

State of Louisiana
Department of Revenue

JOHN BEL EDWARDS
Governor



KIMBERLY LEWIS ROBINSON
Secretary

October 1, 2018

Via E-mail/R.R.R. to:

apa.h-wm@legis.la.gov

The Honorable Neil Abramson, Chairman
House Committee on Ways & Means
P.O. Box 94062
Baton Rouge, Louisiana 70804

apa.s-r&f@legis.la.gov

The Honorable Jean-Paul J. Morrell, Chairman
Senate Committee on Revenue & Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: **Proposed Regulation LAC 61:I.1917-Louisiana Rehabilitation of Historic Structures Tax Credit**

Chairman Abramson and Chairman Morrell:

On August 10, 2018 a copy of the *Notice of Intent* issued by the Department of Revenue for promulgation of the proposed regulation, LAC 61:I.1917, *Louisiana Rehabilitation of Historic Structures Tax Credit*, was sent to your committee for review. The purpose of this *Notice of Intent* is to further define relative to eligible costs and expenses and to provide for an application procedure as it pertains to the Historic Rehabilitation Credit. In addition, the proposed regulation provides relative to transfer fees, as authorized by R.S. 47:6019.

The *Notice of Intent* was published in the August 2018 issue of the *Louisiana Register*. A public hearing was held on Monday, September 24, 2018. No written or oral comments were received. In addition, one attendee was present at the public hearing. No changes will be made to the text of the rule before it is finalized.

This report is being made in accordance with R.S. 47:968(D)(1)(b) of the Administrative Procedure Act. Unless otherwise directed, the proposed rule will be submitted for publication as a final rule in the November 2018 edition of the *Louisiana Register*. Should you have any questions or need additional information, please contact me at (225) 219-2700.

Contributing to a better quality of life.

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Sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Kimberly Lewis Robinson
Secretary

Enclosure

NOTICE OF INTENT

Department of Revenue Policy Services Division

Louisiana Rehabilitation of Historic Structures Tax Credit (LAC: 61:I.1917)

Under the authority of R.S. 47:6019 and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1917 relative to the Historic Rehabilitation Tax Credit.

Revised Statute 47:6019 authorizes a credit for the eligible costs and expenses incurred during the rehabilitation of a historic structure located in a downtown development district or a cultural district. The purpose of this regulation is to further define relative to eligible costs and expenses and to provide for an application procedure as it pertains to the historic rehabilitation credit. In addition, the proposed regulation provides relative to transfer fees, as authorized by R.S. 47:6019.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

§1917. Louisiana Rehabilitation of Historic Structures Tax Credit

A. General Description

1. Revised Statute 47:6019 authorizes an income and corporation franchise tax credit for eligible costs and expenses incurred during the rehabilitation of a historic structure located in a downtown development district or a cultural district. Eligible structures must be nonresidential real property or residential rental property.

2. The tax credit for QRE's is earned only in the year in which the property attributable to the expenditures is placed in service. However, regardless of the year in which the property is placed in service, the amount of the credit shall equal 25 percent of the eligible costs and expenses of the rehabilitation incurred prior to January 1, 2018, and twenty percent of the eligible costs and expenses of the rehabilitation incurred on or after January 1, 2018.

3. No taxpayer, or any entity affiliated with such taxpayer, shall claim more than \$5,000,000 of credit annually for any number of structures rehabilitated within a downtown development district or cultural district.

4. The credit shall be allowed against the income tax for the taxable period in which the credit is earned and against the franchise tax for the taxable period following the period in which the credit is earned. If the tax credit allowed pursuant to R.S. 47:6019 exceeds the amount of such taxes due, any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years. The credit may be used in addition to the twenty percent federal tax credit for such purposes.

5. The tax credit shall not be allowed for the rehabilitation costs and expenses that are paid for with state or federal funds, unless the state or federal funds are reported as taxable income or are structured as repayable loans.

B. Definitions

Assistant Secretary—the Assistant Secretary of the Office of Legal Affairs, Louisiana Department of Revenue, or, in the absence of such official, another designee as authorized by the secretary.

CPA—certified public accountant.

Cultural District—a district designated by a local governing authority in accordance with law for the purpose of revitalizing a community by creating a hub of cultural activity, including affordable artist housing and workspace, which has been determined by the Department of Culture, Recreation and Tourism to meet the criteria established to be so designated.

Department—the Louisiana Department of Revenue.

Downtown Development District—a downtown development district or central business development district created by law, or by ordinance adopted prior to January 1, 2002, in a home rule charter municipality.

Eligible Costs and Expenses—qualified rehabilitation expenditures as defined in section 47(c)(2)(A) of the Internal Revenue Code of 1986, as amended, except that "substantially rehabilitated shall mean that the qualified rehabilitation expenditures must exceed \$10,000.

Phased Projects—a project which is completed in multiple phases.

QRE's—qualified rehabilitation expenses.

SHPO—State Historic Preservation Office.

SOI-Compliant—work performed in accordance with the Secretary of the Interior's Standards for Rehabilitation.

Transfer—for purposes of the fee requirement, an assignment, disposition, transfer or allocation of tax credits.

C. Application Procedure

1. Initial Determination of Eligibility by the SHPO

a. The SHPO determines whether the structure, before and after the work is performed, qualifies as contributing to the historical significance of the district. Specifically, the SHPO determines whether work was performed on an eligible structure and whether such work performed was SOI-compliant. A project is determined to be a certified rehabilitation if the building itself meets eligibility requirements and the work is SOI-compliant.

b. The SHPO makes a determination as to whether a project is determined to be a certified rehabilitation through a three-part application process administered by an architectural historian.

i. In Part 1, the SHPO certifies whether the structure is eligible for the Program.

ii. In Part 2, the SHPO certifies whether the work, as proposed by the applicant, is SOI-compliant.

iii. In Part 3, the SHPO confirms that the actual work performed by the applicant was indeed SOI-compliant.

c. If the project is determined by SHPO to be a certified rehabilitation, the SHPO shall provide to the applicant, with copies to the department, an approved "part 3-request for certification of completed work", and an executed section I of Form R-6121B.

2. Approval of the Credit by the Department of Revenue

a. An applicant shall submit the following to the department:

i. a certified audit report or examined cost certification prepared by an independent auditor, which report and auditor meet the following minimum qualifications as set forth by the department:

(a). the auditor must be a CPA licensed in the State of Louisiana or in compliance with the CPA Mobility Act and must be an independent third party not related to the applicant;

(b). the CPA must be listed on the legislative auditor approved listing, or, if not licensed in Louisiana, in compliance with the CPA Mobility Act;

(c). the auditor's opinion must be addressed to the party which has engaged the auditor, but may expressly permit others to rely on the same;

(d). the name of the auditor's firm, address, and telephone number must be evident on the report;

(e). the auditor's opinion must be dated no earlier than the completion of the audit fieldwork;

(f). the certified audit report or examined cost certification must be performed in accordance with auditing standards set forth by the American Institute of Certified Public Accountants, the auditor must have sufficient knowledge of accounting principles and the SOI standards for rehabilitation. The auditor's opinion should be accompanied by the cost report of QRE's, the notes to the cost report, and a completed CPA certification form;

(g). the period during which qualified rehabilitation costs were incurred must be noted;

(h). the certified audit report or examined cost certification must provide a breakdown of all related party transactions, as defined by the Statement of Financial Accounting Standards No. 57 and include the following:

(i). the name and address of the related party;

(ii). the nature of the relationship between the related party and the applicant;

(iii). the nature and amount of the transaction;

(iv). the federal and state tax identification numbers of the related party for total payments equal to \$10,000 or greater, and payment schedule if there are remaining outstanding balances;

(v). if there are no related party transactions, the cost report must include a note indicating such;

(i). a reasonableness/fairness opinion shall be submitted, if applicable, comparing the amounts charged on related party transactions to what an independent party would have charged for similar work and/or services;

(j). for any total payments \$100,000 or greater, the report or certification must include the following:

(i). name and address of the payee;

(ii). federal and state tax numbers of the payee;

(iii). any state/and/or local license numbers of the payee (i.e. contractor's license); and

(iv). total amount paid (Form R-6122).

b. For those applicants whose total project cost is \$500,000 or less, the following information may be submitted in lieu of the requirements contained in Subparagraph C.2.a of this Section. Projects submitted in multiple phases, "phased projects", where the estimated total costs of all phases of a project is greater than \$500,000 must submit the information required in Subparagraph C.2.a of this Section, regardless of whether the specific cost for any particular phase being submitted for review is \$500,000 or less. For qualifying projects, an applicant must submit the following information:

i. an itemized listing of all QRE's as well as all non-QRE's, detailing all costs and eligible expenses as

defined in Section 47(c)(2)(A) of the Internal Revenue Code of 1986, as amended. The itemized listing must conform to the requirements of Subclause C.2.a.i.(f) of this Section, as provided, and contain an arms-length comparison for each expenditure submitted as well as the period during which the rehabilitation costs were incurred. Column headings for the list must include: category of work, method of payment, date paid, name of payee/contractor, description of expenditure, total amount of expenditure and amount of QRE's. The department may require documentation to verify whether the expenses claimed were actually incurred during the rehabilitation;

ii. an invoice for each QRE totaling \$2,500 or more. Where the aggregate payments to a single payee are equal to or greater than \$100,000, the federal and state tax numbers as well as any state and/or local license numbers (i.e. contractor's license) must be submitted;

iii. a notarized statement attesting that the expenditures submitted were incurred in connection with the rehabilitation of a "certified historic structure" that is properly chargeable to a capital account. Such expenditures include: architectural and engineering fees; construction interest and taxes; developer's fees; general administrative fees; legal and professional fees; and rehabilitation costs. Common expenditures which do not qualify as QRE's include, but are not limited to: acquisition costs; appliances; appraisal costs; cabinets; carpeting (when tacked and not glued to floor); demolition costs; financing fees; furniture; leasing expenses; marketing costs; moving costs; parking lot; paving and landscape costs; and signage.

c. The department shall review the certified audit report, examined cost certification, or itemized listing of all QRE's and non-QRE's. The department may request additional documentation from the applicant as it determines necessary. Further, the department may rely on the SHPO for any technical assistance, as determined necessary during the review process. This assistance includes, but is not limited to, interpretations of the Secretary of the Interior standards for rehabilitation. For projects with a placed in service date occurring on or after January 1, 2018 that have expenditures incurred both before and after January 1, 2018, the audit report, examined cost certification or itemized listing submitted for review shall segregate such expenditures by date so as to allow the proper credit rate to be determined. Failure to so segregate such expenditures will result in credit being applied at a blanket rate of 20 percent.

d. After all supporting documentation is received and approved, the department shall complete and provide to the applicant Section 2 of Form R-6121-B, thereby confirming the certified amount of the tax credit earned by the applicant. With the exception of phased projects, the final year of the placed in service date shall be the first year the credit may be utilized. Issuance of the tax credit certificate shall be delayed by any outstanding tax balances of the applicant until all such tax balances are resolved.

D. Internal Appeal Process

1. Applicants may appeal the denial of the certification of expenditures to the assistant secretary.

a. Written notice of the intent to appeal must be received by the department within ten business days from the date of the denial letter.

b. The full appeal must be received by the department no later than 30 calendar days from the date of the denial letter. Appeals must be in writing and must detail

specific reasons the denial should be partially or completely reconsidered or overturned.

i. Upon a showing of reasonable cause, the assistant secretary may extend the deadline for submission of the full appeal.

c. The assistant secretary, at his discretion, may hold a hearing in connection with the appeal.

2. Upon review of the appeal and consideration of the hearing, if applicable, the assistant secretary shall take one of the following actions:

a. sustain, in full or in part, the denial;

b. overturn, in full or in part, the denial.

3. The assistant secretary's final written decision to any appeal must be issued no later than 90 days after receiving the full appeal.

E. Claiming or Transferring the Tax Credit

1. All tax credits issued pursuant to R.S. 47:6019 must be registered and conform to all requirements of the Tax Credit Registry, as provided in R.S. 47:1524, in order to be claimed on a return or transferred.

2. Persons who are awarded tax credits may elect to sell their unused tax credits to one or more individuals or entities. The tax credits may be transferred or sold by a taxpayer or any subsequent transferee an unlimited number of times. However, the transfer of the credit does not extend the carry forward period of the credit.

3. Transferors and transferees shall submit to the department in writing a notification of any transfer or sale of tax credits within ten business days after the transfer or sale of such credits. The notification shall be accompanied by a tax credit transfer processing fee of \$200. The notification shall include the transferor's tax credit balance prior to transfer, the credit identification number assigned by the state historic preservation office, the remaining balance after transfer, all federal and Louisiana tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, and any other information requested by the department. Failure to comply with this notification provision will result in the disallowance of the tax credit until the parties are in full compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:6019.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:

Family Impact Statement

The proposed adoption of LAC 61:I.1917, regarding Louisiana Rehabilitation of Historic Structures tax credits, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Poverty Statement

This proposed regulation will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

It is anticipated that this proposed amendment should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting this proposed amendment to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed amendment will have no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service.

3. The overall effect on the ability of the provider to provide the same level of service.

Public Comments

Any interested person may submit written data, views, arguments or comments regarding these proposed amendments to Bradley Blanchard, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:00 p.m., Friday, September 21, 2018.

Public Hearing

A public hearing will be held on Monday, September 24, 2018, at 9:30 a.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Louisiana Rehabilitation of Historic Structures Tax Credit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule provides for an application procedure and to further define eligible costs and expenses pertaining to the Rehabilitation of Historic Structures credit. The rule also establishes the credit transfer fee and provides for an internal appeal process for expenses that are determined to be ineligible for the credit.

There is no anticipated direct material effect on governmental expenditures as a result of the proposed rule. The department has implemented application procedures, and no additional resources are needed to collect the transfer fee or to provide an internal appeal process.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule provides for a fee of \$200 to be collected by Department of Revenue (LDR) whenever the Rehabilitation of Historic Structures credit is transferred. This fee will be used to pay for the administrative and other costs necessary to record the transfer of the credit in the Tax Credit Registry. LDR estimates approximately 2,100 transfers will occur per year based on transfers completed in FYE 2017. With a fee at \$200 per transfer, LDR could see a projected increase of \$210,000 for FYE 2019 and \$420,000 per year thereafter in self-generated revenues. Fees will not begin to be collected until this rule is promulgated, which is anticipated to occur approximately halfway through FYE 2019.

This proposal should have no impact on the revenue collections of local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Taxpayers purchasing or selling credits will be affected due to the proposed transfer fee. Also, brokers in the business of facilitating the sale of tax credits will be affected by this proposal since additional fees may be associated with transfer transactions. These impacts are directly related to the fees collected in Section II.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule has no effect on competition or employment.

Kimberly Lewis Robinson
Secretary
1808#040

Evan Brasseaux
Staff Director
Legislative Fiscal Office