

C.R.S. 39-22-514.5

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Colorado Revised Statutes Annotated Title 39. Taxation (§§ 39-1-101 — 39-37-301) Specific Taxes (§§ 39-20-101 — 39-37-301) Income Tax (Art. 22) Article 22. Income Tax (Pts. 1 — 55) Part 5. Special Rules (§§ 39-22-501 — 39-22-570)

39-22-514.5. Tax credit for qualified costs incurred in preservation of historic structures - commercial historic preservation tax credit program cash fund - tax preference performance statement - legislative declaration - short title - definitions.

(1) Short title. The short title of this section is the "Colorado Job Creation and Main Street Revitalization Act".

(2) Definitions. As used in this section, unless the context otherwise requires:

(a)

(I) "Certified historic structure" means a property located in Colorado that has been certified by the historical society or other reviewing entity because it has been:

(A) Listed individually on, or as a contributing property in a district included within, the national register of historic places;

(B) Listed individually on, or as a contributing property in a district that is included within, the state register of historic properties pursuant to the provisions of article 80.1 of title 24; or

(C) Listed individually by, or as a contributing property within a designated historic district of, a certified local government.

(II) "Certified historic structure" may be either a residential or commercial structure.

(b) "Certified local government" means any local government that has been certified by the historical society in accordance with federal law.

(c) "Certified rehabilitation" means repairs or alterations to a certified historic structure that have been certified by the historical society or other reviewing entity as meeting the standards for rehabilitation of the United States secretary of the interior.

(d) "Contributing property" means property that adds to the sense of time, place, and historical development of a historic district as determined by the historical society or other reviewing entity.

(d.3) "Denver metropolitan area" means all of the land area within the boundaries of the counties of Adams, Arapahoe, Boulder, and Jefferson, all of the area within the boundaries of the city and county of Broomfield and the city and county of Denver, and all of the area within the boundaries of the county of Douglas; except that the area

within the boundaries of the town of Castle Rock and the area within the boundaries of the town of Larkspur in the county of Douglas shall not be included in such area.

(e) "Department" means the Colorado department of revenue or any successor entity.

(f) "Designated" means established by local preservation ordinance.

(g) "Historical society" means the state historical society of Colorado, also known as history Colorado, or any successor entity.

(g.5) "Municipality" has the same meaning as specified in section 31-1-101 (6) and also includes any unincorporated area of a county, including without limitation an unincorporated community or a census-designated place.

(h) "Office" means the Colorado office of economic development or any successor entity.

(i) "Owner" means any taxpayer filing a state tax return or any entity that is exempt from federal income taxation pursuant to section 501 (c) of the internal revenue code, as amended, that owns:

(I) Title to a qualified structure;

(II) Prospective title to a qualified structure in the form of a purchase agreement or an option to purchase;

(III) A leasehold interest in a qualified commercial structure for a term of not less than thirty-nine years;

(III.5) A leasehold interest in a qualified commercial structure that is located in a rural community for a term of not less than five years; or

(IV) A leasehold interest in a qualified residential structure for a term of not less than five years.

(j) "Qualified commercial structure" means an income producing or commercial property located in Colorado that is:

(I) At least thirty years old; and

(II)

(A) Listed individually on, or as a contributing property in a district included within, the state register of historic properties pursuant to article 80.1 of title 24; or

(B) (Deleted by amendment, L. 2018.)

(C) Listed individually by, or as a contributing property that is included within a designated historic district of, a certified local government.

(k) "Qualified rehabilitation expenditures" means:

(I) With respect to a qualified commercial structure, any expenditure as defined under section 47 (c)(2)(A) of the internal revenue code, as amended, and the related regulations thereunder; and

(II) With respect to a qualified residential structure, exterior improvements and interior improvements undertaken to restore, rehabilitate, or preserve the historic character of a qualified property that meet the standards for rehabilitation of the United States secretary of the interior as adopted by the historical society or the certified local government pursuant to federal law. As used in this subsection (2)(k)(II), "exterior improvements" is limited to any one or more of the following: Roof replacement or repair; exterior siding replacement or repair; masonry repair, re-pointing, or replacement; window repair or replacement; door repair or replacement; woodwork and trim repair or replacement; foundation repair or replacement; and excavation costs associated with foundation work. As used in this subsection (2)(k)(II), "interior improvements" is limited to one or more of the following: Electrical repairs and upgrades; plumbing repairs and upgrades; heating, venting, and air conditioning repairs and upgrades; repair of existing interior walls, ceilings, and finishes; repair or replacement of existing woodwork and trim; insulation; refinishing or replacing historic floor materials in-kind, excluding carpeting; and reconstructing missing historic elements when there is sufficient historical documentation to guide the reconstruction.

(l) "Qualified residential structure" means a nonincome producing and owner-occupied residential property located in Colorado that is:

(I) At least thirty years old; and

(II)

(A) Listed individually on, or as a contributing property in a district included within, the state register of historic properties pursuant to article 80.1 of title 24; or

(B) (Deleted by amendment, L. 2018.)

(C) Listed individually by, or as a contributing property that is included within a designated historic district of, a certified local government.

(m) "Qualified structure" means a structure that satisfies the definition of either a qualified residential structure or a qualified commercial structure.

(n) "Rehabilitation plan" or "plan" means construction plans and specifications for the proposed rehabilitation of a qualified structure that are in sufficient detail to enable the office or the reviewing entity, as applicable, to evaluate whether the structure is in compliance with the standards developed under subsection (4) of this section.

(o) "Reviewing entity" means:

(I) A certified local government that has decided pursuant to subsection (5.5)(c) of this section to perform the duties specified under this section; or

(II) The historical society if the qualified residential structure either is not located within the territorial boundaries of any certified local government or is located within the territorial boundaries of a certified local government that has decided pursuant to subsection (5.5)(c) of this section not to perform the duties specified under this section.

(o.5) "Rural community" means:

(I) A municipality with a population of less than fifty thousand people that is not located within the Denver metropolitan area; or

(II) An unincorporated area of any county the total population of which county is less than fifty thousand people that is not located within the Denver metropolitan area.

(p) "Substantial rehabilitation" means:

(I) With respect to a qualified commercial structure:

(A) For tax years commencing prior to January 1, 2020, rehabilitation for which the qualified rehabilitation expenditures exceed twenty-five percent of the owner's original purchase price of the qualified commercial structure less the value attributed to the land; and

(B) For tax years commencing on or after January 1, 2020, rehabilitation for which the qualified rehabilitation expenditures are in an aggregate amount of at least twenty thousand dollars; and

(II) With respect to a qualified residential structure, rehabilitation for which the qualified rehabilitation expenditures exceed five thousand dollars.

(3) General provisions. For income tax years commencing on or after January 1, 2016, but prior to January 1, 2037, there shall be allowed a credit with respect to the income taxes imposed pursuant to this article 22 to each owner of a qualified structure that complies with the requirements of this section.

(4) Development of standards for approval of commercial or residential rehabilitation projects.

(a) The office, in consultation with the historical society, shall develop standards for the approval of the substantial rehabilitation of qualified commercial structures for which a tax credit under this section is being claimed. The standards must consider whether the substantial rehabilitation of a qualified commercial structure is consistent with the standards for rehabilitation adopted by the United States department of the interior.

(b) The historical society shall develop standards for the approval of the substantial rehabilitation of qualified residential structures for which a tax credit under this section is being claimed. The standards must consider whether the substantial rehabilitation of a qualified residential structure is consistent with the standards for rehabilitation adopted by the United States department of the interior.

(5) Submission by owner of application and rehabilitation plan.

(a) The owner shall submit an application and rehabilitation plan to either the office for a qualified commercial structure or to the reviewing entity for a qualified residential structure, along with an estimate of the qualified rehabilitation expenditures under the rehabilitation plan. If an application and rehabilitation plan is for a qualified commercial structure, the owner shall specify whether the owner is seeking to reserve a credit allowed pursuant to subsection (12)(a) of this section or a credit allowed pursuant to subsection (12)(a.5) of this section, and an owner may only apply for one of these two credits for a single qualified rehabilitation plan as described in subsection (7) of this section. An owner, at the owner's own risk, may incur qualified rehabilitation expenditures no earlier than twenty-four months prior to the submission of the application and rehabilitation plan that an owner submits prior to January 1, 2026, and no earlier than twelve months prior to the submission of the application and rehabilitation plan that an owner submits on or after January 1, 2026, but only if satisfactory documentation is submitted to the office or the reviewing entity, as applicable, indicating the condition of the qualified structure prior to commencement of the rehabilitation, including but not limited to photographs of the qualified structure and written declarations from persons knowledgeable about the qualified structure. An owner may submit an application and rehabilitation plan and may commence rehabilitation before the property:

(I) Is listed individually on, or as a contributing property in a district included within, the national register of historic places;

(II) Is listed individually on, or as a contributing property in a district included within, the state register of historic properties pursuant to article 80.1 of title 24; or

(III) (Deleted by amendment, L. 2018.)

(IV) Is listed individually by, or as a contributing property within a designated historic district of, a certified local government.

(b) Notwithstanding the provisions of subsection (5)(a) of this section, an owner may incur qualified rehabilitation expenditures at the owner's own risk.

(b.5) On or after January 1, 2025, an owner shall not submit an application and rehabilitation plan for an already completed rehabilitation project.

(c) Within ninety days after receipt of the application and rehabilitation plan, the office and the historical society, in the case of a qualified commercial structure, and the reviewing entity, in the case of a qualified residential structure, shall notify the owner in writing if the rehabilitation plan is preliminarily determined to be a certified rehabilitation.

(5.5) Issuance of tax credit certificate for qualified residential structures - rules.

(a)

(I) Following the completion of a rehabilitation of a qualified residential structure, the owner shall notify the reviewing entity that the rehabilitation has been completed and shall certify that the qualified rehabilitation expenditures incurred in connection with the rehabilitation plan. The owner shall also provide the reviewing entity with a cost and expense certification for the total qualified rehabilitation expenditures and the total amount of tax credits for which the owner is eligible. The reviewing entity shall review the documentation of the rehabilitation and verify its compliance with the rehabilitation plan. Except as otherwise provided in subsections (5.5)(a)(II) and (5.5)(a)(III) of this section, within ninety days after receipt of the foregoing documentation from the owner the reviewing entity shall issue a tax credit certificate in an amount equal to twenty percent of the actual qualified rehabilitation expenditures; except that the amount of the tax credit certificate awarded for tax years commencing before January 1, 2025, shall not exceed fifty thousand dollars for each qualified residential structure, the amount of the tax credit certificate awarded for tax years commencing on or after January 1, 2025, shall not exceed one hundred thousand dollars for each qualified residential structure, and both the fifty thousand dollar and one hundred thousand dollar amounts are to

be calculated over a ten-year rolling period that commences with each change in ownership of the qualified residential structure.

(II) For income tax years commencing prior to January 1, 2030, and for applications submitted pursuant to subsection (5) of this section prior to January 1, 2025, with respect to a qualified residential structure located in an area that the president of the United States has determined to be a major disaster area under section 102 (2) of the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", 42 U.S.C. sec. 5121 et seq., or that is located in an area that the governor has determined to be a disaster area under the "Colorado Disaster Emergency Act", part 7 of article 33.5 of title 24, the amount of the tax credit specified in subsection (5.5)(a)(I) of this section is increased to twenty-five percent for an application that is filed within six years after the disaster determination.

(III) For income tax years commencing on and after January 1, 2020, with respect to a qualified residential structure located in a rural community, the amount of the tax credit specified in subsection (5.5)(a)(I) of this section is increased to thirty-five percent for an application that is properly filed in accordance with this section.

(b) Repealed.

(c) For the purposes of this section, a certified local government may act as a reviewing entity only for a qualified residential structure. Each certified local government shall adopt a resolution or ordinance stating whether the government will act as a reviewing entity for the purposes of this section. The local government shall send a copy of the resolution or ordinance to the historical society. Any certified local government that decides to act as a reviewing entity for the purposes of this section shall perform all duties and responsibilities in connection with a certified rehabilitation that receives preliminary approval from such entity. The historical society shall promulgate rules on standards and reporting, in accordance with article 4 of title 24, as it deems necessary to facilitate the effective implementation of this subsection (5.5)(c).

(d) In the case of a qualified residential structure, the reviewing entity may impose a reasonable application fee.

(e) The historical society shall promulgate any and all rules necessary to further implement the tax credits to be claimed for the substantial rehabilitation of qualified residential structures under this section. Any rules must be promulgated in accordance with article 4 of title 24.

(f) By March 15, 2019, and on a quarterly basis thereafter, the historical society shall provide a report to the department specifying the ownership of tax credits to be claimed for the rehabilitation of qualified residential structures under this section covering the period since the last report. The historical society shall share with the department all necessary information about the tax credit created by this section to enable the historical society and the department to properly administer the tax credit.

(6) Application and issuance fees for qualified commercial structures.

(a) For a qualified commercial structure for which the amount of tax credit requested under this section is two hundred fifty thousand dollars or more, the office may impose a reasonable application fee that does not exceed five hundred dollars. For a qualified commercial structure for which the amount of tax credit requested under this section is less than two hundred fifty thousand dollars, the office may impose a reasonable application fee that does not exceed two hundred fifty dollars.

(b) (Deleted by amendment, L. 2018.)

(c) The office may impose on the owner a reasonable issuance fee of up to three percent of the amount of the tax credit issued, which must be paid before the tax credit is issued to the owner. With respect to both an application fee and an issuance fee, the office shall share on an equal basis any such fees collected with the historical society and the department. Money collected from such fees must be credited to the commercial historic preservation tax credit program cash fund created in subsection (17) of this section and applied to the administration of the tax credit created by this section.

(d) (Deleted by amendment, L. 2018.)

(7) Reservation of tax credits for qualified rehabilitation plans for qualified commercial structures.

(a) In the case of a qualified commercial structure, a reservation of tax credits is permitted in accordance with the provisions of this subsection (7). The office and the historical society shall review the application and rehabilitation plan for a qualified commercial structure to determine that the information contained in the application and plan is complete. If the office and the historical society determine that the application and rehabilitation plan are complete, the office shall reserve for the benefit of the owner an allocation of a tax credit as provided in subsection (12)(a) or (12)(a.5) of this section and subsection (8)(c)(II) of this section, and the office shall notify the owner in writing of the amount of the reservation. The reservation of tax credits does not entitle the owner to an issuance of a tax credit until the owner complies with all the other requirements specified in this section for the issuance of the tax credit. The office shall separately reserve tax credits allowed pursuant to subsection (12)(a) of this section and tax credits allowed pursuant to subsection (12)(a.5) of this section in the order in which it receives completed applications and rehabilitation plans for each of those two categories of credits. The office shall issue a reservation of tax credits authorized by this subsection (7) within a reasonable time, not to exceed ninety days after the filing of a completed application and rehabilitation plan. The office shall stamp each completed application and plan with the date and time it receives the application and plan and shall review a plan and application on the basis of the order in which the documents were submitted by date and time. The office shall only review an application and plan submitted in connection with a property for which a property address, legal description, or other specific location is provided in the application and plan and for which the owner has specified the category of credit sought as required by subsection (5) (a) of this section. The owner shall not request the review of another property for approval in the place of the property that is the subject of the application and plan. Any application and plan disapproved by the office will be removed from the review process, and the office shall notify the owner in writing of the decision to remove the property from the review process. Disapproved applications and plans lose their priority in the review process. An owner may resubmit a modified application and plan, but a resubmitted application and plan is a new submission for purposes of the priority procedures described in this subsection (7)(a). If a resubmitted application and plan are submitted, the office may charge a new application fee in an amount specified in accordance with subsection (6) of this section.

(a.5) In the case of any project for a qualified commercial structure the qualified rehabilitation expenditures for which amount to less than fifty thousand dollars, if the total number of applications for such projects that are received but not reserved for credits allowed pursuant to either subsection (12)(a) or (12)(b) of this section reaches fifteen, the office may suspend the submission of additional applications for that credit for such projects until such time as the fifteen projects have been duly reserved or disapproved. The notification period that is specified in subsection (5)(c) of this section is extended to one hundred twenty days after receipt of the application and rehabilitation plan for the fifteen projects. Any application for a qualified commercial structure the qualified rehabilitation expenditures for which amount to fifty thousand or more dollars is not subject to this subsection (7)(a.5).

(b) If, for any calendar year, the aggregate amount of reservations for tax credits allowed pursuant to either subsection (12)(a) or (12)(a.5) of this section that the office has approved is equal to the total amount of tax credits available for reservation pursuant to the applicable subsection (12)(a) or (12)(a.5) of this section during that calendar year, the office shall notify all owners who have submitted applications and rehabilitation plans for reservation of a tax credit allowed pursuant to the applicable subsection (12)(a) or (12)(a.5) of this section then awaiting approval or submitted for approval after the calculation is made that no additional approvals of applications and plans for reservations of tax credits will be granted during that calendar year. The office shall additionally notify the owner of the priority number given to the owner's application and plan then awaiting approval. The applications and plans remain in priority status for two years from the date of the original application and plan and are considered for reservations of

tax credits in the priority order established in this subsection (7) if additional credits become available resulting from the rescission of approvals under subsection (8)(a) of this section or because a new allocation of tax credits for a calendar year becomes available.

(c) Notwithstanding any other provision of this section, this subsection (7) does not apply to a qualified residential structure because no reservation of tax credits is necessary in the case of a qualified residential structure.

(8) Deadline for incurring specified amount of estimated costs of rehabilitation - proof of compliance - audit of cost and expense certification - issuance of tax credit certificate - commercial structures.

(a) An owner receiving a reservation of tax credits under subsection (7)(a) of this section shall incur not less than twenty percent of the estimated costs of rehabilitation contained in the application and rehabilitation plan not later than eighteen months after the date of issuance of the written notice from the office to the owner granting the reservation of tax credits. An owner receiving a reservation of tax credits shall submit evidence of compliance with the provisions of this subsection (8)(a). If the office determines that an owner has failed to comply with the requirements of this subsection (8)(a), the office may rescind the issuance it previously gave the owner approving the reservation of tax credits and, if so, the total amount of tax credits made available pursuant to subsection (12)(a) or (12)(a.5) of this section, as applicable, for the calendar year for which reservations may be granted must be increased by the amount of the tax credits rescinded. The office shall promptly notify any owner whose reservation of tax credits has been rescinded and, upon receipt of the notice, the owner may submit a new application and plan for which the office may charge a new application fee in accordance with subsection (6) of this section.

(b) Following the completion of a rehabilitation of a qualified commercial structure, the owner shall notify the office that the rehabilitation has been completed and shall certify the qualified rehabilitation costs and expenses. The applicant shall include a review of the certification by a licensed certified public accountant that is not affiliated with the qualified applicant, and the review of the certification must align with office policies for certification of qualified rehabilitation expenditures. The office and the historical society shall review the documentation of the rehabilitation and the historical society shall verify that the documentation satisfies the rehabilitation plan. Within ninety days after receipt of such documentation from the owner, the office shall issue a tax credit certificate in an amount equal to the following subject to subsection (8)(c) of this section:

(I) Twenty-five percent of the actual qualified rehabilitation expenditures that are less than two million dollars; plus

(II) Twenty percent of the actual qualified rehabilitation expenditures in excess of two million dollars.

(c) Notwithstanding subsection (8)(b) of this section:

(I) The total amount of the tax credit certificate issued for any particular project shall not exceed the amount of the tax credit reservation issued for the project under subsection (7)(a) of this section;

(II) The amount of a tax credit certificate to be issued pursuant to subsection (12)(a) of this section for any one qualified commercial structure shall not exceed one million dollars, and the amount of a tax credit certificate to be issued pursuant to subsection (12)(a.5) of this section for any one qualified rehabilitation plan shall not exceed one million five hundred thousand dollars in any one calendar year;

(III) With respect to a certified historic structure that is a qualified commercial structure that is located in an area that the president of the United States has determined to be a major disaster area under section 102 (2) of the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", 42 U.S.C. sec. 5121 et seq., or that is located in an area that the governor has determined to be a disaster area under the "Colorado Disaster Emergency Act", part 7 of article 33.5 of title 24, the tax credit amounts specified in subsections (8)(b)(I) and (8)(b)(II) of this section must be increased as follows for an application that is filed within six years after the disaster determination:

(A) The twenty-five percent credit amount specified in subsection (8)(b)(I) of this section is increased to thirty percent; and

(B) The twenty percent credit amount specified in subsection (8)(b)(II) of this section is increased to twenty-five percent;

(IV) For income tax years commencing on or after January 1, 2020, with respect to a certified historic structure that is a qualified commercial structure that is located in a rural community, the tax credit amounts specified in subsections (8)(b)(I) and (8)(b)(II) of this section must be increased as follows for an application that is properly filed in accordance with this section:

(A) The twenty-five percent credit amount specified in subsection (8)(b)(I) of this section is increased to thirty-five percent; and

(B) The twenty percent credit amount specified in subsection (8)(b)(II) of this section is increased to thirty percent; and

(V) For a tax credit allowed pursuant to subsection (12)(a.5) of this section only, if, due to a regulatory requirement or condition of financing, the qualified commercial structure for which the tax credit is claimed is subject to a deed restriction that requires the owner to lease rental housing units in the qualified commercial structure only to individuals or households whose income is below a specified amount, then the amount of the tax credit specified in subsection (8)(b) of this section, as increased pursuant to subsection (8)(c)(III) or (8)(c)(IV) of this section, if applicable, is increased by an additional five percent.

(d) If the amount of qualified rehabilitation expenditures incurred by the owner would result in an owner being issued an amount of tax credits that exceeds the amount of tax credits reserved for the owner under subsection (7)(a) of this section, the owner may apply to the office for the issuance of an amount of tax credits that equals the excess. The owner must submit its application for issuance of such excess tax credits on a form prescribed by the office. The office shall automatically approve the application, which it shall issue by means of a separate certificate, subject only to the availability of tax credits and the provisions concerning priority provided in subsection (7)(a) of this section.

(e) (Deleted by amendment, L. 2018.)

(f) Repealed.

(9) Filing tax credit certificate with income tax return. In order to claim the credit authorized by this section, the owner shall file the tax credit certificate with the owner's state income tax return. The amount of the credit claimed that the owner may claim under this section is the amount stated on the tax credit certificate.

(10) (Deleted by amendment, L. 2018.)

(11) Residential and commercial.

(a) For tax years commencing prior to January 1, 2027, the entire tax credit to be issued under this section for either a qualified residential structure or a qualified commercial structure may be claimed by the owner in the taxable year in which the certified rehabilitation is placed in service. If the amount of the credit allowed under this section exceeds the amount of income taxes otherwise due on the income of the owner in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not to exceed ten years and will be applied to the earliest income tax years possible. Any amount of the credit that is not used after such period shall not be refunded to the owner.

(b)

(I) For tax years commencing on or after January 1, 2027, the entire tax credit to be issued under this section for either a qualified residential structure or a qualified commercial structure may be claimed by the owner in the tax year in which the certified rehabilitation is placed in service.

(II) If the amount of the credit allowed under this section for a qualified commercial structure, but not a qualified residential structure, exceeds the amount of income taxes otherwise due on the income of the owner in the income tax

year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not to exceed ten years and shall be applied to the earliest income tax years possible. Any amount of the credit that is not used after such period shall not be refunded to the owner.

(III) If the amount of the credit allowed under this section for a qualified residential structure, but not a qualified commercial structure, exceeds the amount of income taxes otherwise due on the income of the qualified applicant in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in the income tax year is refunded to the qualified applicant.

(12) Limit on aggregate amount of all tax credits that may be reserved for qualified commercial structures - assignability and transferability of tax credits for qualified commercial structures - tax preference performance statement - legislative declaration.

(a) Except as otherwise provided in subsections (12)(a.5) and (12)(b) of this section, the aggregate amount of all tax credits in any calendar year that may be reserved for qualified commercial structures by the office upon the certification of all rehabilitation plans under subsection (7)(a) of this section for such structures must not exceed:

(I) For qualified commercial structures estimating qualified rehabilitation expenditures in the amount of two million dollars or less, two and one-half million dollars in the aggregate for the 2016 calendar year, five million dollars in the aggregate for each of the 2017, 2018, and 2019 calendar years, in addition to the amount of any previously reserved tax credits that were rescinded under subsection (8)(a) of this section during the applicable calendar year;

(II) For qualified commercial structures estimating qualified rehabilitation expenditures in excess of two million dollars, two and one-half million dollars in the aggregate for the 2016 calendar year, five million dollars in the aggregate for each of the 2017, 2018, and 2019 calendar years, in addition to the amount of any previously reserved tax credits that were rescinded under subsection (8)(a) of this section during the applicable calendar year;

(III) For qualified commercial structures estimating qualified rehabilitation expenditures in any amount, ten million dollars in the aggregate for each of the 2020 through 2032 calendar years, in addition to the amount of any previously reserved tax credits that were rescinded under subsection (8)(a) of this section during the applicable calendar year; except that the aggregate amount of the ten million dollars in tax credits in any tax year that may be reserved by the office must be equally split between qualified commercial structures for which the estimated qualified rehabilitation expenditures are equal to or less than two million dollars and qualified commercial structures for which the estimated qualified rehabilitation expenditures are in excess of two million dollars.

(a.5) For calendar years commencing on or after January 1, 2025, but before January 1, 2030, in addition to the tax credits allowed to be reserved by the office pursuant to subsection (12)(a) of this section, the office shall separately reserve credits pursuant to this subsection (12)(a.5) for an owner of a qualified commercial structure that submits an application and rehabilitation plan for rehabilitation of the qualified commercial structure so that at least fifty percent of the square footage of the qualified commercial structure will be net new rental housing units, as defined by the office. Except as otherwise provided in subsection (12)(b) of this section, the aggregate amount of all tax credits in any calendar year that may be reserved pursuant to this subsection (12)(a.5) for qualified commercial structures by the office upon the certification of all rehabilitation plans under subsection (7)(a) of this section for such structures must not exceed five million dollars per year in the aggregate, in addition to the amount of any previously reserved tax credits that were rescinded under subsection (8)(a) of this section during the applicable calendar year.

(b) Notwithstanding any other provision of this subsection (12), if the entirety of the allowable tax credit amount for any calendar year is not requested and reserved under:

(I) Subsection (12)(a) of this section, the office may use any such unreserved tax credits in reserving tax credits in another category for that same calendar year, and the office may also use any remaining unreserved tax credits for

that calendar year in reserving tax credits in subsequent calendar years; or

(II) Subsection (12)(a.5) of this section, the office shall use any remaining unreserved tax credits for that calendar year in reserving tax credits in subsequent calendar years.

(c) Any tax credits issued under this section to a partnership, a limited liability company taxed as a partnership, or multiple owners of a property must be passed through to the partners, members, or owners, including any nonprofit entity that is a partner, member, or owner, respectively, on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method.

(d) Any tax credits issued under this section for a qualified commercial structure are freely transferable and assignable, subject to any notice and verification requirements to be determined by the office; except that the owner or a subsequent transferee may only transfer the portion of the tax credit that has neither been applied against the income tax imposed by this article 22 nor used to obtain a refund. Any transferee of a tax credit for a qualified commercial structure issued under this section may use the amount of tax credits transferred to offset against any other tax due under this article 22 or the transferee may freely transfer and assign all or any portion of the tax credits that have neither been applied against the income taxes imposed by this article 22 nor used to obtain a refund to any other person or entity, including an entity that is exempt from federal income taxation pursuant to section 501 (c) of the internal revenue code, as amended, and the other person or entity may freely transfer and assign all or any portion of the tax credits that have neither been applied against the income taxes imposed by this article 22 nor used to obtain a refund to any other person or entity. The tax credits may be transferred or assigned on multiple occasions until such time as the credit is claimed on a state tax return. The transferor and the transferee of the tax credits shall jointly file a copy of the written transfer agreement with the office within thirty days after the transfer. Any filing of the written transfer agreement with the office perfects the transfer. The office shall develop a system to track the transfers of tax credits and to certify the ownership of tax credits. A certification by the office of the ownership and the amount of tax credits may be relied on by the department and the transferee as being accurate, and the office shall not adjust the amount of tax credits as to the transferee; except that the office retains any remedies it may have against the owner. The office may promulgate rules to permit verification of the ownership and amount of the tax credits; except that any rules promulgated shall not unduly restrict or hinder the transfer of the tax credits. Notwithstanding any other provision of this section, only tax credits issued under this section for a qualified commercial structure, and not tax credits issued under this section for a qualified residential structure, are freely transferable and assignable in accordance with this subsection (12)(d).

(e) (Deleted by amendment, L. 2018.)

(13) Appeal. Any owner or any duly authorized representative of an owner may appeal any final determination made by the office, the historical society, or the department, including, without limitation, any preliminary or final reservation, or any approval or denial, in accordance with the "State Administrative Procedure Act", article 4 of title 24. The owner or the owner's representative shall submit any such appeal within thirty days after receipt by the owner or the owner's representative of the final determination that is the subject of the appeal.

(14) Deadline for submitting application and rehabilitation plan. Notwithstanding any other provision of this section, the tax credits authorized by this section for the substantial rehabilitation of a qualified structure are not available to an owner of a qualified structure that submits an application and rehabilitation plan after December 31, 2032. No action or inaction on the part of the general assembly has the effect of limiting or suspending the issuing of tax credits authorized by this section in any past or future income tax year with respect to a qualified structure if the owner of the structure submits an application and rehabilitation plan with the office on or prior to December 31, 2032, even if the qualified structure is placed into service after December 31, 2032. Any tax credits that have been reserved for a qualified commercial structure in accordance with subsection (7)(a) of this section and any applicable rules

promulgated under this section prior to December 31, 2032, may still be issued by the office through and including December 31, 2036.

(15) Report to the department - rules - qualified commercial structures.

(a) On or before March 15, 2016, and on a quarterly basis thereafter, the office shall provide a report to the department specifying the ownership and transfers of tax credits for the rehabilitation of qualified commercial structures under this section covering the period since the last report.

(b) The office, in consultation with the historical society, may promulgate any and all rules necessary to further implement the tax credits to be claimed for the substantial rehabilitation of qualified commercial structures under this section and shall solicit advice from the department in promulgating rules for transfers of such tax credits. Any such rules must be promulgated in accordance with article 4 of title 24.

(c) Notwithstanding any other provision of law, a taxpayer shall not claim a credit under this section in connection with the rehabilitation of a historic structure for which the taxpayer is also claiming a credit under section 39-22-514.

(16) Tax preference performance statement.

(a) In accordance with section 39-21-304 (1), which requires each bill that creates a new tax expenditure or extends an expiring tax expenditure to include a tax preference performance statement as part of a statutory legislative declaration, the general assembly declares that the general purposes of the tax credit created in this section are to induce certain designated behavior by taxpayers and to provide tax relief for certain businesses or individuals. The specific purposes of the tax credit are to provide an incentive to taxpayers to rehabilitate qualified structures in a way that increases the number of net new rental housing units in the state and to provide a greater incentive for taxpayers who develop such units for rental to low- and moderate-income renters who need affordable and middle-income housing.

(b) The general assembly and the state auditor shall measure the effectiveness of the tax credit in achieving the purposes specified in subsection (16)(a) of this section based on the information required to be maintained and reported by the office to the state auditor pursuant to subsection (16)(c) of this section.

(c) The office shall maintain a database of any information determined necessary by the office to evaluate the effectiveness of the income tax credit allowed in this section in meeting the purposes set forth in subsection (16)(a) of this section and shall provide such information, which must include the number and value of tax credits claimed pursuant to this section, the number of net new rental units developed, including the number of such units developed for rental only to low- and moderate-income renters, through the rehabilitation of qualified commercial or residential structures for which tax credits were allowed pursuant to this section, and, if available, any other information that may be needed, to the state auditor as part of the state auditor's evaluation of the tax credit required by section 39-21-305.

(17) Commercial historic preservation tax credit program cash fund.

(a) The commercial historic preservation tax credit program cash fund is created in the state treasury. The fund consists of gifts, grants, donations, fee revenue credited to the fund pursuant to subsection (6) of this section, and any other money that the general assembly may appropriate, transfer, or require by law to be credited to the fund.

(b) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the commercial historic preservation tax credit program cash fund to the fund.

(c) Money in the fund is continuously appropriated to the office for the purpose of administering the tax credit issued pursuant to this section.

(d) The state treasurer shall transfer all unexpended and unencumbered money in the fund on December 31, 2051, to the general fund.

History

Source: **L. 2014:**Entire section added,(HB 14-1311), ch. 183, p. 670, § 1, effective May 14. **L. 2015:**(2)(j) amended,(HB 15-1307), ch. 218, p. 804, § 1, effective August 5. **L. 2018:**Entire section amended,(HB 18-1190), ch. 344, p. 2046, § 1, effective May 30; (5.5)(a)(III) and (8)(c)(IV)(A) added,(HB 18-1190), ch. 344, p. 2046, § 1, effective January 1, 2020. **L. 2019:**(7)(a.5) amended,(SB 19-241), ch. 390, p. 3477, § 55, effective August 2. **L. 2024:**(2)(j)(I), (2)(l)(I), (2)(n), (3), IP(5)(a), (5.5)(a)(I), (5.5)(a)(II), (6)(c), (7)(a), (7)(a.5), (7)(b), (8)(a), IP(8)(b), (8)(c)(II), (8)(c)(IV)(B), (11), IP(12)(a), (12)(a)(III), (12)(b), and (14) amended, (5)(b.5), (8)(c)(V), (12)(a.5), (16), and (17) added, and (5.5)(b) and (8)(f) repealed,(HB 24-1314), ch. 245, p. 1613, § 1, effective August 7.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 39, Art. 22

Colorado Revised Statutes Annotated

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