

IRS Info

This information has been prepared by the Internal Revenue Service for use by applicants for the Historic Preservation Tax Incentives. Its purpose is to present an overview of the issues set forth, and it should not be relied upon as definitive tax advice. Applicants are strongly encouraged to consult their tax advisor or the Internal Revenue Service about the tax implications of the Historic Preservation Tax Incentives.

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Frequently Asked Questions

Prepared by Mark Primoli, Internal Revenue Service, October 2000

Eligible Buildings and Expenses

18. What is the definition of a building?

Treasury Regulation 1.48-1(e) defines a building as any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing, or to provide working, office, parking, display, or sales space.

19. Is the rehabilitation tax credit available for condominiums?

The rehabilitation tax credit can generally be used by an individual condominium owner provided the condominium unit is held for the production of income, or is used in a trade or business. Thus, rehabilitation expenditures otherwise qualifying will not be eligible for the credit if the property is used for the taxpayer's personal use.

20. Can a taxpayer claim the 10% rehabilitation tax credit on any building built before 1936?

No. A taxpayer cannot claim a 10% rehabilitation tax credit on a building which is in the National Register of Historic Places or is located within a Registered Historic District unless it has been certified by the National Park Service as not contributing to the significance of the district through the submission of Part 1 of the Historic Preservation Certification Application.

If a building is not listed in the National Register, is not located in a Registered Historic District, or is located in a Registered Historic District but has been determined to be a non-contributing structure by the Department of the Interior, a 10% rehabilitation tax credit may be utilized provided the building:

- Was placed in service before 1936;
- Is used for non-residential rental purposes;
- Has not been physically moved after 1936;
- Meets the following internal and external wall retention:

(a) 50% or more of the existing external walls are retained in place as external walls,

- (b) 75% or more of the existing external walls are retained in place as internal or external walls,
- (c) 75% or more of the existing internal structural framework is retained in place.

21. Is a sports stadium considered a building?

A stadium was considered a building within the definition of Treasury Regulation 1.48-1(e) in Revenue Ruling 69-170.

22. Can a rehabilitation tax credit be claimed for expenses associated with noncontributing additions?

Any expenditure attributable to an enlargement of an existing structure, i.e. a new addition, is specifically excluded from the definition of a qualified rehabilitation expenditure. See Internal Revenue Code Section 47(c)(2)(B)(iii). A building is enlarged to the extent that the total volume of the building increases.

However, if the addition was made previously or over a period of time, the cost of rehabilitating this noncontributing addition may qualify for the rehabilitation tax credit.

23. What is not included in qualified rehabilitation expenditures?

Qualified rehabilitation expenditures do not include:

- Costs of acquiring the building or interest therein. See Treasury Regulation 1.48-12(c)(9).
- Enlargement costs which expand the total volume of the existing building. Interior modeling which increases floor space is not considered enlargement. See Treasury Regulation 1.48-12(c)(10).
- Expenditures attributable to work done to facilities related to a building such as parking lots, sidewalks and landscaping. See Treasury Regulation 1.48-12(c)(5).
- New building construction costs. See Treasury Regulation 1.48-12(b)(2)(B)(iv).

24. What are some examples of expenses that do not qualify for the rehabilitation tax credit?

- Acquisition costs
- Appliances
- Cabinets
- Carpeting (if tacked in place and not glued)
- Decks (not part of original building)
- Demolition costs (removal of a building on property site)
- Enlargement costs (increase in total volume)
- Fencing
- Feasibility studies
- Financing fees
- Furniture

- Landscaping
- Leasing Expenses
- 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
- Window treatments

25. What are some expenses that qualify for the rehabilitation tax credit?

Any expenditure for a structural component of a building will qualify for the rehabilitation tax credit. Treasury Regulation 1.48-1(e)(2) defines structural components to include walls, partitions, floors, ceilings, permanent coverings such as paneling or tiling, windows and doors, components of central air conditioning or heating systems, plumbing and plumbing fixtures, electrical wiring and lighting fixtures, chimneys, stairs, escalators, elevators, sprinkling systems, fire escapes, and other components related to the operation or maintenance of the building.

In addition to the above named "hard costs", there are "soft costs" which also qualify. These include construction period interest and taxes, architect fees, engineering fees, construction management costs, reasonable developer fees, and any other fees paid that would normally be charged to a capital account.

Documentation and Timing

26. If a building was rehabilitated and placed in service, can a taxpayer apply for certification and claim the rehabilitation tax credit "after the fact"?

Yes, if the building is individually listed in the National Register.

No, if the building is located within a registered historic district. If the building is within a registered historic district, the taxpayer must request on or before the date the property was placed in service a determination from the Department of Interior that such building is an historic structure and the Department of Interior later determines that the building is a certified historic structure. This is accomplished with the submission of Part 1 of the Historic Preservation Certification Application. If Part 1 of the application was not submitted prior to when the

property was placed in service, the taxpayer would not be eligible for the rehabilitation tax credit. See Treasury Regulation 1.48-12(d)(1).

27. Can a taxpayer claim the rehabilitation tax credit without receiving final approval by the National Park Service?

Yes. Treasury Regulation 1.48-12(d)(7)(ii) states that if the final certification of completed work has not been issued by the Secretary of Interior at the time the tax return is filed for a year in which the credit is claimed, a copy of the first page of Part 2 of the Historic Preservation Certification Application must be attached to Form 3468 filed with the tax return. The taxpayer must reasonably expect that they will receive final approval and that their project will be certified by the National Park Service.

Final certification by the Department of Interior is required. If the taxpayer fails to receive final certification within 30 months after the date the taxpayer filed a tax return on which the credit was claimed, the taxpayer must agree to extend the period of assessment for any tax relating to the time for which the credit was claimed. If the final certification is denied by the Department of Interior, the credit will be disallowed for any taxable year in which it was claimed.

28. How does a cash basis taxpayer account for qualified rehabilitation expenditures?

Treasury Regulation 1.48-12(c)(3) states that an expense is incurred by the taxpayer on the date such expenditure would be considered incurred under an accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to the other items of income and expense.

29. What is the definition of "placed in service"?

"Placed in service" generally means that the appropriate work has been completed which would allow for occupancy of either the entire building, or some identifiable portion of the building. See Treasury Regulation 1.46-3(d).

30. How do you define placed in service when a building is never taken out of service?

If the property remains in service during the rehabilitation, the placed in service date will be commensurate with the project completion date.

31. What relationship exists between the substantially rehabilitated requirement and the placed in service requirement?

If the substantial rehabilitation test has not been met at the time a building, or some portion of the building is actually placed in service, the building does not meet the definition of a qualified rehabilitated building. As such, placed in service is deemed to be at the point in time when the substantial rehabilitation test is actually met. See Internal Revenue Code Section 47(b)(1) and 47(c)(1)(C) and Treasury Regulation 1-48-12(f)(2) and 1.48-12(c)(6).

Generally speaking, the 24-month measuring period ends sometime during the year in which the property is placed in service. When comparing the taxpayer's qualified rehabilitation expenses to its basis, the expenses accrued over a 24-month period must end with or within the tax year the credit is being claimed. Exceptions to this rule exist if the building is never taken out of service during the rehabilitation. Then only the substantial rehabilitation test must be met. See Treasury Regulation 1.48-12(f)(2). In an elected 60-month phased rehabilitation, the court has ruled that the tax credit could not be claimed on assumed eligibility. The substantial rehabilitation test must be met. See *Ford vs. U.S.* 93-1 USTC.