State Tax Credits for Historic Preservation

National Trust *for* Historic Preservation
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A Policy Report Produced by the
National Trust for Historic Preservation

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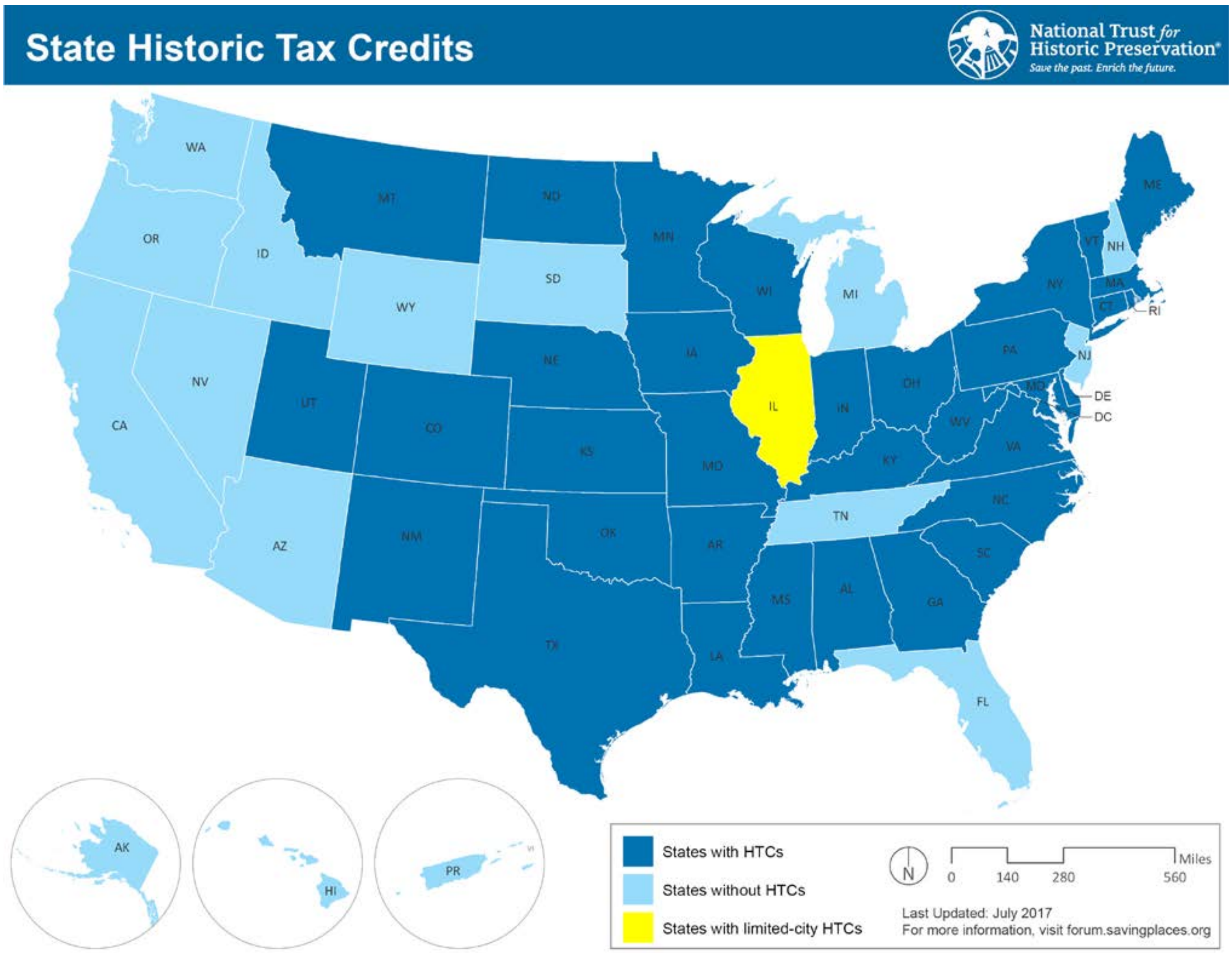
Introduction

Today, thirty-five states in the country offer credits against state taxes to provide incentives for the appropriate rehabilitation of historic buildings. In most cases these tax credits take the form of the very successful federal income tax credit for historic rehabilitation contained in Section 47 of the Internal Revenue Code.



Although the tax credits vary from state to state, most programs include the following basic elements:

- Criteria establishing what buildings qualify for the credit.
- Standards to ensure that the rehabilitation preserves the historic and architectural character of the building.
- A method for calculating the value of the credit awarded, reflected as a percentage of the amount expended on that portion of the rehabilitation work that is approved as a certified rehabilitation.
- A minimum amount, or threshold, required to be invested in the rehabilitation.
- A mechanism for administering the program, generally involving the state historic preservation office and, in some cases, the state department of revenue or the state department of economic development.

Why Do Some State Tax Credits Work Better Than Others?

Not all state tax credit programs are created equal. Some state programs have been extraordinarily productive in stimulating rehabilitation activity. Many others have produced mixed or minimal results.

What causes these programs to fall short? In general, two factors greatly influence the effectiveness of the state historic tax credits: a limit or cap on the amount of credit and a lack of transferability.

Annual Aggregate Caps

A well-thought-out and skillfully drafted tax incentive for historic preservation cannot achieve its objectives if the total amount of credits that can be awarded annually is subject to a statutory limit, particularly if the limit is fixed at a low figure. For example, Kentucky has a 20% credit for commercial buildings and a 30% credit for owner-occupied residences, but only a $5 million annual cap.

Even if the annual limit is relatively high, the very act of imposing a cap alters the nature of the program and can produce a perverse result, rewarding projects that do not require an incentive while excluding projects that cannot proceed without the state incentive.

Where demand for credits exceeds the amount permitted by law, applicants either must compete for credits or participate in a lottery or other arbitrary allocation system. Projects that truly require the state credit to be financially feasible have tended to be discouraged from participating because of the lack of certainty as to the outcome, the cost of preparing a competitive application that nonetheless may be unsuccessful, and the difficulties of keeping financing commitments in place during the evaluation process.

State Historic Tax Credits Increase Use of the Federal Historic Tax Credits

After examining all of the state historic tax credit programs to determine their impact on use of federal tax credits, researchers found that the presence of an active state tax credit program boosts the use of the federal credit on average between $15 and $35 million in certified expenditures.

That means the states with active tax credit programs are bringing in between $3 to $7 million federal dollars, which would not otherwise be available, to the state.

Leveraging Federal Economic Development with State Rehab Tax Credits by Jeffrey Oakman and Marvin Ward, Washington, DC Office of Revenue Analysis, 2012.

Individual Project Capping

Some states have sought to ease concerns about the costs of the credits to the state treasury by imposing caps on the dollar amount of credits that can be awarded to individual projects, while avoiding the pitfalls of annual aggregate caps. The effectiveness of the credits in providing incentives to developers is likely to be a function of how high the limit is set. Some states have experimented with project credits as high as $5 million per project (e.g., Connecticut and Maine). Clearly, however, limits as low as that allowed under North Dakota law, which is presently set at $250,000, are inadequate to provide an incentive for the rehabilitation of large commercial buildings.

Transferability

A state tax credit has value only to the extent that the credit holder has sufficient liability for state taxes that the credit can be used to offset. Although state tax rates vary, they are far lower than federal income tax rates. As a consequence, an apparently valuable state tax credit may wind up in the hands of a party unable to use it. There are several remedies to solve this problem, but many state statutes do not provide for them.

What Makes a State Tax Credit Good?

Eligible Buildings

The scope of eligible buildings should include:

1. Buildings individually listed in the National Register of Historic Places,
2. Buildings located in historic districts listed in the National Register that contribute to the historic character of the district or in districts certified as eligible for listing,

3. Individual buildings that have been locally designated as landmarks, and
4. Buildings located in local historic districts that contribute to the historic character of the district.

Standards for Rehabilitation

The state should adopt the Secretary of the Interior's Standards for Rehabilitation, as interpreted by the state historic preservation officer.

Availability for Homeowners

The credit should be available for owner-occupied residences as well as commercial property. This is particularly important because there is no federal credit for owner-occupied residences.

Appropriate Rates

The percentage rate of the credit should be fixed at a level high enough to constitute a meaningful incentive, typically in the range of 20 percent to 30 percent of qualified rehabilitation expenditures.

Rates that are significantly lower don't provide enough incentive to make a difference in a developer's decision to undertake a historic preservation project. As a negative example, Montana provides only a 5 percent tax credit for the rehabilitation of commercial structures when the federal 20 percent credit is used.

Transferability

As mentioned earlier, there needs to be a workable mechanism to put the credit in the hands of the party that can use it. States have solved this problem in one or more ways:

1. The tax code may permit the party that earns the credit to sell it outright to a third party with adequate tax liability to use it. For example, Kansas, Kentucky, Oklahoma, and Missouri permit the taxpayer to sell or convey the tax credits in this manner.

2. The code may permit a partnership that owns the property to make a disproportionate distribution of the credit, so that a local taxpayer can acquire the state tax credit while a national corporation not doing business in the state acquires the federal tax credit. Virginia, Kansas, and Delaware, for example, allow the credit to be passed through and allocated to partners or shareholders in this way.

3. The code may allow a tax credit not fully usable in the current year to be carried back to offset taxes previously paid for prior tax years. This provision appears to be unique among the states to Missouri and West Virginia, although it is a feature of the federal program.

4. The tax credit may be refundable, so that any amount not used to offset current-year taxes is paid in cash to the holder of the credit. Since homeowners earning credits are effectively precluded from using the more complex techniques for transferring credits, the most practical solutions for them are to allow the unused credit to be either refunded or sold outright. Maryland, Ohio, Iowa, and Louisiana provide a refundable tax credit, which is of particular value to lower-income homeowners.

Annual Aggregate Caps

Although state legislatures and their fiscal analysts prefer to keep a tight grip on the award of tax credits, those states that have resisted capping have had an economic advantage in attracting capital for historic preservation.

Eligible Claimants

In a number of states entities such as insurance companies, banks and public utilities are not taxed under the state corporate income tax law, but are subject to tax laws that are specific to their industries. Where this is the case, provision should be made to permit the credits to be used under these laws, so as to enable sales of tax credits to these companies.

Geographic Distribution and Targeting

In order to make sure that the benefits of the credit are felt in all parts of the state, some states have experimented with geographical set-asides for rural areas, or limits on the percentage of the credits that can be claimed for metropolitan areas. Another approach would limit the use of the credit to areas of physical deterioration and economic distress. These techniques should be evaluated with care to make sure that the limitations do not interfere with achieving the goals of the state's historic rehabilitation program.

Important Definitions

Carry Back — the ability to apply current tax credits against state income taxes due in preceding years.

Carry Forward — the ability to apply current tax credits against taxes due in future years.

CLG (Certified Local Government) — a local government certified by the state historic preservation officer as having the capacity to administer preservation programs, including grants under the National Historic Preservation Act.

Disproportionate Allocation — a mechanism involving the use of pass-through entities by which a state tax credit can be allocated to a taxpayer within the state in which the project is located, while the federal tax credit for the same project is allocated to an out-of-state person or entity.

Freely Transferable — the ability to make an outright transfer or assignment of the tax credit to another person or entity.

Secretary of the Interior's Standard for Rehabilitation (DOI) — general standards adopted by the Department of the Interior governing the rehabilitation of historic buildings. Rehabilitation must be carried out in accordance with these standards to qualify for federal historic tax credits as well as for many state tax incentives or financing programs.

Recapture Period — period of time during which specified action, such as a change in ownership of the property, will trigger an obligation to pay back a ratable portion of the tax credit previously claimed.

Sunset Date — the date on which a statutory provision will expire.

States Neighboring Pennsylvania

Maryland Certified Rehabilitation Tax Credits MD. Code Ann., Tax General § 10-704.5 Enacted:1997; amended 2004	20% credit for commercial buildings and owner-occupied residences; additional 5% credit for high performance commercial buildings that achieve LEED gold rating or comparable rating from another rating system; 10% credit for non-historic, "qualified rehabilitated structures," commercial properties located in Main Street Maryland community and a designated "sustainable" community. **Aggregate caps: $9 million for commercial buildings and $4 million for small commercial projects with $500,000 or less in QREs and more than 75% residential rental. Per-project cap: commercial - $3 million; small commercial and owner-occupied - $50,000.** Competitive award process for commercial properties only; owner-occupied need not compete. No more than 60% of funds available for commercial projects in any year may go to any single jurisdiction. Minimum investment: the greater of 100% of the adjusted basis or $25,000 for commercial properties; $5,000 for small commercial and owner occupied properties. Commercial credit is transferable. Residential credit is fully refundable. Program sunsets in 2017	Maryland Historical Trust 410-514-7628
New York Credit for Rehabilitation of Historic Properties N.Y. Tax Law § 210-B	20% credit for certified commercial properties subject to geographical targeting. **No aggregate cap. Per project cap: $5 million in credits.** Must be used in conjunction with federal credit but can be taken fully in first year. Credit must be taken in the year building is placed into service. Carry forward: unlimited.	New York State Historic Preservation Office 518-237-8643

Enacted: 2007	Commercial credits fully refundable. 20% credit for certified, owner-occupied properties. Subject to the same census tract restrictions as commercial program. Residential per project cap: $50,000 in credits. If taxpayer's adjusted gross income is under $60,000, homeowner credit is refundable; over $60,000, unlimited carry forward. Minimum expenditure: $5,000 and 5% must be spent on exterior work. Both programs sunset on Dec. 31, 2025 and default to 2007 features if not renewed. 25% rehab credit for historic barns. Must be income-producing, built or placed in agricultural service before 1936 and rehab cannot "materially alter the historic appearance."	
Ohio Rehabilitation of Historic Buildings; Tax Credits Ohio Rev. Code § 149.311 Enacted: Dec. 2006 Effective: April 4, 2007	25% credit for owners and long-term qualified lessees of certified historic building. Project cap: $5 million. **Aggregate cap: $60 million annually and any unused amount will be carried forward and added to the next year. $25 million set aside every two fiscal years for one catalytic project, defined as a large-scale rehabilitation project that would foster economic development.** DOI Standards apply. Refundable amount of credit limited to $3 million per project. Transfer by disproportionate allocation permitted. Five year carry-forward. Applicant must provide evidence that the credit is a major factor in the applicant's decision to rehab. Applicant must have CPA certify costs if qualified rehabilitation expenditures exceed $200,000. If the applicant does not provide evidence of having a viable financing plan, having final construction drawings and all necessary historical approvals within 12 months of receiving notice of approval, or if the applicant has not closed on financing within 18 months after approval, the director may rescind the approval and reallocate the credit amount to another applicant. Director of Economic Development must conduct a cost-benefit analysis of every project that shows whether the project will result in a net revenue gain in state and local taxes. Director of Development and Tax Commissioner must produce an annual report to the legislature analyzing program's effectiveness.	Ohio Development Services Agency 614-466-6667
Pennsylvania Enacted: July 2, 2012 Effective: Feb. 1, 2013	25% credit for eligible properties that qualify for the federal tax credit. Minimum investment same as for the federal credit. Project cap: $500,000. **Aggregate cap: $3 million annually.** Projects to be allocated equitably among state's regions. Any unused amount from a region will be reallocated to another region. DOI Standards for Rehabilitation apply. Public utilities, insurance companies and financial institutions may participate in the program. Applications must be filed by Feb. 1, 2013, but may cover expenditures previously made. Carry forward: 7 years. Credits are transferable by certificate only. Sunset: 2019.	Pennsylvania Historical & Museum Commission 717-783-6012
West Virginia **Commercial** **Enacted: 1990** Credit for Qualified Rehabilitated Buildings Investment (Residential) W. Va. Code §§ 11-21-8a – 11-21-8h Enacted: March 10, 1999	25% credit for buildings eligible for federal credit after Dec 31, 2017. **$30 million annual cap. $10 million per project cap. $5 million set aside for projects with less than $500,000 in QRE**. Credits accessible beginning on Jan 1, 2020. Recipient of credit must not be delinquent in payment of taxes. Commercial buildings entitled to carry forward 10 years. Recapture rules same as federal credit. Credits awarded first-come, first-serve basis. May be directly transferred or transferred by disproportionate allocation. Sunset 2022.	West Virginia Historic Preservation Office 304-558-0220

Effective: March 10, 1999 Enrolled House Bill 203, passed October 17, 2017 -in effect from passage	20% credit for eligible owner-occupied residences. Owner-occupied residences may be directly transferred or transferred by disproportionate allocation and are entitled to 5-year carry forward. Minimum investment in homeownership projects: 20% of assessed value. No statewide or per project dollar caps.	

States with Affordable Housing Component

Connecticut Tax Credits for Rehabilitation of Historic Homes Conn. Gen. Stat. Ann. § 10-320j Enacted: 1999 Effective: Jan. 1, 2000. Tax Credits for Rehabilitation of Certified Historic Structures Conn. Gen. Stat. Ann. § 10-416a Enacted: 2007 Tax Credits for Commercial and Industrial Buildings Conn. Gen. Stat. Ann. § 10-416b Enacted: 2009	25% credit for converting historic commercial, industrial, former government property, cultural building, institutional, or mixed residential and non-residential property to mixed residential and non-residential uses or non-residential use (including commercial, institutional, governmental or manufacturing use). Credit is increased to 30% if (a) at least 20% of units created are affordable rental units, or (b) at least 10% of units created are affordable homeownership units. Caps: $50 million over 3 years and $5 million per project. Carry forward: 5 years. Property must be listed individually on the national register or located in a district listed on the national or state register and certified as contributing. Freely transferable either by direct sale or disproportionate allocation. (Section 10-416-b C.G.S.) 25% credit for converting commercial or industrial property for residential use only. Caps: $2.7 million per project and $15 million annual aggregate. Carry forward: 5 years. Freely transferable either by direct sale or disproportionate allocation among partners of a syndication partnership. Property must be listed individually on the national or state register or located in a district listed on the national or state register and certified as contributing. Minimum expenditure: 25% of assessed building value. Credit can offset income tax liability as well as taxes owed by insurance companies and utilities. Section 10-416a. 30% credit for eligible rehab of owner-occupied residence, including apartments up to 4 units. Eligible properties: National and/or State Register of Historic Places, must be located in distressed areas. Cap: $30,000 per dwelling, $3 million annual aggregate. Recapture period: 5 years. Carry forward: 4 years. Minimum expenditure: $25,000. Credit can be used only to offset corporate taxes. Corporations may qualify either by purchasing tax credits or loan principal reduction. Effective July 2015, the minimum expenditure will be $15,000, projects will not be limited geographically while the cap will be $50,000 per dwelling for nonprofits. (Sec. 10-416 C.G.S.)	Connecticut Historical Commission 860-566-3005
Delaware Historic Preservation Tax Credit Act Del. Code Ann. tit. 30, §§ 1811-1817 Enacted: 2000 Effective: July 1, 2000 for Stage II approvals granted by SHPO and first tax claim effective July 1, 2002.	20% credit for income-producing properties and a 30% credit for homeowners and nonprofits. A 10% bonus credit applies for depreciable projects that qualify for low-income housing tax credits and homeowners who meet low-income qualifications. Credits awarded on first-come, first-serve basis. Fiscal year runs from July 1 to June 30 and applications for current fiscal year need to be turned in before April 1. Carry forward: 10 years. Non-refundable. Homeowner credit cannot exceed $20,000 per application but may re-apply. Credits are freely transferable either by direct transfer or disproportionate allocation. Credits claimed in progress-based installments with phased projects. The maximum amount of credits in any fiscal year is $5 million of which $1.5 million is initially set aside for projects receiving under $300,000 in tax credits and $1.5 million is initially	Delaware State Historic Preservation Office 302-736-7400 http://history.delaware.gov

	set aside for projects located in Downtown Development Districts. Set asides are released in April of each fiscal year. Also an annual set aside of $100,000 for qualified resident curators. Sunset: 2020.	
Maine Credit for Rehabilitation of Historic Properties Me. Rev. Stat. Ann. Tit. 36 § 5219-BB Enacted: March, 2007 Effective: Jan. 1, 2008	25% credit for qualifying rehab expenses of certified historic structure. 30% credit where at least 33% of the aggregate square feet of the completed project creates new affordable housing. Affordable housing credit may be increased each tax year by 1% till reached maximum of 35% in 2013. Minimum expenditures: Same as federal tax credit. If federal credit is not claimed, min. expenditure is $50,000 and maximum is $250,000. Cap: $5 million per project cap; no annual statewide cap. Credits are fully refundable and freely transferable by disproportionate allocation. Credit must be taken in 4 equal installments with first year being year property is placed into service. Sunset date: Dec. 31, 2023.	Maine Historic Preservation Commission 207-287-2132
Massachusetts Historic Rehabilitation Tax Credit Mass. Gen. Laws Ann. ch. 63, § 38R Mass. Gen. Laws Ann. ch. 62, § 6J Enacted: 2003 Effective: January 1, 2005	20% credit for eligible income-producing properties. 25% credit for projects with affordable housing. $50 million annual statewide cap. Carry forward: 5 years. DOI standards apply. Permits direct transfer of credit or transfer by disproportionate allocation. Min. investment: 25% of adjusted basis. Funded through 2022.	Massachusetts Historical Commission 617-727-8470

Twenty-three states offer credits to owner-occupied residences:

1. Alabama: (for residential, income-producing)
2. Arkansas: Historic rehabilitation income tax credit (§ 26-51-2204)
3. Colorado: Colorado State Income Tax Credit for Historic Preservation (§39-22-514 C R S)
4. Connecticut: CT Historic Homes Rehabilitation Tax Credit Program (Public Act 99-173)
5. Delaware: Delaware Historic Preservation Tax Credit Program (73 Del Laws, c 6, § 1)
6. Georgia: Georgia State Income Tax Credit Program for Rehabilitated Historic Property (O C G A § 48-7-29 8)
7. Indiana: Residential Historic Rehabilitation Credit (IC 6-3.1-22)
8. Iowa: Historic Preservation and Cultural and Entertainment District Tax Credit Program (Iowa Code §404A)
9. Kansas: Historic Preservation Tax Credit (K S A §79-32211)
10. Kentucky: Kentucky Historic Preservation Tax Credit Program (300 KAR 6:010)
11. Maryland: Sustainable Communities Tax Credit Program (Md Code § 9-204)
12. Mississippi: Mississippi Historic Preservation Tax Incentives Program (Miss Code § 27-7-22 31)
13. Missouri: Missouri Historic Tax Credit Program
14. New Mexico: State of New Mexico Investment Tax Credit program (4 NM §10 9)
15. New York: New York State Historic Homeownership Rehabilitation Tax Credit
16. North Carolina:
17. North Dakota: Historic Preservation and Renovation Tax Credit (N D C C § 40-63-06)
18. Ohio: Ohio Historic Preservation Tax Credit Program (ORC §149 311)
19. South Carolina: Historic Rehabilitation Tax Credit (S C Code § 12-6-3535)
20. Utah: Utah Historic Preservation Tax Credit (UC 9-8-404) – for residential income-producing
21. Virginia: Historic Rehabilitation Tax Credit (Virginia Code §58 1-339 2)
22. West Virginia: Rehabilitation Investment Tax Credit Program (W V Code §11-21-8g)
23. Wisconsin: Wisconsin Historic Homeowners Rehabilitation Tax Credit Program (Wiscn Admin Code Sect 71 07(9m))

Dollar Limits on State Tax Credits for Commercial Properties (in alphabetical order) – a/o 8/24/2016

	State	Aggregate	Per Project	Comments
1	Alabama	$20 million annually	$5 million in credits	Total $100 million cap (2018-2022)
2	Arkansas	$4 million annually	$400,000 in credits	
3	Colorado	$10 million annually	$1 million	
4	Connecticut (a)	$50 million over 3 years	$5 million per project	
4	Connecticut (b)	$15 million annually	$2.7 million per project	
5	Delaware	$5 million annually	None	For both homeowners and commercial
6	Georgia	None and $25 million	$5 million (up to $10 million if meets tests)	Projects under $300,000 in credits are not subject to cap
7	Illinois	None	None	River Edge Redevelopment Zone only
8	Iowa	$45 million annually	None	
9	Kansas	None	None	
11	Kentucky	$5 million annually	None	For both homeowners and commercial
12	Louisiana	None	$5 million per taxpayer	In development districts
13	Maine	None	$5 million per project	
14	Maryland	Annual appropriation	$3 million per project	$10M for 2014
15	Massachusetts	$50 million annually	None	
16	Minnesota	None	None	
17	Mississippi	$12 million annually	None	
18	Missouri	$140 million annually	None	Projects with eligible costs less than $1,100,000 are not subject to cap
19	Montana	None	None	5% add-on to federal
20	Nebraska	$15 million annually	$1 million in credits	
21	New Mexico	None	$25,000 outside $50,000 in Arts & Cultural District	
22	New York	None	$5 million	In distressed area
23	North Dakota	None	$250,000	In a “renaissance zone”
24	North Carolina	None	$4.5 million	
25	Ohio	$60 million annually	$5 million	
26	Oklahoma	None	None	
27	Pennsylvania	$3 million annually	$500,000	Started 2012
28	Rhode Island	$34.5 million	None	Total; no cap currently set annually
29	South Carolina	None	None	10% add-on to federal; 25% for other eligible properties
30	Texas	None	None	Starts Jan 1 2015
31	Utah	None	None	for residential owner-occupied and non-owner-occupied.
32	Vermont	$1.5 million annually	None	10% add-on to federal
33	Virginia	None	None	
34	West Virginia	$30 million	$10 million	
35	Wisconsin	None	$3.5 million	20% credit

Of the 35 states that offer historic tax credits for income-producing properties, only 16 have annual aggregate caps and Rhode Island has a total program cap.

Annual Aggregate Caps (in order of amount):

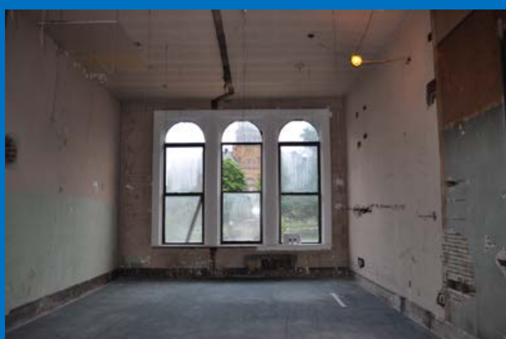
1. Missouri $140M (plus no cap on small projects)
2. Ohio $60M
3. Massachusetts $50M
4. Connecticut $50M over 3 years (program a) and $15M (program b)
5. Iowa $45M
6. West Virginia $30M
7. Georgia $25M (plus no cap on small projects)
8. Alabama $20M
9. Nebraska $15M
10. Mississippi $12M
11. Maryland $10M
12. Colorado $10M
13. Delaware $5M * covers both homeowners & commercial
14. Kentucky $5M *covers both homeowners & commercial
15. Arkansas $4M
16. Pennsylvania $3M
17. Vermont $1.5M

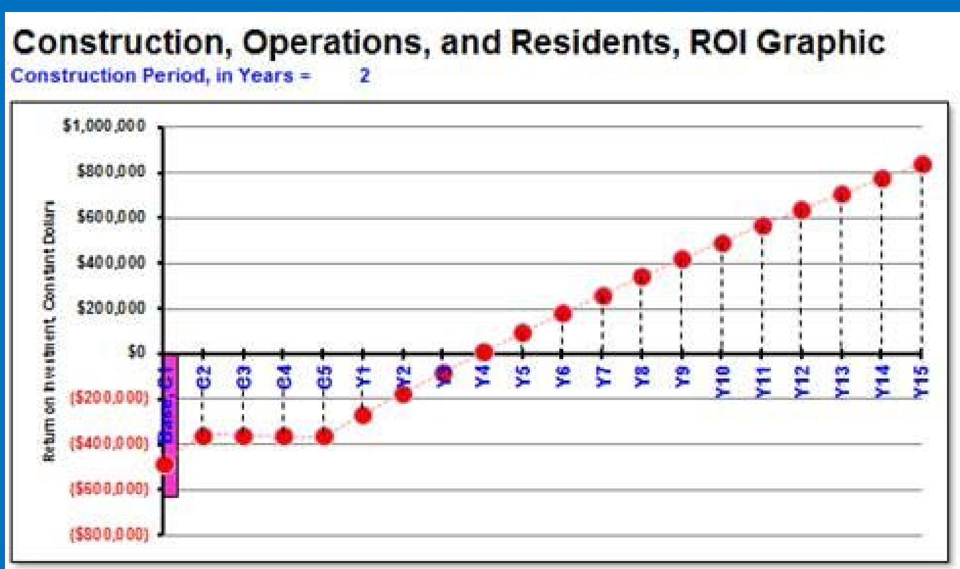
COST BENEFIT ANALYSIS IN OHIO

Ohio law requires the state to conduct a cost-benefit analysis for each historic building seeking a tax credit. The state must determine whether rehabilitation of the building and awarding of the credit will result in a net revenue gain in state and local taxes once the building is used. The Ohio model takes into account tax revenues generated after the building is placed in service.

A cost-benefit analysis involving The Market Block Building in Warren, Ohio demonstrated that 31% of the state's investment of $630,800 in historic tax credits was recovered before the tax credit was awarded. One-hundred percent (100%) of the state's investment will be recovered in new revenues by the fourth year of operation. By year 10 the building will have generated additional state and local tax revenues of $494,000 in excess of the amount of the credit, or a return on investment of 80%, and by year 15 the building will have generated approximately $839,000 in new tax revenues, representing a return on investment of 130%.

This year Heritage Ohio presented its Best Commercial Rehabilitation Award to The Chesler Group for this renovation which created new office and meeting space for The Raymond John Wean Foundation. The renovation of these four 1868 buildings along the Courthouse Square, helps the Foundation bring together local residents and incubate new businesses.





About the National Trust for Historic Preservation

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The National Trust is a privately-funded nonprofit organization chartered by Congress in 1949. We work to save America's historic places to enrich our future. With headquarters in Washington, D.C., 12 field offices, 27 historic sites, and partner organizations in 50 states, territories, and the District of Columbia, the National Trust protects significant historic sites and advocates for historic preservation as a fundamental value in programs and policies at all levels of government.

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