

# FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

## TITLE 17. LIBRARIES AND CULTURAL RESOURCES

### DEPARTMENT OF HISTORIC RESOURCES

**Title of Regulation:** 17 VAC 10-30. Historic Rehabilitation Tax Credit (adding 17 VAC 10-30-10 through 17 VAC 10-30-160).

**Statutory Authority:** §§ 10.1-2202 and 58.1-339.2 of the Code of Virginia.

**Effective Date:** April 5, 2006.

**Agency Contact:** Virginia E. McConnell, Manager, Office of Preservation Incentives, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391 or e-mail virginia.mcconnell@dhr.virginia.gov.

#### Summary:

*The regulations formally implement enabling legislation for the Virginia Historic Rehabilitation Tax Credit program. They will provide clear guidance to Virginia taxpayers about eligibility for the program, application requirements and procedures, review standards, appeal procedures, and coordination with the federal Certified Historic Rehabilitation program. The only substantial change from the proposed regulations specifically disallows the credit for expenditures that are made by government agencies or are financed by an obligation of the Commonwealth.*

#### CHAPTER 30.

#### HISTORIC REHABILITATION TAX CREDIT.

#### 17 VAC 10-30-10. Definitions.

*The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:*

*"Certified historic structure" means a building listed on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks Register, or certified by the Director of the Department of Historic Resources as meeting the criteria for listing on the Virginia Landmarks Register. Portions of buildings, such as single condominium apartment units, are not independently eligible for certification. Rowhouses, even with abutting or party walls, are eligible for certification.*

*"Certified rehabilitation" means any rehabilitation of a certified historic structure that is certified by the Department of Historic Resources as consistent with The Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67).*

*"Completion year" means the calendar year in which the last eligible rehabilitation expense is incurred or the final certificate of occupancy (if appropriate) is issued.*

*"Department" means the Virginia Department of Historic Resources.*

*"Eligible rehabilitation expenses" means expenses incurred [ by a taxpayer ] in the material rehabilitation of a certified historic structure and added to the property's capital account.*

*"Historic district" means any district listed on the Virginia Landmarks Register by the Historic Resources Board according to the procedures specified in Chapter 22 (§ 10.1-2200 et seq.) of Title 10.1 of the Code of Virginia.*

*"Inspection" means a visit by an authorized representative of the Department of Historic Resources to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.*

*"Material rehabilitation" means improvements or reconstruction consistent with The Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67), the cost of which amounts to at least 50% of the assessed value of the building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which case the cost shall amount to at least 25% of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses. Material rehabilitation does not include enlargement or new construction.*

*"Owner" means 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 of Taxation for purposes of the applicable tax benefits.*

*"Owner-occupied building" means any building, at least 75% of which is used as a personal residence by the owner, or which is available for occupancy by the owner for at least 75% of the year.*

*"Plan of rehabilitation" means a plan pursuant to which a certified historic structure will be materially rehabilitated.*

*"Property" means a building and its site and landscape features.*

*"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 which are significant to its historical, architectural, and cultural values as determined by the Department of Historic Resources.*

---

# Final Regulations

---

"Standards for Rehabilitation" means The Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67), established by the United States Department of the Interior.

"Start of rehabilitation" means the date upon which the taxpayer applies for the building permit for the work contemplated by the plan of rehabilitation, or the date upon which actual work contemplated by the plan of rehabilitation begins.

"Virginia Landmarks Register" means the list of historic landmarks, buildings, structures, districts, objects, and sites designated by the Virginia Landmarks Board, in accord with the procedures specified in Chapter 22 (§ 10.1-2200 et seq.) of Title 10.1 of the Code of Virginia.

## **17 VAC 10-30-20. Introduction to certifications of significance and rehabilitation.**

A. Individuals, estates, partnerships, trusts, or corporations may apply for certification of historic significance and certification of rehabilitations.

B. Requests for certifications of historic significance and of rehabilitations shall be made on the Historic Preservation Certification Application forms. Part 1 of the application, Evaluation of Significance, is used to request certification of historic significance. Part 2 of the application, Description of Rehabilitation, is used to request certification of a proposed rehabilitation project. Part 3 of the application, Request for Certification of Completed Work, is used to request certification of a completed rehabilitation project. If a rehabilitation project is completed before preparing Part 2 of the application, the applicant shall prepare Parts 2 and 3 simultaneously.

C. The Historic Preservation Certification Application forms are available from the Department of Historic Resources.

D. The department generally completes reviews of certification requests within 30 days of receiving a complete, adequately documented application. Where adequate information is not provided, the department will notify the applicant of the additional information needed to complete the review. The department will adhere to this time period as closely as possible, but it is not mandatory, and the failure to complete a review within the designated period does not waive or alter any certification requirement. Expedited review of projects is available upon request as set forth in 17 VAC 10-30-80.

E. Certifications are only given in writing by duly authorized officials of the Department of Historic Resources. Decisions with respect to certifications are made on the basis of the information contained in the application form and other available information.

## **17 VAC 10-30-30. Certifications of historic significance.**

A. Any property owner may consult with the Department of Historic Resources to determine whether a property is listed individually on the Virginia Landmarks Register, or whether a property is located within a historic district that is listed on the Virginia Landmarks Register.

B. Properties listed individually on the Virginia Landmarks Register are certified historic structures.

C. For properties located in registered historic districts, the applicant shall request that the Department of Historic Resources determine whether the property is of historic significance to the district. The applicant shall prepare Part 1 of the Historic Preservation Certification Application form according to the instructions accompanying the application, including:

1. Name and mailing address of the owner;
2. Name and address of the property;
3. Name of the historic district;
4. Current photographs of the building and its site, showing exterior and interior features and spaces adequate to document the property's significance;
5. Brief description of the appearance of the property, including alterations, characteristic features, and estimated date or dates of construction;
6. Brief statement of significance, summarizing how the property reflects the recognized historic values of the historic district;
7. Map showing the location of the property within the historic district; and
8. Signature of the owner requesting certification.

D. Properties containing more than one building, where the department determines that the buildings have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, will be treated as a single certified historic structure, whether the property is individually listed in the Virginia Landmarks Register or is located within a registered historic district. Buildings that are functionally related historically are those that have functioned together to serve an overall purpose during the property's period of significance.

E. Properties within registered historic districts will be evaluated to determine if they contribute to the historic significance of the district by application of the standards set forth in 17 VAC 10-30-40.

F. Owners of properties that are not listed on the Virginia Landmarks Register may request a determination from the department as to whether the property meets the criteria for listing on the Virginia Landmarks Register. The department will provide written notification to the applicant of determinations of eligibility. Individual properties determined by the department to be eligible for listing in the Virginia Landmarks Register are certified historic structures.

G. Owners of properties that are located in potential historic districts may request preliminary determinations from the department as to whether the potential historic district meets the criteria for listing on the Virginia Landmarks Register. Owners of properties located in districts determined to be eligible for listing may apply for preliminary certification of their properties, as specified in 17 VAC 10-30-40. Applications for preliminary certification of buildings within

eligible historic districts must show how the district meets the criteria for listing on the Virginia Landmarks Register, and how the property contributes to the significance of that district, as specified in 17 VAC 10-30-40. Preliminary certifications will become final, and the properties will become certified historic structures, as of the date of listing the district on the Virginia Landmarks Register. Issuance of preliminary certification does not obligate the department to nominate the potential district. Applicants proceed with rehabilitation projects at their own risk; if the historic district is not listed in the Virginia Landmarks Register, the preliminary certification will not become final.

H. Owners of properties that have received preliminary certifications may apply for certification of rehabilitation projects, as specified in 17 VAC 10-30-50. Final certifications of rehabilitations will be issued only for certified historic structures.

I. A request for certification of historic significance may be submitted by an applicant who is not the owner of the property in question. In such cases, the applicant shall include a signed statement from the owner acknowledging the request for certification.

J. The Department of Historic Resources discourages the moving of historic buildings from their original sites. Under certain circumstances the relocation of historic buildings may be part of a historic rehabilitation project that can be certified. Building owners are advised that the relocation of a building that is listed in the Virginia Landmarks Register may result in removal of the building from the Register. The relocation of a building that has been determined eligible for listing in the Virginia Landmarks Register may result in the loss of its eligibility. The relocation of a historic building into, from, or within a historic district or to or from an individual property listed in the Virginia Landmarks Register, or that has been found eligible for listing, may result in removal of the district or property from the Register, loss of the eligibility of the district or property, or loss of the moved building's contributing status within the district or as part of the property. For historic rehabilitation projects involving moved buildings, the following procedures apply:

1. When a building is to be moved as part of a historic rehabilitation project for which certification is sought, the owner shall contact the department prior to moving the building, and shall follow procedures specified by the department. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment. In certain special cases, when there is adequate documentation about the building before its relocation and about the moving process, it may be possible to certify historic rehabilitation projects involving moved buildings when participation of the department prior to the move did not occur. However, this approach is not recommended, and owners pursue it at their own risk.

2. For individual properties and properties in historic districts not listed in the Virginia Landmarks Register or not previously found eligible for listing, prior to the move the owner shall submit Part 1 of the historic rehabilitation

application to the department, according to subsections C, F, and G of this section.

3. For individual properties and properties in historic districts listed in the Virginia Landmarks Register or found eligible for listing, prior to the move the owner shall submit documentation to the department to determine whether the move is likely to result in the loss of listing or loss of eligibility for listing. Guidance on the type of documentation required can be obtained from the department.

4. Following the relocation of the building and its installation on a new site, reevaluation of the building will be necessary to determine whether it can become a certified historic structure. The owner shall submit Part 1 of the historic rehabilitation application to the department, according to subsections C, F, and G of this section, presenting information about the building in its new location.

5. The relocation of a historic building into, from, or within a listed or eligible historic district, or to or from an individually listed or eligible property, may result in alterations to the boundary definitions of the district or property, and will change the inventory of buildings in the district or on the individual property. The applicant for certification of the historic rehabilitation project involving building relocation will be responsible for amending the district or property information and nomination accordingly, following guidance provided by the department.

## **17 VAC 10-30-40. Standards for evaluating significance within registered historic districts.**

A. Some properties listed in the Virginia Landmarks Register, primarily historic districts, are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures. These usually are documented as a group rather than individually. Accordingly, this type of documentation is not conclusive for the purposes of this part. The applicant shall supplement this documentation using Part 1 of the Historic Preservation Certification Application, providing information on the significance of the specific property, as set forth in 17 VAC 10-30-30 C.

B. The Department of Historic Resources evaluates properties located within registered historic districts to determine if they contribute to the historic significance of the district by applying the following standards:

1. A property contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, 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 is one that does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

3. Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the

---

# Final Regulations

---

significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

C. Certifications of significance will be made on the appearance and condition of the property before the beginning of the rehabilitation work.

D. If a nonhistoric surface material obscures a building's facade, it may be necessary for the owner to remove a portion of the surface material before requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured facade has retained substantial historic integrity and the property otherwise contributes to the significance of the historic district, it will be determined to be a certified historic structure.

## **17 VAC 10-30-50. Certifications of rehabilitation.**

A. Applicants requesting certification of rehabilitation projects shall comply with the procedures listed below. A fee, described in 17 VAC 10-30-80, is charged by the Department of Historic Resources for reviewing all proposed, ongoing, and completed rehabilitation work. No certification decisions shall be issued to any applicant until the appropriate remittance is received. Applicants may request the department's review before, during, or after completion of a rehabilitation project. Applicants are strongly encouraged to request the department's review before beginning a rehabilitation project.

1. To request review of a rehabilitation project, the project applicant shall submit Part 2 of the Historic Preservation Certification Application form according to the instructions accompanying the application. Documentation, including photographs adequate to document the appearance of the structure, both on the interior and the exterior, and its site and environment before rehabilitation, shall accompany the application. Other documentation, including plans, specifications, and surveys, may be required to evaluate certain rehabilitation projects. Where necessary documentation is not provided, review and evaluation may not be possible and a denial of certification will be issued on the basis of lack of information. Because the circumstances of each rehabilitation project are unique, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by applicants as applicable to other projects.

2. To request certification of a completed rehabilitation project, the applicant shall submit Part 3 of the Historic Preservation Certification Application, "Request for Certification of Completed Work," according to the instructions accompanying the application, and provide documentation that the completed project is consistent with the work described in Part 2. This documentation includes but is not limited to:

- a. Name and mailing address or addresses of the owner or owners;
- b. Name and address of the property;

c. Photographs of the property showing the completed rehabilitation work, including exterior and interior features and spaces, sufficient to demonstrate that the completed work is consistent with the standards for rehabilitation;

d. Assessed value of the building in the year preceding the start of rehabilitation;

e. Final costs attributed to the rehabilitation work;

f. When rehabilitation expenses exceed \$100,000, certification by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and

g. Signature of the applicant.

B. Each rehabilitation project shall be done according to a plan of rehabilitation. Although the department has not set any formal requirements for a plan of rehabilitation, every plan shall include, at a minimum, the name of the owner of the property, the location of the property, and a description of the proposed, ongoing, or completed rehabilitation project. A plan of rehabilitation must provide the department with sufficient information to determine whether the rehabilitation qualifies for certification. The burden is on the applicant to supply sufficient information for the department to make a determination.

C. A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure or structures and its site and environment, as well as related demolition, new construction or rehabilitation work that may affect the historic qualities, integrity, site, landscape features, and environment of the property.

1. All elements of the rehabilitation project shall be consistent with the standards for rehabilitation, as set forth in 17 VAC 10-30-60. Portions of a project that are not in conformance with the standards may not be exempted. In general, an applicant undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project, or rehabilitation work that was undertaken by previous owners.

2. Conformance to the standards will be determined on the basis of the application documentation and other available information by evaluating the property as it existed before the beginning of the rehabilitation project.

D. The department, on receipt of the complete application describing the rehabilitation project, shall determine if the project is consistent with the standards for rehabilitation. If the project does not meet the standards, the department shall advise the applicant of that fact in writing. Where possible, the department will advise the project applicant of necessary revisions to meet the standards.

E. Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application shall be brought promptly to the attention of the department by written statement to ensure continued conformance to the standards.

F. An authorized representative of the department may inspect projects to determine if the work meets the standards for rehabilitation. The department reserves the right to make inspections at any time up to three years after completion of the rehabilitation and to revoke a certification, after giving the applicant 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented in the application and supporting documentation. The tax consequences of a revocation of certification will be determined by the Department of Taxation. [ However, certification shall not be revoked for changes that are determined to have been made following good-faith completion of the project. ]

## **17 VAC 10-30-60. Standards for rehabilitation.**

A. The standards for rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified historic rehabilitation. The intent of the standards is to promote the long-term preservation of a property's significance through the preservation of historic materials and features. The standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a rehabilitation project shall be determined by the Department of Historic Resources to be consistent with the historic character of the structure or structures and, where applicable, the district in which it is located.

B. The standards for rehabilitation shall be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

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. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes 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. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the old in design, color, texture, and other visual qualities and, where possible, materials.

Replacement of missing architectural features must 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 must 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. The quality of materials, craftsmanship, and related new construction in a rehabilitation project should be commensurate with the quality of materials, craftsmanship, and design of the historic structure in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate rehabilitation measures include, but are not limited to: improper masonry repointing techniques; improper exterior masonry cleaning methods; improper introduction of insulation where damage to historic fabric would result; and incompatible additions and new construction on historic properties. In almost all situations, these measures and treatments will result in denial of certification.

D. In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In these cases, the Department of Historic Resources will consider this extreme intervention as part of 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.

E. The qualities of a property and its environment which qualify it as a certified historic structure are determined taking into account all available information, including information derived from the physical and architectural attributes of the building; these determinations are not limited to information contained in the Virginia Landmarks Register nomination reports.

# Final Regulations

## 17 VAC 10-30-70. Appeals.

A. A project applicant may appeal any denial of certification. A request for an appeal shall be made in writing to the Director of the Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia 23221, within 60 days of receipt of the decision that is the subject of the appeal. It is not necessary for the applicant to present arguments for overturning a decision within this 60-day period. The applicant may request an opportunity to meet with the director, but all information that the applicant wishes the director to consider shall be in writing. The director shall consider the record of the decision in question, any further written submissions by the applicant, and other available information, and may consult with experts or others as appropriate. The director shall provide the applicant a written decision as promptly as circumstances permit. The appeal process is an administrative review of decisions made by the department; it is not an adjudicative proceeding.

B. In considering appeals, the director may take into account new information not previously available or submitted; alleged errors in professional judgment; or alleged prejudicial procedural errors. The director's decision may:

1. Reverse the appealed decision;
2. Affirm the appealed decision; or
3. Resubmit the matter to the department program staff for further consideration.

C. The decision of the director shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his administrative remedies with respect to the certifications or decisions described in this part until the director has issued a final administrative decision in response to this section.

## 17 VAC 10-30-80. Fees for processing rehabilitation certification requests.

A. Fees are charged for reviewing rehabilitation certification requests in accordance with the following schedule:

Rehabilitation Costs	Part 2 Review Fee	Part 3 Review Fee
Less than \$50,000	Fee waived	\$100
\$50,000 - \$99,999	\$250	\$250
\$100,000 - \$499,999	\$400	\$400
\$500,000 - \$999,999	\$750	\$750
\$1 million or more	\$1,500	\$1,500

B. The department generally completes reviews of certification requests within 30 days of receiving a complete, adequately documented application. Upon request, [ if the current workload at the department permits, ] the department will review complete, fully documented applications within five days. [ The director reserves the right to refuse requests for expedited review if the current workload at the department so warrants. ] Fees are charged for such expedited review in accordance with the following schedule:

Rehabilitation Costs	Expedited Review Fee
Less than \$50,000	\$100
\$50,000 - \$99,999	\$250
\$100,000 - \$499,999	\$400
\$500,000 - \$999,999	\$750
\$1 million or more	\$1,500

C. Payment of fees for review of Parts 2 and 3 shall be made to the Department of Historic Resources when the applications are submitted. Certification decisions will not be issued until the appropriate remittances are received. Payment of fees for expedited review shall be submitted with the request for expedited review, and review shall not commence until such fee is paid. Fees are nonrefundable [ , except in cases where the request for expedited review is refused ].

D. In general, each rehabilitation of a separate certified historic structure will be considered a separate project for purposes of computing the size of the fee.

## 17 VAC 10-30-90. Forms.

Applications for certifications of buildings and rehabilitation projects are made with the Historic Preservation Certification Application, prepared by the Department of Historic Resources. The forms are available from the department.

## 17 VAC 10-30-100. Definition of rehabilitation project.

A. A certified historic structure shall be treated as having been materially rehabilitated only if the eligible rehabilitation expenses (as defined in 17 VAC 10-30-110) incurred in a 24-month period selected by the taxpayer ending with or within the completion year shall equal or exceed 50% of the assessed value of the building for local real estate tax purposes, determined for the year before the start of rehabilitation, unless the building is an owner-occupied building, in which case the eligible rehabilitation expenses shall amount to at least 25% of the assessed value of the building for local real estate tax purposes for the year before the start of rehabilitation.

B. In the case of any rehabilitation that may reasonably be expected to be completed in phases set forth in a plan of rehabilitation submitted contemporaneously with the Description of Rehabilitation, subsection A of this section shall be applied by substituting "60-month period" for "24-month period." A rehabilitation may reasonably be expected to be completed in phases if it consists of two or more distinct stages of development. The department may review each phase as it is presented, but a phased project cannot be designated a certified rehabilitation until all of the phases are completed. The applicant may elect to claim the credit allowable for each completed phase of a phased project, upon receipt from the department of written approval of the work completed for each phase. Any such initial claims will be contingent upon final certification of the completed project.

## 17 VAC 10-30-110. Eligible rehabilitation expenses.

A. Eligible rehabilitation expenses are those expenses incurred [ by a taxpayer ] in connection with a plan of rehabilitation on or after January 1, 1997, in the material

rehabilitation of a certified historic structure and added to the property's capital account.

B. Once the material rehabilitation test is met, the eligible rehabilitation expenses upon which a credit can be claimed include:

1. Expenses incurred prior to the start of the 24-month measuring period as defined in 17 VAC 10-30-100 A, provided that the expenses were incurred in connection with the rehabilitation process that resulted in the material rehabilitation of the building;
2. Within the measuring period as defined in 17 VAC 10-30-100 A; and
3. After the end of the measuring period as defined in 17 VAC 10-30-100 A but prior to the completion of the project.

C. Amounts are properly chargeable to capital account if they are properly includable in computing the basis of real property under U.S. Department of the Treasury, Internal Revenue Code, Reg. § 1.46-3(c). Amounts treated as an expense and deducted in the year paid or incurred or amounts that are otherwise not added to the basis of real property do not qualify. Amounts incurred for [ historic preservation consultant fees, ] architectural and engineering fees, site fees and other construction-related costs that are added to the basis of real property satisfy this requirement.

D. Certain expenses are not eligible rehabilitation expenses. These expenses are:

1. The cost of acquiring a building, any interest in a building (including a leasehold interest) or land. Interest incurred on a construction loan the proceeds of which are used for eligible rehabilitation expenditures (and which is added to the basis of the property) is not treated as a cost of acquisition.
2. Any expense attributable to an enlargement of a building.
  - a. A building is enlarged to the extent that the total volume of the building is increased. An increase in floor space resulting from interior remodeling is not considered an enlargement.
  - b. If expenditures only partially qualify as eligible rehabilitation expenditures because some of the expenditures are attributable to the enlargement of the building, the expenditures must be apportioned between the original portion of the building and the enlargement. The expenditures must be specifically allocated between the original portion of the building and the enlargement to the extent possible. If it is not possible to make a specific allocation of the expenditures, the expenditures must be allocated to each portion on a reasonable basis. The determination of a reasonable basis for an allocation depends on factors such as the type of improvement and how the improvement relates functionally to the building.

*Example:* A historic rehabilitation project includes a new rear wing. A new air-conditioning system and a new roof are installed on the building. A reasonable basis for allocating the expenditures among the two portions

generally would be the volume of the historic building (excluding the new wing), served by the air-conditioning system or the roof, relative to the volume of the new wing that is served by the air-conditioning system and the roof.

3. Any expense attributable to the rehabilitation of a certified historic structure, or a building located in a registered historic district, which is not a certified rehabilitation.
4. Any expense incurred before January 1, 1997.
5. Any expense not incurred by a taxpayer, including expenses incurred by a local government or any agency thereof, or by any agency, unit, or instrumentality of the Commonwealth.
6. Any rehabilitation expense financed, directly or indirectly, by an obligation of the Commonwealth of Virginia.

E. The taxpayer may take into account eligible rehabilitation expenses created in connection with the same plan of rehabilitation by any other entity with an interest in the building. Where eligible rehabilitation expenses are created with respect to a building by an entity other than the taxpayer and the taxpayer acquires the building or a portion of the building to which the expenses were allocable, the taxpayer acquiring such property will be treated as having incurred the eligible rehabilitation expenses actually created by the transferor, provided that no credit with respect to such qualified rehabilitation expenses is claimed by anyone other than the taxpayer acquiring the property.

F. A taxpayer who has incurred eligible rehabilitation expenses may elect to treat a tenant or tenants as having incurred these rehabilitation expenses, provided that the lease is for a term of at least five years. This election shall be made on the application for the certification of rehabilitation. For purposes of testing whether a rehabilitation is material, all eligible rehabilitation expenses will be counted. In the event the election is made to treat multiple tenants as having incurred rehabilitation expenses, the allocation of eligible rehabilitation expenses to these tenants shall be made in accordance with the relative square footage occupied by the tenants or the relative amounts of eligible rehabilitation expenses spent in connection with each tenant's space. Eligible rehabilitation expenses that are not readily allocable by specific space shall be allocated in a manner consistent with the allocation method chosen.

#### **17 VAC 10-30-120. Qualification for credit.**

Credits against tax shall be available for the material rehabilitation of a certified historic structure. Material rehabilitation means improvements or reconstruction consistent with the standards for rehabilitation, the cost of which amounts to at least 50% of the assessed value of the buildings for local real estate tax purposes for the year before the start of rehabilitation, unless the building is an owner-occupied building, in which case the cost shall amount to at least 25% of the assessed value of such building for local real estate tax purposes for the year before such rehabilitation expenses were incurred. An owner-occupied building is any building, at least 75% of which is used as a personal residence by the owner, or which is available for occupancy

---

# Final Regulations

---

by the owner for at least 75% of the year. The assessed value of the building for local real estate tax purposes does not include any assessment for land. The determination of whether a rehabilitation has been material shall be made at the entity level, not at the partner or shareholder level.

*Ex. 1. Certified historic structure has a 1996 tax assessment of \$20,000 for the land, \$80,000 for the building; and a 1997 assessment of \$20,000 for the land, \$70,000 for the building. Taxpayer submits a plan of rehabilitation on December 1, 1997. Taxpayer applies for a building permit for work to be done in accordance with the plan of rehabilitation on December 15, 1997. Taxpayer incurs eligible rehabilitation expenses in the amount of \$37,500 pursuant to the plan of rehabilitation. Rehabilitation is completed in 1999. Taxpayer is not entitled to a tax credit because taxpayer's eligible rehabilitation expenses (\$37,500) do not exceed 50% of the assessed value of the building in the year prior to the start of rehabilitation (\$40,000).*

*Ex. 2. Same facts as above, except taxpayer applies for the building permit on January 2, 1998. Eligible rehabilitation expenses (\$37,500) exceed 50% of the assessed value of the building in the year prior to the start of rehabilitation (\$35,000). Therefore, taxpayer is entitled to a credit of 20% (for completion in 1999) of \$37,500.*

## **17 VAC 10-30-130. Amount and timing of credit.**

A. The amount of the credit shall be determined by multiplying the total amount of eligible rehabilitation expenses incurred in connection with the plan of rehabilitation by 25%. Eligible rehabilitation expenses may include expenses in connection with the rehabilitation that were incurred prior to the start of rehabilitation. Further, eligible rehabilitation expenses may include expenses incurred prior to completion of a formal plan of rehabilitation provided the expenses were incurred in connection with the rehabilitation that was completed.

B. Complete, adequately documented Historic Preservation Certification Application forms must be received by the department within one year after the final expense is incurred or the final certificate of occupancy (if appropriate) is issued. Properties that do not meet the criteria for individual listing on the Virginia Landmarks Register must be located in registered historic districts by such date. Taxpayers are cautioned, however, that if Parts 1 and 2 of the Historic Preservation Certification Application forms are not submitted prior to beginning work on the rehabilitation, they proceed with the project at the risk that the building or the rehabilitation project will not be certified.

## **17 VAC 10-30-140. Entitlement to credit.**

A. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against tax in the manner and amount set forth in these regulations. Credits granted to a partnership, electing small business corporation (S corporation), or limited liability company shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated

among partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree.

The members, partners or shareholders at the end of the taxable year in which there is an entitlement to credit shall be allocated the state rehabilitation tax credits for which a project is certified.

B. The Department of Historic Resources shall certify the amount of eligible rehabilitation expenses. The certification shall consist of a letter signed by an authorized representative of the department confirming that the rehabilitated property is a certified historic structure and that the rehabilitation is a certified historic rehabilitation, and shall specify the amount of eligible rehabilitation expenses, based on the Request for Certification of Completed Work form. The department's certification shall make reference to any partnership, S corporation, or limited liability company allocation document, as defined in subsection A of this section. A person with an interest in the property who materially rehabilitates a certified historic structure may apply for a certificate of material rehabilitation. Persons with an interest in the property include those individuals or entities that have a possessory interest in the property. The application for issuance of a certificate shall set forth the name of the individual or entity that will utilize the credit on its tax return. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

C. If the amount of the credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the income taxes of such taxpayer for the next ten taxable years or until the full credit is used, whichever occurs first. For purposes of passthrough entities (e.g., general and limited partnerships, limited liability companies, S corporations) this paragraph shall be applied to the partners, members or shareholders, as applicable.

## **17 VAC 10-30-150. Transition rules for projects begun before 1997.**

A. Rehabilitation expenses incurred before January 1, 1997, do not qualify for a rehabilitation tax credit.

B. Applicants whose rehabilitation projects commenced before 1997, but were not completed until after January 1, 1997, may apply for certification of their rehabilitation work, in accordance with the provisions of 17 VAC 10-30-20, 17 VAC 10-30-30, and 17 VAC 10-30-50. In these cases, the tax credit is calculated as the appropriate percentage of expenses incurred on or after January 1, 1997.

C. For projects begun before January 1, 1997, the material rehabilitation test shall be determined by the entire project, rather than by those parts of the work completed on or after January 1, 1997.

## **17 VAC 10-30-160. Coordination with the federal certified historic rehabilitation program.**

A. Certifications of properties and rehabilitation projects by the National Park Service, U.S. Department of the Interior,



under Federal Law 36 CFR Part 67, are not equivalent to certification of properties and rehabilitation projects by the Virginia Department of Historic Resources under § 58.1-339.2 of the Code of Virginia, except as provided in subsection B of this section. Taxpayers are cautioned that deadlines and requirements for certifications under these state regulations may differ from deadlines and requirements for certifications under the federal program.

B. Certifications of historic significance of properties (Part 1, Historic Preservation Certification Application) by the National Park Service, U.S. Department of the Interior, dated after January 1, 1995, shall be accepted as equivalent of certification of historic significance by the Virginia Department of Historic Resources under the provisions of 17 VAC 10-30-20.

**NOTICE:** The forms used in administering 17 VAC 10-30, Historic Rehabilitation Tax Credit, are not being published due to the number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

*State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 1 - Evaluation of Significance, DHR Form TC-1 (rev. 8/02)*

*State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 2 - Description of Rehabilitation, DHR Form TC-2 (rev. 8/02)*

*State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Part 3 - Request for Certification of Completed Work, DHR Form TC-3 (rev. 8/02)*

*State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application Billing Statement, DHR Form TC-4 (rev. 10/03)*

*Disclosure of Ownership - State Historic Rehabilitation Tax Credit Program Historic Preservation Certification Application, DHR Form TC-5 (rev. 8/02)*

VA.R. Doc. No. R01-230; Filed February 9, 2006, 2:01 p.m.