

STATE OF RHODE ISLAND
THE DIVISION OF TAXATION

HISTORIC PRESERVATION INVESTMENT TAX CREDIT

Adopted by the Tax Division on April 15, 2008

EMERGENCY REGULATION

ARTICLE I FINDINGS

In response to the current fiscal budgetary crisis, the General Assembly enacted House Bill 8016 Sub A and Senate Bill 2846 Sub A, that make significant amendments to Rhode Island's Historic Preservation Investment Tax Credit under Chapter 33.2 of Title 44. These changes take effect immediately.

Because of imminent due dates for certain elections or actions under the amended statutes, the existence of previously certified tax credits, and the existence of pending applications for the tax credit, there is imminent peril to the public welfare in that some persons involved with ongoing projects may unknowingly fail to take necessary measures to properly certify tax credits and consequently declare tax deficiencies. It is further found that due to the current fiscal budgetary crisis and time constraints, an emergency rule or regulation needs to be promulgated without prior notice and hearing in order to advise affected persons as to how the changes in the tax credit will be implemented.

Accordingly, in accordance with R.I.G.L. §42-35-3(b) and R.I.G.L. §44-33.2-4(f), as amended by the General Assembly, the Tax Administrator of the Division of Taxation, Department of Revenue and the Executive Director of Historical Preservation and Heritage Commission (the Commission), hereby promulgate the following emergency regulation, on a joint basis, to implement the provisions of House Bill 8916 Sub A and Senate Bill 2846 Sub A.

ARTICLE II GENERAL OVERVIEW OF CHANGES

House Bill 8016 Sub A and Senate Bill 2846 Sub A divide projects into three (3) groups and afford them different treatment depending upon what stage the project has reached as of January 1, 2008.

1. All projects *placed in service prior to January 1, 2008* will receive the current 30% tax credit *provided that* their Part 3 applications are submitted to the Commission and processing fees paid to the Division of Taxation (Tax Division) on or before May 15, 2008. **Projects that fail to submit Part 3 application or fail to make payment by May 15, 2008 will not be eligible to receive tax credits.**

2. Most projects that are *already in progress* may continue but with a reduced credit amount and higher fee. Projects who have submitted *Part 1 of their application to the Commission prior to January 1, 2008* will have the option of continuing under the new rules.
 - Projects that wish to continue in the program must pay a processing fee ranging from 3% to 5% of Qualified Rehabilitation Expenditures, with **2.25% of Qualified Rehabilitation Expenditures due on or before May 15, 2008, and the balance due on or before March 5, 2009.**
 - Projects may opt for one of the following combinations of processing fees and tax credits:
 - i. 27% credit with a 5% processing fee
 - ii. 26% credit with a 4% processing fee
 - iii. 25% credit with a 3% processing fee
 - All projects continuing in the program will enter into a contract with the Tax Division stating the estimated amount of Qualified Rehabilitation Expenditures for the project, the tax credit percentage, and the amount of fees. The contract will constitute a State guaranty that the stated amount of tax credits will be available when earned. Projects will not be allowed to claim additional tax credits based on an increase in the Qualified Rehabilitation Expenditures. If final Qualified Rehabilitation Expenditures should be less than the amount stated in the contract, overpayment of fees will be refunded by the Tax Division.
 - Upon completion of the project, Part 3 of the application must be submitted to Commission for certification that the rehabilitation is consistent with specified standards and a detailed statement of costs, which must be certified by a certified public accountant licensed in Rhode Island, must be filed with the Tax Division.
3. A moratorium on new projects would go into effect as of January 1, 2008. Projects that submitted a Part 1 application to the Commission after December 31, 2007 will not be eligible for tax credits.

ARTICLE III DEFINITIONS

1. "Accountant's Certification" means the certification of a certified public accountant licensed in the State of Rhode Island containing the information required in the Application for a Certificate of Completed Work. The Accountant's Certification includes but is not limited to certification of the Adjusted Basis at the beginning of the Rehabilitation, Rehabilitation costs properly capitalized to the

building, and project costs incurred but not eligible for the Historic Preservation Investment Tax Credit such as costs for new construction and other costs not chargeable to capital account.

2. “Act” means Chapter 33.2 of Title 44 of the Rhode Island General Laws, as amended.

3. “Adjusted Basis” means the Owner’s basis in a building, adjusted by depreciation and other adjustments that impact basis, computed in accordance with federal income tax law. In general, adjusted basis is determined with reference to the cost of the building (excluding land) in the hands of the Owner at the time of acquisition, decreased by depreciation and other deductions that reduce basis, and increased by costs incurred in connection with the building and capitalized to the building, such as the cost of improvements to the building.

4. “Affiliate” means any entity controlling, controlled by or under common control with such person, firm, partnership, trust, estate, limited liability company, corporation (whether profit or non-profit) or other business entity that incurs Qualified Rehabilitation Expenditures for the substantial rehabilitation of a certified historic structure of some identifiable portion thereof.

5. “Allocation Agreement” means an executed agreement among all Participants of a Pass-Through Entity, or among all Owners of a building having multiple owners, setting forth the method for allocation of the Historic Preservation Investment Tax Credit agreed upon among the Participants or Co-owners. An Allocation Agreement may include, without limitation, a partnership agreement, an operating agreement of a limited liability company, a shareholders agreement, or any other instrument executed by all Participants or Co-owners.

6. “Applicant” means a Person submitting an application for a Commission determination under Article V hereof.

7. “Assignable Historic Preservation Investment Tax Credit Certificate” means a certificate issued by the Commission and/or Tax Division to the Owner of a Certified Historic Structure or an identifiable portion thereof who has incurred Qualified Rehabilitation Expenditures that have been approved by the Commission as consistent with the Standards for Rehabilitation, and which Qualified Rehabilitation Expenditures have been Placed in Service. If the Owner of the Certified Historic Structure is a Pass-Through Entity, an Assignable Historic Preservation Investment Tax Credit Certificate may be issued to each Participant in the Pass-Through Entity. The Certificate shall specify the amount of the Historic Preservation Investment Tax Credit allocable to such Participant, determined pursuant to this Regulation.

8. “Assignee” means a Person to whom the Historic Preservation Investment Tax Credit Certificate is assigned pursuant to this Regulation.

9. “Bills” means House Bill 8016 Sub A and Senate Bill 2846 Sub A which were enacted and signed in April of 2008. The Bills are effective upon passage.

10. “Certified Historic Structure” means a building which is located in the State of Rhode Island and is:

- (i) listed individually on the National Register of Historic Places;
- (ii) listed individually in the State Register of Historic Places; or
- (iii) located in a Registered Historic District and certified by either the Commission or Secretary of the Interior as being of historic significance to the district.

11. “Certified Rehabilitation” means any Rehabilitation of a Certified Historic Structure consistent with the historic character of such building or the district in which such building is located as determined by the Commission in accordance with the Standards for Rehabilitation.

12. “Certificate of Completed Work” means the written approval issued by the Commission that the Rehabilitation is consistent with the Standards for Rehabilitation.

13. “Certification of Proposed Rehabilitation” means the Certification issued by the Commission that the proposed Rehabilitation is consistent with the Standards for Rehabilitation.

14. “Commission” means the Rhode Island Historical Preservation and Heritage Commission created pursuant to Section 42-45-2.

15. “Contract” means a contract entered between Persons and the Tax Division, on behalf of the State, which guarantees that the stated estimated tax credits will be available when earned.

16. “Executive Director” means the Executive Director of the Commission.

17. “Exempt from Real Property Tax” means, with respect to any Certified Historic Structure, that the building is exempt from taxation pursuant to Section 44-3-3 of the Rhode Island General Laws.

18. “Historic Preservation Certification Application” means Parts 1, 2 and 3 of the Commission’s application forms for each stage of the certification process, as more fully set forth herein.

19. “Holding Period” means twenty-four (24) months after the Commission issues a Certificate of Completed Work to the Owner. In the case of a Rehabilitation reasonably expected to be completed in phases as described in Section 44-33.2-2(8) of the Rhode Island General Laws, “Holding Period” shall be extended to include a period of time beginning on the date of issuance of a Certificate of Completed Work for the first phase or phases for which a Certificate is issued and continuing until the expiration of twenty-four (24) months after the Certificate of Completed Work issued for the last phase.

20. “Initial Certificate Holder” means an Owner or Participant named by the Owner to receive the Historic Tax Credit Certificate.

21. “Inspection” means a visit by an authorized representative of the Commission or Tax Division to a property for the purposes of reviewing and evaluating the significance of the building and the proposed, ongoing or completed Rehabilitation work.

22. “Measuring Period” means the 24-month period selected by the Owner ending within the taxable year in which a Certified Historic Structure is Placed in Service. In the case of a Rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the Rehabilitation begins, this definition shall be applied by substituting “sixty (60) month period” for “twenty-four (24) month period.”

23. “Notification of Assignment” means the notification filed with the Division of Taxation of the assignment of all or a portion the State Historic Preservation Investment Tax Credit.

24. “Owner” means a Person or Persons who hold legal fee or leasehold title to the historic building or an identifiable portion thereof.

25. “Participant” means a partner in a partnership, member of limited liability company, shareholder of an S-corporation, beneficial owner of a trust, or any other Person having an interest in a Pass-through Entity.

26. “Pass Through Entity” means a partnership, limited liability company, S-corporation, association, nominee trust, or any other entity, the tax attributes of which are passed through to the Participants in such entity.

27. “Percentage Interest” means the Percentage Interest in the Historic Preservation Investment Tax Credit allocated to an Owner, a Participant, a

co-Owner of a multiple-Owner building or identifiable portion thereof, or another Person pursuant to the terms of the applicable Allocation Agreement.

28. “Person” means any person, partnership, firm, corporation, (including both business and non-profit corporations), limited liability company, trust, estate, association, or other business entity.

29. “Placed in Service” means that Substantial Rehabilitation work has been completed which would allow for occupancy of the entire building or some identifiable portion of the building, or the Owner has commenced depreciation of the Qualified Rehabilitation Expenditures, whichever occurs first. Issuance of a certificate of occupancy or similar permit authorizing occupancy of the entire building or some identifiable portion by the municipal authority having jurisdiction shall constitute sufficient evidence for purposes of the Act that the building or the identifiable portion thereof that is the subject of the certificate of occupancy has been placed in service. However, a building or identifiable portion thereof may be treated as Placed in Service without a certificate of occupancy if the building or identifiable portion thereof is placed in a condition or state of readiness and availability for a specifically defined function, or upon the commencement of the period for depreciation with respect to the building under the Owner’s depreciation practice, whichever occurs earlier.

30. “Principal Residence” means the principal residence of the Owner within the meaning of Section 121 of the Internal Revenue Code or any successor provision.

31. “Processing Fees” means any of the fees set forth, defined and imposed in Section 44-33.2-3(b) or Section 44-3.2-4(d) of the Act, as amended by the Bills.

32. “Qualified Rehabilitation Expenditures” means any amounts expended in the Rehabilitation of a Certified Historic Structure properly capitalized to the building and either (i) depreciable under the Internal Revenue Code, or (ii) made with respect to property (other than the principal residence of the Owner) held for sale by the Owner. Processing fees paid to the Division of Taxation are not Qualified Rehabilitation Expenses. Notwithstanding the foregoing, except in the case of a nonprofit corporation, there will be deducted from Qualified Rehabilitation Expenditures for the purposes of calculating the Historic Preservation Investment Tax Credit any funds made available to the Person incurring the Qualified Rehabilitation Expenditures in the form a direct grant from a federal, state or local governmental entity or agency or instrumentality thereof.

33. “Registered Historic District” means any district listed in the National Register of Historic Places or the State Register of Historic Places.

34. “Rehabilitation” means the preservation of a historic building, its component elements, and its structural system by means of repairs and/or selective replacement of worn out materials and alterations to the building generally which are consistent with the building’s documented historic appearance without destroying historically significant later additions.

35. “Standards for Rehabilitation” or “Standards” means the United States Secretary of the Interior’s Standards for Rehabilitation.

36. “State Register of Historic Places” means the state register of historical, architectural, and cultural sites, buildings, places, landmarks, or areas compiled by the Commission pursuant to Rhode Island General Laws 42-45-5. Properties are listed on the State Register in accordance with the Commission’s Procedures for Registration and Protection of Historic Properties.

37. “Substantial Rehabilitation” means, with respect to a Certified Historic Structure, that the Qualified Rehabilitation Expenditures incurred with respect to the Certified Historic Structure during the twenty-four (24) month period selected by the Owner ending within the taxable year in which the Certified Historic Structure is Placed in Service exceed fifty percent (50%) of the Adjusted Basis in such building and its structural components as of the beginning of such period. In the case of any Rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the Rehabilitation begins, the above definition shall be applied by substituting “sixty (60) month period” for “twenty-four (24) month period”.

38. “Tax Division” means the Rhode Island Division of Taxation.

37. “Trust Fund” means the Historic Preservation Tax Credit Trust fund created by Section 2 of the Bills. The Trust Fund is a fund outside the State’s general fund for the purpose of reserving funds for tax credits issued under the Act.

ARTICLE IV TAX CREDIT

Section 1. General. A Person that incurs Qualified Rehabilitation Expenditures for the Substantial Rehabilitation of a Certified Historic Structure certified in accordance with these Regulations is entitled to a credit against the tax imposed on such Person pursuant to Chapter 11, 12, 13 (other than the tax imposed under Section 44-13-13), 14, 17 or 30 of Title 44 of the Rhode Island General Laws. The Initial Certificate Holder or the Assignee of such Person may also claim the Credit in accordance with these Regulations.

Section 2. Amount of Credit.

- a. For Certified Historic Structures or some identifiable portion thereof that are Placed in Service prior to January 1, 2008, the Historic Preservation Investment Tax Credit is equal to thirty percent (30%) of the Qualified Rehabilitation Expenditures.
- b. For Certified Historic Structures or some identifiable portion thereof that are Placed in Service after December 31, 2007 for which a Part 1 Application was recorded as received by the Commission before January 1, 2008, the Historic Preservation Investment Tax Credit can range between twenty five percent (25%) and twenty seven percent (27%) of the Qualified Rehabilitation Expenditures depending upon the Contract entered into between the Person and the Tax Division.

Section 3. When Claimed. The Historic Preservation Investment Tax Credit shall be claimed for the year in which the Certified Historic Structure or an identifiable portion thereof is Placed in Service.

Section 4. Minimum Expenditure. In order to qualify for the Historic Preservation Investment Tax Credit, an Owner must meet the Substantial Rehabilitation test.

ARTICLE V. APPLICATION GUIDELINES.

Section 1. Certifications of Significance and Rehabilitation – General.

A. Application. Requests for designation of a building as a Certified Historic Structure and of a proposed Rehabilitation 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 as meeting the Standards for Rehabilitation. Part 2 of the application must be filed with the Commission prior to the Certified Historic Structure being Placed in Service. Part 3 of the application, Request for Certification of Completed Work, is used to request certification of a completed Rehabilitation project. The application process is administered jointly by the Commission and the Tax Division. Generally, the Part 1 and Part 2 Applications are reviewed by the Commission. Part 3 Applications are reviewed by the Commission in order to determine compliance with the Standards and by the Tax Division in order to determine the amount of Qualified Rehabilitation Expenditures. The Participant must also enter into a Contract with the Tax Division on or before May 15, 2008 in order to qualify for tax credits.

B. Forms. Application forms are available from the Commission at the Old State House, 150 Benefit Street, Providence, RI 02903; Tel: (401) 222-2678; website www.preservation.ri.gov. and from the Tax Division at One Capitol Hill, Providence, RI 02908; Tel. (401) 574-8729; website www.tax.ri.gov.

C. Coordination with Federal Filings. If the applicant also seeks to claim the federal Historic Rehabilitation Tax Credit, application may be made on Parts 1, 2 and 3 of the Historic Preservation Certification application used by the National Park Service, with such additional forms and certifications as may be requested by the Commission.

D. Commission Review. The Commission and the Tax Division generally completes reviews of certification requests within 30 business days of receiving a complete, adequately documented application. Where adequate information is not provided, the Commission and/or the Tax Division will notify the Applicant of the additional information needed to complete the review. The Commission and the Tax Division will adhere to this time period as closely as possible, but failure to complete a review within the designated period does not waive or alter any certification requirement or imply approval. Notwithstanding the foregoing, the Commission and/or the Tax Division must issue (i) a written determination either granting or denying a Certificate of Completed Work and (ii) a certification of the amount of Historic Preservation Investment Tax Credit for which the Substantial Rehabilitation qualifies within 90 days after receipt of a complete, adequately documented application for a Certificate of Completed Work.

E. Commission Decisions; Reliance on Application. Certifications are only given in writing by the Executive Director or other duly authorized representative of the Commission or the Tax Division. Decisions with respect to certifications are made on the basis of the information contained in the application form and other available information. The Applicant's signature on any application form is a representation to the Commission and the Tax Division that the facts contained therein are true and correct, and the Commission is entitled to rely thereon. If information comes to the attention of the Commission or the Tax Division at any time up to and including the last day of the applicable Holding Period, that is materially inconsistent with representations made in an application, the Commission may deny the requested certification or revoke a certification previously given or the Tax Division may terminate the Contract and any Processing Fees paid thereunder will be forfeited. Such denial or revocation may be appealed pursuant to the procedures set forth in Article V, Section 6.

Section 2. Certification of Historic Significance.

A. Consultation. Any Owner may consult with the Commission to determine whether a property is a Certified Historic Structure.

B. Part 1-Application for Certification of Historic Structure. The Applicant shall prepare Part 1 of the Historic Preservation Certification Application and such form shall be recorded as received at the Commission prior to January 1, 2008. Such application form shall be filed according to the instructions accompanying the application, including:

1. Name and mailing address of the Owner and, if the Owner holds leasehold title to the building or an identifiable portion thereof, the name and mailing address of the holder of the fee interest;
2. Name and address of the property;
3. Name of the historic district (if located in a historic district);
4. Current color 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(s) of construction;
6. Brief statement of significance, including a summary of how the property reflects the recognized historic values of any historic district in which it is located;
7. Map showing the location of the property; and
8. Signature of the Applicant.

C. Review of Application for Certification of Historic Structure.

1. Scope of Review. The Commission will determine if the property is:

- (i) listed individually on the National Register of Historic Places; or
- (ii) listed individually on the State Register; or
- (iii) located in a registered historic district and is of historic significance to the district.

2. Physical Integrity. The Commission will determine if the property possesses sufficient physical integrity to convey its historical significance.

3. Multiple Buildings or Complex. For purposes of a determination of historic significance, properties containing more than one building, where the

Commission 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 building, whether the property is individually listed in the National Register of Historic Places or the State Register of Historic Places or is located within a registered historic district. Buildings that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance.

4. Determination of Significance to District. 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 Section 3 of this Article V.

5. Preliminary Determination of Eligibility for Listing a Structure. Owners of properties that are not listed on the National Register of Historic Places or the State Register of Historic Places may request a written opinion from the Commission as to whether the property meets the criteria for listing on the Register. Owners of properties that the Commission considers to be eligible for listing may apply for preliminary certification of their properties, pursuant to Section 3 of this Article V. Preliminary certifications will become final, and the properties will become Certified Historic Structures, as of the date of listing on the National Register of Historic Places or the State Register. Issuance of preliminary certification does not obligate the Commission to nominate the property. Applicants proceed with Rehabilitation projects at their own risk; if the historic property is not listed prior to completion of the project, the preliminary certification will not become final.

6. Preliminary Determination of Eligibility for Registering a District. Owners of properties that are located in potential historic district may request a written opinion from the Commission as to whether the potential historic district meets the criteria for being listed as a Registered Historic District. Owners of properties located in districts that the Commission considers to be eligible for listing may apply for preliminary certification of their properties, pursuant to Section 3. Applications for preliminary certification of buildings within eligible historic districts must show how the district meets the criteria for being listed as a historic district, and how the property contributes to the significance of that district, pursuant to Section 3 of this Article V. Preliminary certifications will become final, and the properties will become Certified Historic Structures, as of the date of listing the district as a Registered Historic District. Issuance of preliminary certification does not obligate the Commission to nominate the potential district. Applicants proceed with Rehabilitation projects at their own risk; if the historic district is not listed as a Registered Historic District prior to completion of the project, the preliminary certification will not become final.

D. Application for Certification of Rehabilitation of Buildings in Districts with Preliminary Historic Certification. Owners of properties that have received preliminary certifications may apply for certification of a proposed Rehabilitation, pursuant to Section 4 of this Article V. Final certifications of Rehabilitations will be issued only for Certified Historic Structures.

Section 3. Standards for Evaluating Significance within Registered Historic Districts

A. Evaluations of Significance. Some historic districts are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and buildings. These usually are documented as a group rather than individually. Accordingly, this type of documentation is not conclusive for the purposes of an evaluation of the significance of an individual component. 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 Section 2(B) of this Article V.

B. Standards for Evaluation. The Commission 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 which 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 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. 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 may be determined to be a Certified Historic Structure.

Section 4. Certifications of Rehabilitation.

A. Certification of Proposed Rehabilitation or of Completed Work. Applicants requesting certification of a proposed Rehabilitation shall comply with the procedures listed in Paragraph 1 below; Applicants requesting a Certificate of Completed Work shall comply with the procedures listed in Paragraph 2, below. Processing Fees, described in Article IX, are charged by the Commission or the Tax Division for reviewing all proposed, ongoing, and completed Rehabilitation work. No certification decisions shall be issued to any Applicant until the applicable fees are received.

1. Part 2 – Application for Certification of Proposed Rehabilitation. An application for certification of a proposed Rehabilitation shall be submitted to the Commission prior to the Certified Historic Structure being placed in service. Applicants are strongly encouraged to request the Commission review before beginning a Rehabilitation project. To request review of a proposed Rehabilitation, the Applicant shall submit Part 2 of the Historic Preservation Certification Application form according to the instructions accompanying the application. This documentation includes but is not limited to:

- (i) Name and mailing address of the Owner and, if the Owner holds leasehold title to the Certified Historic Structure or an identifiable portion thereof, the name and mailing address of the holder of the fee interest;
- (ii) Name and address of the property;
- (iii) Color photographs of the property adequate to document the appearance of the building, both on the interior and the exterior, and its site and environment before Rehabilitation;
- (iv) The Applicant's estimate of projected Qualified Rehabilitation Expenditures and of Adjusted Basis in the Certified Historic Structure as of the date of application;
- (v) Signature of the Applicant and, if the Applicant is not the holder of the fee interest in the Certified Historic Structure, the signature of the fee owner as to the Adjusted Basis in the Certified Historic Structure as of the date of application.

Other documentation, including but not limited to plans, specifications, surveys and/or structural reports may be required to evaluate rehabilitation projects. Where necessary documentation is not provided, review and evaluation will be delayed and a denial of certification may be issued on the basis of lack of information. Because the circumstances of each Rehabilitation 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. Part 3 – Request for Certification of Completed Work. To request certification of a completed Rehabilitation, the Applicant shall submit Part 3 of the Historic Preservation Certification Application, “Request for Certification of Completed Work,” to the both the Commission and the Tax Division according to the instructions accompanying the application, and provide documentation to the Commission that the completed project is consistent with the work described in Part 2. In addition, the Applicant must submit additional detailed documentation for the final costs attributed to the Rehabilitation the Tax Division in a form prescribed by the Tax Administrator This documentation includes but is not limited to:

- (i) Name and mailing address of the Owner and, if the Owner holds leasehold title to the Certified Historic Structure or an identifiable portion thereof, the name and mailing address of the holder of the fee interest;
- (ii) Name and address of the property;
- (iii) Color 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*. Photographic views after Rehabilitation should correspond with photographic views submitted in Part 2;
- (iv) Final costs attributed to the Rehabilitation;
- (v) Accountant’s Certification of the actual Qualified Rehabilitation Expenditures attributed solely to the Rehabilitation of the Certified Historic Building and the satisfaction of the Substantial Rehabilitation Test;
- (vi) The Placed in Service date; and
- (vii) Signature of the Applicant.

3. Certification by Commission of Proposed Rehabilitation. The Commission shall issue to the Applicant a written determination either denying or certifying the Proposed Rehabilitation within the timeframe described in Article V, Section 1(D) hereof..

4. Certification of Completed Work. Within 90 days after the Commission's and the Tax Division's receipt of an application for Certification of Completed Work, the Commission and/or the Tax Division shall issue to the Applicant (i) a written determination either denying or certifying the Rehabilitation (a "Certificate of Completed Work") and (ii) a certification of the amount of Historic Preservation Investment Tax Credit for which the Rehabilitation qualifies (an "Assignable Historic Preservation Investment Tax Credit Certificate" pursuant to the procedures of Article VIII hereof).

B. Scope of Rehabilitation; Qualified Rehabilitation Expenditures. For purposes of Commission reviews and certification, a Rehabilitation project encompasses all work on the interior and exterior of the certified historic building(s) 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. The Commission will determine if such work is consistent with the standards for Rehabilitation whether or not a Credit is claimed for those costs. However, only those costs that constitute Qualified Rehabilitation Expenditures may be included in the calculation of the Historic Preservation Investment Tax Credit. The Commission and the Tax Division are entitled to rely on the Accountant's Certification regarding the Qualified Rehabilitation Expenditures actually incurred included with the Application without independent investigation. However, the Tax Division reserves the right to request additional documentation and supporting detail to verify Qualified Rehabilitation Expenditures, including but not limited to, the original documents of entry, vendor lists, payroll record, accounts, and other records.

1. All elements of the Rehabilitation project shall be consistent with the *Standards for Rehabilitation*. Portions of a project that are not in conformance with the Standards may not be exempted from review. In general, an Applicant undertaking a Rehabilitation will not be held responsible for rehabilitation work not part of the current project that occurred more than five years before the current project began, or Rehabilitation work not part of the current project that was undertaken by previous owners.

2. Consistency with the *Standards for Rehabilitation* 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.

C. Determination of Consistency with Standards for Rehabilitation. The Commission, 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 for Rehabilitation, the Commission shall advise the Applicant of that fact in writing. Where possible, the Commission will advise the Applicant of necessary revisions to meet the Standards for Rehabilitation.

D. Determination of Qualified Rehabilitation Expenditures. The Tax Division, upon receipt of the complete application describing the Rehabilitation Project, shall determine if the costs attributed to the Rehabilitation meet the criteria of Qualified Rehabilitation Expenditures. If any costs of a project are denied as Qualified Rehabilitation Expenditures, the Tax Division shall advise the Applicant of that fact in writing briefly setting forth the grounds for said denial.

E. Changes after Determination. 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 Commission and the Tax Division by written amendment to the application to ensure continued consistency to the *Standards for Rehabilitation*.

F. Standards for Rehabilitation. The *Standards for Rehabilitation* are the criteria used to determine if a Rehabilitation qualifies as a Certified Rehabilitation. The intent of the *Standards for Rehabilitation* is to return a historic property to a state of utility through repairs or alterations which make possible the efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values. The *Standards for Rehabilitation* 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 shall be determined by the Commission in its reasonable discretion to be consistent with the historic character of the building(s) and, where applicable, the district in which it is located.

G. Application of Standards for Rehabilitation. 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 buildings, 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.

H. Quality of Materials and Work. 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 Certified Historic Structure in question. This standard will be applied in a reasonable manner taking into account economic and technical feasibility. 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: excessively abrasive paint removal; 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.

I. Structural Matters. 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 Commission will consider this extreme intervention as part of a Certified 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.

These standards will be applied in a reasonable manner taking into account economic and technical feasibility.

Section 5. All Available Information Used in Determination. 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 State Register of Historic Places nomination reports.

Section 6. Appeals.

A. Appeal Procedures. An Applicant may appeal any denial or revocation of certification. A request for an appeal shall be made in writing to the Commission, within 60 days of receipt of the decision which 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 Commission or a Sub-Committee thereof, but all information that the Applicant wishes the Commission to consider shall be in writing. If the appeal disputes a determination of Qualified Rehabilitation Expenditures or other accounting or tax related issues, agents or employees of the Tax Division may be joined in the appeal to present written evidence and testimony on the issues. The Commission shall consider the record of the decision in question, and further written submissions by the Applicant, and other available information, and shall provide the Applicant a written decision as promptly as circumstances permit. The appeal process is an administrative review of decisions made by an authorized representative of the Commission.

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

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

C. Final Administrative Remedy. The decision of the Commission shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Commission has issued a final administrative decision in response to this section. The Commission shall notify the Tax Division in writing of any denial or revocation of a certification and of the final administrative decision on the appeal.

ARTICLE VI SUBSTANTIAL REHABILITATION; QUALIFIED REHABILITATION EXPENDITURES

Section 1. Substantial Rehabilitation.

A. A Rehabilitation of Certified Historic Structure shall be deemed a Substantial Rehabilitation only if the Qualified Rehabilitation Expenditures incurred in the 24-month period selected by the Owner ending within the taxable

year in which the Rehabilitation is Placed in Service shall equal or exceed fifty percent of the Adjusted Basis of the Certified Historic Structure as of the beginning of the 24-month period. In the case of projects involving multiple buildings (except for phased Rehabilitations addressed in Section B below), the Substantial Rehabilitation Test must be met with respect to each building separately based on the Adjusted Basis attributable to each such building and the Qualified Rehabilitation Expenditures attributable to each such building. The 24-month period is a measuring period for testing whether the Rehabilitation is a Substantial Rehabilitation. Qualified Rehabilitation Expenditures incurred in connection with the Rehabilitation either before the beginning of the 24-month period or after the Rehabilitation is Placed in Service but prior to the end of the taxable year in which the Rehabilitation is Placed in Service may be included in the calculation of the Credit provided the Substantial Rehabilitation Test is met.

B. In the case of any Rehabilitation that may reasonably be expected to be completed in phases set forth in architectural plans and specifications prepared before the physical work on the Rehabilitation begins, at the election of the Owner, paragraph (A) of this section may 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 Commission may review each phase as it is presented, and may issue a Certificate for Completed Work upon completion of each Phase. However, an Assignable Historic Preservation Investment Tax Credit Certificate may be issued only upon satisfaction of the Substantial Rehabilitation Test for the entire phased project. Thereafter, Assignable Historic Preservation Investment Tax Credit Certificates may be issued upon issuance of a Certificate of Completed Work for later phases without again having to meet the Substantial Rehabilitation Test. The Applicant may elect to claim the Credit allowable for each completed phase of a phased project, upon receipt from the Commission of an Assignable Historic Preservation Investment Tax Credit Certificate. Any Credit claimed prior to final certification of the completed Rehabilitation will be contingent upon final certification of the completed Rehabilitation.

Section 2. Qualified Rehabilitation Expenditures.

A. Qualified Rehabilitation Expenditures are those expenses incurred in connection with a Substantial Rehabilitation of a Certified Historic Structure that are properly capitalized to the building and either (i) depreciable under the Internal Revenue Code or (ii) made with respect to property (other than the Principal Residence of the Owner) held for sale by the Owner.

B. Amounts are properly capitalized to the building if they are properly includible in computing the depreciable basis of real property under federal income tax law. 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 soft costs, including without limitation architectural and engineering fees, survey fees, legal expenses, insurance premiums, development fees and other construction related costs that are added to the depreciable basis of real property satisfy this requirement.

C. Expenses that do not qualify as Qualified Rehabilitation Expenditures include, without limitation:

1. The cost of acquiring a building, an interest in a building (including a leasehold interest) or land. For this purpose, interest incurred on a construction loan, the proceeds of which are used for Qualified Rehabilitation Expenditures (and which is added to the basis of the Certified Historic Building) is not treated as a cost of acquisition.

2. Any expense attributable to an enlargement of a building. 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. If expenditures only partially qualify as Qualified 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: 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 between the historic building and the new rear wing generally would be the volume of the historic building (excluding the new wing), served by the air-conditioning system on 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 site work expenses.

5. Any costs of demolition of adjacent structures.

6. Processing Fees imposed under Section 44-32.2-3(b) and Section 44-33.2-4(d) the Act.

D. Public Grants. Except in the case of nonprofit corporations, there shall be deducted for purposes of calculating the Historic Preservation Investment Tax Credit any funds made available to the Person incurring the Qualified Rehabilitation Expenditures in the form of a direct grant from a federal, state or local governmental entity or agency or instrumentally thereof.

Section 3. Step in the Shoes. The Owner may take into account Qualified Rehabilitation Expenditures incurred in connection with the same plan of Rehabilitation by any other Person who has or had an interest in the building. Where Qualified Rehabilitation Expenditures are incurred with respect to a building by a Person (or Persons) other than the Owner, and the Owner acquires the building or a portion of the building (including a leasehold interest in the building or a portion thereof) to which the expenditures were allocable, the Owner acquiring such property will be treated as having incurred the Qualified Rehabilitation Expenditures actually incurred by the transferor, provided that (i) the Rehabilitation was not Placed in Service by the transferor and (ii) no Credit with respect to such Qualified Rehabilitation Expenditures is claimed by anyone other than the Owner acquiring the property or that Owner's Assignee(s). In such instances, the Measuring Period during which the Substantial Rehabilitation Test must be met shall include the transferor's period of ownership, and the Adjusted Basis against which Qualified Rehabilitation Expenditures are tested shall be the Adjusted Basis of the transferor as of the beginning of the Measuring Period.

ARTICLE VII DETERMINATION OF CREDIT

A. The amount of the Credit shall be determined by multiplying the total amount of Qualified Rehabilitation Expenditures incurred in connection with the plan of Rehabilitation times thirty percent. Qualified Rehabilitation Expenditures may include expenses in connection with the Rehabilitation which were incurred prior to the start of Rehabilitation or of the Measuring Period. Further, Qualified Rehabilitation Expenditures may include expenses incurred prior to completion of a formal plan of Rehabilitation provided the expenses were incurred in connection with the Rehabilitation which was completed.

B. The Commission and/or the Tax Division shall certify the amount of Qualified Rehabilitation Expenditures in the Certificate of Completed Work. In the case of multiple building projects, a Certificate of Completed Work shall be issued for each building. The Certificate shall be signed by an authorized representative of the Commission and/or the Tax Division confirming that the property to be rehabilitated is a Certified Historic Structure; that the Rehabilitation is a Certified Rehabilitation; and specifying the amount of Qualified Rehabilitation Expenditures, based on the Request for Certification of Completed Work.

C. The Tax Division shall also issue an Assignable Historic Preservation Investment Tax Credit Certificate, which shall certify as to the amount of Historic Preservation Investment Tax Credit for which the Substantial Rehabilitation qualifies as more fully provided in Article VIII.

D. The Commission and/or the Tax Division may rely without independent investigation on the Accountant's Certification as to the amount of Qualified Rehabilitation Expenditures actually incurred and the satisfaction of Substantial Rehabilitation Test. However, the Tax Division reserves the right to review such Certifications and to audit the original documents of entry, vendor lists, payroll records, accounts or other records supporting such Certifications.

E. If the amount of the Credit exceeds the taxpayer's tax liability for the taxable year in which the Credit may be claimed, 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.

F. In the case of a corporation, the Historic Preservation Investment Tax Credit is only allowed against the tax of a corporation included in a consolidated return that qualifies for the Credit and not against the tax of other corporations that may join in the filing of a consolidated tax return.

ARTICLE VII ASSIGNMENT OF HISTORIC PRESERVATION INVESTMENT TAX CREDIT.

A. Issuance of Assignable Historic Preservation Investment Tax Credit Certificate to Owner, Initial Assignee, or Participant. Upon approval by the Commission and the Tax Division of the Substantial Rehabilitation of a Certified Historic Structure pursuant to this Regulation, the Tax Division shall issue an Assignable Historic Preservation Investment Tax Credit Certificate to the Owner or any eligible Initial Certificate Holder. If the Owner or the Participant is a Pass-Through Entity, or if there are multiple Owners, the Tax Division may issue an Assignable Historic Preservation Investment Tax Credit Certificate to each Participant in such Pass-Through Entity or each Owner, indicating on the face of such Certificate the amount of the Historic Preservation Investment Tax Credit allocable to such Participant. The amount assigned to each Participant will be the amount represented by the Applicant in the Application for a Certificate of Completed Work.

B. Determination of Amount of Credit allocated to Participants in Pass-Through Entities. The amount allocated to each Participant on the Assignable Historic Preservation Investment Tax Credit Certificate issued to such Participant must be either (i) in proportion to the number of Participants in the Owner or (ii) determined in accordance with any allocation method set forth in an executed

agreement among all Participants, which may be without regarding to their sharing of other tax or economic attributes of such entity (the Allocation Agreement). The Commission and/or the Tax Division shall have no obligation to confirm the amount stated for each Participant in the Application for Completed Work or to review the Allocation Agreement.

C. Assignment of Certificate. An Assignable Historic Preservation Investment Tax Credit Certificate may be assigned to any Person, whether or not such Person has an ownership interest in the Certified Historic Structure, provided that no Credit has been claimed based on the Assignable Historic Preservation Investment Tax Credit Certificate being assigned. The Certificate may be assigned by endorsing the assignment clause set forth on the Certificate and delivery of the original certificate to the Assignee.

D. Assignee Recognition of Credit. The Assignee may use the Historic Preservation Investment Tax Credit only to offset the tax imposed for the taxable year in which the Certified Structure or an identifiable portion thereof is Placed in Service, or for taxable years to which the Credit is carried forward. The Assignee may apply the Historic Preservation Investment Tax Credit against taxes imposed on the Assignee until the end of the tenth (10th) calendar year after the year in which the Substantial Rehabilitation is Placed in Service or until the full Credit assigned is used, whichever occurs first. Fiscal year Assignees may claim the Credit until the expiration of the fiscal year that ends within the tenth (10th) year after the year in which the Substantial Rehabilitation is Placed in Service.

E. Filing with Tax Return. An original executed copy of the Assignable Historic Preservation Investment Tax Credit Certificate shall be attached to the tax return of the Owner, Participant or Assignee who desires to claim the Credit. A Participant of a Pass-Through Entity who transfers its interest in the entity must also endorse and deliver the Assignable Historic Preservation Tax Credit Certificate to the transferee if the transferee desires to claim the Historic Preservation Investment Tax Credit.

F. Notification of Assignment to Tax Division. An Assignor of all or any portion of the Historic Preservation Investment Tax Credit, shall notify the State of Rhode Island Division of Taxation in writing within 30 calendar days following the effective date of such assignment. Attached to such written notification (the Notification of Assignment) shall be:

1. A copy of the Assignable Historic Preservation Investment Tax Credit Certificate, endorsed to the Assignee. The original Certificate shall not be included with the Notification of Assignment, which must be retained by the Assignee and attached to the Assignee's tax return for the year with respect to

which the Historic Preservation Investment Tax Credit is claimed.

2. A copy of the Certificate of Completed Work issued by the Commission.
3. The name, address and telephone number of the Assignor and of the Assignee.
4. The taxpayer identification number or social security number of the Assignor and the Assignee.
5. For non-resident corporations, partnerships, limited liability companies, or other entities, the name and address of such entity's registered agent in the State of Rhode Island and evidence of qualification to do business in Rhode Island.

G. Multiple Assignees; Reissuance of Certificate. If the holder of an Assignable Historic Preservation Investment Tax Credit Certificate desires to assign its interest in the Credit to more than one Assignee, the holder must request the Commission to reissue the original Certificate in such number of Certificates as the holder requires. The request must be made in writing, must specify the number of new Certificates required and the amount to be specified on each Certificate, and must attach the Original Certificate for cancellation by the Commission.

H. Treatment of Proceeds of Assignment for State Tax Purposes. The Assignor of all or a portion of the Historic Investment Tax Credit shall not recognize any state income tax under the provisions of Title 44 of the Rhode Island General Laws with respect to the proceeds of such assignment. The Assignor of any Credit shall attach a copy of the Assignable Historic Preservation Investment Tax Credit Certificate to its tax return to evidence that such proceeds are not subject to state income tax. If the Historic Preservation Investment Tax Credit is subsequently recaptured under Section 44-33.2-3(e) of the Act, revoked or adjusted, the seller's tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total amount of the sales proceeds, without proration, as a modification under Title 44, Chapter 30 of the Rhode Island General Laws. In the event that the seller is not a natural person, the seller's tax calculation under chapters 11, 12, 13 (other than with respect to the tax imposed under subsection 44-13-13), 14, 17, or 30 of title 44, as applicable), for the year of revocation, recapture, or adjustment, shall be increased by including the total amount of the sales proceeds without proration.

I. Administrative Fees. The Commission and/or the Tax Division may assess reasonable administrative fees for issuing multiple Assignable Historic Preservation Investment Tax Credit Certificates or for reissuing Certificates.

ARTICLE IX PROCESSING FEES AND CONTRACTS OF GUARANTY

Section 1. Project Currently in Progress-Contract with the Tax Division.

A. For Certified Historic Structures or some identifiable portion thereof that are Placed in Service after December 31, 2007:

1. The Part 1 'Application for Certification as a Historic Structure' must have been recorded as being received by the Commission by January 1, 2008;

2. The Processing Fees referenced in Section 44-33.2-3(b) of the Act shall be paid to the Tax Division by May 15, 2008;

3. Upon the payment of those fees, the Person that will incur Qualified Rehabilitation Expenditures shall enter into a Contract with the Tax Division;

4. At the signing of the Contract, the Person that will incur Qualified Rehabilitation Expenditures shall select the percentage of tax credits and Processing Fees, as outlined in Section 44-33.2-3(b), for any Certified Historic Structure or identifiable part thereof that will be Placed in Service after December 31, 2007;

5. The Contract will guarantee the amount of tax credit as the lesser of: (1) the amount specified in the Contract or (2) the actual Qualified Rehabilitation Expenditures multiplied by the tax credit percentage selected by the Person at the signing of the Contract;

6. Two and one quarter percent (2.25%) of the Qualified Rehabilitation Expenses shall be paid to the Tax Division by May 15, 2008 and the remaining percentage of the Processing Fees shall be paid on or before March 5, 2009. Untimely payments shall accrue interest in accordance with R.I.G.L Section 44-1-7; and

7. The Contract shall be assignable:

(i) to an Affiliate of the Person incurring the Qualified Rehabilitation Expenditures, without consent from the Tax Division, or

(ii) to some other Person or business entity incurring Qualified Rehabilitation Expenditures. Such assignments are subject to the

approval of the Tax Division, which approval shall not be unreasonably withheld.

8. The Tax Division and the Commission shall reconcile the actual amount of tax credits as part of the final project certification. If the Processing Fees paid upon Contract signing are greater than required, based on the actual Qualified Rehabilitation Expenditures, the appropriate difference shall be refunded to the Person that incurred the Qualified Rehabilitation Expenditures, without interest.

Section 2. Projects Near Final Certification.

A. For Certified Historic Structures or some identifiable portion thereof that are Placed in Service prior to January 1, 2008.

1. The Processing Fees of two and one quarter percent (2.25%) of Qualified Rehabilitation Expenditures as referenced in Section 44-33.2-4(d) of the Act shall be paid, in their entirety, to the Tax Division by May 15, 2008; and

2. The Part 3 'Request for Certification of Completed Work' must be recorded as being received by the Commission by May 15, 2008.

ARTICLE X RESTRICTIVE COVENANT; RECAPTURE

Section 1. Restrictive Covenant. Upon issuance of a Certificate of Completed Work, the Owner shall cause to be recorded in the applicable land evidence records a restrictive covenant pursuant to which (i) during the Holding Period, no alteration to the Certified Historic Structure will be made without the Commission's approval and in a manner consistent with the Standards for Rehabilitation, (ii) the Certified Historic Structure may not become Exempt from Real Property Tax, and (iii) the Commission and/or the Tax Division shall be granted the right to one or more Inspections during the Holding Period to confirm matters represented in the Historic Preservation Certification Application and to review any alterations. If the Owner is the holder of leasehold title, the fee owner of the Certified Historic Structure must also execute the Restrictive Covenant.

Section 2. Recapture. No Credit may be claimed with respect to property that is Exempt from Real Property Tax. Any Credit claimed under the Act shall be recaptured in full (by increasing the taxpayer's tax for the year by the total amount of Historic Preservation Investment Tax Credit actually used against the tax) if, within 24 months after the issuance of a Certificate of Completed Work, the property becomes Exempt from Real Property Tax. The Assignor, if any, of any recaptured Credit shall recognize income in the amount of the proceeds of the assignment upon any recapture of the Credit. Recapture of the Credit may be appealed to the Commission in accordance with Article V, Section 6. The

Commission shall notify the Tax Division of any recapture of the Credit and of the final administrative decision on any appeal.

ARTICLE XI MISCELLANEOUS

Section 1. Administration and Examination of Records – Tax Division. The Tax Division and its agents, for the purpose of ascertaining the correctness of any Credit claimed under the Act, may examine any books, paper, records or memoranda bearing upon the matters required to be included in the return, report or other statement, and may require the attendance of the Person executing the return, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other Person, and may examine the Person under oath respecting any matter which the Tax Division or its agents deems pertinent or material in determining eligibility for Credits claimed, and may request information from the Commission, and the Commission shall provide such information in all cases, to the extent not otherwise prohibited by statute.

Section 2. Commission's and Tax Division's Inspection Rights. The Commission or the Tax Division shall have the right at reasonable times to enter upon any property that is the subject of an application for certification, whether the Rehabilitation is proposed, ongoing, or completed, and for the entire Holding Period following issuance of a Certificate of Completed Work, to verify that the Rehabilitation is as represented and that no unpermitted alterations or changes are made after issuance of a Certificate of Completed Work.

Section 3. Commission's and Tax Division's Right to Deny or Revoke Credit. If information comes to the attention of the Commission at any time up to and including the last day of the Holding Period that is materially inconsistent with representations made in an application, the Commission may deny the requested certification or revoke a certification previously given. The Tax Division may cancel a Contract for tax credits and any Processing Fees paid thereunder forfeited.

Section 4. Election Among Credits. Taxpayers who elect to claim Credits under the Act are ineligible for any tax credits that may also be available to the taxpayer for the Rehabilitation of that particular Certified Historic Structure under Chapter 44-33.1, Chapter 42-64.7, and/or Chapter 44-31.

Section 5. Severability Clause. If any provision of these Rules and Regulations, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

DAVID M. SULLIVAN, TAX ADMINISTRATOR

Emergency Regulation: Historic Preservation Investment Tax Credit

Tax Division Adoption

EFFECTIVE: APRIL 15, 2008