KRS 171.396(9), qualified rehabilitation expenses shall include:

1. The cost of work done to structural components of the building within the footprint of the historic structure if **the components**~~[they]~~ are permanent;
2. Costs related to new heating, plumbing, and electrical systems, as well as expenses related to updating kitchens and bathrooms, compliance with the Americans with Disabilities Act of 1990**,** ~~[(]~~42 U.S.C. 12101~~[),]~~ and fire suppression systems and fire escapes; and
3. The cost of architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs, if those costs are added to the basis of the property.

(d) In addition to the exclusions listed in KRS 171.396(9), qualified rehabilitation expenses shall not include the construction costs for a new building, parking lot, or sidewalk.

(4) Review of Part 2 Applications.

(a) A complete and adequately documented Certification Application Part 2- Description of Rehabilitation shall be reviewed by the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation**established in subsection (2) of this section**. Applicants that do not meet this standard **shall**~~[will]~~ be notified via email and given **ten (10)**~~[10]~~ days to submit missing elements; otherwise, the project **shall**~~[will]~~ be placed on hold and removed from the allocation pool until KHC certifies that the Part 2 constitutes a complete and adequately documented application.

(b) After consideration of the information contained in the application and other available information, the council shall issue a preliminary certification of rehabilitation if the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(5)

(a) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in subsection (2) of this section, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) An applicant's failure to respond **shall**~~[may]~~ result in denial of the application.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) Changes to rehabilitation plans. Once a rehabilitation plan has been approved by the council, an applicant may only make substantive changes in the work **stated**~~**[described]**~~ in the application by:

(a) Filing a Certification Application-Continuation/Amendment form with the council; and

(b) Receiving notification from the council that the revised plan continues to meet the standards of rehabilitation established in subsection (2) of this section and is a substantial rehabilitation.

Section 5. Certifications of Rehabilitation-Part 3 Completed Work.

(1) Application. Upon completion of a rehabilitation project, an applicant shall file a Certification Application Part 3-Request for Certification of Completed Work form with the council for final certification of rehabilitation. An application shall include the~~**[following information]**~~:

(a) Names and mailing addresses of owners;

(b) Name and address of property;

(c) Designation of whether the application is for owner-occupied residential property or other property;

(d) Actual starting date and completion date;

(e) Actual qualified rehabilitation expenses;

(f) Photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment during and after rehabilitation;

(g) **Taxpayer** ~~**[The taxpayer]**~~ identification number or Social Security number; and

(h) Signatures of owners or a representative authorized to sign on behalf of the owner requesting certification.

(2) Summary of Investment and Election of Credit. In addition to filing a Certification Application Part 3-Request for Certification of Completed Work form, the applicant shall file a Summary of Investment and Election of Credit form with the council. The Summary of Investment and Election of Credit shall include the~~**[following]**~~:

(a) Names and mailing addresses of the owners;

(b) Name and address of the property;

(c) Actual costs attributed to the rehabilitation work;

(d) Signatures of the owners or a representative authorized to sign on behalf of the owner;

(e) Notarization of the signatures if the property is an owner-occupied residence or, for all other property, compilation by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and

(f) An irrevocable election by the taxpayer to:

1. Use the credit, in which case, the credit shall be refundable; or

2. Transfer the credit, pursuant to KRS 171.397(8).

(3) Scope of review.

(a)

1. Rehabilitation shall encompass all work on the interior and exterior of the certified historic structure or structures and the site and environment, ~~**[as determined by the council,]**~~as well as related demolition, new construction, or rehabilitation work **that could**~~**[which may]**~~ affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure.

2. Conformance to the standards of rehabilitation established in Section 4(2) of this administrative regulation shall be determined on the basis of application

documentation and other available information by evaluating the property as it existed prior to the commencement of rehabilitation.

(b) A phased rehabilitation project shall not be **authorized~~[permitted]~~**. Starting April 30, 2022, a Part 2 application **shall~~[may]~~** not be submitted if a building has already received a Part 2 allocation from a previous year that has not yet been certified or if the owner has not relinquished that allocation in writing.

(c) Portions of a completed rehabilitation project that are not in conformance with the standards for rehabilitation shall not be exempted and **shall~~[may]~~** result in denial of the Certification Application Part 3-Request for Certification of Completed Work.

(4) Review of Part 3 Applications. A complete and adequately documented Certification Application Part 3 - Request for Certification of Completed Work shall be reviewed by the council for a determination that the completed rehabilitation project is a certified rehabilitation and a determination of the final amount of credit approved. The council shall issue a final certification of rehabilitation if~~[all the following requirements have been met]~~:

(a) All elements of the completed rehabilitation project meet the standards for rehabilitation as established in Section 4(2) of this administrative regulation;

(b) The completed rehabilitation project was a substantial rehabilitation; and

(c) Part 3 was filed with the council after the completion date.

(5) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in Section 4(2) of this administrative regulation, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application. Applicant's failure to respond **shall~~[may]~~** result in denial of the application. The council's notification or failure to notify shall not constitute a waiver or alteration of time limitations established under the Act.

Section 6. Recapture of Preliminary Tax Credit Allocation For Credits Under KRS 171.397.

(1) Notice of Recapture. For tax credits under KRS 171.397, if an owner fails to obtain a Certification of Completed Work within thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax credit, the director shall mail to the owner written notice of recapture of the preliminary tax credit allocation.

(2) Objection.

(a) If the owner objects to the recapture of the preliminary allocation of tax credit, the owner shall file written notice of objection accompanied by a supporting statement **establishing~~[setting forth]~~** grounds for objection within forty-five (45) days of the date of the notice of recapture.

(b) If the owner does not timely object, the preliminary tax credit allocation shall be recaptured by the council and added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(3) Reinstatement. Within thirty (30) days of receipt of the owner's notice of objection, the council shall review the objection and determine if the owner has provided reasonable grounds as established in subsection (5) of this section to reinstate the preliminary allocation.

(a) If the council determines that the preliminary tax credit allocation shall be reinstated, the:

1. Council shall give the owner written notice that the preliminary tax credit allocation has been reinstated for an additional twenty-four (24) months;

2. Owner shall pay a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable; and

3. Owner shall obtain a **signed Part 3-Request for** Certification of Completed Work **(TC-3 form)** on or before the expiration of twenty-four (24) months. If the owner

fails to obtain a Certification of Completed Work or fails to request an extension under subsection (4) of this section, the council shall initiate recapture of the preliminary tax credit allocation under the procedures established in this section.

(b) If the council determines that the preliminary tax credit allocation shall not be reinstated:

1. The council shall give the owner written notice that the preliminary tax credit allocation has not been reinstated;

2. The owner shall be given thirty (30) days from the date of the notice that the preliminary tax credit allocation has not been reinstated to file an appeal, pursuant to Section 8 of this administrative regulation; and

3. If the owner fails to file a timely appeal, pursuant to Section 8 of this administrative regulation:

a. The preliminary allocation shall not be reinstated;

b. The preliminary tax credit allocation shall be recaptured by the council; and

c. The preliminary tax credit allocation shall be added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(4) Extension of Preliminary Tax Credit Allocation.

(a) At any time prior to expiration of thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax, an owner may request in writing that the preliminary tax credit allocation be extended for a period of twenty-four (24) months if the**owner**:

1. **Provides** ~~**[Owner Provides]**~~ written documentation of reasonable grounds established in subsection (5) of this section for an extension; and

2. **Pays** ~~**[Owner Pays]**~~ a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable.

(b) Prior to the expiration of the twenty-four (24) month extension, the owner may request another extension under the procedures established in this subsection. There shall not be a limit on the number of extensions that an owner may request.

(5) Grounds for Reinstatement or Extension.

(a) Reasonable grounds shall be documentation of on-going efforts to obtain financial, legal, material, or physical resources necessary to complete the rehabilitation project or documentation that the delay in completion of the rehabilitation project is necessary and unavoidable.

(b) Reasonable grounds shall not include casualty loss or demolition to the extent that the structure no longer qualifies as a certified historic structure, inability to qualify as a substantial rehabilitation, or inability or unwillingness to perform work conditioned by the council and necessary to qualify the project as a certified rehabilitation.

(c) The number of prior reinstatements or extensions shall not be a factor in determining if a reinstatement or extension shall be granted.

Section 7. Inspection. The director or an authorized representative of the council shall be **authorized**~~**[permitted]**~~ to conduct an inspection of the property at any time up to three (3) years after the council has issued a Certification of Completed Work to determine if the work meets the standards for rehabilitation established in Section 4(2) of this administrative regulation.

Section 8. Appeal. A taxpayer may appeal a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act**. An appeal shall be filed**~~**[by filing an appeal]**~~ in writing, in care of the council, to the director or a reviewing officer designated by the director to hear an appeal.

(1) An appeal shall be made within thirty (30) days of the date of receipt of the determination being appealed.

(2) The director or the reviewing officer shall decide, based solely upon the record developed by the council, if the council:

(a) Reached incorrect conclusions of law;

(b) Made clearly erroneous factual findings;

(c) Did not consider relevant facts; or

(d) Abused the discretion available to that person.

(3) The director's or reviewing officer's decision shall:

(a) Confirm the determination;

(b) Reverse the determination **due to**~~**[on account of]**~~ incorrect conclusions of law; or

(c) Remand the matter to the council for further proceedings.

(4) The director or reviewing officer shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

(5) If the appeal is decided by a reviewing officer and the reviewing officer affirms the determination, the taxpayer may appeal the reviewing officer's determination in writing to the director**. An appeal shall be**~~**[,]**~~ pursuant to this subsection.

(a) An appeal to the director shall be filed within the time period established in subsection (1) of this section.

(b) The director shall use the same standards of review established in subsection (2) of this section.

(c) The director shall:

1. Confirm the decision of the reviewing officer;
2. Reverse the determination **due to**~~**[on account of]**~~ incorrect conclusions of law; or
3. Remand the matter to the council for further proceedings.

(d) The director shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

Section 9. Revocation of Owners' Certifications.

(1) If, after obtaining final certification of rehabilitation, the council determines that the rehabilitation was not undertaken as represented by the owner in the applications, amendments, or supporting documentation, or the owner upon obtaining final certification undertook disqualifying work, the council may revoke a certification by giving written notice to the owner.

(2) The owner may file an appeal, pursuant to Section 8 of this administrative regulation.

(3) If the owner fails to file a timely appeal, the final certification of rehabilitation shall be revoked.

Section 10. Fees for Processing Rehabilitation Certification Requests.

(1)

(a) Payment of fees for review of Parts 2 and 3 shall be filed with the council **with**~~**[when]**~~ applications~~**[are filed]**~~ and **shall be**~~**[are]**~~ nonrefundable.

(b) Certification shall not be issued until the appropriate remittance is received.

(c) Payment shall be made by check or money order payable to the Kentucky State Treasurer.

(2) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests of owner-occupied residential property, commercial**,** and other buildings shall be charged in accordance with the **table established in this subsection**~~**[following schedule]**~~. If a Part 2 application is denied, there shall not be a charge for a Part 3 review.

Rehabilitation Costs for Owner-Occupied Residences, Commercial and Other Buildings	Part 2 Review Fee	Part 3 Review Fee

$20,000 - $50,000	$150.00	$150.00
$50,001 – 100,000	$250.00	$250.00
$100,001 - $250,000	$375.00	$375.00
250,001 - $500,000	$500.00	$500.00
$500,001 - $6,000,000	.15% of estimate eligible costs and expenses	.15% of estimate eligible costs and expenses
Over $6,000,000	$9,000.00	$9,000.00

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certification Application Part 1-Evaluation of National Register Status", KHC Form TC-1, Rev. 2022;

(b) "Certification Application Part 2-Description of Rehabilitation", KHC Form TC-2, Rev. 2022;

(c) "Certification Application Part 3-Request for Certification of Completed Work", KHC Form TC-3, Rev. 2022;

(d) "Certification Application-Continuation/Amendment", KHC Form TC-2a, Rev. 2022;~~[and]~~

(e) "Summary of Investment and Election of Credit", KHC Form TC-4, Rev. 2022;**and**

(f) Intent to Apply for Major Rehabilitation, KHC Form TC-00, Rev. 2022;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 410 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material is also available on the Council's Web site at https://heritage.ky.gov/historic-buildings/rehab-tax-credits/Pages/guides.aspx.

(48 Ky.R. 3130, 49 Ky.R. 1062; eff. 1-31-2023.)

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