

Clearinghouse Rule 95-215

STATE OF WISCONSIN

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STATE HISTORICAL SOCIETY OF WISCONSIN

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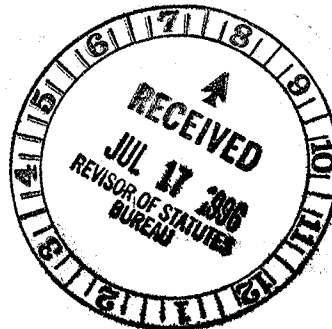
I, Robert B. Thomasgard, Acting Director of the State Historical Society of Wisconsin and custodian of the official records, certify that the annexed rules, relating to the State Historic Rehabilitation Tax Credit program, were duly approved and adopted by this agency on July 12, 1996.

I further certify that this copy has been compared by me with the original on file in this agency and that it is a true copy of the original, and of the whole of the original.

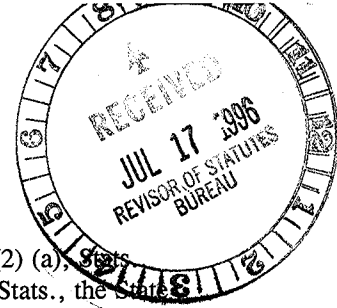
IN TESTIMONY WHEREOF, I have hereunto set my hand at the State Historical Society, 816 State Street, in the city of Madison, this 12th day of July, 1996.

Robert B. Thomasgard

Robert B. Thomasgard, Acting Director
State Historical Society of Wisconsin



9-1-96
95-215



NOTICE IS HEREBY GIVEN That pursuant to s. 44.02 (24) and s. 44.34 (4) and s 227.11 (2) (a), Stats., and interpreting s. 71.07 (9r) Stats., and according to procedure set forth in s. 227.16 (2) (e), Stats., the State Historical Society will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, the State Historical Society is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business, or professional group which will be affected by the rule:

INTRODUCTION

The State Historical Society of Wisconsin proposes an order to create Chapter HS 3 relating to a state 25% tax credit program for rehabilitation of owner-occupied historic residences.

ANALYSIS PREPARED BY THE STATE HISTORICAL SOCIETY OF WISCONSIN

Statutory authority: s.44.02 (24) and s. 44.34 (4) and s. 227.11 (2) (a), Stats.
Statutes interpreted: s. 71.07 (9r), Stats.

This chapter establishes the procedures that the State Historical Society will use to certify applications under the State Historic Rehabilitation Tax Credit program.

The State of Wisconsin offers a 25 percent income tax credit to owner-occupants who substantially rehabilitate buildings listed in the National Register of Historic Places or the State Register of Historic Places or that are determined through the application process to be eligible for listing in the state or national registers of historic places. The tax credit is equal to 25% of the cost of eligible rehabilitation work, up to a maximum of \$10,000 for individuals, or \$5,000 for married persons filing separately. To qualify for the credit, an owner must: a) use the property as the owner's personal residence; b) spend at least \$10,000 on eligible rehabilitation work; c) formally apply to receive the credit and receive approval before beginning tax credit-eligible work; and d) plan and execute the project in a way that does not destroy the building's historical integrity.

By s. 71.07 (9r) (b) 3, Stats., the State Historical Society of Wisconsin, is responsible for:

- a. certifying that the property is listed in the National Register of Historic Places or the State Register of Historic Places, or is eligible for listing in either register;
- b. certifying that proposed rehabilitation work, including both eligible activities and additional work, conforms with the Secretary of the Interior's Standards for Rehabilitation, which have been written into s. HS 3.06 (6) of the rule; and
- c. certifying that the completed project conforms to the approved work plan.

By s. 71.07 (9r) (b) 4, Stats., the Wisconsin Department of Revenue is responsible for enforcement of the rule that limits the credit to expenditures made during a 2 year period, unless an owner elects a 5 year period. Owners claiming the 5 year period are subject to s. 71.07 (9r) (b) 4, Stats., which requires that work must be "initially planned for completion in phases." This means that owners must apply for the 5 year period before beginning tax credit-eligible work. Because the work indicated in the 5 year phasing plan is identical to that of the certification application, s. 3.08 of the rule requires that, if an owner requests a 5 year period, it becomes part of the certification application which, under s. 71.07 (9r) (b) 3 b, Stats., must be approved by the State Historical Society. Enforcement of the 5 year expenditure period is the responsibility of the Wisconsin Department of Revenue.

By s. 44.02 (24), Stats., the State Historical Society is required to provide the public with applications, materials and instructions about applying for the credit. Application forms are referenced in the rule.

Except as cited above, enforcement and administration of s.71.07 (9r), Stats., is the responsibility of the Wisconsin Department of Revenue.

SECTION 1. Chapter HS 3 is created to read:

**CHAPTER HS 3
STATE HISTORIC REHABILITATION TAX CREDITS**

HS 3.01	Authority	HS 3.05	Determination of Historic Property
HS 3.02	Purpose	HS 3.06	Certification of Rehabilitation Work
HS 3.03	Definitions	HS 3.07	Certification of Completed Work
HS 3.04	General Certification by the Society	HS 3.08	Approval of 5 year phasing

HS 3.01 AUTHORITY.

This chapter is promulgated under the authority of ss.44.02 (24), 44.34 (4) and 227.11 (2) (a), Stats. and provides a process to implement s. 71.07 (9r), Stats.

HS 3.02 PURPOSE.

This chapter establishes procedures that the state historical society will use to make its determinations regarding the eligibility of projects to rehabilitate historic property for 25% state investment tax credits. NOTE: In addition to these requirements of the state historical society, the taxpayer claiming the credit must meet other requirements of the department of revenue.

HS 3.03 DEFINITIONS. In this chapter:

- (1) "Completion date" means the date indicated in the approved part 2 application by which all eligible activity is to be completed.
- (2) "Eligible activity" means those portions of a project for which the owner may claim the costs under the 25% rehabilitation tax credit program under s. 71.07 (9r) (a) and (b) 1m., Stats.
- (3) "Eligible property" means real property located in the state of Wisconsin that has been determined to be historic property that is used as an owner-occupied personal residence and is not actively used in a trade or business, held for the production of income, or held for sale or other disposition in the ordinary course of the owner's trade or business.
- (4) "Five year phasing application" means state form HPD:WTC004, "Request for Five-Year Project Phasing.," available from the division of historic preservation, state historical society, 816 State Street, Madison, Wisconsin 53706.
- (5) "Listing date" means the date on which the property or the district in which it is physically located is listed in the national register or state register.
- (6) "National register" means the list of properties and districts of historic, archeological, architectural, and engineering significance in the national register of historic places maintained by the national park service, U. S. department of the interior under provisions of 16 U.S.C. s. 470.
- (7) "Officer" means the state historic preservation officer appointed under s. 44.32, Stats.
- (8) "Outbuilding" means any building within the legal boundaries of a property that contains eligible property under s. HS 3.03 (3).
- (9) "Owner" means the natural person whose name is listed in the county register of deeds as holding record title to the property or who holds equitable title as a land contract vendee.

- (10) "Part 1 application" means state form HPD:WTC001, "Historic Preservation Certification Application, Part 1 -- Evaluation of Significance," available from the division of historic preservation, state historical society, 816 State Street, Madison, Wisconsin 53706.
- (11) "Part 2 application" means state form HPD:WTC002, "Historic Preservation Certification Application, Part 2 -- Description of Rehabilitation," available from the division of historic preservation, state historical society, 816 State Street, Madison, Wisconsin 53706.
- (12) "Part 3 application" means state form HPD:WTC003, "Request for Certification of Completed Work," available from the division of historic preservation, state historical society, 816 State Street, Madison, Wisconsin 53706.
- (13) "Physical work" means construction or destruction in preparation for construction.
- (14) "Project period" means the period from the start of physical work until the completion of all eligible activity.
- (15) "Rehabilitation work" means an activity that has received, or is the subject of an application to receive, a general certification by the society under s. HS 3.04, including both eligible activity and other physical work that may be undertaken during or within 12 months before the project period.
- (16) "Society" means the state historical society.
- (17) "State register" means the list of properties and districts of historic, archeological, architectural, and engineering significance in the Wisconsin state register of historic places maintained by the state historical society under s. 44.36, Stats., including interim listings under s. 44.36 (5) (a) 3., Stats.

HS 3.04 GENERAL CERTIFICATION BY THE SOCIETY.

For purposes of s. 71.07 (9r) (b) 3, Stats., a project is certified when the officer has made a determination of historic property under s. HS 3.05 and certifies in writing that the property is historic property and that the rehabilitation work meets the rehabilitation standards under s. HS 3.06. The officer shall rescind certification if the applicant does not submit a part 3 application under s. HS 3.06 (1) and (2) or the officer denies the part 3 application under s. HS 3.07 (5).

HS 3.05 DETERMINATION OF HISTORIC PROPERTY. Before the officer may certify the rehabilitation work, under s. HS 3.06, a property shall be determined to be historic property through the following processes:

- (1) **INDIVIDUALLY LISTED PROPERTY.**
 - (a) A property is historic property if the officer certifies that it is listed individually in the national register or the state register.
 - (b) The owner shall apply for and receive written determination of historic property by the officer. The owner shall apply using a part 1 application.
 - (c) If the rehabilitation project includes work on an outbuilding, the owner shall include in the part 1 application a description of the outbuilding and photographs for the officer to determine that the outbuilding contributes to the significance of the historic property.

- (d) If the officer determines that the part 1 application is incomplete, the officer shall return it to the owner with recommendations for making it complete.
 - (e) If the officer determines that the part 1 application is complete, the officer shall review and approve or deny the part 1 application in writing.
 - (f) When the officer determines a property to be historic property, the officer shall sign the part 1 application and return it to the owner indicating that the property is historic property.
- (2) DISTRICT PROPERTY.
- (a) A property is historic property if it is included in a district that is listed in the national register or the state register and if the officer certifies in writing that it contributes to the significance that caused the district to become eligible for listing in one or both registers.
 - (b) The owner shall apply for and receive written determination of historic property by the officer. The owner shall apply using a part 1 application.
 - (c) If the rehabilitation project includes work on an outbuilding, the owner shall include in the part 1 application a description of the outbuilding and photographs for the officer to determine that the outbuilding contributes to the significance of the historic property.
 - (d) If the officer determines that the part 1 application is incomplete, the officer shall return it to the owner with recommendations for making it complete.
 - (e) If the officer determines that the part 1 application is complete, the officer shall review and approve or deny the part 1 application in writing.
 - (f) When the officer determines a property to be historic property, the officer shall sign the part 1 application and return it to the owner indicating that the property is historic property.
- (3) PROPERTY DETERMINED ELIGIBLE.
- (a) A property is historic property if it is determined by the officer to be eligible for listing in the national register or the state register.
 - (b) The owner shall apply for and receive written determination of historic property by the officer. The owner shall apply using a part 1 application that describes the historic building, its site, and any outbuildings contained on the site.
 - (c) If the officer determines that the part 1 application is incomplete, the officer shall return it to the owner with recommendations for making it complete.
 - (d) If the officer determines that the part 1 application is complete, the officer shall review and approve or deny the part 1 application in writing.
 - (e) When the officer determines a property to be historic property, the officer shall sign the part 1 application and return it to the owner indicating that the property is historic property.

HS 3.06 CERTIFICATION OF REHABILITATION WORK.

- (1) The owner shall apply for and receive approval by the officer for proposed rehabilitation work using a part 2 application. The owner shall describe all rehabilitation work, including both eligible activities and non-eligible activities, such as site work and cosmetic interior work, and shall indicate on the part 2 application those portions of the project for which the tax credit will be claimed.
- (2) The part 2 application shall document the condition and appearance of the property before the start of rehabilitation work, including photographic documentation of all affected portions of the property and, where necessary to describe the project, architectural plans. The officer may waive photographic documentation or architectural drawings in cases where documentation is impossible.
- (3) The officer shall review the part 2 application if the owner has applied for a determination of historic property using a part 1 application and if the officer has determined that the property is historic property. If the officer reviews the part 1 application and determines that the property is not historic property, the officer shall return the part 2 application to the owner with an indication that the property is not historic property.
- (4) If the officer determines that the part 2 application is incomplete, the officer shall return it to the owner with recommendations for making it complete.
- (5) If the officer determines that the part 2 application is complete, the officer shall review and approve, approve with conditions, or deny the part 2 application in writing.
- (6) The officer shall approve the part 2 application if the officer determines that the proposed project meets all of the following rehabilitation standards:
 - (a) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
 - (b) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
 - (c) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
 - (d) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
 - (e) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
 - (f) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
 - (g) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
 - (h) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

- (i) New additions, exterior alterations or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
 - (j) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.
- (7) The officer may approve the part 2 application with conditions if the officer determines that compliance with the conditions would result in the rehabilitation work meeting the rehabilitation standards.
 - (8) When the officer approves a part 2 application, the officer shall sign the part 2 application and return it to the owner indicating that the officer has certified the property as historic property and has approved the proposed work and any conditions that may be attached to the approval.
 - (9) An owner may reapply for certification of a rehabilitation project that has been denied by the officer. If the officer determines that the owner has made substantive revisions to the application to conform to the rehabilitation standards, the officer shall consider the application in accordance with procedures in this section.

HS 3.07 CERTIFICATION OF COMPLETED WORK.

- (1) Within 90 days of the completion of rehabilitation work the owner shall submit a part 3 application to the officer for approval. If the officer determines that the part 3 application is incomplete, the officer shall return it to the owner with recommendations for making it complete.
- (2) If the officer does not receive a part 3 application within 90 days of the completion date, the officer shall notify the owner in writing that certification of rehabilitation will be rescinded unless the owner submits a complete part 3 application within 45 days of the date of the written notification. If the officer does not receive a complete part 3 application by the end of the 45 day period, the officer shall notify the secretary of the department of revenue in writing that certification of rehabilitation has been rescinded.
- (3) If the officer determines that the part 3 application is complete, the officer shall review and approve or deny the part 3 application in writing.
- (4) The officer shall approve the part 3 application if the officer determines that the rehabilitation work conforms to the part 2 application. When the officer approves a part 3 application, the officer shall sign the part 3 application and return it to the owner indicating that the officer has approved the rehabilitation work.
- (5) The officer shall deny the part 3 application if the officer determines that the rehabilitation work does not conform to the part 2 application. When the officer denies a part 3 application, the officer shall issue a letter to the property owner notifying the owner of the reasons for the denial, any remedial action that the owner may take that will result in the approval of the part 3 application, and a date by which the remedial action must take place. If by the given date the officer determines that the project has been brought into conformance with the part 2 application, the officer shall sign and return it to the owner indicating that the officer has approved the rehabilitation work. If by the given date the owner has not demonstrated that work has been brought into conformance with the part 2 application, the officer shall notify by letter the secretary of the department of revenue that the rehabilitation work does not meet the rehabilitation standards.

HS 3.08 APPROVAL OF 5 YEAR PHASING.

- (1) The owner shall apply for and receive approval by the officer prior to the beginning of physical work if the owner elects to claim the costs of eligible activity not completed within a two year project period. Application shall be made using a 5 year phasing application submitted to the officer with the part 2 application.
- (2) If the officer determines that the 5 year phasing application is incomplete, the officer shall return it to the owner with recommendations for making it complete.
- (3) When the officer approves the 5 year phasing application, the officer shall sign the form and return it to the owner indicating that the phasing plan has been approved and that the project period has been extended according to the approved application up to a maximum of five years.

EFFECTIVE DATE

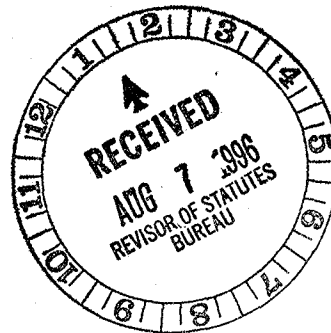
This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rule will have no effect on small businesses. The ability to claim the credit is limited to natural persons who own and reside in historic houses. The rule imposes no restrictions on small businesses.

FISCAL ESTIMATE

This rule will have no fiscal effect apart from the fiscal effect of the statute.





THE STATE HISTORICAL SOCIETY OF WISCONSIN

Division of Historic Preservation

816 State Street
Madison, Wisconsin 53706-1488
608/264-6500

Friday, July 12, 1996

Mr. Gary Poulson
Revisor of Statutes Bureau
131 W. Wilson Street
Suite 800
Madison, WI

INTERDEPARTMENTAL MAIL

Dear Gary:

Enclosed is the required copy of HS 3, the administrative rule adopted by the State Historical Society for publication in the register.

I have also enclosed an uncertified copy and a 3.5" disk in two formats: Microsoft Word 6.0 and WordPerfect 5.1 containing the rule and application forms.

I would appreciate your processing this rule at your earliest convenience.

Thank you for your assistance. If you have any questions, please let me know. I can be reached by mail at the State Historical Society, by telephone at 608/264-6490, by FAX at 608/264-6504, or by E-mail at jim.sewell@ccmail.adp.wisc.edu.

Sincerely,

James A. Sewell
Senior Preservation Architect

Enclosures

