

HISTORIC BUILDING REHABILITATION

TAX CREDITS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Chad E. Bennion

This act amends the Individual Income Tax Act and Corporate Franchise and Income Taxes to modify the corporate franchise and income tax and individual income tax historic building rehabilitation tax credits. The act provides tax credits for commercial certified historic buildings and commercial qualified historic buildings. The act deletes a requirement that a taxpayer reside in the state to be eligible for a tax credit. This act provides definitions and makes technical changes. The act has retrospective operation for taxable years beginning on or after January 1, 2003.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

59-7-609, as enacted by Chapter 42, Laws of Utah 1995

59-10-108.5, as last amended by Chapter 25, Laws of Utah 1995

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-7-609** is amended to read:

59-7-609. Historic building rehabilitation tax credit.

(1) As used in this section:

(a) "Certified historic building" means a building or structure that:

(i) (A) is listed on the National Register of Historic Places; or

(B) is listed on the National Register of Historic Places within a three-year period after

a taxpayer claims a credit under this section;

(ii) is located in:

(A) this state; and

(B) a National Register Historic District; and



(iii) the division has designated as being of significance to the National Register Historic District.

(b) "Commercial certified historic building" means a commercial unit that is a certified historic building.

(c) "Commercial qualified historic building" means a commercial unit that is a qualified historic building.

(d) (i) "Commercial unit" means a building or structure that is primarily used for the purpose of conducting business.

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules defining the term "conducting business."

(e) "Division" means the Division of State History.

(f) "Qualified historic building" means, as determined by the division, a building:

(i) that meets the:

(A) age requirements established by the National Register of Historic Places; and

(B) integrity requirements established by the National Register of Historic Places; and

(ii) for which any qualifying rehabilitation expenditures made by a taxpayer claiming a tax credit under this section meet the Secretary of the Interior's Standards for Rehabilitation.

(g) (i) "Qualified rehabilitation expenditures" means, as determined by the division, an expenditure incurred for the rehabilitation of the physical elements of a:

(A) commercial certified historic building;

(B) commercial qualified historic building; or

(C) residential certified historic building.

(ii) "Qualified rehabilitation expenditures" does not include:

(A) an expenditure related to a taxpayer's personal labor;

(B) an expenditure related to the cost of acquiring the real property upon which a building is located;

(C) an expenditure attributable to the enlargement of a building;

(D) any expenditure related to rehabilitation work if the rehabilitation work is not approved as provided in Subsection (4);

(E) an expenditure attributable to landscaping or other site features; or

(F) an expenditure similar to an expenditure described in Subsections (1)(g)(ii)(A)

through (E).

(h) (i) "Rehabilitation project" means a project:

(A) to rehabilitate a:

(I) commercial certified historic building;

(II) commercial qualified historic building; or

(III) residential certified historic building; and

(B) for which a taxpayer claiming a tax credit under this section incurs qualified rehabilitation expenditures.

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may by rule define the term "project."

(i) "Residential certified historic building" means a certified historic building that, as determined by the division, is:

(i) primarily used for residential purposes; and

(ii) (A) occupied by the owner of the building; or

(B) income producing.

(j) "Tax credit threshold" means that a taxpayer has made qualified rehabilitation expenditures that total at least \$10,000 with respect to each:

(i) commercial certified historic building for which the taxpayer claims a tax credit under this section;

(ii) commercial qualified historic building for which the taxpayer claims a tax credit under this section; or

(iii) residential certified historic building for which the taxpayer claims a tax credit under this section.

~~[(1) (a) For tax years beginning January 1, 1993, and thereafter, there is allowed to a]~~

~~(2) A taxpayer subject to [Section 59-7-104, as a credit against the tax due, an amount]~~
taxation under this chapter may claim the following nonrefundable tax credits against the taxes imposed by this chapter as provided in this section:

(a) for taxable years beginning on or after January 1, 1993, a taxpayer meeting the tax credit threshold for a residential certified historic building may claim a tax credit equal to 20% of the total amount of the taxpayer's qualified rehabilitation expenditures~~[-, costing more than \$10,000, incurred in connection with any]~~ for the residential certified historic building~~[-. When~~

qualifying expenditures of more than \$10,000 are incurred, the credit allowed by this section shall apply to the full amount of expenditures.];

~~[(b) AH]~~ (b) except as provided in Subsection (3), for taxable years beginning on or after January 1, 2003, a taxpayer meeting the tax credit threshold for a:

(i) commercial certified historic building may claim a tax credit equal to 20% of the total amount of the taxpayer's qualified rehabilitation expenditures for the commercial certified historic building; or

(ii) commercial qualified historic building may claim a tax credit equal to 20% of the total amount of the taxpayer's qualified rehabilitation expenditures for the commercial qualified historic building; or

(c) a combination of the tax credits described in Subsections (2)(a) and (b).

(3) (a) Notwithstanding Subsection (2)(b), the maximum amount of tax credit that a taxpayer may claim or carry forward during a six-year period is \$100,000 for all of the qualified rehabilitation expenditures incurred in connection with each:

(i) commercial certified historic building; or

(ii) commercial qualified historic building.

(b) The six-year period described in Subsection (3)(a) begins on the first day of the first taxable year for which a taxpayer may claim a tax credit under Subsection (2)(b).

(4) A taxpayer seeking to claim a tax credit under this section shall:

(a) file an application for approval of the taxpayer's qualified rehabilitation expenditures:

(i) prior to the completion of the rehabilitation project; and

(ii) on a form supplied by the division;

(b) obtain:

(i) approval for the taxpayer's qualified rehabilitation [work to which the credit may be applied shall be approved by the State Historic Preservation Office] expenditures:

(A) from the division; and

(B) prior to completion of the rehabilitation project [as meeting the Secretary of the Interior's Standards for Rehabilitation so that the office can provide corrective comments to the taxpayer in order to preserve]; and

(ii) after completing the rehabilitation project, an authorization form to claim the tax

121 credit:

122 (A) from the division; and

123 (B) on a form provided by the commission; and

124 (c) comply with any requirement of the division to ensure that the historical qualities of
125 the building are preserved.

126 ~~[(c) Any]~~ (5) Subject to Subsection (3), if the amount of a tax credit [remaining] a
127 taxpayer claims under this section exceeds that taxpayer's tax liability for a taxable year, the
128 taxpayer may [be carried] carry forward [to each of] the amount of the tax credit that exceeds
129 the taxpayer's tax liability for a time period that does not exceed the next five taxable years
130 [following the qualified expenditures].

131 ~~[(d) The commission;]~~ (6) In accordance with Title 63, Chapter 46a, Utah
132 Administrative Rulemaking Act, and in consultation with the [division of State History]
133 division, the commission shall promulgate rules to implement this section.

134 ~~[(2) As used in this section:]~~

135 ~~[(a) "Certified historic building" means a building that is listed on the National~~
136 ~~Register of Historic Places within three years of taking the credit under this section or that is~~
137 ~~located in a National Register Historic District and the building has been designated by the~~
138 ~~Division of State History as being of significance to the district.]~~

139 ~~[(b) (i) "Qualified rehabilitation expenditures" means any amount properly chargeable~~
140 ~~to the rehabilitation and restoration of the physical elements of the building, including the~~
141 ~~historic decorative elements, and the upgrading of the structural, mechanical, electrical, and~~
142 ~~plumbing systems to applicable codes.]~~

143 ~~[(ii) "Qualified rehabilitation expenditures" does not include expenditures related to:]~~

144 ~~[(A) the taxpayer's personal labor;]~~

145 ~~[(B) cost of acquisition of the property;]~~

146 ~~[(C) any expenditure attributable to the enlargement of an existing building;]~~

147 ~~[(D) rehabilitation of a certified historic building without the approval required in~~
148 ~~Subsection (1)(b); or]~~

149 ~~[(E) any expenditure attributable to landscaping and other site features, outbuildings,~~
150 ~~garages, and related features.]~~

151 ~~[(c) "Residential" means a building used for residential use, either owner occupied or~~

income-producing].

Section 2. Section **59-10-108.5** is amended to read:

59-10-108.5. Historic building rehabilitation tax credit.

(1) As used in this section:

(a) "Certified historic building" means a building or structure that:

(i) (A) is listed on the National Register of Historic Places; or

(B) is listed on the National Register of Historic Places within a three-year period after a taxpayer claims a credit under this section;

(ii) is located in:

(A) this state; and

(B) a National Register Historic District; and

(iii) the division has designated as being of significance to the National Register Historic District.

(b) "Commercial certified historic building" means a commercial unit that is a certified historic building.

(c) "Commercial qualified historic building" means a commercial unit that is a qualified historic building.

(d) (i) "Commercial unit" means a building or structure that is primarily used for the purpose of conducting business.

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules defining the term "conducting business."

(e) "Division" means the Division of State History.

(f) "Qualified historic building" means, as determined by the division, a building:

(i) that meets the:

(A) age requirements established by the National Register of Historic Places; and

(B) integrity requirements established by the National Register of Historic Places; and

(ii) for which any qualifying rehabilitation expenditures made by a taxpayer claiming a tax credit under this section meet the Secretary of the Interior's Standards for Rehabilitation.

(g) (i) "Qualified rehabilitation expenditures" means, as determined by the division, an expenditure incurred for the rehabilitation of the physical elements of a:

(A) commercial certified historic building;

183 (B) commercial qualified historic building; or

184 (C) residential certified historic building.

185 (ii) "Qualified rehabilitation expenditures" does not include:

186 (A) an expenditure related to a taxpayer's personal labor;

187 (B) an expenditure related to the cost of acquiring the real property upon which a
188 building is located;

189 (C) an expenditure attributable to the enlargement of a building;

190 (D) any expenditure related to rehabilitation work if the rehabilitation work is not
191 approved as provided in Subsection (4);

192 (E) an expenditure attributable to landscaping or other site features; or

193 (F) an expenditure similar to an expenditure described in Subsections (1)(g)(ii)(A)
194 through (E).

195 (h) (i) "Rehabilitation project" means a project:

196 (A) to rehabilitate a:

197 (I) commercial certified historic building;

198 (II) commercial qualified historic building; or

199 (III) residential certified historic building; and

200 (B) for which a taxpayer claiming a tax credit under this section incurs qualified
201 rehabilitation expenditures.

202 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
203 the division may by rule define the term "project."

204 (i) "Residential certified historic building" means a certified historic building that, as
205 determined by the division, is:

206 (i) primarily used for residential purposes; and

207 (ii) (A) occupied by the owner of the building; or

208 (B) income producing.

209 (j) "Tax credit threshold" means that a taxpayer has made qualified rehabilitation
210 expenditures that total at least \$10,000 with respect to each:

211 (i) commercial certified historic building for which the taxpayer claims a tax credit
212 under this section;

213 (ii) commercial qualified historic building for which the taxpayer claims a tax credit

under this section; or

(iii) residential certified historic building for which the taxpayer claims a tax credit under this section.

[~~(1)(a)~~] (2) (a) (i) For [tax] taxable years beginning on or after January 1, 1993, [and thereafter] but beginning on or before December 31, 2002, there is allowed to resident individuals, as a tax credit against the income tax due, an amount equal to 20% of qualified rehabilitation expenditures, costing more than \$10,000, incurred in connection with [any] a residential certified historic building.

(ii) When qualifying expenditures of more than \$10,000 are incurred, the tax credit allowed by [this section] Subsection (2)(a)(i) shall apply to the full amount of expenditures.

(b) (i) For taxable years beginning on or after January 1, 2003, a taxpayer subject to taxation under this chapter may claim the following nonrefundable tax credits against the taxes imposed by this chapter as provided in this section:

(A) a taxpayer meeting the tax credit threshold for a residential certified historic building may claim a tax credit equal to 20% of the total amount of the taxpayer's qualified rehabilitation expenditures for the residential certified historic building;

(B) except as provided in Subsection (3), a taxpayer meeting the tax credit threshold for a:

(I) commercial certified historic building may claim a tax credit equal to 20% of the total amount of the taxpayer's qualified rehabilitation expenditures for the commercial certified historic building; or

(II) commercial qualified historic building may claim a tax credit equal to 20% of the total amount of the taxpayer's qualified rehabilitation expenditures for the commercial qualified historic building; or

(ii) a combination of the tax credits described in Subsections (2)(b)(i)(A) and (B).

(3) (a) Notwithstanding Subsection (2)(b)(i)(B), the maximum amount of tax credit that a taxpayer may claim or carry forward during a six-year period is \$100,000 for all of the qualified rehabilitation expenditures incurred in connection with each:

(i) commercial certified historic building; or

(ii) commercial qualified historic building.

(b) The six-year period described in Subsection (3)(a) begins on the first day of the first

taxable year for which a taxpayer may claim a tax credit under Subsection (2)(b)(i)(B).

~~[(b) AH]~~ (4) A taxpayer seeking to claim a tax credit under this section shall:

(a) file an application for approval of the taxpayer's qualified rehabilitation expenditures:

(i) prior to the completion of the rehabilitation project; and

(ii) on a form supplied by the division;

(b) obtain:

(i) approval for the taxpayers qualified rehabilitation ~~[work to which the credit may be applied shall be approved by the State Historic Preservation Office]~~ expenditures:

(A) from the division; and

(B) prior to completion of the rehabilitation project ~~[as meeting the Secretary of the Interior's Standards for Rehabilitation so that the office can provide corrective comments to the taxpayer in order to preserve]; and~~

(ii) after completing the rehabilitation project, an authorization form to claim the tax credit:

(A) from the division; and

(B) on a form provided by the commission; and

(c) comply with any requirement of the division to ensure that the historical qualities of the building are preserved.

~~[(c) Any]~~ (5) Subject to Subsection (3), if the amount of a tax credit ~~[remaining]~~ a taxpayer claims under this section exceeds the taxpayer's tax liability for a taxable year, the taxpayer may ~~[be carried]~~ carry forward ~~[to each of]~~ the amount of the tax credit that exceeds the taxpayer's tax liability for a time period that does not exceed five taxable years ~~[following the qualified expenditures]~~.

~~[(d) The commission,]~~ (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, in consultation with the ~~[Division of State History]~~ division, the commission shall promulgate rules to implement this section.

~~[(2) As used in this section:]~~

~~[(a) "Certified historic building" means a building that is listed on the National Register of Historic Places within three years of taking the credit under this section or that is located in a National Register Historic District and the building has been designated by the~~

Division of State History as being of significance to the district.]

~~[(b) (i) "Qualified rehabilitation expenditures" means any amount properly chargeable to the rehabilitation and restoration of the physical elements of the building, including the historic decorative elements, and the upgrading of the structural, mechanical, electrical, and plumbing systems to applicable codes.]~~

~~[(ii) "Qualified rehabilitation expenditures" does not include expenditures related to:]~~

~~[(A) the taxpayer's personal labor;]~~

~~[(B) cost of acquisition of the property;]~~

~~[(C) any expenditure attributable to the enlargement of an existing building;]~~

~~[(D) rehabilitation of a certified historic building without the approval required in~~

~~Subsection (1)(b); or]~~

~~[(E) any expenditure attributable to landscaping and other site features, outbuildings, garages, and related features.]~~

~~[(c) "Residential" means a building used for residential use, either owner occupied or income producing.]~~

Section 3. **Retrospective operation.**

This act has retrospective operation for taxable years beginning on or after January 1, 2003.

Legislative Review Note

as of 1-13-03 7:00 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note**Historic Building Rehabilitation Tax Credits***22-Jan-03***Bill Number HB0193***7:52 AM*

State Impact

Passage of this bill could decrease the Uniform School Fund by \$145,000 in FY 2004 and by \$192,000 in FY 2005. There could be some potential revenue offset as property values increase over time.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Uniform School Fund	\$0	\$0	(\$145,000)	(\$192,000)
TOTAL	\$0	\$0	(\$145,000)	(\$192,000)

Individual and Business Impact

Qualified applicants could receive tax benefits between \$2,000 and \$100,000.

Office of the Legislative Fiscal Analyst