ARTICLE 23. STATE HISTORIC REHABILITATION TAX CREDIT

Rule 1. Administration

312 IAC 23-1-1 Administration by division of historic preservation and archeology
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 1. (a) This article governs the administration of the state historic rehabilitation tax credit established by IC 6-3.1-16.
(b) This article is administered by the division.
(c) In administering this article, the division shall consult with the revenue department whenever appropriate. *(Natural Resources Commission; 312 IAC 23-1-1; filed Nov 4, 1999, 10:04 a.m.: 23 IR 548)*

312 IAC 23-1-2 Delegation and responsibility for establishing requirements of this article
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 2. (a) Where this article grants authority to the division to take action, the division director may delegate the authority to any employee of the division.
(b) The responsibility for establishing any requirement contained in this article rests with the person seeking the state historic rehabilitation tax credit. Except as otherwise provided in this section, the division shall determine whether the responsibility has been met. *(Natural Resources Commission; 312 IAC 23-1-2; filed Nov 4, 1999, 10:04 a.m.: 23 IR 548)*

312 IAC 23-1-3 Review of initial determinations by the division of historic preservation and archeology
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 4-21.5-1-5; IC 6-3.1-16; IC 14-21-1

Sec. 3. (a) An affected person who is dissatisfied with a determination by the division made under this article may, within thirty (30) days of the determination, appeal to the review board. The appeal shall be considered and determined by the review board as soon as is practicable.
(b) An affected person may, under IC 4-21.5 and 312 IAC 3-1, take administrative review of a determination made by the review board under subsection (a).
(c) The commission is the ultimate authority, as defined by IC 4-21.5-1-5, for an action taken under this article. *(Natural Resources Commission; 312 IAC 23-1-3; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)*

Rule 2. Definitions

312 IAC 23-2-1 Application of definitions
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 1. The definitions in this rule apply throughout this article. *(Natural Resources Commission; 312 IAC 23-2-1; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)*

312 IAC 23-2-2 "Division" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 2. "Division" means the division of historic preservation and archeology of the department. *(Natural Resources Commission; 312 IAC 23-2-2; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)*

312 IAC 23-2-3 "Division director" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 3. "Division director" means the director of the division. *(Natural Resources Commission; 312 IAC 23-2-3; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)*

312 IAC 23-2-4 "Historic property" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 4. "Historic property" means any historic site, historic structure, or other personal or real property located on or in a historic site or historic structure. *(Natural Resources Commission; 312 IAC 23-2-4; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)*

312 IAC 23-2-5 "Historic site" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 5. "Historic site" means any site that is important to the general, archeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. A historic site includes any adjacent property that is necessary to the preservation or restoration of the site. *(Natural Resources Commission; 312 IAC 23-2-5; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)*

312 IAC 23-2-6 "Historic structure" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 6. "Historic structure" means any structure that is important to the general, archeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. A historic structure includes any adjacent property that is necessary to the preservation or restoration of the structure. *(Natural Resources Commission; 312 IAC 23-2-6; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)*

312 IAC 23-2-7 "Paving and landscaping costs" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 7. "Paving and landscaping costs" means costs incurred in paving and landscaping that are unrelated to sustaining vegetative cover that contributes to the significance of the historic property. *(Natural Resources Commission; 312 IAC 23-2-7; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)*

312 IAC 23-2-8 "Preservation" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 8. "Preservation" means the application of measures to sustain the form, integrity, and material of:
(1) a building or structure; or
(2) vegetative cover that contributes to the significance of the property.
(Natural Resources Commission; 312 IAC 23-2-8; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)

312 IAC 23-2-9 "Qualified expenditures" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 9. "Qualified expenditures" means the expenditures for preservation or rehabilitation that are chargeable to a capital account. The term does not include costs that are incurred to do the following:
(1) Acquire a property or an interest in a property.
(2) Pay taxes due on a property.
(3) Enlarge an existing structure.
(4) Pay realtor's fees associated with a structure or property.
(5) Pay paving and landscaping costs.
(6) Pay sales and marketing costs.
(Natural Resources Commission; 312 IAC 23-2-9; filed Nov 4, 1999, 10:04 a.m.: 23 IR 549)

312 IAC 23-2-10 "Receipt" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 10. "Receipt" means the date when a document is actually received by the division at the address set forth in 312 IAC 23-3-1. *(Natural Resources Commission; 312 IAC 23-2-10; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)*

312 IAC 23-2-11 "Register" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1-9; IC 14-21-1-15

Sec. 11. "Register" means the register of Indiana historic sites and historic structures established under IC 14-21-1-9. *(Natural Resources Commission; 312 IAC 23-2-11; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)*

312 IAC 23-2-12 "Rehabilitation" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 12. "Rehabilitation" means the process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving the parts or features of the property that are significant to the historical, architectural, or archeological values of the property. *(Natural Resources Commission; 312 IAC 23-2-12; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)*

312 IAC 23-2-13 "Revenue department" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 6-8.1-2-1; IC 14-21-1

Sec. 13. "Revenue department" means the Indiana department of state revenue established under IC 6-8.1-2-1. *(Natural Resources Commission; 312 IAC 23-2-13; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)*

312 IAC 23-2-14 "Review board" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1-10; IC 14-21-1-20

Sec. 14. "Review board" means the historic preservation review board established under IC 14-21-1-10. *(Natural Resources Commission; 312 IAC 23-2-14; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)*

312 IAC 23-2-15 "State fiscal year" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 15. "State fiscal year" means the period beginning on July 1 of a year and ending on June 30 of the following year. *(Natural Resources Commission; 312 IAC 23-2-15; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)*

312 IAC 23-2-16 "State historic rehabilitation tax credit" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 16. "State historic rehabilitation tax credit" means the credit to state tax liability provided by IC 6-3.1-16. *(Natural Resources Commission; 312 IAC 23-2-16; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)*

312 IAC 23-2-17 "State tax liability" defined
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-2.1; IC 6-3; IC 6-3.1-1-2; IC 6-3.1-16; IC 14-21-1

Sec. 17. "State tax lability" means a taxpayer's total tax liability incurred under:
(1) IC 6-2.1 (the gross income tax);
(2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax); and
(3) IC 6-3-8 (the supplemental net income tax);
as computed after the application of all credits that under IC 6-3.1-1-2 are to be applied before the credit provided by IC 6-3.1-16 and this article. *(Natural Resources Commission; 312 IAC 23-2-17; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)*

Rule 3. Certification by Division of Historic Preservation and Archeology

312 IAC 23-3-1 Certifications to qualify for the historic rehabilitation tax credit
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16-8; IC 14-21-1

Sec. 1. (a) This rule establishes standards for certifications by the division that are required in order for a person to qualify for the state historic rehabilitation tax credit.
(b) To receive the certifications required by IC 6-3.1-16-8, a person must file a written application with the division that satisfies the requirements of IC 6-3.1-16 and this article.
(c) The application must be made on a division form that is filed after February 14, 1994. The division form may require an applicant to provide information at different stages of the process.
(d) The address for filing is as follows:
Division of Historic Preservation and Archeology
Department of Natural Resources
Indiana Government Center-South
402 West Washington Street, Room W274
Indianapolis, Indiana 46204.
(Natural Resources Commission; 312 IAC 23-3-1; filed Nov 4, 1999, 10:04 a.m.: 23 IR 550)

312 IAC 23-3-2 General eligibility requirements for an historic property to receive the historic rehabilitation tax credit
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16; IC 14-21-1

Sec. 2. In order to qualify for the certifications required for the state historic rehabilitation tax credit, an applicant must

demonstrate to the division each of the following:

(1) The historic property is listed on the register.

(2) The historic structure that is the subject of rehabilitation contains at least two thousand (2,000) gross square feet on the ground floor. This information shall be submitted with a drawing of the floor plan that includes its dimensions.

(3) The historic structure is at least fifty (50) years old. Originals or photocopies of the following documentation may be used to establish age:

(A) Historic property surveys or inventories that indicate the age of the historic structure.

(B) Articles from newspapers or periodicals that are dated to confirm the age of the historic structure.

(C) Construction records.

(D) Original architectural drawings.

(E) Other documents or records approved by the division.

(4) With respect to any measure to sustain the significant vegetative cover of the property, the measure sustains the cover in a way that preserves its significance to the property. Preservation of a vegetative cover that does not contribute to the significance of the property cannot be included in the qualified expenditure calculation.

(5) Preservation or rehabilitation is performed under a plan approved by the division under section 3 of this rule.

(Natural Resources Commission; 312 IAC 23-3-2; filed Nov 4, 1999, 10:04 a.m.: 23 IR 551)

312 IAC 23-3-3 Preservation or rehabilitation plan

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31

Affected: IC 6-3.1-16; IC 14-21-1

Sec. 3. (a) To qualify for the state historic rehabilitation tax credit, an applicant must submit to the division a preservation or rehabilitation plan before beginning preservation or rehabilitation work on the historic property.

(b) Before approving a plan submitted under subsection (a), the division must determine the plan complies with each of the following:

(1) This article.

(2) The Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR 68).

(3) The Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings (1995).

(c) Application for the state credit must be made on a federal tax credit certification application form under the Tax Reform Act of 1986 (P.L.99-514) and must be accompanied by a supplemental state form approved by the division.

(d) Following a review of the preservation or rehabilitation plan, the division shall make a determination to approve the plan, approve the plan with conditions, or reject the plan. A determination under this subsection is subject to review under 312 IAC 23-1-2.

(e) After the completion of a preservation or rehabilitation project approved under subsection (d), the applicant must seek certification by the division that the project was performed according to the plan and this article. The applicant must include documentation to establish that the project was completed within the following periods:

(1) Except as provided in subdivision (2), two (2) years after beginning the physical work of construction or destruction in preparation for construction.

(2) Five (5) years after beginning the physical work of construction, or destruction in preparation for construction if the approved plan authorized that the preservation or rehabilitation be completed in phases.

(3) Not more than three (3) years before receipt of the documentation by the division.

(f) The division shall grant a certification sought under subsection (e) if the project complies with the terms and conditions of the plan. Subject to section 4 of this rule, the grant of a certification under this subsection qualifies the applicant to seek the state historic rehabilitation tax credit from the revenue department. A determination under this subsection to grant or deny certification is subject to review under 312 IAC 23-1-2. *(Natural Resources Commission; 312 IAC 23-3-3; filed Nov 4, 1999, 10:04 a.m.: 23 IR 551)*

312 IAC 23-3-4 Annual limitation on total state tax credits; maximum credit for each application; queue for qualified taxpayers

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 6-3.1-16-14; IC 14-21-1

Sec. 4. (a) The total amount of historic rehabilitation tax credits that may be allowed under this article, for each state fiscal year, cannot exceed the amount stated in IC 6-3.1-16-14.

(b) No person shall receive a tax credit in excess of one hundred thousand dollars ($100,000) for an application approved under this article.

(c) Applications for a tax credit shall be accepted beginning on February 15, 1994, by the division. No application shall qualify for a tax credit until the project work has been certified by the division as provided in section 3(e) and 3(f) of this rule. The division shall place each application certified under section 3(e) and 3(f) of this rule in a queue.

(d) Subject to subsections (a) and (b), an application placed in a queue qualifies for a twenty percent (20%) historic rehabilitation tax credit. The division shall notify those applicants in the queue who have qualified for credits, and the revenue department, of both of the following:

(1) The amount of credit to which each applicant is entitled.

(2) The state fiscal year in which the applicant may claim the credit.

(e) Subject to subsections (a) and (b), certified applications in the queue that follow those qualified for credits in the current year shall receive credits in the following state fiscal year, up to the annual limitation described in IC 6-3.1-16-14. The same pattern shall be repeated in each subsequent state fiscal year.

(f) If the result of an applicant receiving a credit under subsection (d) or (e) would be to exceed the annual cap, the excess is allowed as part of the amount eligible for credits in the following state fiscal year.

(g) A person placed in the queue under 310 IAC 24-3, before its repeal, shall maintain entitlement to the same order in the queue and the same amount of credit as if 310 IAC 24-3 had not been repealed. *(Natural Resources Commission; 312 IAC 23-3-4; filed Nov 4, 1999, 10:04 a.m.: 23 IR 551)*

312 IAC 23-3-5 Modification of tax credits

Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 4-21.5; IC 6-3.1-16-14

Sec. 5. (a) The division may, for misrepresentation, fraud, or similar good cause, file a complaint with the commission under IC 4-21.5 to modify or terminate a tax credit previously approved under this rule.

(b) The division shall, by administrative letter, modify a tax credit certification to conform the credit to a subsequent statutory change to IC 6-3.1 (or the amount of the annual credit authorized by IC 6-3.1). A modification under this subsection may accelerate or defer when a credit can be taken but shall not modify the sequence of the queue referenced in section 4(g) of this rule. *(Natural Resources Commission; 312 IAC 23-3-5; filed Oct 9, 2001, 4:34 p.m.: 25 IR 708)*

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