

# **State of Rhode Island and Providence Plantations**

## **Rhode Island Division of Taxation in Consultation with the Rhode Island Historical Preservation and Heritage Commission**

### **Public Notice of Proposed Rule-Making**

Pursuant to the provisions of 42-35-3(a)(1) of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Division of Taxation hereby gives notice of its intent to issue a regulation regarding Historic Preservation Tax Credits 2013.

The purpose of this regulation is to implement Rhode Island General Laws (RIGL) Chapter 44-33.6 which provides for Historic Preservation Tax Credits 2013. This regulation shall take effect February 27, 2014.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at [www.tax.ri.gov](http://www.tax.ri.gov), in person at the Rhode Island Division of Taxation, or requested by e-mail at [Michael.Canole@tax.ri.gov](mailto:Michael.Canole@tax.ri.gov) or by calling Michael Canole at (401) 574-8729.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) whether the regulation, in and of itself, would have significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Wednesday, January 22, 2014 to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail at [Michael.Canole@tax.ri.gov](mailto:Michael.Canole@tax.ri.gov). A public hearing to consider the proposed regulation will be held on Wednesday, January 22, 2014 at 9:00 a.m., at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing to Michael Canole at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by calling (401) 574-8729.

**Rhode Island Department of Revenue**

**Division of Taxation**

**Concise summary of all non-technical requirements pursuant to RIGL Section 42-35-3(a)(1) for rules and regulations regarding Historic Preservation Tax Credits 2013.**

**The purpose of this rule making is to implement (RIGL) chapter 44-33.6 “Historic Preservation Tax Credits 2013.” This chapter creates economic incentives for the purpose of stimulating the redevelopment and reuse of Rhode Island’s historic structures, as well as to generate positive economic and employment activities that will result from such redevelopment and reuse. This regulation requires the filing of an application form, payment of a non-refundable three percent (3%) Processing Fee and entering into a contract with the Rhode Island Division of Taxation. Applicants are also required to file a Part 1 and a Part 2 Application for certification with the Rhode Island Historical Preservation & Heritage Commission.**

**This regulation shall take effect February 27, 2014**

**State of Rhode Island and Providence Plantations**

**Rhode Island Division of Taxation in Consultation with the  
Rhode Island Historical Preservation and Heritage Commission**

**Tax Credits/Deductions  
Historic Preservation Tax Credits 2013**

**Regulation CR 14-16**

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**Rule 1. Findings**

In accordance with Rhode Island General Laws (RIGL) §42-35-3(b) and §44-33.6-4(i), as amended by the General Assembly, the Tax Administrator of the Division of Taxation, Department of Revenue, and the Executive Director of the Historical Preservation & Heritage Commission (the Commission), hereby promulgate the following regulation.

**Rule 2. Purpose**

The purpose of this rule making is to implement (RIGL) chapter 44-33.6 “Historic Preservation Tax Credits 2013.” This chapter creates economic incentives for the purpose of stimulating the redevelopment and reuse of Rhode Island’s historic structures, as well as to generate positive economic and employment activities that will result from such redevelopment and reuse. This regulation requires the filing of an application form, payment of a non-refundable three percent (3%) Processing Fee and entering into a Contract with the Rhode Island Division of Taxation. Applicants are also required to file a Part 1 and a Part 2 Application for certification with the Rhode Island Historical Preservation & Heritage Commission.

### **Rule 3. Authority**

These rules and regulations are promulgated pursuant to RIGL §44-1-4, and §44-33.6-4(i). These rules and regulations have been prepared in accordance with the requirements of RIGL chapter 42-35 of the Rhode Island Administrative Procedures Act.

### **Rule 4. Application**

These rules and regulations shall be liberally construed so as to permit the Division of Taxation and the Historical Preservation & Heritage Commission to effectuate the purpose of RIGL chapter 44-33.6 and other applicable state laws and regulations.

### **Rule 5. Severability**

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.

### **Rule 6. Definitions**

“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 an Assignable Historic Preservation Tax Credit Certificate. The accountant’s certification includes, but is not limited to, certification of the Adjusted Basis at the beginning of the Rehabilitation, the Rehabilitation costs properly capitalized to the building, and project costs incurred but not eligible for the historic preservation tax credit such as costs for new construction and other costs not chargeable to the capital account. The accountant’s certification shall be completed in the form of the Division of Taxation’s Form HTC-8016 and shall be accompanied by an opinion of the accountant regarding the accuracy of the required information. The cost certification should include, but is not limited to:

(1) A schedule of development costs (separating costs qualified for tax credit from costs not qualified for tax credit) and calculation of historic tax credit basis based on QREs and documentation from the project.

(2) Verification of the existence of development costs by examination of invoices, canceled checks, settlement sheets and related documents.

(3) Review of the respective development costs to determine whether the costs were eligible to be included in historic tax credit basis QREs in accordance with RIGL 44-33.6.

(4) Calculation of the Substantial Rehabilitation Test in accordance with RIGL §44-33.6-2(16).

(5) Computation of tax credits to be available to the project based upon the determination of QREs included in historic tax credit basis.

“Act” means RIGL chapter 44-33.6.

“Adjusted Basis” means the Owner’s basis in a building on or after July 3, 2013, 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.

“Affiliate” means any entity controlling, controlled by or under common control with such Person, firm, partnership, trust, estate, limited liability company (LLC), corporation (whether profit or non-profit) or other business entity that incurs Qualified Rehabilitation Expenditures (QREs) for the Substantial Rehabilitation of a Certified Historic Structure or some identifiable portion thereof.

“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 tax credit agreed upon among the participants or co-Owners. An allocation agreement may include, without limitation, a partnership agreement, an operating agreement of an LLC, a shareholders agreement, or any other instrument executed by all participants or co-Owners.

“Applicant” means a Person submitting an application to the Commission and to the Division of Taxation for determination under Rule 18.

“Assignable Historic Preservation Tax Credit Certificate” means a certificate issued by the Division of Taxation to the Owner of a Certified Historic Structure or an identifiable portion thereof who has incurred QREs that have been approved by the Commission as consistent with the Standards for Rehabilitation, and which QREs have been Placed in Service. If the Owner of the Certified Historic Structure is a pass-through entity, an Assignable Historic Preservation Tax Credit Certificate may be issued to each participant in the pass-through entity. The certificate shall specify the amount of the historic preservation tax credit allocable to such Participant, determined pursuant to this regulation.

“Assignee” means a Person to whom the historic preservation tax credit certificate is assigned pursuant to RIGL chapter 44-33.6.

“Assignor” means a holder of an Assignable Historic Preservation Tax Credit Certificate pursuant to Rule 22(a) who assigns such Assignable Historic Preservation Tax Credit Certificate to an Assignee pursuant to Rule 22(c).

“Authorized to be Reserved” means the Applicant has previously entered into a Contract with the Division of Taxation, on behalf of the state, which guarantees that the stated estimated tax credits will be available when earned.

**“Certified Historic Structure”** means a property which is located in the state of Rhode Island and is:

(1) listed individually on the national register of historic places; or

(2) listed individually in the State Register of Historic Places; or

(3) 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.

**“Certified Rehabilitation”** means any Rehabilitation of a Certified Historic Structure consistent with the historic character of such property or the district in which the property is located as determined by the Commission guidelines.

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

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

**“Commencement of Substantial Construction Activities”** has the meaning set forth in Rule 13.

**“Commission”** means the Rhode Island Historical Preservation & Heritage Commission created pursuant to RIGL §42-45-2.

**“Contract”** means a contract entered into between Applicant and the Division of Taxation, on behalf of the state, which guarantees that the stated estimated tax credits will be available when earned and may be claimed in full, to the extent of:

(1) QREs actually approved by the Division of Taxation; and

(2) the taxpayer’s tax liability, in the year earned subject in the case of Phased Projects to the provisions of Rule 11.

**“Division of Taxation”** means the Rhode Island Division of Taxation.

**“Estimated Qualified Rehabilitation Expenditures”** means the estimated amount of QREs set forth in a Contract for a planned Rehabilitation.

**“Executive Director”** means the executive director of the Commission.

**“Exempt from Real Property Tax”** means, with respect to any Certified Historic Structure, that the structure is exempt from taxation pursuant to RIGL §44-3-3.

**“Force Majeure”** means an event which is (i) reasonably unforeseen, (ii) outside the control of the Applicant and (iii) could not be avoided by the Applicant’s exercise of due care. By way of example, and not in limitation, any delays, work stoppages, or work force reductions caused by financial difficulties, labor disputes or violations of the law shall not be deemed a force majeure.

**“Hard Construction Cost”** means the direct Contractor costs for labor, material, equipment, and services associated with an approved project, contractors’ overhead and profit, and other direct construction costs. Hard construction costs do not include architectural and engineering fees, survey, legal expenses, insurance premiums, development fees and other soft costs.

**“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.

**“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 which may reasonably be expected to be completed in phases as described in RIGL §44-33.6-2(16), "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.

**“Initial Certificate Holder”** means an Owner or participant named by the Owner to receive the historic tax credit certificate.

**“Inspection”** means a visit by an authorized representative of the Commission to a property for the purposes of reviewing and evaluating the significance of the building and the proposed, ongoing or completed Rehabilitation work, and by an authorized representative of the Division of Taxation to verify expenses and costs reported.

**“Measuring Period”** means the twenty four (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." Notwithstanding anything to the contrary herein, the measuring period shall not commence prior to July 3, 2013.

**“Neighborhood Revitalization Plan”** means any plan or portion of a plan for the revitalization of one or more defined communities that was developed by a state agency, municipality, or one or more non-profit organizations, each of which is exempt from taxation under IRC §501(c)(3) and has as one of its exempt purposes the provision of housing for low and moderate income households [or the revitalization of one or more communities].

**“Notification of Assignment”** means the notification filed with the Division of Taxation of the assignment of all or a portion of the state historic preservation tax credit.

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

**“Part 1 Application”** means the Historic Preservation Certification Application Part 1- Request for Historical Certification.



**“Part 2 Application”** means the Historic Preservation Certification Application Part 2-Request for Certification of Proposed Rehabilitation (2013) and must include a detailed project timeline and associated costs.

**“Part 3 Application”** means the Historic Preservation Certification Application Part 3-Request for Certification of Completed Rehabilitation.

**“Participant”** means a partner in a partnership, member of an LLC, shareholder of a subchapter S corporation, beneficial Owner of a trust, or any other Person having an interest in a pass-through entity.

**“Pass Through Entity”** means a partnership, LLC, subchapter S-corporation, association, nominee trust, or any other entity, the tax attributes of which are passed through to the participants in such entity.

**“Percentage Interest”** means the percentage interest in the historic preservation 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.

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

**“Phased Project”** means a project with identifiable portions of the building(s) to be completed in phases set forth in architectural plans and specifications prepared before the physical work on the Rehabilitation begins, as reported in the Part 2 of the application filed with the Commission.

**“Placed in Service”** means that Substantial Rehabilitation work has been completed which would allow for occupancy of the entire structure or some identifiable portion of the structure, as established in the Part 2 Application or the Owner has commenced depreciation of the QREs, 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.

**“Principal Residence”** means the principal residence of the Owner within the meaning of Internal Revenue Code (IRC) §121 or any successor provision.

**“Processing Fees”** means any of the fees set forth, defined and imposed in RIGL §44-33.6-4(d).

**“Qualified Rehabilitation Expenditures”** means any amounts expended in the Rehabilitation of a Certified Historic Structure properly capitalized to the building and either:

(1) Depreciable under IRC §1 *et seq.*, or

(2) Made with respect to property (other than the Principal Residence of the Owner) held for sale by the Owner. Processing Fees paid pursuant to this chapter are not qualified Rehabilitation expenses. Notwithstanding the foregoing, except in the case of a nonprofit corporation, there will be deducted from QREs for the purposes of calculating the tax credit any funds made available to the Person (including any entity specified in RIGL §44-33.6-3(a)) incurring the QREs in the form of a direct grant from a federal, state or local governmental entity or agency or instrumentality of government.

**“Registered Historic District”** means any district listed in the national register of historic places or the State Register of Historic Places.

**“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.

**“Remain Idle”** means that substantial work has ceased at the subject project; work crews have been reduced by more than twenty-five percent (25%) for reasons unrelated to scheduled completion of work in accordance with the project schedule, reasonably unanticipated physical conditions, or Force Majeure; or the project schedule that was originally submitted by the taxpayer to the Commission has been extended by more than twelve (12) months for reasons other than reasonably unanticipated physical conditions or an event of Force Majeure (by way of example, and not in limitation, any delays, work stoppage, or work force reduction caused by issues with project funding, finances, disputes, or violation of laws shall be deemed to cause a project to Remain Idle).

**“Rule”** means any rule contained in this regulation, unless clearly otherwise stated.

**“Scattered Site Development”** means a development project for which the developer seeks or has obtained unified financing to rehabilitate dwelling units in two (2) or more buildings located in an area that is defined by a Neighborhood Revitalization Plan and is not more than one mile in diameter.

**“Social Club”** means a corporation or other entity and/or its Affiliate that offers its facilities primarily to members for social or recreational purposes and the majority source of its revenue is from funds and/or dues paid by its members and/or an entity defined as a social club pursuant to the IRC §501(c)(7).

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

**“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 RIGL §42-45-5. Properties are listed on the state register in accordance with the Commission’s procedures for registration and protection of historic properties.

“Substantial Construction” means that:

- (1) the Owner of a Certified Historic Structure has entered into a Contract with the Division of Taxation and paid the Processing Fee;
- (2) the Commission has certified that the Certified Historic Structure’s Rehabilitation will be consistent with the standards set forth in RIGL chapter 44-33.6; and
- (3) the Owner has, within five (5) years from the date of the executed Contract, expended ten percent (10%) of its QREs, estimated in the Contract entered into with the Division of Taxation for the project or its first phase of a Phased Project as detailed in the Part 2 Application filed with and approved by the Commission.

“Substantial Rehabilitation” means, with respect to a Certified Historic Structure, that the qualified Rehabilitation expenses of the building during the twenty-four (24) month period selected by the taxpayer ending with or within the taxable year exceed the Adjusted Basis in such building and its structural components as of the beginning of such period, or July 3, 2013, whichever is later. 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”.

“Tax Administrator” means the person within the Rhode Island Department of Revenue as described in RIGL § 44-1-1 et seq.

“Trade or Business” means an activity that is carried on for the production of income from the sale or manufacture of goods or performance of services, excluding residential rental activity.

## **Rule 7. General Overview**

(a) Effective July 3, 2013, RIGL chapter 44-33.6 establishes the “Historic Preservation Tax Credits 2013” program. Persons wishing to participate in this program must:

(1) Beginning August 1, 2013 file an application for the Rhode Island historic preservation tax credits 2013 program with the Division of Taxation using Rhode Island Form HTC-13. Any application received prior to August 1, 2013 will be deemed received on August 1, 2013. These projects will be placed in sequence on a “first come, first served” basis. This sequence is also referred to within as the “queue”, and further described in Rule 9.

(2) File a Part 1 and Part 2 Application with the Commission and, within ninety (90) days receive certification from the Commission;

- (i) Projects shall have twelve months from the approval of the Part 2 Application to commence Substantial Construction.
- (3) Within thirty (30) days after the date of Part 2 certification, Applicant shall pay to the Division of Taxation a non-refundable fee equal to three percent (3%) of the estimated QREs;
- (4) Enter into a Contract with the Division of Taxation. Prior to entering into the Contract with the Division of Taxation, any taxpayer who is a current participant in the Historic Structures - Tax Credit program under RIGL chapter 44-33.2 must withdraw from said program and forfeit any claims or redress against the State attributable to that program.
- (b) The maximum project credit is \$5 million. No building to be completed in phases or in multiple projects may exceed the maximum project credit of \$5 million for all phases or projects involved in the Rehabilitation of the building.
- (c) Persons incurring QREs for Substantial Rehabilitation of a Certified Historic Structure certified in accordance with these rules and regulation are entitled to a credit in an amount equal to the following:
- (1) Twenty percent (20%) of the QREs; or
- (2) Twenty-five percent (25%) of the QREs provided that either:
- (i) At least twenty-five percent (25%) of the total rentable area of the Certified Historic Structure will be made available for a Trade or Business; or
- (ii) The entire rentable area located on the first floor of the Certified Historic Structure will be made available for a Trade or Business.
- (d) Substantial Rehabilitation of the following properties are ineligible for the tax credit authorized by RIGL chapter 44-33.6;
- (1) Property that is Exempt from Real Property Tax;
- (2) A Social Club; or
- (3) A single family home or a property that contains less than three (3) residential apartments or condominiums.
- (e) Division of Taxation Reporting Requirements:
- (1) By August 15<sup>th</sup> of each year, the Division of Taxation must publicly report the name, address, and amount of tax credit received for each recipient (developer or initial holder) during the previous state fiscal year.
- (2) By September 1<sup>st</sup> of each year, the Division of Taxation must publicly report in the aggregate certain information regarding the credits, such as the number of jobs created, the number of Rhode Island businesses retained for work, the total amount of QREs, and other items as required by the Tax Administrator.

(3) By September 1, 2018, and biennially thereafter, the Division of Taxation must report in the aggregate the total number of approved projects, project costs, and associated amount of tax credits.

(f) Restrictive covenant. As provided in Rule 24, 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:

(1) 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,

(2) The Certified Historic Structure may not become Exempt from Real Property Tax, and

(3) The Commission and/or the Division of Taxation 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.

#### **Rule 8. Tax Credit**

(a) Subject to the maximum credit provisions set forth in subsections (c) and (d) below, any Person, firm, partnership, trust, estate, LLC, corporation (whether for profit or nonprofit) or other business entity that incurs QREs for the Substantial Rehabilitation of a Certified Historic Structure certified in accordance with these regulations, provided the Rehabilitation is consistent with the Standards of Rehabilitation as certified by the Commission and said Person, firm, partnership, trust, estate, LLC, corporation or other business entity is not a Social Club or Exempt from Real Property Tax, is entitled to a credit against the tax imposed on such Person pursuant to RIGL chapters 11, 12, 13, (other than the tax imposed under §44-13-13), 14, 17 or 30 in an amount equal to the following:

(1) Twenty percent (20%) of the QREs; or

(2) Twenty-five percent (25%) of the QREs provided that either:

(i) At least twenty-five percent (25%) of the total rentable area of the Certified Historic Structure will be made available for a Trade or Business; or

(ii) The entire rentable area located on the first floor of the Certified Historic Structure will be made available for a Trade or Business.

(b) Tax credits shall be allowed for the taxable year in which such Certified Historic Structure or an identifiable portion of the structure is Placed in Service provided that the Substantial Rehabilitation test is met for such year.

(c) Maximum project credit. The credit allowed pursuant to RIGL chapter 44-33.6 shall not exceed five million dollars (\$5,000,000) for any Certified Rehabilitation project under this program. No building to be completed in phases or in multiple projects shall exceed the maximum project credit of five million dollars (\$5,000,000) for all phases or projects involved in the Rehabilitation of such building.

(d) Maximum aggregate credits. The aggregate credits authorized to be reserved pursuant to RIGL chapter 44-33.6 shall not exceed sums estimated to be available in the historic preservation tax credit fund as determined by the Division of Taxation.

(e) Subject to the exception provided in subsection (h) of this rule, if the amount of the tax credit exceeds the taxpayer's total tax liability for the year in which the substantially rehabilitated property is Placed in Service, the amount that exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for the succeeding ten (10) years, or until the full credit is used, whichever occurs first. Credits allowed to a partnership, an LLC taxed as a partnership or multiple Owners of property shall be passed through to the Persons designated as partners, members or Owners respectively pro rata or pursuant to an executed agreement among such Persons designated as partners, members or Owners documenting an alternate distribution method without regard to their sharing of other tax or economic attributes of such entity. Credits may be allocated to partners, members or Owners that are exempt from taxation under IRC §501(c)(3), §501(c)(4) or §501(c)(6) and these partners, members or Owners must be treated as taxpayers for purposes of these rules and regulations.

(f) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or otherwise to any individual or entity, including, but not limited to, condominium Owners in the event the Certified Historic Structure is converted into condominiums and Assignees of the credits that have not claimed the tax credits in whole or part may assign, transfer or convey the credits, in whole or in part, by sale or otherwise to any individual or entity. The Assignee of the tax credits may use acquired credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed pursuant to RIGL chapters 11, 12, 13, (other than the tax imposed under §44-13-13), 14, 17 or 30. The Assignee may apply the tax credit against taxes imposed on the Assignee until the end of the tenth calendar year after the year in which the substantially rehabilitated property 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 year after the year in which the substantially rehabilitated property is Placed in Service. The Assignor shall perfect the transfer by notifying the state of Rhode Island Division of Taxation, in writing, within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the Division of Taxation to administer and carryout the provisions of RIGL chapter 44-33.6.

(g) For purposes of RIGL chapter 44-33.6, any assignment or sales proceeds received by the taxpayer for its assignment or sale of the tax credits allowed pursuant to RIGL chapter 44-33.6 shall be exempt from tax under RIGL title 44. If a tax credit is subsequently recaptured under RIGL chapter 44-33.6, 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 RIGL chapter 30 of title 44. In the event that the seller is not a natural person, the seller's tax calculation under RIGL chapters 11, 12, 13 (other than with respect to the tax imposed under section 44-13-13), 14, or 17, as applicable, for the year of revocation, recapture, or adjustment, shall be increased by including the total amount of the sales proceeds without proration.

(h) Credits allowed to partners, members or Owners that are exempt from taxation under IRC §501(c)(3), §501(c)(4) or §501(c)(6), and only said credits, shall be refundable. Said entities shall file Rhode Island Form HTC-14, Refund Request with the Division of Taxation, together with a copy of a valid determination letter from the Internal Revenue Service certifying their exempt status, and will be entitled to payment equal to 100% of the credit.

(i) Substantial Rehabilitation of the following properties is ineligible for the tax credits authorized under RIGL chapter 44-33.6:

(1) Property that is Exempt from Real Property Tax;

(2) A Social Club; or

(3) A single family home or a property that contains less than three (3) residential apartments or condominiums; provided, however, a scattered site development with five (5) or more residential units in the aggregate (which may include single family homes) shall be eligible for tax credits. In the event a Certified Historic Structure undergoes a Substantial Rehabilitation pursuant to RIGL chapter 44-33.6 and within twenty-four (24) months (sixty (60) months for a Phased Project) after issuance of a Certificate of Completed Work the property becomes Exempt from Real Property Tax, the taxpayer's tax for the year shall be increased by the total amount of credit actually used against the tax.

(j) In the case of a corporation, this 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.

(k) The Initial Certificate Holder or the Assignee of such person may also claim the credit in accordance with these rules and regulations.

## **Rule 9. Queuing Process**

(a) In order to comply with the requirements of Rule 8(d) the Division of Taxation has developed a "queuing" process, which is an equitable process that will provide Applicants some degree of certainty as to what credit amounts may be available to them at the conclusion of a project. This queuing process shall consist of the following:

(1) On or after August 1, 2013, any Person intending to participate in the historic preservation tax credit 2013 program must first apply to the Division of Taxation using Form HTC-13. These projects will be placed in sequence on a "first come, first served"

basis as further described in paragraph (7) below. Any application received before August 1, 2013 will be deemed received on August 1, 2013. This sequence is also referred to within as the “queue.”

(2) To remain eligible for the tax credits, Applicants have ninety (90) days from the of date the Division of Taxation’s notice that credits are available for their project to apply for Part 1 and Part 2 certification from the Commission. Failure to do so will result in the loss of placed in the queue and forfeiture of all rights, claims and entitlements to the credits initially available to your project. The project may reapply in accordance Rule 9 (a)(1). At the time of reapplication the project will be placed at the end of the queue.

(3) Within thirty (30) days after the date of Part 2 certification, the Applicant shall pay to the Division of Taxation a non-refundable Processing Fee equal to three percent (3%) of the estimated QREs and shall execute the Contract with the Division of Taxation. Any Part 1 or Part 2 certification received prior to August 1, 2013 must be re-certified by the Commission.

(4) The estimated credit amount, as filed on Form HTC-13, will not be allocated to any other project, unless the project:

(i) remains idle; or

(ii) declares in writing to the Division of Taxation the Owner wishes to abandon its claim under RIGL chapter 44-33.6; or

(iii) fails to meet the deadlines as indicated in sub-paragraph (3) below; or

(iv) fails to pay the appropriate Processing Fee; or

(v) fails to enter timely enter into a Contract with the Division of Taxation.

(5) In order to maintain place in the queue, a project shall commence Substantial Construction within twelve (12) months from the date of the Part 2 certification letter, and cannot Remain Idle.

(6) Upon the project’s voluntary or involuntary abandonment of tax credits, the estimated tax credit which originally had been assigned to the project shall be released and made available to other projects in sequence in the queue, subject to the sunset provision in Rule 26.

(7) If all available tax credits have been allocated, a project applying for tax credits shall be put at the end of the queue in the order of the date the application was received by the Division of Taxation.



(8) If multiple applications are received by the Division of Taxation on the same day seeking credits in excess of the amount of credits available, the Division of Taxation shall hold a public drawing to determine the queuing order for such projects.

(9) Applications will be deemed received on the date postmarked for delivery in the U. S. mail or on the date delivered to the Division of Taxation by the taxpayer or his representative, by messenger, or by an overnight delivery service.

(b) In the event funds become available, the Division of Taxation may notify a project in the queue credits are available to them, provided the project has not been Placed in Service. In the case of a Phased Project, credits may become available only to those phases not yet Placed in Service.

#### Example 1: Project not Placed in Service

An Applicant in the Queue for which credits were not initially available decides to rehabilitate the building even though credits are not available to the project. Subsequently, credits became available and the project had not yet been Placed in Service. The project would be eligible to receive tax credits.

#### Example 2: Project Placed in Service

An Applicant in the Queue for which credits were not initially available decides to rehabilitate building even though credits are not available to the project. The project was Placed in Service before credits become available. The Applicant is **not** eligible to receive tax credits.

#### Example 3: Phased Project

An Applicant in the Queue for which credits were not initially available decides to rehabilitate building even though credits are not available to the project. Subsequently, credits are available to the project and the Applicant has completed Phase 1 and that phase has Placed in Service. Accordingly, Phase 1 is not eligible of credits. The other two phases of the project have not yet been completed and have not been Placed in Service. The remaining phases of the project would be eligible to receive tax credits.

### **Rule 10. Administration**

(a) To claim the tax credit authorized in RIGL chapter 44-33.6, the Applicant shall apply:

(1) To the Commission, prior to the Certified Historic Structure being Placed in Service, for a determination of historic significance;

(2) To the Commission, prior to the Certified Historic Structure being Placed in Service, for a certification that the Certified Historic Structure's Rehabilitation will be consistent

with the Standards of the Secretary of the United States Department of the Interior for Rehabilitation;

(3) To the Commission, after completion of the Rehabilitation work of the Certified Historic Structure, for a certification that the Rehabilitation is consistent with the standards of the Secretary of the United States Department of the Interior for Rehabilitation; and

(4) To the Division of Taxation, after completion of the Rehabilitation work of the Certified Historic Structure, for a certification as to the amount of tax credit for which the Rehabilitation qualifies. The Commission and the Division of Taxation may rely on the facts represented in the application without independent investigation and, with respect to the amount of tax credit for which the Rehabilitation qualifies, upon the certification by a certified public accountant licensed in the state of Rhode Island. The applications shall be developed by the Commission and the Division of Taxation and may be amended from time to time.

(b) Within thirty (30) days after the Commission's and Division of Taxation's receipt of the Applicant's fully documented application requesting certification for the completed Rehabilitation work:

(1) The Commission shall issue the Applicant a written determination either denying or certifying the Rehabilitation; and

(2) Subject to the Commission's approval of the completed Rehabilitation and provided that the Division of Taxation has received all materials required by Rule 18 and Rule 20 no later than the beginning of the thirty (30) day period referenced above the Division of Taxation shall issue a certification of the amount of credit for which the Rehabilitation qualifies. To claim the tax credit, the Applicant shall attach the Division of Taxation's certification as to the amount of the tax credit to all state tax returns on which the credit is claimed.

(c) No taxpayer may benefit from the provisions of RIGL chapter 44-33.6 unless the Owner of the Certified Historic Structure grants a restrictive covenant to the Commission, agreeing that during the Holding Period no material alterations to the Certified Historic Structure will be made without the Commission's prior approval and agreeing that such shall be done in a manner consistent with the standards of the Secretary of the United States Department of the Interior; and, in the event the Owner applies for the twenty-five percent (25%) tax credit, that either:

(1) At least twenty-five percent (25%) of the total rentable area of the Certified Historic Structure will be made available for a Trade or Business; or

(2) The entire rentable area located on the first floor of the Certified Historic Structure will be made available for a Trade or Business, in either case, for a period of sixty (60)

months after the placed-in-service date of the Certified Historic Structure or identifiable portion thereof.

(3) In the event at least 25% of the total rentable area, or the entire first floor, of the Certified Historic Structure is not made available for a Trade or Business, the tax credit shall be reduced from 25% to 20% of QREs.

(d) Within thirty (30) days after the date of Part 2 certification, the Applicant shall pay to the Division of Taxation a non-refundable Processing Fee equal to three percent (3%) of estimated QREs. The fee shall be payable prior to the signing the Contract.

(e) Under authority of RIGL 44-33.6-4(e) the Division of Taxation is expressly authorized and empowered to enter into Contracts with Persons, firms, partnerships, trusts, estates, LLCs, corporations (whether for profit or nonprofit) or other business entities that incur QREs for the Substantial Rehabilitation of Certified Historic Structures or some identifiable portion of a structure. Upon payment of the fee set forth in subsection (d) above, the Division of Taxation and the Applicant shall enter into a Contract for tax credits consistent with the terms and provisions of this chapter.

(f) Upon satisfaction of all the requirements set forth in this regulation and the payment of the fees as set forth in subsection (d) above, the Division of Taxation shall, on behalf of the State of Rhode Island, guarantee the delivery of one hundred percent (100%) of the tax credit and use of one hundred percent (100%) of the tax credit in the tax year a Certified Historic Structure is Placed in Service through a contract with Persons, firms, partnerships, trusts, estates, LLCs, corporations (whether for profit or nonprofit) or other business entities that will incur QREs for the Substantial Rehabilitation of a Certified Historic Structure or some identifiable portion of a structure. The maximum credit will not exceed the lesser of the amount originally contracted or the credit based on QREs actually incurred and audited by the Division of Taxation.

(g) Any Contract executed pursuant to RIGL chapter 44-33.6 by a Person, firm, partnership, trust, estate, LLC, corporation (whether for profit or nonprofit) or other business entity shall be assignable to:

(1) An Affiliate thereof without any consent from the Division of Taxation;

(2) A banking institution as defined by RIGL §44-14-2(2) or credit union as defined in RIGL §44-15-1.1(1) without any consent from the Division of Taxation;

(3) A Person, firm, partnership, trust, estate, LLC, corporation (whether for profit or nonprofit) or other business entity that incurs QREs for the Substantial Rehabilitation of Certified Historic Structures or some identifiable portion of a structure, with such assignment to be approved by the Division of Taxation, which approval shall not be unreasonably withheld or conditioned; or

(4) Any other Person, firm, partnership, trust, estate, LLC, corporation (whether for profit or nonprofit) or other business entity that is approved by the Division of Taxation, which approval shall not be unreasonably withheld or conditioned.

(h) If information comes to the attention of the Commission or the Division of Taxation 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, and, in either instance, all fees paid by the Applicant shall be deemed forfeited. In the event that tax credits or a portion of tax credits are subject to recapture for ineligible costs and such tax credits have been transferred, assigned and/or allocated, the state will pursue its recapture remedies and rights against the Applicant for the tax credits, and all fees paid by the Applicant shall be deemed forfeited. No redress shall be sought against Assignees, transferees or allocates of such credits provided they acquired the tax credits by way of an arms-length transaction, for value, and without notice of violation, fraud or misrepresentation.

### **Rule 11. Phased Projects**

(a) In the case of a Phased Project, the credit allowed shall be limited to the estimated QREs as reported in the Contract for “Historic Preservation Tax Credit 2013” for each phase. Any QREs in excess of the estimated amount for any phase shall be carried over to the next subsequent phase and added to the QREs for that phase. The credit allowed for that subsequent phase shall still be limited to the estimated QREs for that phase as reported in the Contract.

Example 1: A four-phase project, where at least 25% of the total rentable area of the Certified Historic Structure will be made available for a Trade or Business, with total estimated QREs of sixteen million dollars (\$16,000,000) in equal phases of four million dollars (\$4,000,000) each with a total credit amount of 25% or four million dollars (\$4,000,000) was reported in the Contract. In the first phase, the QREs were six million dollars (\$6,000,000). The credit will be limited to 25% of the first four million dollars (\$4,000,000) of QREs or one million dollars (\$1,000,000). The excess two million dollars (\$2,000,000) of QREs will be carried forward to the next subsequent phase. In the next phase, the actual QREs were three million dollars (\$3,000,000) plus the two million dollars (\$2,000,000) carried forward amount for a total allowable QREs of five million dollars (\$5,000,000). The credit will be limited to 25% of the first four million dollars (\$4,000,000) of QREs or one million dollars (\$1,000,000). The excess one million dollars (\$1,000,000) of QREs will be carried forward to the next subsequent phase. This procedure will be continued until the project has reached the total estimated QREs or the total credit amount has been reached, whichever is less.

Example 2: A two-phase project, for residential rental real estate, with total QREs of ten million dollars (\$10,000,000) in equal phases of five million dollars (\$5,000,000) each with a total credit of 20% or two million dollars (\$2,000,000) was reported in the Contract with completion dates of December 31, 2014 for the

first phase and December 31, 2016 for the second phase. The first phase was completed on December 31, 2014, and all required filings were submitted timely. The Assignable Historic Preservation Tax Credit Certificate will be issued in the amount of one million dollars (\$1,000,000). The second phase was completed on December 31, 2015. Since phase two was completed one year earlier than the time reported in the Contract, the Assignable Historic Preservation Tax Credit Certificate will not be issued until December 31, 2016.

(b) If the actual QREs for a phase are less than the estimated amount as reported in the Contract, the credit shall be limited to the applicable percentage of the actual QREs incurred for that phase. Any unused credit amount of a phase may be carried forward to the next subsequent phase. That subsequent phase shall be allowed a credit calculation as if the carried forward credit amount has been reported in the Contract.

Example: A four-phase project, where at least 25% of the total rentable area of the Certified Historic Structure will be made available for a Trade or Business, with a total QREs of sixteen million dollars (\$16,000,000) in equal phases of four million dollars (\$4,000,000) each with a total credit amount of 25% or four million dollars (\$4,000,000) was reported in the Contract. In the first phase the QREs were two million dollars (\$2,000,000). The credit will be limited to 25% of the actual two million dollars (\$2,000,000) of QREs or five hundred thousand dollars (\$500,000). The remaining estimated QREs from phase one will be carried forward to the next subsequent phase. In the next phase, the actual QREs were five million dollars (\$5,000,000). The allowed credit will be limited to 25% of the five million dollars (\$5,000,000) or one million two hundred fifty thousand dollars (\$1,250,000) The remaining estimated QREs will be carried forward to the next subsequent phase. This procedure will be continued until the project has reached the total QREs or the total credit amount has been reached, whichever is less.

## **Rule 12. Election; Limitations**

(a) Taxpayers who elect and qualify to claim tax credits for the Substantial Rehabilitation of a Certified Historic Structure pursuant to RIGL chapter 44-33.6 are ineligible for any tax credits that may also be available to the taxpayer for the Substantial Rehabilitation of that particular Certified Historic Structure under the provisions of RIGL chapter 44-33.1, and RIGL chapter 42-64.7, and/or RIGL chapter 44-31.

(b) Prior to entering into the Contract with the Division of Taxation, any taxpayer who is a current participant in the Historic Tax Credit Program under RIGL chapter 44-33.2 must withdraw from said program and forfeit any claims or redress against the State.

(c) Neither taxpayers nor Assignees may apply any tax credits issued in accordance with RIGL chapter 44-33.6 until on or after July 1, 2013.

### **Rule 13. Timing and Reapplication**

(a) Taxpayers shall have twelve (12) months from the date of Part 2 Certification to commence Substantial Construction activities.

(1) For this purpose, Substantial Construction activities shall be deemed to have commenced upon receipt by the Division of Taxation of all of the following:

- (i) Building permit;
- (ii) Executed construction contract; and
- (iii) Notice to proceed issued to the contractor.

(2) For taxpayers acting as their own contractor, Substantial Construction activities shall be deemed to have commenced upon receipt by the Division of Taxation of the building permit along with an affidavit of commencement of Substantial Construction and supporting documentation.

(b) Upon commencing Substantial Construction activities, the Applicant shall submit an affidavit of Commencement of Substantial Construction Activities to the Commission and the Division of Taxation, together with evidence of such requirements having been satisfied.

(c) Furthermore, after Commencement of Substantial Construction Activities, no project shall Remain Idle prior to completion for a period of time exceeding six (6) months. In the event that a Applicant does not commence Substantial Construction activities within twelve (12) months from the date of Part 2 Certification, or in the event that a project Remains Idle prior to completion for a period of time exceeding six (6) months, the subject Applicant shall forfeit all fees paid prior to such date, and all rights and entitlements to the tax credits, and its then-current Contract for tax credits shall be deemed null and void, and shall terminate without need for further action or documentation.

(d) Upon any such forfeiture and termination, an Applicant may reapply for tax credits pursuant to RIGL chapter 44-33.6. However, notwithstanding anything contained herein to the contrary, one hundred percent (100%) of the Processing Fees required shall be paid upon reapplication and such Processing Fees shall be non-refundable. Additionally, any taxpayer reapplying for tax credits pursuant to RIGL §44-33.6-7 shall be required to submit evidence with its application establishing the reason for delay in commencement or the project sitting idle, as the case may be, and provide evidence, reasonably satisfactory to the Commission, that such condition or event causing same has been resolved. All taxpayers shall submit a reasonably detailed project timeline to the Commission together with the Part 2 Application. The provisions of this Rule shall be further detailed and incorporated into a Contract for tax credits used in connection with RIGL chapter 44-33.6.

#### **Rule 14. Historic Tax Credit Apprenticeship Requirements**

(a) Notwithstanding any laws to the contrary, any credit allowed under RIGL chapter 44-33.6 for Hard Construction Costs valued at ten million dollars (\$10,000,000) or more shall include a requirement that any contractor and subcontractor working on the project shall have an apprenticeship program as defined herein for all apprenticeable crafts that will be employed on the project as determined at the time of bid. The Contract entered into with the Division of Taxation shall contain a covenant to meet the requirements of this Rule. At the time of review of the accountant's cost certification, the Division of Taxation shall confirm with the Rhode Island Department of Labor and Training that the project is/was in compliance with this Rule and shall not approve tax credits for any project not confirmed by the Rhode Island Department of Labor and Training. The provisions of this Rule shall only apply to contractors and subcontractors with five (5) or more employees. For purposes of RIGL chapter 44-33.6, an apprenticeship program is one that is registered with and approved by the United States Department of Labor in conformance with 29 C.F.R. 29 and 29 C.F.R. 30.

(b) The Rhode Island Department of Labor and Training must provide information and technical assistance to affected governmental, quasi-governmental agencies, and any contractors awarded projects relative to their obligations under RIGL chapter 44-33.6.

(c) The Rhode Island Department of Labor and Training may also impose a penalty of up to five hundred dollars (\$500) for each calendar day of noncompliance with RIGL §44-33.6-8, as determined by the director of labor and training. Mere errors and/or omissions shall not be grounds for imposing a penalty under this subsection.

(d) Any penalties assessed under RIGL chapter 44-33.6 shall be paid to the Rhode Island general fund and shall not be considered QREs.

(e) To the extent that any of the provisions contained in RIGL §§37-13-3.1 or 37-13-3.2 conflict with the requirements for federal aid contracts, federal law and regulations shall control.

#### **Rule 15. Information requests**

(a) The Division of Taxation and its agents, for the purpose of ascertaining the correctness of any credit claimed under the provisions of this chapter, may examine any books, papers, 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 Administrator or his or her agent deems pertinent or material in determining the eligibility for credits claimed and may request information from the Commission, and the Commission shall provide the information in all cases, to the extent not otherwise prohibited by statute.

(b) Submissions to the Rhode Island Division of Taxation shall include:

(1) CPA cost Certification Report;

(2) Rhode Island Form HTC-8016;

(3) Schedule of all development costs – qualified and non-qualified;

(4) Schedule of all documents filed with the Commission, including pictures; and

(5) Excel spreadsheet (or similar program) containing all costs, qualified and non-qualified, associated with the project. This spreadsheet shall:

(i) Be sorted and subtotaled by the historic cost categories as outlined on the Rhode Island Form HTC-8016. Subtotals must agree with the line items on the cost report.

(ii) All categories in the cost report shall be itemized separately.

(iii) The detail shall include the vendor's name, amount and date of each invoice. Copies of invoices may be requested.

(iv) The spreadsheet shall have columns for qualified and non-qualified costs.

#### **Rule 16. Reporting Requirements**

(a) Each taxpayer requesting certification of a completed Rehabilitation shall report to the Commission and the Division of Taxation the following information:

(1) The number of total jobs created;

(2) The number of Rhode Island businesses retained for work;

(3) The total amount of QREs;

(4) The total cost of materials or products purchased from Rhode Island businesses; and

(5) Such other information deemed necessary by the Tax Administrator.

(b) Any agreements or Contracts entered into under RIGL chapter 44-33.6 by the Division of Taxation, the Commission, or the Economic Development Corporation and the Applicant shall be sent to the Division of Taxation and be available to the public for inspection by any person and shall be published by the Tax Administrator on the Division of Taxation's website.



(c) By August 15th of each year the Division of Taxation shall report the name, address, and amount of tax credit received for each credit recipient (Developer or initial holder) during the previous state fiscal year to the governor, the chairpersons of the House and Senate Finance Committees, the House and Senate Fiscal Advisors, and the Department of Labor and Training. This report shall be available to the public for Inspection by any person and shall be published by the Tax Administrator on the Division of Taxation's website.

(d) By September 1st of each year the Division of Taxation shall report in the aggregate the information required under RIGL §44-33.6-9(a). This report shall be available to the public for Inspection by any person and shall be published by the Tax Administrator on the Division of Taxation's website.

(e) By September 1, 2018, and biennially thereafter, the Division of Taxation shall report in the aggregate the total number of approved projects, project costs, and associated amount of approved tax credits.

#### **Rule 17. Historic Preservation Tax Credit Fund**

All Processing Fees collected pursuant to RIGL chapter 44-33.6 after July 1, 2013 shall be deposited in a historic preservation tax credit restricted receipt account within the historic preservation tax credit fund, which shall be used, to the extent resources are available, to refund or reimburse the state for any credits certified by the Division of Taxation.

#### **Rule 18. Application Guidelines**

(a) Certifications of Significance and Rehabilitation – General.

(1) **Application.** Request 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.

(i) Part 1 of the application is used to request certification of historic significance and is filed with the Commission and shall contain such information as is required in section (b)(2);

(ii) Part 2 of the application is used to request certification of a proposed Rehabilitation plan as meeting the Standards for Rehabilitation. Part 2 of the application must be filed with and approved by the Commission prior to entering into a Contract with the Division of Taxation and shall contain such information as is required in section (d)(1);

(iii) Part 3 of the application is used to request certification of a completed Rehabilitation project by the Commission;

(iv) The Part 1, Part 2 and Part 3 applications are submitted to and reviewed by the Commission;

(v) In order to obtain an Assignable Historic Preservation Tax Credit Certificate upon issuance by the Commission of the Certificate of Completed Work, the Owner shall file the Accountant's Certification with the Division of Taxation. The Owner shall also file with the Division of Taxation a complete and fully documented Rhode Island Form HTC-8016; and

(vi) The Owner must also have entered into a Contract with the Division of Taxation and paid the Processing Fee described in Rule 10(d) in order to qualify for tax credits.

**(2) 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](http://www.preservation.ri.gov) and from the Division of Taxation at One Capitol Hill, Providence, RI 02908; Tel. (401) 574-8970; website: [www.tax.ri.gov](http://www.tax.ri.gov).

**(3) Coordination with Federal Filings.** If the Applicant also seeks to claim the federal historic Rehabilitation tax credit, application for the Rhode Island credit 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.

**(4) Commission and Division of Taxation Review.** The Commission and the Division of Taxation generally complete reviews of certification requests within 30 days of receiving a complete, fully documented application. Where adequate information is not provided, the Commission and/or the Division of Taxation will notify the Applicant of the additional information needed to complete the review. The Commission and the Division of Taxation 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:

(i) within 30 days after receipt of a complete and fully documented application for a Certificate of Completed Work, the Commission must issue a written determination either granting or denying a Certificate of Completed Work; and

(ii) within 30 days after receipt of a complete and fully documented RI Form HTC-8016 and an Accountant's Certification and a Certificate of Completed Work, the Division of Taxation shall issue a written determination as to the amount of historic preservation tax credit for which a Substantial Rehabilitation qualifies, conditioned on the Commission issuing a Certificate of Completed Work.

**(5) Commission Decisions; Reliance on Application.** Certifications of Part 1, 2, and 3 are only given in writing by the Executive Director or other duly authorized representative of the Commission. Certifications of the amount of the historic tax credit for which the Rehabilitation qualifies are only given in writing by the Division of Taxation. 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 to the Division of Taxation that the facts contained therein are true and correct, and the Commission and the Division of Taxation are entitled to rely thereon. If information comes to the attention of the Commission or the Division of Taxation 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 certifications or revoke a certification previously given or the Division of Taxation 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 Rule 19.

**(b) Certification of Historic Significance.**

(1) **Consultation.** Any Owner may consult with the Commission to determine whether a property is a Certified Historic Structure.

(2) **Part 1 - Application.** The Applicant shall submit Part 1 to the Commission. Such application form shall be filed according to the instructions accompanying the application.

**(3) Review of Application for Certification of Historic Structure.**

(i) **Scope of Review.** The Commission will determine if the property is:

(A) listed individually on the national register of historic places;

(B) listed individually on the State Register of Historic Places; or

(C) located in a Registered Historic District and certified by either the Commission or the United States Secretary of the Interior as being of historic significance to the district.

(ii) **Physical Integrity.** The Commission will determine if the property possesses sufficient physical integrity to convey its historical significance.

(iii) **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.

(iv) **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 (c) of this Rule.

**(v) 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 (c) of this Rule. 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.

**(vi) 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. 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 (c) of this Rule. 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.

### **(c) Standards for Evaluating Significance within Registered Historic Districts**

**(1) Evaluations of Significance.** Some historic districts are resources whose concentration or continuity possess greater historical significance than many of their individual 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 (b)(2) of this Rule.

(2) **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:

(i) 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.

(ii) 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.

(iii) 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.

(3) If a non-historic 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.

(d) **Certifications of Rehabilitation.**

(1) **Certification of Proposed Rehabilitation or of Completed Work.** Applicants requesting certification of a proposed Rehabilitation shall comply with the procedures listed in Paragraph (i) below; Applicants requesting a Certificate of Completed Work shall comply with the procedures listed in Paragraph (c)(4) of this Rule.

(i) **Part 2 - Application.** 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's review before beginning a Rehabilitation project. To request review of a proposed Rehabilitation, the Applicant shall submit Part 2 Application form according to the instructions accompanying the application. This documentation includes but is not limited to:

(A) 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;

(B) Name and address of the property;

(C) 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;

(D) The Applicant's estimate of projected QREs and of Adjusted Basis in the Certified Historic Structure as of the date of application but no earlier than July 3, 2013;

(E) 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 but no earlier than July 3, 2013;

(F) 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; and

(G) A reasonably detailed project timeline, including associated costs.

(2) **Part 3 - Application.** 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 Commission 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. 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) The Placed in Service date; and

(vi) 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.

(4) **Certification of Completed Work.** Within 30 days after the Commission's receipt of a complete and fully documented application for certification of completed work, the

Commission shall issue to the Applicant a written determination either denying or certifying the Rehabilitation (a "Certificate of Completed Work").

**(5) Assignable Historic Preservation Investment Tax Credit Certificate.**

(i) To request one or more Assignable Historic Preservation Tax Credit Certificates, the Applicant shall submit to the Division of Taxation:

(A) Accountant's certification of the actual QREs attributed solely to the Rehabilitation of the certified historic building and the satisfaction of the Substantial Rehabilitation test;

(B) The Placed in Service date;

(C) A complete and fully documented Rhode Island Form HTC-8016; and

(D) The certification of completed work issued by the Commission.

(ii) Within 30 days after the Division of Taxation's receipt of the Accountant's Certification, the Rhode Island Form HTC-8016 and the placed in-service date, the Division of Taxation shall issue to the Applicant a certification of the amount of historic preservation tax credit for which the Rehabilitation qualifies and shall issue a Assignable Historic Preservation Tax Credit Certificate pursuant to the procedures of Rule 22; both of which are conditioned on the Commission issuing a Certificate of Completed Work.

**(6) Abandonment of Project.**

(i) For those projects that enter into a Contract with the Division of Taxation on or after August 1, 2013, and five (5) years have elapsed, the Commission and the Division of Taxation may require the Owner submit evidence that Substantial Construction has occurred which shall include the certification of an accountant licensed in the State of Rhode Island that at least ten percent of the estimated QREs have been incurred. If the project has not met the criteria of Substantial Construction the project shall be considered abandoned and shall forfeit the rights and entitlements to the tax credits and the Processing Fee.

(ii) At any time after payment of the Processing Fee and execution of a Contract, the Applicant may inform the Commission and the Division of Taxation in writing that it intends to abandon the project or to complete it without compliance with the Standards for Rehabilitation and that it relinquishes all claims to the tax credits and the Processing Fee.

**(e) Scope of Rehabilitation.** 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 QREs may be included

in the calculation of the historic preservation tax credit. The Commission and the Division of Taxation may rely on the Accountant's Certification regarding the QREs actually incurred included with the application without independent investigation. However, the Division of Taxation reserves the right to request additional documentation and supporting detail to verify QREs, 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 (5) 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.

**(f) Determination of Consistency with Standards for Rehabilitation.** The Commission, on receipt of the complete application describing the completed 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.

**(g) Determination of QREs.** The Division of Taxation, upon receipt of the complete and fully documented Rhode Island Form HTC-8016, shall determine if the costs attributed to the Rehabilitation meet the criteria of QREs. If any costs of a project are denied as QREs, the Division of Taxation shall advise the Applicant of that fact in writing briefly setting forth the grounds for said denial.

**(h) 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 Division of Taxation by written amendment to the application to ensure continued consistency to the Standards for Rehabilitation.

**(i) Standards for Rehabilitation.** The Standards for Rehabilitation are the criteria used to determine if a Rehabilitation qualifies as a Certified Rehabilitation (36 CFR 67).

**(j) 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 (36 CFR 67).

**(k) 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.

(l) **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.

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

(m) **All Available Information Used in Determination.** The qualities of a property and its environment which qualify it as a Certified Historic Structure are determined by 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.

## **Rule 19. Appeals**

(a) From an action of the Commission. For matters pertaining exclusively to application, and certification of historic Rehabilitation projects, any Person aggrieved by a denial action of the Commission shall notify the Commission in writing, within thirty (30) days from the date of mailing of the notice of denial or revocation by the Commission, and request a hearing relative to the denial or revocation. The Commission shall, as soon as is practicable, fix a time and place of hearing. Following the hearing, the Commission shall render a final decision. Appeals from a final decision of the Commission shall be to the Rhode Island Superior Court pursuant to RIGL §42-35-15.

(b) Relating to a denial of tax credit or any portion thereof. Any Person aggrieved by the Division of Taxation's denial of a tax credit or tax benefit under this program shall notify the Division of Taxation in writing, within thirty (30) days from the date of mailing of the notice of denial of the tax credit, and request a hearing relative to the denial of the tax credit. The Division of Taxation shall, as soon as is practicable, set a time and place for hearing, and shall render a final decision. The final decision of the Division of Taxation

shall be deemed a final decision of the Tax Administrator. Appeals from a final decision of the Tax Administrator shall be to the Rhode Island Sixth (6th) Division District Court pursuant to RIGL § 8-8 et seq. The taxpayer's right to appeal to the district court is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer files a timely motion for exemption from prepayment with the district court in accordance with the requirements imposed pursuant to RIGL § 8-8-26.

## **Rule 20. Substantial Rehabilitation; Qualified Rehabilitation Expenditures**

### **(a) Substantial Rehabilitation.**

(1) A Rehabilitation of Certified Historic Structure shall be deemed a Substantial Rehabilitation only if the QREs incurred in the twenty-four (24) month period selected by the Owner ending within the taxable year in which the Rehabilitation is Placed in Service and beginning no earlier than July 3, 2013 shall exceed the Adjusted Basis of the Certified Historic Structure as of the beginning of the twenty-four (24) month period or July 3, 2013, whichever is later. In the case of projects involving multiple buildings (except for phased Rehabilitations addressed in Rule (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 QREs attributable to each such building. The twenty-four (24) month period is a Measuring Period for testing whether the Rehabilitation is a Substantial Rehabilitation. QREs incurred in connection with the Rehabilitation either before the beginning of the twenty-four (24) month period, but not prior to July 3, 2013, 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. Expenditures incurred prior to July 3, 2013 are ineligible as QREs, but are included in the calculation of Adjusted Basis.

(2) In the case of any Rehabilitation that may reasonably be expected to be completed in phases as 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 of a Phased Project as it is presented, and may issue a certificate for completed work upon completion of each phase. However, an Assignable Historic Preservation Tax Credit Certificate may be issued only upon satisfaction of the Substantial Rehabilitation test for the entire Phased Project. Thereafter, Assignable Historic Preservation Tax Credit Certificates may be issued upon receipt 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 Division of Taxation of an Assignable Historic Preservation Tax Credit Certificate, which shall be issued no earlier than the estimated completion date for such phase set forth in the Contract. Any credit claimed prior to final certification of the

completed Rehabilitation will be contingent upon final certification of the completed Rehabilitation.

**(b) Qualified Rehabilitation Expenditures (QREs).**

(1) QREs are those expenses incurred and paid in connection with a Substantial Rehabilitation of a Certified Historic Structure that are properly capitalized to the building and either:

(i) depreciable under the IRC; or

(ii) made with respect to property (other than the Principal Residence of the Owner) held for sale by the Owner.

(2) 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.

(3) Expenses that do not qualify as QREs include, without limitation:

(i) 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 QREs (and which is added to the basis of the certified historic building), is not treated as a cost of acquisition.

(ii) 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 QREs 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 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.

(iii) 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.

(iv) Any site work expenses.

(v) Any costs of demolition of adjacent structures.

(vi) Processing Fees imposed under RIGL chapter 44-33.6.

(vii) Additional expenses that do not qualify as QREs include, without limitation:

Appliances;

Cabinets;

Carpeting (if tacked in place and not glued);

Decks (not part of the original building);

Fencing;

Feasibility studies;

Financing fees;

Furniture leasing expenses;

Landscaping;

Moving (building) costs (if part of acquisition);

Outdoor lighting remote from building;

Parking lot;

Paving;

Planters;

Porches and porticos (not part of original building);

Retaining walls;

Sidewalks;

Signage;

Storm sewer construction costs; or

Window treatments.

(4) Public Grants. Except in the case of nonprofit corporations, there shall be deducted for purposes of calculating the historic preservation tax credit any funds made available

to the Person incurring the QREs in the form of a direct grant from a federal, state or local governmental entity or agency or instrumentally thereof.

**(c) Step in the Shoes.**

(1) The Owner may take into account QREs incurred in connection with the same plan of Rehabilitation by any other person who has or had an interest in the building. Where QREs 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 QREs 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 QREs is claimed by anyone other than the Owner acquiring the property or that Owner's Assignee(s).

(iii) The Adjusted Basis against which QREs are tested shall be the Adjusted Basis of the transferor as of the beginning of the Measuring Period, provided that no QREs incurred before July 3, 2013 may be included in calculating the tax credits available to the project.

**Rule 21. Determination of credit**

(a) The amount of the credit shall be determined by multiplying the total amount of QREs incurred in connection with the plan of Rehabilitation by the appropriate percentage as elected in the Contract. QREs may include expenses in connection with the Rehabilitation which were incurred prior to the start of Rehabilitation or of the Measuring Period but not prior to July 3, 2013. Further, QREs may include expenses incurred prior to completion of a formal plan of Rehabilitation but not prior to July 3, 2013, provided the expenses were incurred in connection with the Rehabilitation which was completed.

(b) The Division of Taxation shall certify the amount of QREs. In the case of Phased Projects, the Division of Taxation shall certify the amount of QREs for each phase.

(c) The Division of Taxation shall also issue an Assignable Historic Preservation Tax Credit Certificate, which shall certify as to the amount of historic preservation tax credit for which the Substantial Rehabilitation qualifies as more fully provided in Rule 22.

(d) The Division of Taxation may rely without independent investigation on the Accountant's Certification as to the amount of QREs actually incurred and the satisfaction of Substantial Rehabilitation test. However, the Division of Taxation 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 Accountant's Certification.

(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 (10) taxable years or until the full credit is used, whichever occurs first.

(f) In the case of a corporation, the historic preservation 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.

## **Rule 22. Assignment of Historic Preservation Tax Credits**

(a) Issuance of Assignable Historic Preservation Tax Credit Certificate to Owner, initial Assignee, or participant. Upon approval by the Commission of the Substantial Rehabilitation of a Certified Historic Structure and by the Division of Taxation of the amount of credit allowed pursuant to these rules, the Division of Taxation shall issue an Assignable Historic Preservation 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 Division of Taxation may issue an Assignable Historic Preservation Tax Credit Certificate to each participant in such pass-through entity or each Owner, indicating on the face of such certificate(s) the amount of the historic preservation tax credit allocable to such participant. The amount assigned to each participant will be the amount represented by the Applicant in the application for issuance of tax credit certification.

(b) Determination of Amount of Credit allocated to Participants in Pass-Through Entities. The amount allocated to each participant on the Assignable Historic Preservation Tax Credit Certificate issued to such participant must be either:

(1) in proportion to the number of participants in the Owner; or

(2) determined in accordance with any allocation method set forth in an Allocation Agreement among all participants, which may be without regard to their sharing of other tax or economic attributes of such entity set forth in the Allocation Agreement. The Division of Taxation 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 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 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. Assignees of the credit and their Assignees may further assign the credits, provided that no credit has been claimed based on the Assignable Historic Preservation Tax Credit Certificate being assigned.

(d) Assignee Recognition of Credit. The Assignee may use the historic preservation 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 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 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 tax credit.

(f) Notification of Assignment to Division of Taxation. An Assignor of all or any portion of the historic preservation tax credit shall notify the Division of Taxation in writing within thirty (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 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 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, LLCs, 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 an Assignable Historic Preservation Tax Credit Certificate has not been used in whole or in part, and the holder desires to assign its interest in the credit to one or more Assignee(s), the holder must make a request of the Division of Taxation to reissue the original certificate in such number of certificate(s) as the holder desires. The request must be made in writing, must specify the number of new certificates desired and the amount to be specified on each certificate, and must attach the original certificate for cancellation by the Division of Taxation.

(h) Treatment of Proceeds of Assignment for State Tax Purposes. The Assignor of all or a portion of the historic tax credit shall not recognize any state income tax under the provisions of RIGL title 44 with respect to the proceeds of such assignment. The Assignor of any credit shall attach a copy of the Assignable Historic Preservation Tax Credit Certificate to its tax return to evidence that such proceeds are not subject to state income tax. If the historic preservation tax credit is subsequently recaptured under RIGL

§44-33.6-4(h), revoked or adjusted, the Assignor's tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total amount of the sales proceeds, if any, without proration, as a modification under RIGL chapter 44-30. In the event that the Assignor is not a natural person, the Assignor's tax calculation under RIGL chapters 11, 12, 13 (other than with respect to the tax imposed under §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, if any, without proration.

(i) Administrative Fees. The Commission and/or the Division of Taxation may assess reasonable administrative fees for issuing multiple Assignable Historic Preservation Tax Credit Certificates or for reissuing certificates.

### **Rule 23. Processing Fees and Contracts of Guaranty**

(a) Within thirty (30) days of the date of Part 2 certification, the Applicant shall pay to the Division of Taxation a non-refundable Processing Fee equal to three percent (3%) of the estimated QREs and shall enter into a Contract with the Division of Taxation.

(b) The Contract will guarantee the amount of tax credit as the lesser of:

(1) the amount specified in the Contract; or

(2) the actual QREs as verified by the Division of Taxation multiplied by the applicable tax credit percentage as provided in Rule 8, provided that the project's Substantial Construction activities are commenced within 12 months of receipt of the Part 2 certification, that the project has not remained idle, and that the tax credits are not otherwise revoked, forfeited, recaptured or disallowed pursuant to the express provisions of this regulation.

(c) The Contract shall be assignable:

(1) to an Affiliate of the Person incurring the QREs, without consent from the Division of Taxation;

(2) to a banking institution as defined by RIGL §44-14-2 or credit union as defined by RIGL §44-15-1.1(1), without consent from the Division of Taxation;

(3) to a Person, firm, partnership, trust, estate, LLC, corporation (whether for profit or nonprofit) or other business entity that incurs QREs for the Substantial Rehabilitation of Certified Historic Structures or some identifiable portion of a structure, with such assignment to be approved by the Division of Taxation, which approval shall not be unreasonably withheld or conditioned; or

(4) to any other Person, firm, partnership, trust, estate, LLC, corporation (whether for profit or nonprofit) or other business entity that is approved by the Division of Taxation, which approval shall not be unreasonably withheld or conditioned.



## **Rule 24. Restrictive Covenant; Recapture**

(a) 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:

(1) 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;

(2) The Certified Historic Structure may not become Exempt from Real Property Tax; and

(3) The Commission and/or the Division of Taxation 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.

(b) 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 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 Division of Taxation in accordance with Rule 19.

(c) Liability for Recapture. In the event that tax credits that are subject to recapture have been transferred or assigned, the state will pursue its recapture remedies and rights against the Assignor or transferor of the tax credits or any other interested or responsible parties. No redress shall be sought against Assignees or transferees of such credits provided they acquired the tax credits by way of an arms length transaction, for value, and without notice of violation, fraud or misrepresentation. It will be presumed that any transferee or Assignee who is an Affiliate or a participant of the Assignor has notice of violation, fraud or misrepresentation and did not acquire the tax credits in an arms length transaction.

## **Rule 25. Inspection Rights**

(a) Commission's and Division of Taxation's Inspection rights. The Commission or the Division of Taxation shall have the right at reasonable times to make an Inspection and 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.

(b) Commission's and Division of Taxation's Inspection rights 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. If information comes to the attention of the Division of Taxation at any time up to and including the last day of the Holding Period that is materially inconsistent with representations made in the Accountant's Certification or any supporting materials, the Division of Taxation may revoke the Assignable Historic Tax Credit Certificate and cancel the Contract for tax credits and any Processing Fees paid thereunder shall be forfeited, and the Applicant shall forfeit the rights and entitlements to any remaining tax credits. If any tax credits have been claimed by any taxpayer based on an Assignable Historic Preservation Tax Credit Certificate that has been revoked or a Contract that has been canceled, the Person who filed the Accountant's Certification shall pay to the Division of Taxation an amount equal to the tax credits issued. There shall be no adjustment to the tax credit claimed by the taxpayer if a taxpayer acquired the Assignable Historic tax Credit Certificate, directly or indirectly, from the Owner or a participant in the Owner without notice of the materially inconsistent information upon which the certificate or Contract has been revoked.

**Rule 26. Sunset**

No credits shall be authorized to be reserved or contract entered into pursuant to RIGL chapter 44-33.6 on or after June 30, 2016 or upon the exhaustion of the maximum aggregate credits, whichever comes first.

**Rule 27. Effective Date**

These rules and regulation shall become effective February 27, 2014.

David M. Sullivan, Tax Administrator