Contents of the Appendix

From: Mary Ottoson [mailto:mary@hobarthistoricrestoration.com]
Sent: Tuesday, December 23, 2014 9:17 AM
To: King, Steve [DCA]
Subject: DCA Rules Comments for Immediate Review - 12/23/14

Hello Steve,

Thank you for sharing the information regarding the new DCA rules and the opportunity to comment. Below are my comments for Division II, PROJECTS FOR WHICH PART 2 APPLICATIONS WERE APPROVED AND AGREEMENTS WERE ENTERED INTO ON OR AFTER JULY 1, 2014

223-48.23 – Maximum of 25%? So not a flat 25%? Sounds like DCA has the authority to make awards up to 25%, rather than a flat 25% calculation of QREs. This leaves it a bit open ended, unless I am misunderstanding.
223-48.24(1) – For projects that score highly but are passed up for that registration round b/c they would eat up too many tax credits for that FY, will they receive bonus points on future registration rounds? If not, why are they being penalized for having high scores but a big project? That's not right either.
223-48.25(4) – Do projects have to have a part 2 approved prior to registration, or just have a part 2 submitted? 48.31 reads that part 2 must be *approved* prior to registration.
223-48.26 – Should not allow projects to be phased under small projects fund. This makes a loop hole for what would be large projects to file as multiple phases, not just amendments (which you state are not allowed). Already aware of some developers which were asking if they could go that route ("phase" projects so they can be "small fund"). This will be a problem for SHPO if any loop holes aren't closed now.
223-48.27(2) – Notarized? Really? Why not just a signed letter. This is an excessive precaution. NPS doesn't require notarized documentation. A letter from fee simple owner, which assessor information which lists that person/entity as current owner, should suffice.
223-48.27(3)– So no more retroactive possibilities for applying for tax credits? What about projects that submit a part 2, have it approved, but don't make the registration in Jan-Feb 2015. Does that mean they have to wait until August (assuming there is a July registration) to start any construction? Do not agree.
223-48.30 (1)(b) – How can an applicant plan to apply for federal credits but still must provide an approved fed part 2 application by NPS? Doesn't make any sense. Requiring a federal part 2 application prior to a state part 2 or registration is not ok. The federal review fees are steep and some people wait to apply for federal after receiving state's determination.
223-48.31 (2) – This vague language of registration periods as "identified by the department from time to time" should be amended to read at least twice per year. Registrations of twice per year are vital to the program and for continuing the success of projects. Financing on large rehabs is near impossible without these tax credits and expecting current fee simple owners, developers, cities, etc. to wait a full year (potentially) to hear back on a status is absurdity. There needs to be a requirement that DCA will hold at least two registration periods per FY year.
223-48.31 (6)(b) – Secured financing – FYI that it will be virtually impossible to secure financing and get loan documents without a State Historic Tax Credit Award already being made. Be aware of that. Our lenders have already stated they won't sign any documentation or release loans until the State Historic Tax Credit Tentative Award (spelling out a dollar amount of tax credits) is made by SHPO.
223-48.31 (6)(c) – So developers will be penalized if they don't already own the property? Again, defeats the purpose of the program. Most people don't buy the buildings to rehab, without knowing they will be getting some tax credits and the timing. You're asking for unrealistic risk from the development community. Agree that current owners shouldn't be discounted or penalized, but they shouldn't necessarily receive preferential treatment.

223-48.31(6)(f) – Has zoning really been an issue for SHPO/DCA? This adds another element of review that really isn't necessary for SHPO, this is a local concern (not a state agency or department's). At least, not as scoring criteria. Much of the time, rezoning applications don't happen until well into the planning phase which typically doesn't happen until after developers know they are receiving tax credits. Very few projects can afford to hire and pay a full team (architect, engineer, landscape, etc) until after they have financing in place, which doesn't happen until SHPO releases a tentative tax credit dollar award. Thus, rezoning applications don't typically happen until after that full team has been assembled and hired.
223-48.31 (7)(d) – Previous applications should absolutely take top priority over economic priorities, vacant properties and rural resources. They are getting penalized again, for having scored highly in previous rounds or continuing to try to rehab a property. Goes against principle of the program.
223-48.31(8) - Will the final approved registration list be made public and posted online after all registrant applicants have been notified? It should be a matter of public information that doesn't have to be requested but rather shared on the website.

The rest of the rules are clear, concise and make sense.

Thank you for the opportunity to respond.

Best Regards and Happy Holidays,

Mary

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From: Jim Hobart [mailto:jim@hobarthistoricrestoration.com]
Sent: Friday, December 26, 2014 9:29 AM
To: King, Steve [DCA]
Subject: Mott Building Cedar Rapids

Happy Holidays,

I hope that your holiday season is going well. It is amazing that this year is coming to a close.

There a couple of issues I need help with. The first and most important is the approval of the Part II for the Mott building in Cedar Rapids. We had moved forward on the intent that SHPO was going to also have a March registration period. The period has been moved to June/July and disrupts the financing of this project. The banks will not lend without the State Historic Tax Credit estimated certificate in place. We accomplished the 1.5 meeting on Tuesday afternoon. There did not seem to be many items of concern to Barry or Lori. I am asking if there is anything on my side that can assure that we get this project into the queue for the February 6th deadline to keep this project on track. We have strong support from our bank, but their lending rules will not allow the State funds unless documented.

I was also concerned with Lori pushing to have an architect and engineer on board before Part II was approved. This situation was discussed at length in the preparation of reforming the Historic State Tax Credit design. The idea was to keep costs at minimum up to approval of the Part II. We have experience on projects in Iowa, Illinois and Wisconsin and see this idea being a positive move to insure that more projects are looked at and investigated. I hope that we maintain this ideal moving forward.

I hope your New Year brings happiness and success, and thank you for your help on this matter. You and your staff have made great improvements and have our support.

Respectfully,
Jim Hobart

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From: lois@sinclairgroup.org [mailto:lois@sinclairgroup.org]
Sent: Thursday, January 01, 2015 4:00 PM
Subject: HPCED Proposed Rules and Registration Application for Stakeholder Comment

We have carefully examined the proposed rules implementing the revisions to Chapter 404A and the proposed rule changes under Iowa Department of Revenue's section of the rules that govern the HPCED Tax Credit Program. We see no problem with the forms. There are two areas where there seems to still be a lack of clarity:

48.33(1) Submission period. - What happens in a case like ours (Priester Building - Bloomfield Iowa) where part of the building will be placed in service (first floor store fronts) well before the second floor (residential living spaces are completed)? Can this rule for submission of Part 3 apply to 1870 calendar days after the property is FULLY places in service? Hence - downstairs store fronts places in service in March 2015 and upstairs apartments places in service in November 2015, therefore Part 3 submission no later than May 2016?

A second issue - while it is clear in the rules that to claim grant money for qualified rehabilitation expenses one must treat this as income and pay tax on these funds, there could be more clarity or guidance as to whether the state of Iowa requires, recommends, or leaves this optional. There is a wide degree of variance according to the sophistication of various tax accountants. The very conservative accountant in our small town says that Main Street must issue a 1099 for Challenge Grant funds. Other accountants that we have consulted (and other Main Street accountants) disagree and say that this is not required. In our situation it is not going to make any difference, but I can see a situation occurring where requiring this puts someone into a higher income bracket and therefore makes it financially detrimental. Guidance would be helpful.

Thank you.

Lois and Carol Priester

Dr. Lois Abel-Priester,

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From: Rebecca McCarley [mailto:rebecca@octaspark.com]
Sent: Thursday, January 15, 2015 12:06 PM
To: King, Steve [DCA]; Cownie, Mary [DCA]; Daniels, Victoria [IDR]
Cc: 'Sam Erickson'; 'Jake Christensen'; 'Emily Meyer'; 'Greg Wattier'; 'John Gronen'; gronenres@mcleodusa.net; Bennett, Berry [DCA]; Vander Molen, Kristen [DCA]
Subject: HPCED program and HSPG grants

Mary and Steve -

A couple related questions and thoughts for you this morning regarding the historic tax credit program (HPCED) and Historic Site Preservation Grant (HSPG) program. I appreciate your time in reading through my email and giving it some consideration.

For the historic tax credit program, there had been some general mention of items that might need to be tweaked this legislative session. I have not heard specific items, just that there may be some areas of the legislation to edit. I have also heard of letting the program run though a full cycle before working on any tweaks to better identify what may or may not need to be adjusted. Is DCA or IDR planning to recommend any changes that would be made to code for the historic tax credit program during this legislative session?

The one “issue” that jumps to mind that I have heard about for the historic tax credit program is related to the changes in code to the applicant type. Since it has been made more specific/restrictive, I have heard of issues related to applicants who have a building under contract but are not yet the owner (which may have been addressed administratively) as well as issues of partnerships between non-profits and other groups, particularly governmental entities. There may have been other issues that I’m not aware of.

The net result of the latter issue with partnerships with government entities has been that any government owned building (courthouses, city halls, jails, libraries, schools, etc.) are no longer eligible for the historic tax credit program, as applicants are restricted now to owners, and governmental entities are not eligible applicants. Previously, whether good or simply working an angle, partnerships with non-profits (as the eligible applicant) have permitted historic tax credit dollars to be used as contributions from these groups towards rehab of these governmental historic buildings, particularly county courthouses. That is no longer the case under the rewritten code. Whether or not this partnership structure was truly to be included in the historic tax credit program is unknown, but the net result was that these tax credits were used towards the rehab and retention of a historic building, which is the certainly the intent of the program.

I know that this issue has been brought to the attention of some staff at DCA, particularly in regards to a couple potential projects in Muscatine County, but I don’t know if there have been any further discussion about amending the applicant type restrictions in the historic tax credit language or not. And I don’t know if there is a desire to rewrite the code to return the program to the previous more broad interpretation of eligible applicants – basically anyone who has permission of the owner can apply for the historic tax credits for the rehab of a building. I think that there was a desire to tighten this language, and it may be the way that it is preferred to be, regardless of the impact on rehab of some buildings.

Perhaps the greater issue resulting in government owned buildings finding a way to partner to apply for historic tax credit dollars (essentially getting a “grant” as they have no tax liability) is that DCA’s Historic Site Preservation Grant (HSPG) program has not been funded in the last five years. This program used to provide 1:1 grants (~50%) ranging from minimum grant of $60,000 ($120,000 project) to max grant of $100,000 ($200,000+ projects) for rehab of historic buildings by government entities or non-profits (no individuals or businesses). The program is authorized to be funded up to $1.5 million annually, though appropriations from FY06 to FY10 were typically around $600,000-$800,000, if I recall correctly. Many projects were funded at the max level of $100,000 (as their rehab costs well exceeded $200,000), so typically only 10-12 projects were funded per year. This included both governmental applicants as well as non-profit applicants. As I recall, there were always well more than twice the number of applications/dollars requested than able to be funded in those last five years that the program was funded.

So, as an example, for a courthouse with a $500,000 rehab project, the historic tax credit program (previously using a non-profit partner) might cover 25% of the qualified costs, or $125,000. The HSPG program would cover a max grant of $100,000. So, the numbers are fairly close. Obviously, a larger project with higher costs would greatly benefit from applying for historic tax credits rather than to the HSPG program. A $1 million rehab project would get $250,000 through historic tax credits, but would still be stuck at $100,000 as the max allowed grant in the HSPG program.

At a basic level, given the changes in the historic tax credit program, there seems to be a strong need for a discussion on funding the HSPG program this year. Has there been any discussion within DCA to date? Traditionally, this program has been funded as a line item within DCA's budget (I have not seen any proposed budget yet to check if it is there or not). Thus, when there was a need to cut DCA's budget, this grant program was subjected to its current state of non-funding, despite high demand for these grants and success of the program. Ironically, given the current issue, one reason that I heard the first year that it was not funded was that these applicants/projects could now use the historic tax credit program, which had then received significantly increased funding as well as correcting the issue of full refundability of the tax credits. There was also some discussion on funding HSPG separate from DCA's budget, thus eliminating the funding/budget issue. For example, the REAP program through DNR is funded as a separate item in the general budget, rather than as part of DNR's budget. Thus, HSPG might be funded similarly funded separately from the overall budget (as obviously the historic tax credits program is as well). Since it has been five years since HSPG has been funded at all, it would be great to see full funding of $1.5 million this year, as well as for the next few years moving forward.

While simply getting the HSPG program funded at $1.5 million this year under its current rules would be a great start, there might also be some discussion on amending the program to provide additional funds for these projects that are not (and maybe should not be) traditional historic tax credit program users. It would be great to see the amount of max grants raised to $200,000 or $300,000 (with min grant of $60,000 retained). Obviously, then there would need to be an increase in overall funding for the program. Rather than add $5 million to the historic tax credit program, it would be great to see the authorized annual funding of HSPG program increased to $5 million, with annual appropriations then that would hopefully also match that level. Rehab projects through HSPG grants obviously provide the same local and statewide economic impact as these applicants/projects using the historic tax credit program. And the program intent of rehabilitation of historic buildings is the same for both programs. Thus, with increased funding and potential grant amounts, the HSPG program could be as effective for these buildings/applicants as the historic tax credit program is for other applicants - and was for these applicants before the code change, assuming that the rewritten definition of eligible applicant is remaining in place.

Additionally, since HSPG has not been funded in five years, there has been a surge of additional large project applications for the historic preservation category (60%) of the HRDP grant program (roughly 5% of REAP), which provides much smaller grants (up to $50,000 max typically). Thus, fewer "typical" HRDP applicants in the historic preservation category have been able to receive funding. Thus, any funding for the HSPG program would thus also alleviate the burden placed on these historic preservation HRDP grants.

I look forward to hearing any thoughts that you might have or discussion that has taken place to date on any changes for the historic tax credit program this year or funding the HSPG program this year. Thanks for taking the time to give my thoughts some consideration as well.

Thanks,
Rebecca

King, Steve [DCA]

From: Vander Molen, Kristen [DCA]
Sent: Tuesday, February 03, 2015 9:00 AM
To: King, Steve [DCA]
Subject: FW: ARC 1836C - fees

Importance: High

Steve,

I presume you are the one representing the Department at the ARRC meeting on Friday. Please read Jack Ewing's comments below regarding fees. If you're not representing the Department, please pass this information along to the appropriate person.

Kristen

From: Ewing, Jack [LEGIS] [mailto:Jack.Ewing@legis.iowa.gov]
Sent: Tuesday, February 03, 2015 8:56 AM
To: Vander Molen, Kristen [DCA]
Subject: ARC 1836C - fees

Kristen,

I wanted to bring something to your attention in case it comes up on Friday, so you're not caught off guard. In ARC 1836C, on historic preservation tax credits, you're removing the application fee schedule in current 48.16 and replacing it with a provision in new 48.34 stating that the application fee amounts will be listed on DCA's website. In the past, the ARRC has discouraged proposals to remove fee schedules from rules, particularly in light of Iowa Code section 17A.2(11)(g), which excludes from the definition of "rule," "[a] specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, application fee, or other fees." This exclusion seems to imply that a license fee, application fee, or other fee would be considered a rule, and thus should be listed as such.

However, this same scenario came up in another department's rulemaking recently, and the ARRC seems to be developing a policy of distinguishing between a fee that a person or entity more or less has no choice but to pay if one wants to practice one's occupation or carry out some other important function, and fees that are more discretionary and subject to market influence, such that a person or entity would not necessarily feel compelled to partake of the program if the person or entity found the amount of the fee objectionable. When in doubt, it's best to stay on the right side of the statutory definition of course, and not providing fee amounts in rule is fairly uncommon, but at least the ARRC's views on the subject seem to be evolving, and it could be argued that DCA's action here is closer to the permissive side of the spectrum in that regard. Either way, you may want to give the issue some thought.

This may well not come up at all, and if so I apologize for wasting your time, but the same issue was discussed at the ARRC's December meeting, so I figured a heads up is in order. I'd at least be prepared to explain why the fee schedule is being removed from the rule, in case anyone asks. Let me know if you have any questions.

Jack Ewing
Legal Counsel
Legislative Services Agency
515-281-6048

Director Cownie & Director Kay-Decker-

I hope you are both well. On behalf of the Smart Growth Coalition, I have attached a memo and a spreadsheet expressing concerns with the proposed Department of Revenue and Department of Cultural Affairs rules. Please accept these as a submission of public comments. We will present at the ARRC on Friday and at Wednesday's public hearing. I wanted to give you an opportunity to view these so you would be prepared to respond if you would like at the hearing.

I hope the spreadsheet provides clarity to our concerns.

Thank you

David

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Dubuque Initiatives	National Funding	World Food Prize Foundation
Faegre Baker Daniels	Nelson Construction	
Fischer Companies	Nyemaster, Goode PC	

To: Kristen Vander Molen, Dept of Cultural Affairs & Alana Stamas, Dept of Revenue
From: David Adelman- Lobbyist; Smart Growth Coalition
Date: February 3, 2015
Re: Comments relating the Historic Preservation Tax Credit Rules proposed by DCA & DoR

The Smart Growth Coalition respectfully submits the following comments as it relates to draft rules **ARC 1837C & ARC 1836C.** These comments will be shared at the Administrative Rules Review Committee meeting on Friday, February 6th and at the Public Hearing at 3:30 on Wednesday, February 11th. We hope both Departments view these comments as constructive and will make the necessary changes in order to comply with the legislation passed by the 85th General Assembly and signed by the Governor. The Historic Preservation Tax Credit Program has been a great tool for preservation in Iowa and has helped contribute to Iowa's thriving economy. Without the changes set forth below, we feel the changes set forth by the Departments in these draft rules will significantly hamper preservation and economic growth in Iowa.

ISSUE 1 - Use of Federal, State and Local Loans and Incentives

In April of 2014, one of the issues that Smart Growth had addressed with HF 2453 was the reference to IRC 47 in the definition of qualified rehabilitation expenditures. The amount of the state historic tax credits available to a project are calculated based on a percentage of the qualified rehabilitation expenditures. The definition of qualified rehabilitation expenditures was amended by HF 2453 to not include expenditures financed by federal, state or local government grants and forgivable loans, except as allowed under Internal Revenue Code (IRC) section 47. Smart Growth believed that the intention of the reference to IRC 47 was to be consistent with the federal historic tax credit definition of qualified rehabilitation expenditures and to maintain the approach taken by the IRS. However, it appears that the Department of Cultural Affairs and the Department of Revenue (the "Departments") are not aligning with the federal law regarding qualified rehabilitation expenditures.

For example, some projects' qualified rehabilitation expenditures have been challenged under the 2014 amendment. In these challenges the departments are not allowing grant payments as eligible qualified rehabilitation expenses even though we believe they would have been counted as eligible qualified rehabilitation expenditures under the federal historic tax credit laws. The basis of these challenges appears to be rooted in the following:

a) The Departments are tracing grant sources back to the original source. The departments believe that any **transaction** that resulted from sources that can be "traced back" to federal, state or local dollars are not eligible qualified rehabilitation expenditures. To do this, the departments are disregarding intermediate entities and transactions that should not be disregarded. Because Iowa Code Section 404A.1(6)(b) states that "Qualified rehabilitation expenditures does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under section 47 of the Internal Revenue Code", we believe that the Departments should apply federal law in determining whether these sources can be included in qualified rehabilitation expenditures.

b) If a grant was provided to a local not-for-profit and classified as a loan or equity to the building owner entity, we have traditionally not recognized income by the owner entity and not reduced qualified rehabilitation expenditure. Because Iowa Code Section 404A.1(6)(b) states that "Qualified rehabilitation expenditures does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under section 47 of the Internal Revenue Code", the Departments should apply federal law in determining whether these sources can be included in qualified rehabilitation expenditures.

c) If such a grant were deemed to be grant income to the owner entity that is a partnership, the general treatment under federal law would be to recognize the grant as taxable income. Because Iowa Code Section 404A.1(6)(b) states that "Qualified rehabilitation expenditures does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under section 47 of the Internal Revenue Code", if a grant is determined to be taxable pursuant to section 61 of the Internal Revenue Code, the Department should apply federal law in determining whether these sources can be included in qualified rehabilitation expenditures.

These barriers on the use of the state historic tax credits have the following effects on a proposed rehabilitation project.

Historic Tax Credit Calculations			
	Federal Historic Tax Credit	State Historic Tax Credit (pursuant to I.C. 404A)	State Historic Tax Credit (pursuant to the proposed adm. rules)
Annual Credit Rate	20%	25%	25%
Total Qualified Rehabilitation Credits	6,000,000.00	6,000,000.00	6,000,000.00
Less Federal Historic Tax Credits	$0	$0	$1,200,000.00
Less Federal Low Income Housing Tax Credits	$0	$0	$3,420,000.00
Less TIF Payments	$0	$0	$240,000.00
Less Taxable City Grant	$0	$0	$250,000.00

Actual Qualifying Costs	$6,000,000.00	$6,000,000.00	$890,000.00
Eligible Basis	$6,000,000.00	$6,000,000.00	$890,000.00
Projected Credit Amount	$1,200,000.00	$1,500,000.00	$222,500.00 ($1,277,500 gap)

The above calculations, based on a redevelopment project in rural Iowa, show that the progression from Iowa Code section 404A to the administration of the rules creates a funding gap that is detrimental to the state historic tax credit program. The $1,277,500.00 funding gap for this project causes the redevelopment project to be unfeasible and this project will have to be abandoned. Under the proposed administrative rules, the addition of the definition of "Government Funds" or "funding originating from a government" under 223 – 48.22 may be the cause of the issues set forth in (a) and (b) above. Therefore, we suggest that this definition and the requirement to provide this information under 223 – 48.31(3), 223 – 48.32(1)(d), and 223 – 48.33(2)(d) should be deleted in their entirety to ensure that section 47 of the Internal Revenue Code is followed. The Departments have the right to request further information (e.g. an accountant or attorney letter), if they believe that grants are being used in the qualified rehabilitation project. An accountant or attorney letter would give the Departments some professional assurance that this part of the state statute was being applied correctly. In addition the Departments need to follow section 47 of the Internal Revenue Code with regard to expenditures financed by federal, state, or local government grants or forgivable loans as set forth in Iowa Code section 404A.

ISSUE 2 – Different requirements for an eligible taxpayer who is a fee simple owner and an eligible taxpayer who is an applicant that will qualify for federal credit

The proposed administrative rules provide different requirements with regard to the requirement for federal historic tax credit approval of Part I and Part II applications depending on whether the eligible taxpayer is a fee simple owner or an applicant that will qualify for the federal credit. "Eligible Taxpayer" is defined in Iowa Code section 404A.1 as "the owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project. The proposed administrative rules separate the definition into two different classifications that do not match up with the federal historic tax credits and should be amended to remove the requirement to provide an approved federal Part 1 application and an approved federal Part 2 application for eligible taxpayers who are a person who will qualify for federal rehabilitation credits.

> 48.28(2) Proof of status as eligible taxpayer. The Part 1 application may be submitted by an eligible taxpayer as described in rule 223—48.27(404A).
> a. To prove the applicant is the fee simple owner, the applicant will be expected to provide title documentation. If the title is held in the name of an entity, the application must be accompanied by documentation which indicates that the signatory is the authorized representative of the entity.
> b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant **must provide a copy of the approved federal Part 1 application**, unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit, and the applicant must provide proof of permission from the fee simple owner as described in subrule 48.27(2).

There will be different requirements with regard to the documentation to provide for a fee simple owner and for an applicant that will qualify for federal credits in that the fee simple owner will provide proof of title and the applicant will provide the supporting documentation required by the federal rehabilitation credits, such as a purchase agreement or real estate installment contract. The state and federal programs have to work together throughout the process and it is typical for applicants not to purchase the property until the Part II application is approved. Therefore, the requirements for the applicant during the Part I and Part II application should mirror the federal program. A condition precedent to the Agreement is that the eligible taxpayer is the fee simple titleholder or has a binding qualified long-term lease and the registration application process deducts points of an applicant that is not being the fee simple owner.

ISSUE 3 – Amendment to Part I and Part II Applications

Currently under the federal and state historic tax credit Part I and Part II applications there is a process to amend the application if there is a change in ownership, name, or address or if there is a modification to the original description/application of the rehabilitation project. We typically have amendments to the Part I and Part II applications for various reasons and would like to see the language previously used in the administrative rules under the previous section 223 – 48.6(1)(d).

ISSUE 4 – Representations and Warranties regarding related persons and related entities.

All of the items under 48.31(4)(a) are concerning because of the representations and warranties applicants have to make regarding related person or any related entity.

In addition we have some concerns with how this section is drafted, for example:

a. Item (1) the applicant fails to answer the questions or provide documentation – this is of some concern because throughout these proposed rules SHPO has no requirement to notify or contact the applicants if additional information is needed. There needs to be some sort of communication between applicant and SHPO similar to how it has been or to the deficiency letter process IFA uses for LIHTC.
b. Item (2) is of concern because if we file extensions for federal tax returns or any related person or entity files an extension we should be rejected based on this language.
c. Item (7) is of concern because the department in its sole discretion may determine that this project will cause a breach or default or noncompliance with another contract, grant award or tax credit program – how are they going to determine this and are they going to need to review every contract, grant and tax credit of the applicant and related persons or entities?
d. Item (8) is of concern because the department determines in its sole discretion that the applicant will not be able to provide the representations and warranties of the agreement. This should be changed to present tense - the applicant has not provided the representations and warranties required under the agreement.

ISSUE 5 – Notification of incomplete information.

In the previous rules, under 48.6, it stated SHPO staff shall notify the applicant if part one application or the part two application is incomplete. We would like to see this under the Part one, Part two, and registration application sections of the proposed rules to ensure there will be communication from SHPO regarding “incomplete” information.

SMART GROWTH COALITION

ISSUE 6 – Preferences to statewide economic priorities, vacant properties, preservation of rural resources and other criteria

Under the proposed rules, 223 – 48.31(7), the addition of scoring preferences to statewide economic priorities, vacant properties, preservation of rural resources and other criteria as the department deems necessary is very concerning because there is nothing in the Iowa Code Section 404A that endorses these as priorities for the DCA and therefore this should not be included in the administrative rules or application.

cc:

Administrative Rules Review Committee Members
The Honorable Governor Terry Branstad
Senator Bill Dotzler
Senator Joe Bolkcom
Representative Chris Hagenow
Representative Tom Sands

kristen.vandermolen@iowa.gov.
alana.stamas@iowa.gov

Document	Issue	Statutory Support
Registration Application	Appears to contemplate a single application period running only from January 26th through February 6. Projects can arise at any time during the year. While using a single application cycle allows DCA to apply relative and objective scoring mechanisms when selecting projects, it could result in significant delays for important Projects.	The statute specifically provides that DCA can implement a continuous application system or may implement one or more application periods. Therefore, the approach by DCA is fully supported by the law.
Registration Application	The application asks for the type of entity that the applicant is. It does not have an "Other" box. For example, it does not contemplate individual ownership, which is possible.	The statute in no way limits the type of person that can claim the credit. The application, in this regard, is not supported by law.
Registration Application	The application contains a scoring mechanism that weighs a numbers factors.	The statute provides that an eligible taxpayer shall make application to DCA in the manner prescribed by DCA, which implies: (a) that an application was contemplated by the statute; and (b) that DCA has some level of authority to determine and manage the application process. However, that discretion is specifically limited by the statute, which lists items that the application shall contain. Most of the application questions fall outside the scope of that list, particularly as they relate to the scoring system, which is not contemplated by the statute in any form or fashion. The closest grant of discretion on this front is the provision that states that the DCA "may" register a project. That statement, however, must be read in conjunction with the rest of the statute, which sets forth detailed standards for qualification that are in no way limited by the point system proposed by DCA.
Registration Application	The application makes a scoring distinction between "Term Sheets" and "Commitment Letters." It does not define either and the line between the two can often be blurred (e.g. what is the difference between a non-binding term sheet and a commitment letter with material conditions.	See above. In no place does the statute provide that DCA is authorized to use financing as a basis for selecting winners and losers.
Registration Application	The application contemplates 3rd party verification of developer equity, delivery of development documents and exclusion of deferred development fees. Developer documentation may not always be available at application. In addition cash resources may not be available at the time of the application, which is complicated given that there is a single cycle application.	See above.
Registration Application	The application provides preference to those projects with local support.	See above
Registration Application	The application provides preference to smaller projects by granting additional points to those that can be completed more quickly. Large projects are often the best projects.	See above.
Registration Application	The application provides preference to those with zoning and code review	See above.
Registration Application	The application provides preference to those projects that have fee ownership or a binding lease agreement.	The statute expressly defines what an "eligible taxpayer" is. It is the owner of the property or anyone that will qualify for the federal rehabilitation credit allowed under Sect. 47. Nowhere in the statute does it state that DCA should take ownership differences into account in determining who can obtain credits.

Document	Issue	Statutory Support
Registration Application	The application appears to contemplate only leases that are in excess of the property's recovery period and not master leases. In other words, its ignores the ability under federal law to pass-through credits to a master lessee pursuant to a master lease, which is the predominate method for structuring federal tax credit projects.	This is in direct conflict with the statute.
Registration Application	The application takes into account a number of economic and preservation priorities in Part B. These could impact who is awarded credits. This provides preference to those that fit particular criteria, vacant buildings, rural buildings, prior applicants.	This statute does not expressly authorize DCA to consider these items.
Certification and Release of Information	The application asks questions related investigations, claims, etc. that have not been proven or established. It then states that the state may deny credits based upon the responses. This may have due process implications. In addition, it notes that explanations must be provided for various items and that the responses are subject to open records.	These inquires are not relevant to the statutory regime. Unlike IEDA programs that specifically limit credit availability to those that have prior legal issues, the SHTC statute does not. These inquires are, therefore, not supported by the statute.
Certification and Release of Information	This document requires information to be provided on a number of persons and entities. The applicant will not always have access to accurate information regarding those persons and entities. Forcing certain parties to disclose this information could impede the formation of capital for these projects. While it may be reasonable to require the requested information of the applicant, it is unreasonable to require that information to be provided for other parties without knowledge qualifiers.	The statute does not require or authorize the collection of information regarding persons or entities other than the applicant.
Certification and Release of Information	The application implies that a prior bankruptcy could impact credit availability. This would appear to be inconsistent with the fresh-start concept behind bankruptcy.	See above
Certification and Release of Information	The scope of many of these inquires is disturbing. For example, it would appear that (because of the placement of the common) any criminal conviction by any investor would be an issue regardless of how related or material that matter or person is to the project.	See above
Certification and Release of Information	This document further states that DCA can reject an application if it determines, in its sole discretion, that the applicant will not be able to provide representations, warranties, conditions or other terms acceptable to the DCA. This document suggests that DCA may elect, in its sole discretion, to not enter into an agreement with an applicant. This would further suggest that there are no standards or limits on DCA's authority to accept or reject applications on any standard, including illegal standards (e.g. race or creed).	See above

Document	Issue	Statutory Support
DCA Regulations	The terms "Government Funding" or "funding originating from a government" are defined, but do not appear to be used in the regulations. To the extent that the definitions are applicable, they are too broad. The statute simply states that qualified rehabilitation expenditures do not include expenditures financed by federal, state or local government grants or forgivable loans unless otherwise allowed by Section 47. While it is unclear what is meant by financed by (e.g. does it cover situations in which a lender to the project received government grants or loans such as TARP Funds or loans from the Fed; can bad funds be traced or allocated to non-QREs; what if loans are forgiven at some point and the applicant pays tax on such amounts under the IRC), it is clear that the statute is qualified by federal law. Section 47 has no "double dipping" provision such as those contained in 45D. It simply provides that if an expenditure creates basis and is otherwise defined as a QRE, credits will be available. However, since QREs are driven by tax basis, federal credits can be affected by other provisions of the code that reduce basis (e.g. grants excluded under 118 can result in a reduction of basis in certain cases generally inapplicable in federal tax credit structures). The definition in the regulations appears to simply state that if there was a government grant, government payment, grant loan, tax credit, rebate or other government incentive anywhere in the system (i.e. even if received by an unrelated lender or an upstream investor), it will impact the availability of credits. This wholly ignores well established federal tax law under Section 47 and otherwise (e.g. it appears to disregard the separateness of various taxpayers without qualification and to ignore the definition of loan, grant, and equity under federal law).	None.
DCA Regulations	48.6(8) Adds a provision that states that credits are subject to audit after the issuance of a tax credit certificate, This would imply that the amount of credits is subject to adjustment for a period of 3 years. How does this interact with the provisions of the act related to "qualifying transferees." In addition, would this imply that the SOL starts running upon the issuance of the tax credit certificate and not the claiming of the tax credit certificate?	This appears to be in conflict with the statute as it relates to "Qualifying Transferes"
DCA Regulations	Its unclear how the regulations related to the prior buckets interact with the scoring application. Does the provision that states that sequencing will not be used after 7/1/14 apply to the entire provision. If that is the case, how does this interact with the draft application that purports to have a deadline in early 2014. Wouldn't the regulations suggest that the sequencing applies then?	
DCA Regulations	48.24(1) Contains the scoring mechanisms discussed above	See above
DCA Regulations	223-48.27 contains redundancies and inconsistencies. It should state no more than the first sentence, which states that eligible taxpayers can apply.	
DCA Regulations	223.27(2) requires the applicant to prove ownership or existence of a lease prior to entering into a contract with DCA. In most cases, a project will be structured in a way that involves a master lease. The master lease will likely not be in place until closing. Since the statute would treat a master lessee as an eligible taxpayer, this creates a potential conflict with the statute or, at the very least, a timing issue.	See above

Document	Issue	Statutory Support
DCA Regulations	48.31. See above as it relates to the application documents asking overly broad questions and applying questionable scoring and rejection criteria and systems	See above
DCA Regulations	48.31(5) provides an open ended review process. How does this work in connection with a single application cycle?	See above
DCA Regulations	223-48.32(404A) implies that the agreement will not be entered into until after the project's financing structure has closed and that this must occur within 90 days of registration. First, it unreasonable to assume that projects will close on their financing structure within 90 days of registration, particularly since there is a single application cycle. Second, few investors or lenders would be willing to go into structures not knowing what the terms of the contract were.	
DOR Regulations	42.19(6) requires significant information to be submitted about the amount paid for credits. However, the law states that such payments are not taxable or deductible. Since they have no tax effect, the relevancy of this information is in question. What is the purpose of collecting this information?	
DOR Regulations	42.52(3) constrains a definition of QREs that is not identical to those in the DCA Regulations. The definition of QREs should only be defined in the DCA regulations or should be defined in the exact same way they were defined in the DCA Regulations. Further, why isn't QRE just defined by reference to 47(c)(2)(A) and 1.48-12?	
DOR Regulations	42.52(4) provides that challenges should be made under 701 Chapter 7. Is that true for all challenges related to the credits or just specific challenges?	

From: Rebecca McCarley [mailto:rebecca@octaspark.com]
Sent: Saturday, February 07, 2015 11:03 PM
To: King, Steve [DCA]; Cownie, Mary [DCA]
Cc: Sam@chihousing.com; 'Jake Christensen'; JohnG@gronenproperties.com; 'Emily Meyer'; 'Dan Downs'; 'Greg Wattier'
Subject: proposed admin rules - historic tax credit

Steve –

Thanks for the opportunity to provide comment this weekend on the proposed admin rules. Your timing was good, as I finally had the opportunity this afternoon to read through them in more detail. You asked for additional comments/questions by Monday, so I will try to outline the things that stood out to me in reading through them. I may have been out of the loop on some discussion, so some may already be answered, while others may still need to be addressed. I'm working off of the attached versions, which I believe to be current.

In the rules that apply to applications prior to July 1, 2014 (Division I now), it looks like most of the changes are straightforward in addressing the massive program change then enacted. I see that you did include provisions on credits allowed to be reassigned, which was needed and is good (48.10-2).

In Division II, the rules for projects after July 1, 2014…

Under definitions (48.22), I see several new definitions have been added and others have changed.
- Applicant is now restricted to an eligible taxpayer, which then is defined as the fee simple owner (or long term lessee) of the property. We've had discussions on if applicants other than owners should be permitted to submit applications, particularly at the Part 1 stage. It seems that anyone might be permitted to submit a Part 1 or Part 2 application, with the understanding (and warning) that you will need to be an "eligible taxpayer" (owner) to receive the credit, assuming code remains as rewritten last year (also see wording in 48.32 intro). By code, I think you need to be an "eligible taxpayer" to submit a registration application or enter an agreement (provided documentation is submitted that you are on that path), but that might be open to discussion for amending. Applicant could be defined and used here to permit someone (developer with an option, per se) to submit the initial applications and get approval on a Part 1 and Part 2 before entering the registration/agreement phase without contradicting anything in code (I believe). If not, then that would be a good item for the list to change in code.
- Barns are specifically defined, but then they are not specifically categorized as either commercial or noncommercial. The "noncommercial property" definition should specifically reference barns as falling in that category. It is written in code as such.
- Commercial property has been redefined. Does the reference continue to permit residential properties with two or fewer units to be considered "noncommercial"?
- Government funding definition seems a bit over-reaching. I understand the desire to prevent double-dipping, but the series of third parties seems to be going a bit too far. The definition in code also references cases when those sources are permitted, and that does not seem reflected in rules. That is referenced below in the QRE definition, and those two should coordinate/cross reference, with that latter one straight from code and taking precedent in the prior's definition. (Glad to see in QREs that costs prior to the agreement are still permitted.)
- Substantial rehabilitation – same issue with barns here. 2015 Code (404A.1 7c2) specifically includes barns in the noncommercial classification for qualified costs, but they are not specifically noted here, nor addressed then in the noncommercial classification (if they were in that definition, then no reference likely needed here)

48.23 – amount of tax credit – the 2015 Iowa Code specifically states that the credit is "an amount equal to twenty-five percent of the QREs of a QRP that are specified in the agreement" but this section states "a maximum of twenty-five percent of the QREs of a QRP that are specified in the agreement." That needs to be corrected to "equal to" in order to match code (404A.2 – 1). The language addresses costs in the agreement, not absolute percent of QREs, so there is no reason to contradict code. In fact, I don't believe that you can.

48.24 – management of aggregate annual tax credits - I am not clear on if only the current fiscal year is eligible for reservation or three years, as previously. Thus, are applications only being taken now for 2015? Aren't those credits already awarded? Are you still reserving credits for the next three years in advance? I think the three years in advance remains appropriate, as projects move forward, and then the intro paragraph and 48.24-2 needs to be revised to address that accordingly. As it is written, it appears only 2015 credits would currently be reserved.

48.25 – applicant is referenced through this section. If applicant was redefined to permit someone not yet the eligible taxpayer to go through the a/b/c portion of the application process in this section, I think that would address a number of issues with the revised application process.

48.26 – small projects – generally looks good. It looks like reservations for small projects – at least 5% annually – would be indefinitely available for small projects? Can they be carried over to the next year? Are they lost if not used, or is there some provision for reallocation (rollover)?

48.27 – again there is reference that only an eligible taxpayer may apply for the credit, and then a lengthy explanation on who that might be. If this might be amended to only an eligible taxpayer may enter into an agreement with the department that would permit a potential developer/owner to start the process to see if a project will fly.

48.28 – Part 1 applications
- wording in 1 is odd – "maintained in a manner that is consistent with the federal standards." Do you mean that maintains its integrity? If so, that language should be used. Historically significant has been defined already and is the basic criteria for a Part 1 application…..and it does not actually require in code that the property has retained integrity from time of listing or been maintained per standards. Thus, perhaps that needs to be deleted completely, or you may be adding an additional layer of eligibility. And it's contradicted in 48.28-6, as only if it is "historically significant" is what needs to be determined for approval.
- Part 1 submissions are also specifically restricted here to eligible taxpayer
- 48.28 - 5 – timeframe for review – we discussed at length in the stakeholders group about turnaround times for review. I see here that within 90 days has now been even further noted not to be mandatory, and the full 90 days start over once additional info is submitted. This seems in direct contrast to the consensus of the group. Also, is that a formal request for additional information in writing, or simply a phone call or email to ask a quick question?

48.29 – preapplication meeting – the timing requirements of this meeting in subsection 2 are very odd and the language needs to be edited. It reads that you must request this meeting within 30 days of submitting the Part 1 application. At the very least, it seems that it should be within 30 days of receiving approval on a Part 1 application – otherwise, how do you even know if you have something to discuss (in some cases at least), or have time to do a draft Part 2 (as noted would be submitted for the meeting)? Also, if a Part 1 application is valid for five years, per the last section, then you would be far beyond 30 days of either submitting or approval to schedule this meeting. So, I think it likely should just simply note that you are eligible to schedule after submitting a Part 1 application and the meeting needs to be held prior to submission of the Part 2 application.

48.30 – Part 2 applications
- 1b – how can you "plan to apply" and already have an "approved federal Part 2 application"? Is this supposed to be Part 1 application? Otherwise, you could not submit a state Part 2 without federal Part 2 approval. If that is the intent, then it seems like you should be able to submit a Part 2 application (and get that discussion), but not enter an agreement without that proof, if that is the proof to determine that the eligibility. Also, what are provisions if the property is only receiving state tax credits, not federal?
- 4 – again timeframe issues here – 90 days are not even mandatory anymore – restarts fully if need to submit additional information. And, what is considered a request for additional information? It needs to be defined as a letter sent to the applicant…..not just something like a phone call or quick email with a question that can simply be answered.
- 6 – amendments cannot always be submitted prior to the undertaking of work approved in the Part 2 application, and they are not required to be submitted as such for the federal program. Often, minor variations might be discussed as they pop up with then an amendment filed to cover a number of them at once, rather than a series of small amendments. I don't see that would be allowed under this language and would certainly increase the workload on the department. A Part 2 can be submitted after work has begun. So, language here should edited accordingly. Also, what is the review period for an amendment? If it must be approved before undertaken, it would need to be almost instantaneous in some cases (unexpected surprises). In either case, it needs to be defined.

48.31 – registration application – others probably have more comments than me on this section. A couple things…
- 4a – that seems like a really long list of things ending with the registration application can just be denied at the "sole discretion" of the department (a9). Some of the list may be needed, but the end jumps out as being too far reaching.
- 6 – I was surprised at the list in the scoring process. We had several discussions in the stakeholders group about items that might be addressed here, and there seem to be some obvious ones missing. The one on "previous application" in the tiebreaker section below seems obvious to move into this main scoring section. There needs to be some weight given to projects that previously applied and did not receive funding because it ran out. They can still meet other criteria, but there was a huge discussion on certainty of getting a qualified project the tax credits a few years ago, which resulted in the A, B, and C categories previously. Also, when the "buckets" came out of code, I thought the intent was to get some weight to them in the scoring criteria – again, they are only in the "tiebreaker" section. I don't know that all of them need to be here, and maybe all were tools to get the cap raised originally, but they are now defined as "state economic priorities" (per inclusion previously?). In that case, perhaps they should be edited with discussion on which are real priorities, and I would suggest moving preservation of rural resources as a priority and also better define it (perhaps unincorporated areas or incorporated areas with population less than 10,000?).
- 9 – small project registration – perhaps state that the department "will" establish rather than "may" establish. The use of the small project fund is going to decline significantly if applications have to follow that full process. Also, note subject to available tax credits. Could a small project registration form then be submitted in a large project round, if small projects are full? Perhaps, not as much as a concern if still reserving more than one year out.

48.32 – agreement
- intro: now, language seems to suggest, that the eligible taxpayer may not be the owner, as there is 90 days after approved registration to finalize project funding and <u>purchase</u> or lease, if necessary. This then would suggest that an "applicant" may not need to be an "eligible taxpayer" until the stage that an agreement is entered into.

- c – is the assumption that the agreement will also be the budget + allowable costs overruns at the percents listed? So, the agreement will be the max amount of credit? Or the allowable cost overruns would be in addition to the agreement amount? 48.32 suggests that it would later be amended to be allowed.
- general question on the agreement: Does the agreement permit the property to be sold within the five years prior to the termination of the agreement? Holding the property for five years has never been a requirement of the state program – and the federal program has a tiered recapture provision. What is the intent and requirements here for extending the agreement beyond with the tax credit certificate is issued? I can easily see a homeowner get historic tax credits and then perhaps move before the end of that five year period.

48.33 – Part 3 applications – again review period has been edited to 90 days or more, as needed. In the stakeholder's group we specifically talked that the Part 3 review period should/could be shorter and that there was need to quick review to receive credits to pay off bridge financing. This then seems to have gone the opposite direction.

48.35 – Compliance
1 – annual reports – I understand the desire that an owner not turn around and do something anti-Standards the month after a project is certified, and I see in code the five years for the agreement period. However, I'm not sure how these annual reports might be used. What is the purpose? Am I correct in saying that credits will not be revoked if the property does not comply after the tax credit certificate is issued? I only see 48.35 – 3 that addresses revocation prior to issuance of tax certificate. I don't see anything about what happens if additional work is performed after Part 3 approval but within that five year window, and that work does or doesn't relate to the original agreement. Also same question here as above on if a property is permitted to be sold under the agreement (as has never been a restriction and would really potentially affect small project users), and same comment that the federal program has a tiered recapture policy (if intent is to recapture).

One last thing that I noticed in reading through the rules. There no longer seems to be any rehabilitation period at all (was two years at one point, then five years from Part 2 approval, etc.). There is a commencement date and a completion date, but no guidance on any length of time between the two. So, a project could be two years or five years or ten years, if stipulated as such in the agreement or amendment to the agreement? And costs prior to the commencement date (when the agreement is entered into) are permitted, so it could go back a year or more as well?

Overall, with all that said, it is evident that the department has put a lot of time and effort in trying to work out new admin rules for a completely revamped program. There are many more items in the proposed document that look like they will work well as written, and I appreciate the opportunity to comment on and discuss the items that may still benefit from some editing. I look forward to continuing the discussion.

Thanks,
Rebecca

-----Original Message-----
From: Jones, Norman [mailto:NJones@winthrop.com]
Sent: Tuesday, February 10, 2015 11:20 PM
To: King, Steve [DCA]
Cc: 'Mary Gronen'
Subject: RE: Potential Meeting Wednesday-prior to public hearing

Steve, the typical tax opinion wouldn't be helpful. As to the basis/QRE issue, this would be rare in a tax opinion also. Bluntly, the concept is perfectly clear among the tax firms that give and review such opinions and wouldn't even merit discussion in a tax opinion. But it certainly could be discussed in an opinion, if helpful. Prior to this, I've never seen anyone take the opposite position.

This leads me to believe that I must be missing something about what the IDR is trying to accomplish with this, or what IDR understands to be the typical facts and the application of this rule, and what the problems are that need to be rectified. I'd really like to listen to what IDR wants to achieve. Maybe we can help achieve that with the least disruption.

Our firm's comments are attached. I suspect, if it would be helpful, that a number of tax lawyers from different firms may be able to weigh in on this question in writing over the next few days.

--Norm

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http://www.winthrop.com/our_firm/email_disclaimer.aspx

-----Original Message-----
From: King, Steve [DCA] [mailto:Steven.King@iowa.gov]
Sent: Tuesday, February 10, 2015 11:03 AM
To: Jones, Norman
Cc: 'Mary Gronen'
Subject: RE: Potential Meeting Wednesday-prior to public hearing

Thanks Norm,
I'm going to ask you to provide what you think is appropriate.
My goal is to make the discussion as productive as possible, and so far we've heard the objection, but we've not seen the supporting documentation for the coalition's position.

I thought if I asked for the existing docs that have been produced to date, we might be able to more quickly reach concensus.

From: Jones, Norman [NJones@winthrop.com]

Sent: Tuesday, February 10, 2015 10:36 AM
To: King, Steve [DCA]
Cc: 'Mary Gronen'
Subject: RE: Potential Meeting Wednesday-prior to public hearing

Steve,

Your email below was forwarded to me relating to tax opinions. A typical investor tax opinion covers some or all material federal income tax issues that the investor might face. What was the thinking on why a seeing an investor tax opinion would be helpful? I'm not sure that that opinion will be very helpful in the current basis/QRE discussion.

Is the thinking that developers should offer tax opinions to SHPO for projects that are receiving grant funding? That is possible to do, but I would think that would be a very different opinion, covering just the basis/QRE issue.

Any insight would be helpful.

I look forward to meeting you tomorrow.

Thanks very much.

--Norm

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From: King, Steve [DCA] [mailto:Steven.King@iowa.gov]
Sent: Tuesday, February 10, 2015 8:18 AM
To: David Adelman; Daniels, Victoria [IDR]
Cc: Decker, Courtney [IDR]; Humes, Adam [AG]; Stamas, Alana [IDR]
Subject: RE: Potential Meeting Wednesday-prior to public hearing

David,
I've heard a number of times from various program users that legal opinions are provided by the program-users attorneys, the lending institutions attorneys and the tax credits purchasers attorneys.
I think it would be a good use of time to make sure samples of these documents are provided prior to tomorrow's meeting.
We understand elements may need to be redacted, so let's try to get that process underway now rather than waiting and realizing that after another meeting.

What do you expect the National Trust representative to provide? Will an attorney from the Trust be available to weigh-in on the established legal precedents for receiving a tax credit on public money?
If they have a document like that, it may save us a great deal of time to provide that information in advance.

Steve King
Deputy State Historic Preservation Officer steve.king@iowa.gov<mailto:steve.king@iowa.gov> | 515.281.4013 | 515.865.7538-cell

From: David Adelman [mailto:dadelman@cgagroup.com]
Sent: Monday, February 09, 2015 8:05 PM
To: Daniels, Victoria [IDR]
Cc: Decker, Courtney [IDR]; Humes, Adam [AG]; Stamas, Alana [IDR]; King, Steve [DCA]
Subject: RE: Potential Meeting Wednesday-prior to public hearing

Victoria-

Thank you for your review with your team and considering our comments. I think, together, we may need to clarify the rules as many have then misread the rules, but this is good movement. The outcome is very well supported and easy to figure out. I believe this just leaves the focus on upper-tier entities. If the Department's focus is looking at the project entity itself, then we should be in good shape but again, needs .

I believe Steve King and Adam Humes have scheduled a meeting with a couple CPAs and tax attorneys at 1pm to discuss the above issue (DCA Executive Conference Room #3rd Floor West SHB). In discussions with Adam, we expect this to be very constructive and clearly outline the position of the Coalition. I know Norm Jones (http://www.winthrop.com/professionals/norman_l._jones_iii.aspx) who is a nationally recognized tax credit expert will be in attendance as will a representative from the National Trust. Obviously, we would like you and Alana to be there.

My hope is we will be able to find resolution very soon.

Have a nice evening.

David

From: Daniels, Victoria [IDR] [mailto:Victoria.Daniels@iowa.gov]
Sent: Monday, February 9, 2015 5:23 PM
To: David Adelman
Cc: Decker, Courtney [IDR]; Humes, Adam [AG]; Stamas, Alana [IDR]
Subject: RE: Potential Meeting Wednesday-prior to public hearing

David,

Thank you for sharing the comments of the Smart Growth Coalition. We appreciated hearing your feedback at the Rules Review Committee meeting and look forward to further dialogue at the public hearing on Wednesday, and thereafter. We were surprised at the Smart Growth Coalition's assertion that a significant number of projects will no longer be eligible for Iowa's Historic Preservation and Cultural Entertainment District Tax Credit. Now that we have had a chance to thoroughly review the materials provided to us last Wednesday, we want to let you know that the example contained in your memo is not consistent with the rules as drafted.

Your example was as follows:

Historic Tax Credit Calculations

Federal Historic Tax Credit

State Historic Tax Credit (pursuant to I.C. 404A)

State Historic Tax Credit (pursuant to the proposed administrative rules)

Annual Credit Rate

20%

25%

25%

Total Qualified Rehabilitation Credits (stet)**

$6,000,000.00

$6,000,000

$6,000,000

Less Federal Historic Tax Credits

$0

$0

1,200,000

Less Federal Low Income Housing Tax Credits

$0

$0

3,420,000

Less TIF Payments

$0

$0

$240,000

Less Taxable City Grant

$0

$0

$250,000

Actual Qualifying Costs

$6,000,000

$6,000,000

$890,000

Eligible Basis

$6,000,000

$6,000,000

$890,000

Projected Credit Amount

$1,200,000

$1,500,000

$222,500

Gap

(1,277,500)

**We presume that the example was intended to illustrate a project with $6,000,000 in total Qualified Rehabilitation Expenses.

The items in your table that are highlighted in yellow are not accurate under Section 404A (as it existed before July 1, 2014 and after that date) and the proposed rules. The accuracy of the items highlighted in green cannot be determined based upon the facts provided.

Federal Historic Tax Credits and Federal Low Income Housing Tax Credits are typically not excluded from basis when calculating the Historic Tax Credit under IRC Section 47. Therefore, those credits are typically not excluded from basis for Iowa's HPCED either.

Under Chapter 404A (as it existed prior to July 1, 2014 and currently) and the proposed rules, TIF payments and a taxable city grant will not reduce basis if they are treated as taxable income.

Assuming that both the TIF payments and the taxable city grant are both included in income, no reduction in basis would occur, and the project would be eligible for a HPCED tax credit of $1,500,000 as follows:

State Historic Tax Credit (pursuant to the proposed administrative rules)

Annual Credit Rate

25%

Total Qualified Rehabilitation Credits (stet)**

$6,000,000

Less Federal Historic Tax Credits

$0

Less Federal Low Income Housing Tax Credits

$0

Less TIF Payments

$0

Less Taxable City Grant

$0

Actual Qualifying Costs

$6,000,000

Eligible Basis

$6,000,000

Projected Credit Amount

$1,500,000

Gap

$0

PLEASE NOTE: These calculations are the same as they would have been under Section 404A prior to July 1, 2014.

This analysis assumes that the costs are the types of expenses that meet the requirements of QREs under Section 47.

So perhaps we are not as far apart as was portrayed at the Committee meeting on Friday.

Please let us know if you have been successful in arranging a pre-hearing meeting.

Victoria L. Daniels I Public Information Officer I Legislative Liaison I Division Administrator, Policy & Communications I Iowa Department of Revenue www.tax.iowa.gov<http://www.tax.iowa.gov> I (515) 281-8450 I Click here<https://www.surveymonkey.com/s/TD6F5ZQ> to tell us about our customer service.

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From: David Adelman [mailto:dadelman@cgagroup.com]
Sent: Friday, February 06, 2015 3:04 PM
To: Humes, Adam [AG]; Stamas, Alana [IDR]; King, Steve [DCA]; Daniels, Victoria [IDR]; Cornelison, Dan @ Hubbell Realty; Saddoris, Kris @ Hubbell Realty; Beal, Jim; Stone, Jason M.; Larry James (larry.james@faegrebd.com<mailto:larry.james@faegrebd.com>); Mary Gronen; Vos, Dave; Norman L. Jones (NJones@winthrop.com<mailto:NJones@winthrop.com>); Jill Connors; 'Jake Christensen' (jake@christensendevelopment.com<mailto:jake@christensendevelopment.com>); John Leith-Tetrault; Aust, Ashley @ Hubbell Realty
Cc: David Adelman
Subject: Potential Meeting Wednesday-prior to public hearing

All-

On this email are those with the Attorneys General office, Department of Revenue, Department of Cultural Affairs and interested stakeholders. In today's Administrative Rules Review Committee we (developers, CPAs and tax attorneys) went back and forth with the AGs office and the Department of Revenue on the "appropriate way" to interpret eligible QREs under IRC 47. No resolution was found however, Adam Humes and I agreed a meeting needs to take place ASAP.

This meeting will NOT be the opportunity to say how your project will be affect, that is for the public hearing (which all of you should attend to put your comments on record).

The purpose of this meeting is for the AG's office and Dept of Revenue to hear from tax experts and CPAs why they believe their interpretation of Section 47 of the IRC is correct. We have asked the National Trust to be at this meeting, whether on the phone, in person, or with written comments. I will work with the stakeholders to come up with a uniformed message to be respectful of the Agency's time, as time is scarce for everyone. However, this is a major change in the program that needs to be ironed out.

Steve King, from DCA, was going to work on reserving a separate room in the Historical Building so we do not have to go far for the public hearing. Once that is done, he or I will send out a calendar invite with the details.

Please do NOT "reply all" on this email. I may have forgotten a subject matter expert and if so please let me know and I will include that individual.

Thank you all for your work and consideration on this crucial program.

David

____

David Adelman | Cornerstone Government Affairs Austin | Baton Rouge | Chicago | Des Moines | Houston | Jackson | Richmond | Washington, DC

(515) 491-1015 mobile | (515) 418-9871 direct

321 East Walnut Street, Suite 140
Des Moines, IA 50309

on the web @ www.cgagroup.com<http://www.cgagroup.com/>

The Davis Brown Law Firm is committed to providing Exceptional Client Service. For a review of the supporting principles, go to www.davisbrownlaw.com/exceptional<http://www.davisbrownlaw.com/exceptional%20>.

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WINTHROP WEINSTINE

ATTORNEYS AND COUNSELORS AT LAW

February 10, 2015

Norman L. Jones III
Direct Dial: (612) 604-6605
njones@winthrop.com

Alana Stamas
Policy and Communications Division
Iowa Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, IA 50306

Re: Notice of Intended Action / ARC 1837C

Dear Ms. Stamas:

This letter contains comments regarding the Notice of Intended Action – ARC 1837C, implementing 2014 statutory changes to the Historic Preservation and Cultural and Entertainment District Tax Credit Program.

I am a tax credit attorney admitted to practice in Iowa and Minnesota. My law firm has helped to close approximately 2,000 federal and state tax credit transactions in 46 states. I have practiced in the area of tax credit transactions for 18 years and, among other transactions, have advised in approximately 200 state historic tax credit transactions. More specifically, I have assisted with numerous Iowa historic tax credit transactions, representing investors, lenders and developers.

We are not being paid to offer these comments but are interested in the continued efficiency and clarity of the rules governing the program.

We offer the following comments:

(1) Paragraph 42.54(3)(b)(1) and elsewhere provides that "… expenses paid for with grants or forgivable loans are not considered incurred by the eligible taxpayer unless ... treated as taxable income by the taxpayer and properly includable in … basis." Because this is different than federal law on QREs, this rule will cause some projects to have federal QREs which are different than Iowa QREs.

a. This rule conflicts with the Iowa Code section 404A.1(6) which provides that "[QREs] means the same as defined in Section 47 of the Internal Revenue Code." Iowa Code section 404A.1(6) also provides that "[QREs] does not include those expenditures financed by ... grants etc., unless otherwise allowed under Section 47 of the Internal Revenue Code." Both portions of the Iowa Code section 404A.1(6) mean the same thing: Iowa QREs equal federal QREs.

There is no statutory authority for a rule which makes Iowa QREs different than federal QREs (other than in the case of tax-exempts, as described below).

b. The differences in federal QREs vs. Iowa QREs will be caused mainly by those projects in which the grant passes through other hands before coming to the taxpayer. The following are examples: (i) A grant made to a tax-exempt, which then uses the money to fund a loan to the taxpayer. In such case, the taxpayer has basis in the loan funds received (see Treas. Reg. §1.1012-1(g)) and can generate QREs with such funds. (ii) A grant made to a corporation, which treats the grant as a contribution to capital under IRC §118, followed by a loan to the taxpayer. In this case also, the taxpayer has basis in the loan funds received and can generate QREs with such funds. (iii) A forgivable loan which for federal income tax purposes is treated as income when actually forgiven.

c. If there is a specific policy goal here by IDR for preferring projects which are paying tax on grants, it's not clear what that could be. Requiring projects to pay federal tax that they otherwise wouldn't, in order to get Iowa credits, seems hard to fit into any policy that we can think of. And if any of the resulting funding gap gets covered by other Iowa sources, the effect of this rule would be a net transfer of Iowa money to the federal government. That's the effect of this proposed rule, but it's hard to believe that could be the intention.

d. Calculating federal QREs, especially dealing with the tax effect of grants, requires some sophistication. Anecdotally, we have heard that there was frustration caused for IDR or the DCA by the inability of some developers to properly calculate federal QREs where grants or forgivable loans were present. This seems like an enforcement issue. The proper response for that is further education, insistence on compliance, and case-by-case adjustments for those few, not punishing the majority who can and do comply. The vast majority of developers and their advisors understand IRC §47 and there is no good reason to depart from IRC §47, depart from the Iowa statute, and make Iowa developers pay more federal income tax, just so we don't have to enforce a rule that some uninformed developers aren't following.

e. Incidentally, for the state historic credits we are the most familiar with, including Virginia, New York, North Carolina, South Carolina, Texas, Ohio, Missouri, Oklahoma, Wisconsin and Minnesota, federal QREs always equal state QREs. If Iowa adopted a different QRE standard, it would be the only state that we are aware of to do so.

(2) Paragraph 42.54(3)(b)(2) contains a similar issue applying to tax-exempts. Technically, tax-exempts don't have federal QREs and therefore don't get federal historic credits. *See* IRC §47(c)(2)B)(v). But the Iowa statute says that nevertheless tax-exempts can have QREs if they incur the type of costs which are generally includable in QREs. The proposed rule says that expenses funded

directly or indirectly with federal state or local grants, or forgivable loans can't be QREs. The drafters may have assumed that (i) a grant can't be in basis without taxable income, and (ii) nonprofits can't take grants into taxable income. In fact, both assumptions would be wrong. (i) As given in the above examples, grants can be converted into loans that are includable in basis without being immediately taxable. (ii) Tax-exempts can take grants directly, and get basis for them by reporting them on Form 990, whether they are taxable or not. (iii) In some cases the grant might be taxable to the tax-exempt.

(3) There are various ways to revise the language in the two referenced paragraphs to make them match federal law. The simplest is to remove references to taxable income, but retain the reference to "properly includable in basis of the property." We would suggest eliminating these two referenced paragraphs as not adding anything to the statute, which is clear and complete by its simple reliance on IRC §47. But if IDR needs to restate the statute without conflicting with federal law, we would suggest that 42.54(3)(b)(1) and (2) (and parallel paragraphs elsewhere in the rules) be combined as follows:

"Expenses paid by the eligible taxpayer, including a nonprofit organization, using funds obtained by the eligible taxpayer in the form of federal, state or local grants or forgivable loans are not considered incurred by the eligible taxpayer unless such funds are properly includable in calculating the basis of the property, under the Internal Revenue Code."

(4) The Example in paragraph 52.18(3), states that the Iowa basis of the building would be reduced by the same amount as the federal reduction in basis. I would suggest deleting the last sentence of the Example. Federal basis reduction in the case of a master lease passthrough election does not apply, whereas the Iowa statute clearly requires a basis reduction in all cases, so it's best to disconnect the Iowa basis reduction from the federal basis reduction to avoid the rules conflicting with the statute.

Thank you for your attention, and please let us know if we can clarify any of the comments above.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

Norman L. Jones III

10001359v1

Please see the attached comments from Norm Jones.

I'm sorry I was out yesterday and I'm just getting caught up this morning.

Steve King
Deputy State Historic Preservation Officer steve.king@iowa.gov | 515.281.4013 | 515.865.7538-cell

-----Original Message-----
From: Mary Gronen [mailto:maryg@gronenproperties.com]
Sent: Monday, February 09, 2015 7:00 PM
To: King, Steve [DCA]; Bennett, Berry [DCA]
Subject: FW: Iowa proposed HTC rules

Steve and Berry,
Please read through Norm's comments below and feel free to give John a call with comments. Thanks very much.

Mary Mulgrew Gronen
Vice President

900 Jackson St., Suite LL2
Dubuque IA 52001
563 557-7010
563 690-1610 fax
563 451-8664 cell
maryg@gronenproperties.com
www.gronenproperties.com
www.schmidinnovationcenter.com
www.caradcolofts.com

-----Original Message-----
From: Jones, Norman [mailto:NJones@winthrop.com]
Sent: Wednesday, February 04, 2015 6:04 PM
To: Mary Gronen
Subject: Fwd: Iowa proposed HTC rules

John and Mary, below are my comments. Would you like me to put this in letter form, or let Adelman incorporate in his letter? Net me know how we should coordinate this.

Thanks.
>
> John,
>
> Now I see what you're so stirred up about in the proposed rules. They create several new problems in closing actual transactions.
>
> My major items are as follows:

>
> Revenue Department proposed rules:
>
> (1) 42.19(4), 42.19(6), 42.54(5) and elsewhere require information about "consideration received in exchange for the tax credit." It's unclear why IRD is looking for this. Perhaps they want to use it to track the "not taxable or deductible in Iowa" portion of the statute elsewhere. If so, we could probably suggest better language. For example, if the state partner contributes capital, is that "consideration"?
>
> (2) 42.52(3)(b)(1) and elsewhere says that "expenses paid for with grants or forgivable loans are not considered incurred by the taxpayer unless ... treated as taxable income by the taxpayer and properly included in basis." Because this is different than federal law on QREs, there will be in some projects a difference between federal QREs and Iowa QREs. This conflicts with the statute which provides that "QREs means the same as defined in Section 47 of the Internal Revenue Code." The statute also says that "QREs does not include expenditures financed by ... grants etc., unless otherwise allowed under Section 47 of the Internal Revenue Code." The second sentence has the same meaning as the first. There is no statutory authority for Iowa QREs to be different than federal QREs.
>
> If there some deeper anti-subsidy goal here by IDR, it's not clear what that is. But requiring projects to pay federal tax that they otherwise wouldn't, in order to get Iowa credits, seems hard to fit into any policy that I can think of. And if any of the resulting funding gap gets covered by other Iowa sources, the effect would be to transfer Iowa money to the federal government. That's the effect of this, but it's hard to believe that could be the intention.
>
> The differences will be caused mainly by those projects in which the funding passes through other hands before coming to the taxpayer. For example, what about a federal grant made to a city, which then uses the money to fund a nonforgivable loan to the taxpayer? Are the project expenses "paid for with" the grant, or the later loan? Similarly, grants could be made to nonprofit corporations, or taxable corporations, and then loaned to the taxpayer. In all of these cases, the taxpayer will have basis in the funds for federal purposes and will be able to generate QREs.
>
> There are various ways to revise the language to make it match federal law. The simplest is to remove references to taxable income, but leave in the reference to "properly includable in basis of the property."
>
> The phrase "paid for with" is unclear in many ways. First, as stated above, if funds pass through several hands, it should be the final transfer of funds to the taxpayer, and the taxpayer's use of those funds, that should determine the character of those funds. Second, does this require or allow some sort of direct tracing to determine what the funds were used for? Or is the assumption that all funds are fungible and the QREs should be reduced prorata?
>
> (3) 42.54(3)(b)(2) is an interesting expansion on the statute and I'm not sure what IDR's goal is here. Technically, tax-exempts don't get federal credits and don't have QREs [check this]. But the Iowa statute says that they can have QREs also if they are the proper type of costs. But the proposed rule says again that expenses funded with grants, etc. can't be QREs. This may be coming from the same mistake as under the prior paragraph. The drafter assumed that because you can't get a grant into basis without taxable income, and because nonprofits can't take grants into taxable income, that there was no point to adding the rest of the rule applicable to for-profits. In fact, both assumptions are wrong. (i) Grants can be converted into other forms that are includable in basis without being immediately taxable. (ii) Tax-exempts can take grants directly, and get

basis for them by reporting them on Form 990, whether they are taxable or not. (iii) Sometimes a grant might be taxable to the nonprofit.
>
> I would suggest eliminating these paragraphs as not adding anything to the state statute, which is clear and complete. But if IDR needs to restate the statute without much danger of adding or subtracting from it and conflicting with federal law, I would suggest that 42.54(3)(b)(1) and (2) be combined as follows:
>
> "Expenses paid by the taxpayer using funds obtained by the taxpayer in the form of grants or forgivable loans are not considered incurred by the taxpayer unless such funds are properly includable in calculating the basis of the property, under the Internal Revenue Code."
>
> (4) 52.18(3), Example states at the end that the Iowa basis of the building would be reduced by the same amount as the federal reduction in basis. I would delete the last sentence of the Example. Federal basis reduction in the case of a master lease passthrough is $0, whereas the Iowa statute clearly requires a basis reduction, so it's best to disconnect the Iowa basis reduction from the federal basis reduction.
>
> (5) 52.18(6)(a) requires information on the monetary or nonmonetary consideration for the credit. Sometimes the deal structure isn't as simple as "quid pro quo" so it would be hard to tell what to list as consideration. If IDR could state what it was looking for and why, taxpayers and advisors could better judge how to report this information. Is a capital contribution "consideration"? Are we supposed to report the amount of federal taxable income if the transaction is a sale? Or does this question have nothing to do with determining taxable income and so we should be reporting something else? The reporting on this will be inconsistent and unusable without a little more clarity as to what it is being used for.
>
> Historical Division proposed rules:
>
> (1) 48.27(404A). Requires fee owner to be the applicant. Is this a problem in practice?
> (2) 48.31(404A). The words "has been met" should be "will be met." Project won't be finished at this point.
> (3) 48.31(6). The scoring process is the single thing most flawed in being efficient with Iowa taxpayer money. As we have noted frequently over the years, this scoring favors projects that don't need the credit in order to proceed.
> --conditions to Part 2 approval. Almost never relevant to whether or when the project will proceed.
> --Secured financing. If the project is already financed, it means it can proceed without the credits. We've seen this strange result many times.
> --Ownership. All applicants will likely be the current owners, under the rules above, and when the project is ready to close, the new owner steps in. So this factor should be completely irrelevant in determining whether and when a project will go.
> --local government support. I assume this means future committed support, not already funded support. Otherwise same problem as above under "secured financing."
> --time line. Again, I've seen this favor projects actually under construction, and which didn't need the credits to proceed. Directly against the policy of using the credit to encourage development that otherwise wouldn't occur.
>
> (4) 48.32(404A). The limited registration period for large projects, combined with the short amount of time (90 days) to close financing thereafter, will be very difficult to do except for projects that already have financing lined up. The normal order is that the credit is awarded and then some time is needed to make other development decisions and line up financing. The 90 days should be say 270 days.
>

>
>
> Sent from my iPad

GET TO KNOW Newton

February 10, 2015

Ms. Kristen Vander Molen and Ms. Alana Stamas
Iowa Department of Cultural Affairs & Iowa Department of Revenue
600 East Locust Street
Des Moines, IA 50316
Sent via email

re: Proposed Rules ARC 1836C and 1837C (Iowa Code 404A) – Historic Preservation and Cultural and Entertainment District Tax Credit (HPCED)

Dear Ms. Vander Molen and Ms. Stamas:

The City of Newton has made great strides forward in recent years, but we have strong concerns that the progress will be significantly hindered by the proposed new rules for State Historic Preservation Tax Credits.

In the wake of the departure of Maytag, the City of Newton found resonance in its history and has used it to build for the future. Since 2008, the City has formed a Historic Preservation Commission, become a Certified Local Government, created two new Historic Districts on the National Register of Historic Places, and become a Main Street Iowa community.

The City now has two major projects pending in its downtown that capitalize on this appreciation of history. The first is a renovation of two buildings on the original Maytag headquarters campus into 42-units of workforce housing by Hubbell Realty. The City has committed significant grant and TIF rebates to the project, totaling nearly $600,000. Hubbell has stated that the project will not be possible if the new rules are put in place. Additionally, Frantz Community Investors has an agreement in place to purchase the former Hotel Maytag and renovate it into market-rate housing and commercial space, including a historic theater and ballroom. The new rules on State Historic Tax Credits make it extremely difficult to have the proposed City and Federal assistance join with the State tax credits to make a great project possible.

There are other smaller projects involving the renovation of historic buildings throughout Newton that would also be hurt by the new rules. Whether upper story housing around the downtown square or the preservation of an endangered building on the National Register, these types of

GET TO KNOW Newton

projects commonly rely on several public funding sources in order to make them feasible. Economic growth, downtown revitalization, and historic preservation would be damaged by the new proposed rules.

The City of Newton requests that the Departments of Cultural Affairs and Revenue revise the rules proposed in ARC 1836C and 1837C to have them align with the Federal regulations. The existing system has worked well to preserve historical resources and grow the local economies, so we ask that it be allowed to continue.

Thank you for your consideration.

Sincerely,

Robert Knabel

Robert L. Knabel
City Administrator
City of Newton

Comments on ARC 1836C February 10. 2015

My question to date are concerned with the following items and sections of ARC 1836C. I may have additional comments at a later date.

Item 4. Subrule 48 (8): states a credit will be issued for 25% of the QRC however e. appears to state any credits in excess of the reserved amount will not be awarded. Why?

Item 7. Subrule 48.7 (8): appears to state NO credit shall be reserved after July 1, 2014. Why?

223.48.28 (5) ; 48.30 (4); 48.31 (5); 48.33 (3): appears to state the department has removed the limit of a 90 day review deadline contrary to state law. Why?

223.48.29 (2): appears to state a pre-application meeting MUST take place no fewer than 30 days after the Part 1 is submitted. However, only 6 sessions per week are available for the pre-app meetings. If all the pre-app sessions are booked, what is the proposed action to be taken by SHPO concerning the pending project review?

223.48.31 (6) and (7): a scoring process is proposed, but the points to be awarded for each category are not revealed. Why?

223.48.32 (1): restrictions limits on increased QRCs (allowable cost overruns) are proposed. Why?

223.48.32 (2): appears to state an amendment to the project completion date will not be allowed. Why?

23.48.33 (2) (d): states the department may waive the examination requirements if ALL requirements are satisfied. Why?

23.48.34: How are the fees budgeted and how have past fees previously collected been allocated? What is the currant balance of the fees previously collected? If the project is not registered or if an agreement is not signed by the authorized signatory, will the fees be re-funded?

I await your response.

Jack C. Porter
Preservation Consultant
Jcporter consulting
815 18th Street
Des Moines, Iowa 50314

FRANTZ
COMMUNITY INVESTORS

TO: Iowa Department of Cultural Affairs & Iowa Department of Revenue

FROM: Thomas J. Frantz, Frantz Community Investors, Cedar Rapids, IA

SUBJECT: Proposed rules ARC 1836C & 1837C re: Iowa Code 404A – Historic Preservation and Cultural & Entertainment District Tax Credit (HPCED)

DATE: February 10, 2015

To Whom It May Concern:

Frantz Community Investors (FCI) has been an intricate part of historic restoration throughout Iowa for several years. This letter presents this developers views of the concerns regarding the proposed rules for the HPCED Tax Credit Program.

1) FCI has worked in cities in Iowa that have been literally transformed due to the use of the HPCED program along with the federal rehabilitation credits. Combined with other programs it is apparent that these programs have brought new life back to our downtowns and Main Streets. In addition, hundreds, if not thousands of jobs have been created and a substantial number of residential units to downtowns throughout Iowa. FCI encourages the continued momentum this program has been able to achieve for the benefit of all Iowans.
2) FCI, both understands and supports your efforts to create rules that are fiscally responsible. The challenge seems to be to keep compatibility among the scenarios and the typical funding sources that come into play for these types of projects.

Please consider the following issues as seen by this developer:

a) Cost overrun: The proposed rules allow 5%-10%-15% cost overruns according to the total cost of the project. Please consider room for exceptions for projects exceeding $6M+ in costs. There obviously needs to be room for flexibility for a project to maximize structural conditions or perhaps tenant build out of historic areas.
b) QRE: Defining allowable expenses in the language runs the risk of complicating the program instead of protecting funding dollars, the latter of which is the assumption. Please review the statute to assure that the criteria are in line for both the smaller/rural communities and the larger projects in some of Iowa's larger cities.
c) 90 day funding source period: This is unrealistic for most developers to enter into an agreement within a 90 day period of time. Some funding sources are "last in" meaning they are the last funding source to come into a deal. FCI supports the need for readiness, however more than 90 days may be required for closing.

d) One annual application period: Some of the steps to complete registration, reservation and an agreement cannot possibly be completed without some information that may not be available during that timeframe. We believe the Part 3 process, as with federal rehabilitation credits, provides adequate protection for program dollars. The project cannot receive its tax credit certificate until the completion of all rehabilitation work meeting program standards.

FCI, as an historic development specialist concentrating on market rate housing for communities throughout Iowa, has carefully considered the consequences of the current proposal and want the program to provide valuable insight for developers and how it can best transform communities, not deter development efforts for those of us working towards community improvement.

Thank you for your time.

Respectfully,

Tom Frantz
Frantz Community Investors
3801 Beverly Rd SW ste 300
Cedar Rapids, IA 52404
Office: 319-390-0013
Cell: 319-573-4460
tom@frantz-ci.com

From: Bryan Friedman [mailto:bryanfriedman@yahoo.com]
Sent: Tuesday, February 10, 2015 4:20 PM
To: Vander Molen, Kristen [DCA]; Stamas, Alana [IDR]
Cc: bobk@newtongov.org
Subject: City of Newton Comments on ARC 1836C and 1837C

Ms. Vander Molen and Ms. Stamas:

Attached please find a letter from the City of Newton regarding the proposed rules for Historic Preservation and Cultural and Entertainment District Tax Credits. I apologize that the City's email system is temporarily down so I am using a webmail account.

Thank you for the opportunity to comment. Please let me know if you have any questions.

Bryan Friedman
Director of Finance and Development
City of Newton, Iowa
641-791-0802 (Office)
641-521-4412 (Cell)
bryanf@newtongov.org

From: Jack C. Porter [mailto:sherman815@msn.com]
Sent: Tuesday, February 10, 2015 8:29 PM
To: Vander Molen, Kristen [DCA]
Subject: ARC 1836c comments

please find attached my comments concerning the proposed administrative rule AR 1836c.

thank you.

jack c porter
jcporter consulting

Sent from Windows Mail

King, Steve [DCA]

From: Jennifer James <jenjames123@gmail.com>
Sent: Tuesday, February 10, 2015 10:39 AM
To: King, Steve [DCA]
Subject: Re: HPCED Proposed Rules and Registration Application for Stakeholder Comment

Dear Steve,

Thank you for the opportunity to view the proposed rules. I am planning to attend the public hearing and speak on the following points:

- The 1.5 process is helpful, especially to receive feedback on the proposed Part 2 work and to demonstrate financial readiness. However, there are proposed scoring and financial changes that if enacted will cause severe impact on the tax credit program usage:

- Concern over scoring rural projects higher than urban projects. This could have unintended consequences including negative minority impact. The statute is neutral/silent on location of resources. Let the legislative system bear the burden of appropriating resources to different areas of the state so that any minority impact can be studied. The reasons for demolition of rural properties may be different from demolition of urban properties -- and the tax credit program may not be the most effective tool for altering those demolition patterns.

- Concern over scoring projects with local support higher than those without. I spoke up about this issue to you more than a year ago and still firmly believe that visionary preservationists often find ways to save buildings when local officials want to tear them down. There are many of these stories in Des Moines: The Des Moines Riverfront YMCA could be become the next example. Buildings may be endangered by this change.

- Concern over limiting applicants for Part 1 and Part 2 to fee-simple owners. This issue was covered during the conference call, but I want to re-iterate that this change will cause harm. Nonprofits of all sorts cannot use the federal tax credit program as a work-around -- and so projects like the Des Moines Social Club would not be possible under the current wording.

- Concern about public access to Part 1 photos and narrative descriptions/statements of significance. Because there is no review fee for Part 1 applications, tax payers at the state and federal level are paying for these reviews. As such, taxpayers should have the ability to view these records of historical information. Sometimes projects do not make it to the National Register stage (state only, abandoned federal) -- and the lag in time from Part 1 to National Register listing can be years. These documents are important for future research and the pursuit of scholarly study as well as for other tax credit applicants who have a building that has the same builder, architect, architectural style, historical owner, etc.

I appreciate your passion for preservation and willingness to dialogue on these issues.

Respectfully submitted,

Jennifer James, MAHP
Architectural Historian
Jennifer James Communications, LC
515/250-7196 // jenjames123@gmail.com

From: Tom Frantz [mailto:tfrantz@frantz-ci.com]
Sent: Tuesday, February 10, 2015 4:09 PM
To: Vander Molen, Kristen [DCA]; Stamas, Alana [IDR]
Cc: Carol Bower; Andy Frantz; Mitchel Hallgren; Mike Frantz
Subject: Tax credit hearing

Hello,

Please consider the attached letter for input at tomorrows public hearing on Iowa tax credits.

Thank you,

Tom Frantz
Frantz Community Investors
3801 Beverly Rd SW ste 300
Cedar Rapids, IA 52404
Office: 319-390-0013
Cell: 319-573-4460
tom@frantz-ci.com

THE CITY OF DUBUQUE
Masterpiece on the Mississippi

Dubuque
All-America City
2007 • 2012 • 2013

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TTY (563) 690-6678
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TO: Iowa Department of Cultural Affairs & Iowa Department of Revenue

FROM: Maurice Jones, Economic Development Director, City of Dubuque, Iowa

SUBJECT: Proposed Rules ARC 1836C & 1837C re: Iowa Code 404A – Historic Preservation and Cultural and Entertainment District Tax Credit (HPCED)

DATE: February 10, 2014

INTRODUCTION
This letter presents for your consideration the views of the City of Dubuque concerning the proposed rules for the HPCED Tax Credit program.

BACKGROUND
The City of Dubuque's greater downtown has been literally transformed thanks to the HPCED Tax Credit program, along with the federal rehabilitation credit. Combined with others, these programs have brought life back to our Main Street, Millwork District, and other adjacent areas. The rehabilitation of many of our historic buildings has brought thousands of jobs and hundreds of residential units to our downtown.

We are eager to continue this momentum with a strong, viable HPCED Tax Credit program. We have seen improvements in the program in recent years and encourage your departments to continue this work of making the program available and workable for the benefit of all Iowans.

DISCUSSION
The City of Dubuque understands and supports your efforts to create rules that are fiscally responsible. The challenge is to keep the program compatible with all of the scenarios and typical funding sources that come into play for these types of projects. We see the following issues that we ask you consider:

1. Cost Overruns
   The proposed rules allow for 15%, 10%, or 5% cost overruns according to the total cost of the project. We believe, particularly for the $6,000,000+ projects, that these figures are too low – or at least need room for exceptions.

To expect that a $20,000,000 project, for instance, would only be allowed to increase to a $21,000,000 project at maximum does not account for unforeseen structural conditions. Nor would it allow for the modification of buildout to accommodate a different commercial tenant, if that should change during the process of developing the building. Our experience in Dubuque tells us that both of these scenarios are not uncommon and would need room for flexibility.

2. <u>Qualified Rehabilitation Expenses</u>
   To insert language in the rules defining allowable expenses runs the risk of complicating the program instead of protecting its funding dollars, the latter of which we assume is the goal. Considering the projects we've participated in, we know that correctly interpreting tax law is best left to the accountants and tax attorneys. Perhaps requesting the project submit a tax opinion would place the compliance burden where it belongs while protecting our tax dollars.

3. <u>Application/Agreement Process & Timing</u>
   The statute does not authorize the Department of Cultural Affairs to consider some of the items that are currently scored in the draft application. For example, the draft application appears to give preference to smaller & rural projects, as more points are given for projects that can be completed quickly or that are in smaller communities. Large, catalytic projects in some of Iowa's larger towns would be disadvantaged. We suggest reviewing the criteria to make sure they are in line with the statute.

   The proposed rules also stipulate that all funding sources need to be finalized within 90 days of project registration in order to enter into an agreement. Several projects in Dubuque have used New Markets Tax Credits (as an example), which have a strict "but for" clause…meaning that they are the last source to come into a deal. It can easily take more than 90 days to close the deal in this instance. We support the idea of project readiness, but more than 90 days may be needed for a closing.

   The new process of securing credits involves an application (with only one annual period), registration, a reservation, and an agreement. Some of the steps cannot be completed without certain information, which may not be available at that time. And for the final step, we believe having the Part 3 process in place, as with the federal rehabilitation credit, provides adequate protection for program dollars – since the project cannot receive its tax credit certificate until after the rehabilitation work has been completed to program standards.

The City of Dubuque recommends the Departments carefully consider the input from the private sector practitioners of this program. We believe they will be able to provide valuable insight into the workings of the program "in the trenches" and how the program can best continue to transform our communities.

Sincerely,

Maurice Jones

Maurice Jones, Economic Development Director, City of Dubuque, Iowa

Cc: Jill Connors, Economic Development, City of Dubuque, Iowa

From: Beal, Jim [mailto:Jim.Beal@mcgladrey.com]
Sent: Tuesday, February 10, 2015 10:35 PM
To: Stamas, Alana [IDR]
Subject: Comments to IDOR rules

Dear Alana:

Please find attached our comments to the proposed rules for the Historic Rehabilitation Credit.

Thank you for your time and attention to this important process.

Sincerely,
Jim.

James A. Beal
Partner

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February 10, 2015

Ms. Alana Stamas
Policy and Communications Division
Iowa Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, IA 50306

Re: Notice of Intended Action / ARC 1837C

VIA Electronic Mail

Dear Ms. Stamas:

This letter contains comments regarding the administrative rules implementing 2014 statutory changes to the Historic Preservation Tax Credit Program.

Summary statements:

1. Department of Revenue proposed Rule 701-42.52(3) has interpreted Code of Iowa §404A.1 to limit qualified rehabilitation expenditures as defined as incurred by the taxpayer. The rule further states that for taxpayers other than not for profit organizations, any expenses paid with grants or forgivable loans are not considered incurred by the taxpayer unless the grant and or forgivable loan are treated as taxable income by the taxpayer and properly includable in calculating the basis of the property.

2. Current Iowa law refers and defers to the federal definition of qualified rehabilitation expenditures under Internal Revenue Code (IRC) Section 47.

3. IRC §47 and the related regulations define qualified rehabilitation expenditure as a certain type of basis within the amount spent on a project.

4. Basis under IRC §1012 is defined cost, unless otherwise defined.

5. Grants received by non-corporate taxpayers (e.g. partnerships) are generally included in income in accordance with IRC §61. No basis reduction is allowed.

6. Grants received by entities that are used to fund loans or equity contributions to partnerships claiming a rehabilitation credit are generally excluded from income as loans (repayment obligations) or non-taxable contributions to capital under IRC §721 and, thus, do not reduce basis of the project.

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7. There is no provisions allowing for non-corporate taxpayers to reduce basis, by the amount of direct or indirect grant funds received, in computing the credit under IRC §47 and therefore qualified rehabilitation expenditures under Iowa Code 404A.1 should not be reduced.

The Code of Iowa §404A.1.6, as amended, states:

> ***404A.1.6.***
>
> > ***404A.1.6.a.***
> >
> > *"Qualified rehabilitation expenditures" means the same as defined in section 47 of the Internal Revenue Code. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered "qualified rehabilitation expenditures" if they are any of the following:*
> >
> > > ***404A.1.6.a.(1)***
> > >
> > > *Expenditures made for structural components, as that term is defined in 26 C. F. R. Section 1.48-1(e)(2).*
> > >
> > > ***404A.1.6.a.(2)***
> > >
> > > *Expenditures made for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, and development fees.*
> >
> > ***404A.1.6.b.***
> >
> > *"Qualified rehabilitation expenditures" does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under section 47 of the Internal Revenue Code.*
> >
> > ***404A.1.6.c.***
> >
> > *"Qualified rehabilitation expenditures" may include expenditures incurred prior to the date an agreement is entered into under section 404A.3, subsection 3.*

Department of Revenue proposed Rule 701-42.52(3) has interpreted Code of Iowa §404A.1 to limit qualified rehabilitation expenditures as defined as costs *incurred by the taxpayer*. The rule further states that for taxpayers other than not for profit organizations any expenses paid with grants or forgivable loans are not considered incurred by the taxpayer unless such grant or forgivable loan are treated as taxable income by the taxpayer.

We do not believe such a rule is consistent with current Iowa or Federal Law.

The Code of Iowa refers to these federal, state and local financing sources having an effect on Qualified Rehabilitation Expenditures "unless otherwise allowed under Section 47 of the Internal Revenue Code".[1] Based on this construction, it is reasonable to conclude that if no reduction is required or allowed for the qualified rehabilitation expenditure definition under IRC §47, then there would be no reduction of qualified rehabilitation expenditures under Iowa Code 404A.1.

IRC §47, Rehabilitation Credit, allows a credit against federal income tax for a percentage of qualified rehabilitation expenditures. IRC §47(c)(2) states:

47(c)(2)Qualified rehabilitation expenditure defined.—

47(c)(2)(A)In general.—

The term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account—

47(c)(2)(A)(i)

for property for which depreciation is allowable under section 168 and which is—

47(c)(2)(A)(i)(I)

nonresidential real property,

47(c)(2)(A)(i)(II)

residential rental property,

47(c)(2)(A)(i)(III)

real property which has a class life of more than 12.5 years, or

47(c)(2)(A)(i)(IV)

an addition or improvement to property described in subclause (I), (II), or (III), and

47(c)(2)(A)(ii)

in connection with the rehabilitation of a qualified rehabilitated building.

The federal regulations further provide that the expenditures are chargeable to a capital account if they are properly includable in computing basis in real property under Regs. Section 1.46-(c).[2] IRC §1012 provides that the basis of property is the cost of such property, except as provided elsewhere in the code.

[1] Code of Iowa 404A.1.6.b
[2] Reg 1.48-12(b)(2)(iv)

To determine if any reduction in basis is allowed or required for receipt of federal, state or local grants for the credit under IRC §47, a determination must be made as to the federal income tax treatment of such grants and the effect on basis.

The internal revenue service guide to conducing IRS examinations of taxpayers claiming Historic Tax Credit states:

> *There are various forms of monetary incentives offered by governmental and tax-exempt entities to help defray the cost of rehabilitating many of our nation's historic structures. The recipient of grant money must first consider several factors before determining whether or not to include the proceeds in income. Two primary factors include whether the recipient is a corporate or non-corporate taxpayer and whether the entity receiving the money has dominion and control over the proceeds. The taxpayer must then determine if the expenditures made with grant proceeds should be included in its computation of qualified rehabilitation expenditures.*[3]

IRC Section 61(a) provides generally that taxable income includes all income from whatever source derived, unless excluded by law.[4]

Grants received by <u>non-corporate taxpayers</u> (i.e. partnerships or individuals) are generally taxable by the recipient. If the grant is deemed taxable, then the taxpayer will have basis in underlying property and the rehabilitation tax credit can be taken on any qualified rehabilitation expenditure incurred with the grant proceeds.[5]

A further question arises, then, in many historic tax credit transactions: What is the effect of a grant provided to another entity that is used to fund a loan or an equity contribution to the taxpayer that claims the rehabilitation credit?

A true loan, based on a debtor / creditor relationship, does not constitute taxable income and does not reduce basis. The question of whether or not a creditor-debtor relationship is created at the time an advance is received is a question of fact to be determined upon consideration of all of the evidence.[6] A true equity interest in a partnership would be evidenced by "parties in good faith acting with a business purpose intending to join together in the present conduct of the enterprise".[7]

The question raised as to the taxable treatment of an "indirect" grant has, in the partnership context, three possible answers:

A. Taxable income as a grant.
B. A loan, constituting a repayment obligation and not taxable income.

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[3] IRS MSSP – Audit Guide – Rehabilitation Tax Credit, page 20-1
[4] *Commissioner vs. Glenshaw Glass Co. 348 U.S. 426 (1955)*
[5] IRS MSSP – Audit Guide – Rehabilitation Tax Credit, page 20-3
[6] *Anson Beaver v. Commissioner, 55 T.C. 85*
[7] *Commissioner vs. Culbertson 6 TCM 692*

C. An equity contribution to the partnership, non taxable if meeting the requirements of IRC §721.

Regardless of the treatment by the partnership as a grant, loan or equity, under no circumstances does the receipt of payment by a partnership of grant proceeds either directly or indirectly yield a reduction of basis. Therefore, under no circumstances do these payments constitute a reduction of qualified rehabilitation expenditures under IRC §47 and, therefore, Iowa Code §404A.1.

Conclusion:

IDOR proposed rules indicate that basis financed directly or indirectly with grant sources do not exist (i.e. were not *incurred)* unless such sources were included in taxable income. In the context of a non-corporate entity, such a rule is not consistent with Iowa law.

If you have any questions regarding our comments, please do not hesitate to contact me.

Very Truly Yours,

McGLADREY, LLP

James A. Beal

James A. Beal
Partner

Transcription of State Tax Credit Administrative Rules Public Hearing – 2/11/2015

Steve King: I'm Steve King. I'm the Deputy State Historic Preservation Officer. And this is the public hearing to hear comments on the proposed administrative rules 1836 C and 1837C. Those are both Department of Cultural Affairs and Iowa Department of Revenue rules for the administration of the historic preservation and cultural and entertainment district tax credit.

Just a few items of how we're going to conduct the meeting. Your comments today are going to be recorded and transcribed. I'm going to recognize folks from the list on the sign-up sheet in the back. I'm going to ask them to come and direct their comments into the microphone. I'd like you to limit your comments to five minutes today. I'll be timing you and if you have written comments, you're welcome to submit those as well as making your verbal comments. You can submit those as hard copy or as an electronic form and you're welcome to send those to SHPOTaxCredit@iowa.gov. That's SHPOTaxCredit@iowa.gov.

So, with that, let's get started. Berry, could you bring me those sign-in sheets.

I'd like to recognize Jen James.

Jennifer James: Thank you, my name is Jennifer Irsfeld James. I'm an architectural historian and historic preservation consultant from Des Moines. The 1.5 pre-application process has been a helpful addition, especially to receive feedback on the proposed Part 2 work and to demonstrate financial readiness. However, there are proposed changes that, if enacted, would cause severe impact on the tax credit program usage. My concerns are the following:

1) **Concern over limiting applicants for Part 1 and Part 2 to fee-simple owners:** This change could cause harm to both for-profit and non-profit entities, but especially for non-profits. Non-profits of all sorts cannot use the federal tax credit program as a work-around and so projects like the Des Moines Social Club, for which I was the architectural historian, would not be possible under the proposed rule.
2) **Concern over delays in approving state applications:** Timely review is crucial for the success of historic rehabilitation projects, both large and small in size. Bank loans, contractor schedules, public government contracts, not to mention the schedules of businesses, non-profits, and homeowners using these spaces, all require meeting deadlines at crucial times. Without the ability to plan for approval in a timely manner, these projects become that much more difficult to do and buildings will be endangered or demolished.
3) **Concern over scoring rural projects higher than urban projects:** This could have unintended consequences, including negative minority impact. The statute is silent or neutral on location of resources. I urge letting the legislative system bear the burden of appropriating resources to different areas of the state so that any minority impact can be studied. The reasons for demolition of rural properties may be different from demolition

of urban properties and the tax credit program may not be the most effective tool for altering these demolition patterns.

4) **Concern over scoring projects with local support higher than those without:** I have firmly believed that visionary preservationists sometimes find ways to save buildings when local officials want to tear them down. There are many of these stories in Des Moines, as well as across the state. Locally, the Des Moines Riverfront YMCA could become the next example. Buildings may be endangered by this proposed change.
5) **Concern about public access to Part 1 photos and narrative descriptions/statements of significance:** The statute and rules appear to be silent on this issue but I would like to ensure public access. Because there is no review fee for Part 1 applications, taxpayers at the state and federal level are paying for these reviews. As such, taxpayers should have the ability to review these records of historical information. Sometimes, projects do not make it to the National Register stage. They become state-only or abandoned federal projects and the lag time from Part 1 application to National Register listing can be years. These documents are important for future research and the pursuit of scholarly study, as well as other tax credit applicants who have a building of the same builder, architect, architectural style, historical owner, etc.

I appreciate your consideration in reviewing these areas of the proposed administrative rules. Thank you.

Steve King: Thank you, Jennifer. Cary, would you like…Cary Darrah, would you like to make comment? No. Thank you. Steve Firman, Waterloo? Thank you. Lew Weinberg, would you like to make comment? No comment. H. Renaud Walker? Andy Lorentzen?

Andrew Lorentzen: Andrew Lorentzen, Walker-Coen-Lorentzen Architects. My comment is that weighting projects that will be done in nine months versus a longer duration is unfair. The rules specifically say that they want to give a weighted preference to projects that will be done sooner, but the unintended consequence of that is that you are preferencing projects that are more complex, err… less complex and less expensive. And, I don't know why that would be. It seems odd. That's all.

Steve King: Thank you. Brad Epperly?

Brad Epperly: Can I go later?

Steve King: We could use the lottery system, but I'd prefer this registration.

Brad Epperly: Good point. That's fine. I was going to reiterate what others had spoken. That's why I was asking. But, I will. Brad Epperly with the Nyemaster-Goode Law Firm. I represent the Iowa Chamber Alliance and the Greater Des Moines Partnership, among others, at the capitol. My comments are just going to be limited to the, from what I have reviewed, the proposed rule, the bill that we passed last year, along with the federal statute and rules, and my comment would be this. There is no way to get at the rule, as written. Related to allowing for the qualified rehabilitation expenses to not be included in the basis unless one steps back from the statute and says I don't like the result. And, what I mean by that is, when we passed the bill, it was done in conjunction with the federal statute in place for the purpose of being in sync and interpreting the federal rules in a way that doesn't exist is inconsistent with how we passed the bill and I think it's the job of the agency to pass it as written and if problems arise to advise the Legislature in later sessions and maybe correct something that they view may be a mistake. But to go the outset, lapse over into legislating. Thanks.

Steve King: Thank you. Tim Rypma? John Gronen, you're on deck.

Tim Rypma: Thank you for your time today. As a tax credit developer, new laws concern me. Renovating a historic building and/or landmark takes a lot of creativity, lots of financial creativity, includes multiple layers of financing. In my years of doing this, you know, I've learned that new building, old building, historic building, these new laws could create…would create…create a financial feasibility of tearing down a building versus historically refurbishing this building. We want to head this city in that direction and the state. I think there's major concerns there so that's what I came to speak on. Thank you.

Steve King: Thank you. John Gronen. Just, again, a little bit of clarity. If I didn't thank you for coming, I'd like to now. Also, we are scheduled in this room from 3:30 to 4:30, but we have it until 5 so if you have even juicier comments, we can go a little bit longer than we have scheduled. John Gronen.

John Gronen: Thank you. I'll try to be really brief. We want to thank you and the departments' efforts and all of the work that you guys have put in over the last year. We, overall, support the whole concept of readiness and having a use when ready program so we can get more money out the door effectively. We support the registration piece. We know there are a few things that have to be worked out, but are confident that you're going to work with us to do that. We, as mentioned, our biggest issue is the whole IRC 47 piece and we're looking forward to working with you guys over the next couple of weeks to bring that to closure satisfactorily. One thing I'll just add is that, like many communities, Dubuque has completely reinvented itself over the last 20 years. We had the highest unemployment in the country at one time and there are a lot of things you can point to that have contributed to that success, but most of it would not have been possible without the state historic tax credit. The amount of money that that has leveraged into our community is into the hundreds of millions of dollars. Our urban core has net new jobs since the year 2000, close to 4,000 new employees. The sense of place that it's added to our community…we now have people wanting to move back to our community. That was unheard of not too many years ago and it all has to do with the redevelopment or our urban core so we think that this investment that the state has made into the state historic tax credit has been critical to our success and I know I speak for communities from Dubuque all the way to Sioux City. So we want to continue to work into the future to make sure this program is viable and healthy. Thanks.

Steve King: Thanks, John. Tim Hurley, Waterloo?

Tim Hurley: Not at this time.

Steve King: Thank you. Carol Bower, Cedar Rapids?

Carol Bower: Not at this time.

Steve King: Thanks, Carol. Mitch Hallgrem, Cedar Rapids?

Mitch Hallgrem: Not at this time. Thank you.

Steve King: Thank you. Jill Connors, Dubuque?

Jill Connors: Good afternoon. I'd like to start this by thanking the departments on behalf of the City of Dubuque for all of the improvements that have been made to date in the program. Historic tax credit investment in our community, just in the past 10 years, as you heard John Gronen mention, has been in the hundreds of millions of dollars have been leveraged. In the Roshek Building alone, IBM, in the past five years, has put over a quarter of a billion dollars worth of payroll into our community and that building also has 15 other tenants with an additional 230 employees. This is really an investment that the State is making in our community and we appreciate it. One of the concerns that we have is the QRE basis question that's been addressed today and is going to continue to be addressed and we encourage you to work with the private sector, the tax experts, to define what the…to have the state basis match the federal basis.

Another concern we have is the scoring criteria which was mentioned earlier this afternoon. How preference is being given to smaller and rural projects. We don't believe that's supported by the statute and so we encourage your departments to make sure that your scoring criteria are supported by the statute.

One final concern we have is the readiness and timing factor. We agree with having readiness factors but believe that having a very strict 90-day timing for funding closing might need some flexibility, especially if the capital stack has other financial tools that have requirements as well. We encourage you to continue working with the private sector practitioners since they have experience of how these rules play out in the field. And, we thank you.

Steve King: Thanks, Jill. Kris Saddoris? Russ Behrens, you're on deck.

Kris Saddoris: Kris Saddoris, and I'm here on behalf of Hubbell Realty. We also echo the thanks to the department, you know, the efforts that have been made on the legislation that was passed last year makes a lot of sense. I echo John's comments. Readiness makes a lot of sense. Very pleased with the statute that was passed and we just want to make sure that the rules are consistent with the implications of that statute. On our behalf, what we really wanted…our concern from the development is understanding timing. Obviously, we all understand we've been in park, if you will, for two years and when we talk about communities and the work that we do, the efforts, I think it's critical to understand that many of these communities that we work, we've been in their communities for three years now. They work extensively and exhaustive efforts to bring those kind of capital stack items to make these projects work. It's critical to understand the leverage. Hubbell itself has nine projects that have been done, six that have been in Des Moines. The Hubbell Building, which was a redevelopment of offices, started a lot of the work that's happened in downtown., a lot of exciting work along Court Avenue, some stuff down along the ML King corridor, which is bolstering an enormous amount of redevelopment there, and it's been leveraged all the way through the Western Gateway. To that end, we've been kindly asked by communities, both in Grinnell and Newton, that you'll get to hear from today, to come in and do that same type of work there. But again, when you're talking about six, seven, eight layers of capital stack, it becomes critical that all of those are utilized and leveraged effectively and so we have certainly the consistency and concern with the QRE issue that's been reiterated before. But, it's critical that these be done in a timely manner because most of these…Newton is a prime example. One of its capital stack items is LIHTC credit so it will be allocated in March. It's critical that those pieces be put together timely, these rules be implemented and done effectively so those capital stack items which we projected when we did those pro formas when we started in their communities three years ago and we had some real expectations. We need to be able to utilize that because when we go into communities such as Newton to bring 42 units into the Maytag buildings, a community gem there, that's critical that it be retained. We have a rule implication that could create a million dollar gap. The reality is, as a developer, I don't have the ability to fill that. And my resources have to come back to a point that I can fill them and, unfortunately, that would mean that the Newton deal wouldn't happen. Two deals that we have in Grinnell…we have an events center that would occur there, an exciting project that would bring many community resources together to put together. Again, that can't happen without this critical resource that the State has brought. And, finally, we have the 77 units that are, again affordable housing units, going in Grinnell. Those are underway with the expectation of a gap filler from the State. I think you can hear from the City of Grinnell the impact that would have in the event that it doesn't occur. I appreciate the time.

Steve King: Thank you, Kris. Russ? And, Angela Herrington is on deck.

Russ Behrens: Thank you. Kris covered it pretty well from our perspective. I just wanted to stress that, in particular, the layering piece that's critically important in rural areas. We're maybe the exception here, but we appreciate the priority given to rural areas. We have an entire city block where our Spaulding Manufacturing complex is located that, with the exception of the one building that's already been preserved through the tax credit program, I believe would be demolished, leveled, and probably some type of one-level commercial space now. So, I just want to stress how important this is to us. Rural towns, in particular, are just starting to learn how to better utilize these and I think it's important that we maintain some kind of consistency as we move forward. Thank you.

Steve King: Thank you, Russ. Angela?

Angela Herrington: Hi. I've been working on housing in Grinnell for about four years and then, most recently, well, longer than that, the cultural center and boutique hotel that we're trying to make happen. I can tell you that in the last four years on housing and then the last five years on the events center and hotel, I have looked under every rock for ways to make big things happen in my very small place. Every single entity that can possibly help us is helping. And to think about that after five years of work on those projects that these absolutely will not happen when I have so much job growth I have nowhere to put anyone with housing and we finally figured out all of the pieces to put in place. And if this happens those 77 new workforce, new young families won't have a place to be. Same with the boutique hotel and cultural center…these are big, big steps for a very small place. But, if it's one thing we have, it's history. If it's one thing that makes it compelling, it's history. To not be able to use that asset and to tear them down, there are just not enough holes in the ground. It can't happen. I can't find another $500,000 for the boutique hotel and cultural center. I can't find another million dollars. It's just not there. The fact that we're this far is absolutely a miracle. So, I'm not sure of all of the rules and how it all works, but just know that a very small place needs you to re-think it because it's just not going to happen. And my place matters as much as the big places do too. And it's even harder to make extraordinary things happen in a town of 9200 people. It's important to us and it's important to Iowa.

Steve King: Thank you, Angela. Bryan Friedman?

Bryan Friedman: Good afternoon. I'm Bryan Friedman. I am the Director of Finance and Development for the City of Newton. Newton's very concerned about the hindrance that the proposed rules could have on our comeback. We are very excited about helping people to get to know Newton and the comeback we've been under in the wake of the departure of Maytag in 2007. Maytag pulled 4,000 jobs out of our community over the past decade and, since then, over 1800 jobs have been created. We're on the comeback path and one of the most exciting things that we get to tell people about, getting to know Newton, is our history. Since 2008, we have established a historic preservation commission, become a Certified Local Government, created two historic districts on the National Register, and become a Main Street Iowa community last year. Those efforts really focus on how our history is such a key piece to our future and our economic growth. There are two projects within our downtown that the proposed way to calculate the state historic tax credits would greatly hinder. One would go away entirely, one would be in severe doubt. With the multi-year efforts that it's taken to get to the point of having project interest and getting that, that would be a severe blow to our momentum in Newton. The first project that was mentioned by Kris Saddoris is the Hubbell renovation of two buildings on the Maytag headquarters campus…historic buildings, over a hundred years old, to be renovated into 42 units of workforce housing. That million dollar gap that the new way to calculate tax credits would create, as Kris indicated, would be unfillable and make that project go away. A second really, really outstanding project that is under consideration in Newton is being proposed by Frantz Community Investors, taking a five story historic hotel and turning it into some market rate housing and that piece of state historic tax credits is a key piece of this. Those are centerpiece projects for our downtown, very key to our continued growth and to draw that investment, to draw that momentum and excitement into the center of Newton and we ask that the State consider not having these rules go into effect, as stated, because they would hinder our projects and create a very key missing piece and damage to our community in Newton. Thank you for your time and I appreciate it.

Steve King: Thank you, Bryan. David Vos? Jake Christensen, you're on deck.

David Vos: Dave Vos, from the Alexander Company. I just wanted to take this opportunity to tell you how much I appreciate you conducting this public hearing and for your willingness to listen and work with us. I think there's been a recognition by your Department that our goals align, that the Department doesn't want to see unintended consequences from the rules. I'm encouraged by what we've discussed over the last couple of days that the Department's going to work with us to try and make sure that our mutual goals and some of these items that might have unintended consequences can be worked through. Again, I just want to thank you for your time and consideration.

Steve King: Thank you, David. Jake? Jack C. Porter, you're on deck.

Jake Christensen: I would echo many of the comments that were made by the people prior to me, but I thought I would just offer a different way to think about some of the issues that we are talking about today. I think, as many of the people have alluded to, the time it takes to put together some of these complex deals is kind of earth-shattering. I was actually talking to David before the meeting where he has worked four years on one project and it will only take one year to build it and that's pretty indicative of the kind of work we do. I think the fee simple component of the rules is problematic for that. Then, the other thing I wanted to mention was the QREs and how the effect is. Most of our projects are underwritten to approximately 10% return and the largest investor on these projects is actually our lender. Our lenders have requirements that we all have to live by and if we don't meet those requirements, none of us are going to be able to get loans to execute the projects. If the rules were to go forward as they are, we would have a reduction in the capital stack between 7 and 10%. So, if we're underwriting to 10%, as a requirement by our lender and we're losing that part of it there's, as the woman from Grinnell mentioned, there's no other place to find that money. That's really what I wanted to share. Thank you.

Steve King: Thank you, Jake. Mr. Porter? Tom Frantz, you're on deck.

Jack Porter: Jack Porter, JC Porter Consulting in Des Moines.

- Item 4, subrule 48, paragraph a (48.6(8)a) states that the credit will be issued in 25% of the QRC, however "e" (48.6(8)e) appears to state any credit in excess of the reserved amount will not be issued.
- Item 7, subrule 48.7(8) appears to state that no credits will be reserved after July 1, 2014 and so clarification of what actually that means, I think is important in the rules.
- 223-48.28(5), 30(4), 31(5), 48.33(3) all include that the 90 day review period is no longer mandatory.
- 48.29(2) also states that the pre-app meeting, which is a good thing, must take place no fewer than 30 days after the Part 1 is submitted, but right now the Department has six sessions per week for the pre-app meetings so the rules don't state what happens if that meeting cannot happen.
- 48.31(6) and (7) include a scoring process, but not the points for the scoring.
- 48.32(1) appears to limit an increase of the QRCs, the allowable cost overruns, but then that might be counter to the state law which says 25% of the QRCs will be awarded.
- 48.32(2) states that amendment to the project completion date, the agreement dates, all the dates will not be allowed.
- 48.33(2)d states that the Department may waive the right of the examination requirements, but only if all of the requirements are satisfied.
- And, finally, 48.34, I'm concerned about how the fees are budgeted, how they've been used in the past and I'm hoping that they will be used in the future to bring on more review staff for the Department.

Steve King: Thank you, Mr. Porter. Tom Frantz? And, Jennifer Kakert is on deck.

Tom Frantz: I'm Tom Frantz. I'm a partner in Frantz Community Investors. Over the years, we've been able to save several historic buildings through re-purposing and renovation. A key part of that renovation has been the state and federal historic tax credits. Not only those tax credits, but a key part of the capital stack has been the local incentives as well. Those are realized through working with the communities and coming up with solutions in order to fill that funding gap that occurs to make the project feasible. I believe with the changes in definitions for the QREs and the limitation on the cost overruns that that gap is going to be significant enough that very few, if any, communities are going to be able to come up with funding mechanisms to fill that gap and we'll be losing a large inventory of our historic buildings just due to the economic feasibility of the renovation and re-purposing. Thank you.

Steve King: Thank you, Tom. Jennifer?

Jennifer Kakert: Hi. Jennifer Kakert. I'm with Financial District Properties in Davenport, Iowa. We've recently been awarded the final piece of funding for our mixed use hotel in Waterloo, Iowa, that will be part of the TechWorks campus. Our final piece of funding was intended to replace federal historic tax credits. We've received state historic tax credits, but we were turned down by federal. This project was originally supposed to start a couple of years ago so we've been looking for that final piece of funding and we've just now secured it but, based on these new rules, I think there's uncertainty about this final source and if we structure it as a forgivable loan or grant, or something along those lines, how it will impact our QREs so we look forward to, the discussions that happened earlier today were very good, and we are looking forward to further clarification on that. I think the only I would say too is that these projects have interdependencies and relationships and one thing affects another and they can change over time and I think that is one thing that you do have to accommodate. Projects, in terms of their sources of funding, can change down to the very last minute in terms of one requirement versus another. I think that we are very much encouraging that the state would match the federal. I think that it would be easier in terms of compliance if we could match the federal rules. We do have a pretty intensive process of getting attorneys and accountants involved and we feel that that would be easy to maintain and reduce some of the complexity. Thank you very much.

Steve King: Thank you, Jennifer. Maurice Jones?

[He stepped out]

Steve King: We can wait. I'd recognize any hands raised from the floor if anyone else would like to speak? Angela, I'd love to hear more from you.

Angela Herrington: I just have one more thing. I really need you to hurry because the momentum because, if we lose that momentum…I need you to hurry because all of the other pieces are going to fall apart if this piece falls apart. So, please, please, please…I need you to hurry.

Steve King: Thank you. Carol Bower.

Carol Bower: Thank you, Steve. I'm Carol Bower. I've been a consultant on historic restoration for many years throughout the state of Iowa. I've worked a lot in Cedar Rapids after the flood. The southwest side of the entire downtown were mostly historic buildings and I was asked by the City to come in and start a non-profit organization that would use the historic tax credits to help us renovate many of those buildings. It was a very important process to rehabilitate the entire city after the flood. In Des Moines, I've done extensive buildings. We've taken buildings that were public nuisances and they were historic, built in the 1870s, and we've restored those buildings. It was a very important process. We sometimes had seven, eight layers of financing in order to get this done, but the historic tax credits are a key to having that done. And the QRE, as I read it, is very important and we ask for your consideration and support on it. Thank you.

Steve King: Thank you. Has Mr. Jones returned? Maurice? Okay. Well, if that concludes the public comment, I'm going to move to adjourn the meeting. Thank you all for coming.

From: Aust, Ashley @ Hubbell Realty [mailto:Ashley.Aust@HubbellRealty.com]
Sent: Thursday, February 12, 2015 4:14 PM
To: King, Steve [DCA]
Subject: State Historic Preservation Tax Credit - Proposed Language

Steve,

Attached please find proposed language to address the issues that were provided in the Smart Growth comments regarding the State Historic Preservation Tax Credit. I believe we found a very simple resolution to the ownership issue that continues to support what you want to do and allows developers to get through both the federal and state program. I am happy to discuss if you have any questions.

Thank you for all of your hard work on this!

Sincerely,

Ashley Aust
Corporate Counsel

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FAX 515-280-2000

February 12, 2015

Steve King
State Historic Preservation Office
600 East Locust Street
Des Moines, Iowa 50319

RE: Proposed Language for Smart Growth Comments relating to the Historic Preservation Tax Credit Rules proposed by DCA and IDOR

Dear Mr. King,

In order to assist you with the Administrative Rules review and possible revisions for the Historic Preservation Tax Credit rules, I am submitting below suggested language for the issues set forth in the Smart Growth comments to Department of Cultural Affairs and Iowa Department of Revenue. The comments below are to address the issues that are numbered in the memo as Issue 2, Issue 3, Issue 4, and Issue 5. I have enclosed the memo for your convenience.

Issue 2: Different requirements for an eligible taxpayer who is a fee simple owner and an eligible taxpayer who is an applicant that will qualify for federal credit.

We propose that 48.27 is amended as follows:

"223 – 48.27 (404A) Who may apply for tax credit. Only an eligible taxpayer may apply for the tax credit. To be an eligible taxpayer, the applicant must be either (1) the fee simple owner or (2) ~~someone~~ a person that will ultimately qualify for the federal rehabilitation credit with respect to the qualified rehabilitation project…."

We propose that 48.28(2)(b) is amended as follows:

"b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the ~~approved~~ federal Part 1 application and attachments, if any, unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal rehabilitation credit, and the applicant must provide proof of permission from the fee simple owner as described in subrule 48.27(2)."

We propose that 48.30(1)(b) is amended as follows:

"b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the ~~signature page of the approved~~ federal Part 2 application ~~signed by the National Park Service~~ and attachments, if any. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit and must provide proof of permission from the fee simple owner as described in subrule 48.27(2)."

Issue 3: Amendment to Part I and Part II Applications.

We propose that 48.30(6) is deleted in its entirety and substituted and amended as follows:

"48.30(6) *Amendments.* An applicant shall amend an approved part 1 application or an approved part 2 application if the property changes ownership or if the applicant's name or address changes. An applicant shall amend an approved part 2 application to notify state historic preservation office of, and to request review of, modifications to or deviations from the original rehabilitation proposal. Amendments to the part 2 application shall not include modifications of the rehabilitation costs estimated in the originally approved part 2 of the application. Amendments to the part 2 application shall not result in the reservation of additional tax credits for the project. Amendments to the part 2 application will not be accepted after state historic preservation office has approved the part 3 application pursuant to rule 223 -- 48.33."

Issue 4: Representations and Warranties regarding related persons and related entities.

We propose that 48.31(a) is amended as follows:

"*a.* The department shall reject an application for registration if any of the following occurs or exists:

(1) The applicant fails to answer the questions and provide all requested information and documents in a timely manner as requested by state historic preservation office.

(2) The applicant provides false or inaccurate information or documents to the department.

(3) The applicant, a related person, or a related entity has not filed any local, state or federal tax returns that are due, this does not include local, state or federal tax returns that have correctly filed extensions of time with the appropriate office.

(4) The applicant, a related person, or a related entity has an overdue local, state or federal tax liability, including any tax, interest, or penalty.

(5) The applicant, a related person, or a related entity is currently in default, has an uncured breach, or is otherwise not in compliance with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(6) The applicant, a related person, or an entity has any past-due amounts owed to the state of Iowa, any agency of the state of Iowa, any other entity or instrumentality of the state of Iowa, or any person or entity that is eligible to submit claims to the state offset system under Iowa Code section 8A.504.

(7) ~~The department determines, in its sole discretion, that registering the project, entering into an agreement with the department, or permitting the applicant's tax credit claim would cause the applicant or another person to default on, breach or otherwise not comply with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.~~

~~(8)~~ The department determines, in its sole discretion, that the applicant ~~will not be~~ is not able to ~~provide representations, warranties, conditions or other terms~~ abide by the terms of ~~an~~ the agreement or the applications. ~~that would be acceptable to the department.~~

~~(9)~~(8) Information is disclosed to the department that would cause the department, in its sole discretion, to decline to enter into an agreement with the applicant.

b. Scope of Inquiry. The department may ask the applicant to disclose additional information and documents about ~~other entities affiliated with~~ the applicant, a related person, or a related entity if the department determines that the information regarding the applicant, related persons, and related entities does not adequately disclose to the department the economic, ownership, and management structure and realities related to the a project."

Issue 5: Notification of incomplete information.

We propose that 48.28(5) is amended as follows:

"48.28(5) *Review process*. The department will evaluate the appearance and condition of the building and verify the information provided by the applicant. The department will notify the applicant if the part 1 application is incomplete. Generally, the department will review fully completed Part 1 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department must request additional information, the 90-day review period will restart when the requested information is received by the department. The application may be rejected if any requested information is not provided."

We propose that 48.30(4) is amended as follows:

"48.30(4) *Review process*. Using the federal standards, the department will evaluate the proposed work to determine whether the proposed project, including any new construction, is consistent with the federal standards, the historic character of the property and, where applicable, the registered or potential district in which the property is located. The department will notify the applicant if the part 2 application is incomplete. Generally, the department will review fully completed Part 2 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department must request additional information, the 90-day review period will restart when the requested information is received by the department. The application may be rejected if any requested information is not provided."

Should you have any questions, please feel free to contact me directly at 515-280-2032 or Ashley.Aust@hubbellrealty.com. We appreciate your consideration of this proposed language.

Sincerely,

Ashley Aust

Ashley Aust
Corporate Counsel

HUBBELL REALTY COMPANY
6900 Westown Parkway, West Des Moines, IA 50266
O: 515 280 2032 | F: 515 280 2032
ashley.aust@hubbellrealty.com

From: David Adelman [mailto:dadelman@cgagroup.com]
Sent: Monday, February 16, 2015 10:42 AM
To: Stamas, Alana [IDR]; Daniels, Victoria [IDR]; King, Steve [DCA]; Cownie, Mary [DCA]; Humes, Adam [AG]
Subject: Tax Treatment of Nonshareholder capital letter

All-

I believe Norm Jones has or will be reaching out to Alana for further discussion and examples but I wanted for forward an additional letter from Wayman Lawrence of Foley & Lardner as I believe it's a helpful perspective.

Please let me know what else I can do to be helpful in the coordination of dialogue.

Thank you

David

David Adelman | Cornerstone Government Affairs
Austin | Baton Rouge | Chicago | Des Moines | Houston | Jackson | Richmond | Washington, DC

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February 13, 2015

David G. Vos
The Alexander Company, Inc.
145 E. Badger Road, Suite 200
Madison, WI 53713

Re: Tax Treatment of Nonshareholder Capital Contributions to Corporations

Dear Dave:

Since 1988, I have specialized in structuring and closing real estate and other business financing transactions involving federal (or state) tax credit equity as a significant funding source. We have worked extensively with the low-income housing tax credits, state and federal historic rehabilitation credits, new markets tax credit and alternative energy credits.

Frequently, tax credit transactions obtain financial assistance from state or federal government agencies which are structured as loans that are forgiven in whole or in part if the project satisfies specified government objectives for a fixed period of years. The IRS takes the position that a forgivable loan is a grant for federal income tax purposes if forgiveness is required upon satisfaction of conditions within the taxpayer's control. For example, most CDBG and Affordable Housing Program loans are forgivable if the taxpayer meets certain affordability requirements for a specified period of years, and thus are grants, not loans, in the eyes of the IRS. The IRS further takes the position that grants to entities taxed as partnerships are currently taxable. Neither of these IRS positions is 100% supportable. However, the tax credit investment community interprets these IRS positions as black letter law. Accordingly, to avoid a year 1 tax liability that would, in many cases, prevent the transaction from working at all, an alternative was needed.

That alternative, which has been in use for about 15 years throughout the country, is as follows: The forgivable loan is made to an entity that is taxed as a corporation for federal income tax purposes. Under Section 118 of the Internal Revenue Code and applicable case law, the forgivable loan qualifies as a "nonshareholder capital contribution" that is excluded from taxable income by the corporation. The price of the gross income exclusion under Section 118 is that the assets acquired by the corporation with the nonshareholder capital contribution have an adjusted tax basis of zero. See, Code Sections 118(e)(1) and 362(c)(2). The corporation that receives the forgivable loan/nonshareholder capital contribution then uses the proceeds to make a loan or equity investment in the tax partnership that owns the tax credit project. When that loan or equity contribution is repaid or returned by the tax partnership, every dollar received is taxable to the corporation because it has no tax basis to recover under the Code provisions cited above.

Most low income credit and historic credit developers and tax credit investors are satisfied that the structure described above is safe if the documents properly reflect the legal rights and obligations of the parties for the forgivable loan to the corporation and the corporation's subsequent investment of the proceeds. In addition, we typically require that the corporation receiving the forgivable loan be a previously existing corporation with other assets and business activities in order to minimize the risk that the IRS will "disregard" the role of the corporation. We have used the structure described above for our clients about one-hundred times over the last 15 years with no IRS challenge.

Very truly yours,

Wayman C. Lawrence

From: Jones, Norman [mailto:NJones@winthrop.com]
Sent: Friday, February 20, 2015 8:15 AM
To: Stamas, Alana [IDR]
Cc: David Adelman (dadelman@cgagroup.com) (dadelman@cgagroup.com); Mary Gronen; barbs@gronenproperties.com; 'Vos, Dave'
Subject: Examples for Iowa IDR Rules on QREs.docx

Alana,

Attached are some examples for discussion today. We're attempting to generally cover the common ways in which the funds are put into projects.

The others in the group are reviewing this, so we may have some changes or corrections in the next day or so.

I look forward to talking today.

Thanks very much.

--Norm

Norman L. Jones
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Shareholder
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Capella Tower | Suite 3500 | 225 S 6th Street | Minneapolis, MN 55402

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QRE Examples for IDR proposed rules:

General Explanation for Forgivable Loans:

Generally, where loan forgiveness is triggered by conditions that are under the borrower's control and which are expected to occur, the transaction should not be treated as a loan for tax purposes. When such transaction should be properly treated as a grant, the recipient should report such amounts as income. Where a forgivable loan should properly be treated as a grant for federal tax purposes, each Example below which refers to a grant will apply identically to the forgivable loan.

1. *Grant to For-profit Project Owner*.

Facts: City receives a grant of federal funds, and makes a grant to a for-profit project owner. The project owner recognizes taxable income in the amount of the grant. Project owner incurs rehabilitation costs using, in part, the grant funds.

Treatment: The income recognition of the grant creates tax basis for the project owner in the grant funds received. Therefore the project owner will have tax basis in the rehabilitation costs incurred. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the grant funds.

2. *Grant to Nonprofit Project Owner*.

Facts: City receives a grant of federal funds, and makes a grant to a nonprofit project owner. The nonprofit project owner reports such grant as income on its federal Form 990. Project owner incurs rehabilitation costs using, in part, the grant funds.

Treatment: The income recognition of the grant (whether taxable or nontaxable income creates tax basis for the nonprofit project owner in the grant funds received. In the case of a nonprofit, the taxability of such income is a separate inquiry depending on the tax-exempt purposes of the nonprofit. Therefore the nonprofit project owner will have tax basis in the rehabilitation costs incurred using such grant funds. Under federal tax law, nonprofits do not have federal QREs. However, under state statute, provided such costs are the type includable as QREs, the nonprofit project owner has incurred QREs using, in part, the grant funds.

3. *Grant to Nonprofit / Non-forgivable Loan to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a nonprofit organization. The nonprofit organization reports such grant as income on its federal Form 990. The nonprofit makes a non-forgivable loan to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such loan proceeds.

Treatment: Project owner has tax basis in the loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the Project owner has basis in the rehabilitation costs incurred using the loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the loan funds.

Additional Explanation: Project owner's repayment of principal on such loan is treated under federal tax principles as not deductible by the Project owner, and may be income to the lender, depending on the lender's basis in the amounts loaned. In this case, the nonprofit has tax basis in the grant funds received in (and therefore the amounts loaned out) because the nonprofit reported such grant as income on its federal Form 990.

4. *Grant to Nonprofit / Capital Contribution to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a nonprofit organization. The nonprofit organization reports such grant as income on its federal Form 990. The nonprofit makes a capital contribution to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such capital contribution.

Treatment: Project owner has tax basis in the capital contributions only to the extent that the contributing partner had basis in the funds contributed. In this case, the nonprofit organization has tax basis in the grant funds received in (and the capital contributions out) because the nonprofit reported such grant as income on its federal Form 990. Therefore, the Project owner has basis in the rehabilitation costs incurred using the capital contribution. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the capital contribution.

5. *Capital Contribution to Corporation / Non-forgivable Loan to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a corporation or S corporation. The corporation treats such grant as a nonshareholder contribution to capital under IRC §118. The corporation makes a non-forgivable loan to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such loan.

Treatment: Project owner has tax basis in the loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the Project owner has basis in the rehabilitation costs incurred using the loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the loan funds.

Additional Explanation: Project owner's repayment of principal on such loan is treated under federal tax principles as not deductible by the Project owner, and may be income to the lender, depending on the lender's basis in the amounts loaned. In this case, the corporation does not have tax basis in the grant funds received (and therefore the amounts loaned out) because the corporation does not have basis in the funds received under IRC §362(c)(2). Accordingly, as the loan is repaid to the corporation, the corporation will recognize income.

6. *Capital Contribution to Corporation / Capital Contribution to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a corporation or S corporation. The corporation treats such grant as a nonshareholder contribution to capital under IRC §118. The corporation makes a capital contribution to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such capital contribution.

Treatment: Project owner has tax basis in the capital contributions only to the extent that the contributing partner had basis in the funds contributed. In this case, the corporation has does not have tax basis in the grant funds received (and therefore the capital contribution out) because the corporation does not have basis in the funds received under IRC §362(c)(2). Therefore, the project owner will not have basis in the rehabilitation costs incurred using the capital contribution. Accordingly, the project owner will not be able to generate QREs using such capital contributions.

Additional Explanation: Project owner's return of capital to the corporation is treated under federal tax principles as a non-taxable return of capital to the extent that the corporation has basis in its partnership interest. In this case, as stated above, the corporation has does not have tax basis in the grant funds received (and therefore the capital contribution out) because the corporation does not have basis in the funds received under IRC §362(c)(2). Accordingly, as the capital contribution is returned to the corporation, the corporation will recognize income.

10045120v1

-----Original Message-----
From: Jones, Norman [mailto:NJones@winthrop.com]
Sent: Tuesday, February 24, 2015 12:51 AM
To: Stamas, Alana [IDR]
Cc: Mary Gronen; barbs@gronenproperties.com
Subject: Example #3

Alana,

The closest parallel authority I could find to our Example #3 is from the Section 42 credit. As you know, that credit also is based on eligible costs and requires the project owner to have tax basis in the funds it spends.

In the TAM, discussing a grant to a nonprofit followed by a loan to the project owner, the fact that the project owner has basis in all funds loaned to it, is taken for granted in these. Because Sec. 42 depends on basis in costs, if there were any question about the taxpayer having basis in borrowed funds, this TAM wouldn't make any sense. Same with respect to the PLR.

So these bear out the general rues of Treas. Reg. 1.1012-1(a) and 1.1012-1(g) that the basis of property is the cost and the cost includes bona fide debt used to acquire such property. There's no reason to make an exception for debt from nonprofits, if it is bona fide debt.

I should have a bit more for you tomorrow.

Thanks very much.

--Norm

Norman L. Jones
(612) 604-6605
njones@winthrop.com

NOTICE: Important disclaimers & limitations apply to this email.
Please see this web page for our disclaimers and limitations:
http://www.winthrop.com/our_firm/email_disclaimer.aspx
-----Original Message-----
From: noreply@winthrop.com
Sent: Monday, February 23, 2015 5:34 PM
To: Jones, Norman
Subject: Scanned Document

Scanned document from uniFlow

#3 GRANT to nonprofit / Loan to Project Owner

Technical Advice Memoranda

Technical Advice Memorandum 200523023, 06/10/2005, IRC Sec(s). 42

UIL No. 42.00-00

Low income housing—loan of govt. funds between general partner and taxpayer—below market federal loans.

Headnote:

Purported loan of HOME Investment Partnership Act funds between general partner and taxpayer would be treated under Code Sec. 42(i)(2)(D); as below-market federal loan. But, purported loan of Affordable Housing Program funds between general partner and taxpayer would be treated as below-market loan under Reg § 1.42-3(a) , rather than below market federal loan Code Sec. 42(i)(2)(D); .

Reference(s): Code Sec. 42;

Full Text:

Number:**200523023**

Release Date: 6/10/2005

Index (UIL) No.: 42.00-00

CASE-MIS No.: TAM-111858-04, CC:PSI:B05

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No.:

ears Involved:

Date of Conference: N/A

L N :

Taxpayer

General Partner

Participating urisdiction

Bank A

Bank B

State

City

County

Date

b

c

d

e

f

g

ISSUES:

1. hether the purported loan of HOME Investment Partnerships Act (HOME) funds between General Partner and Taxpayer should be treated as a grant under § 42(d)(5)(A) of the Internal Revenue Code or a loan under § 1.42-3(a) of the Income Tax Regulations.

2. hether the purported loan of Affordable Housing Program (AHP) funds between General Partner and Taxpayer should be treated as a grant under § 42(d)(5)(A) or a loan under § 1.42-3(a).

C NCLUSI NS:

1. The purported loan of HOME funds between General Partner and Taxpayer is treated for purposes of § 42 as a below market Federal loan under § 42(i)(2)(D).
2. The purported loan of AHP funds between General Partner and Taxpayer is treated for purposes of §42 as a below ma rket loan under § 1.42-3(a), and not as a below market Federal loan under § 42(i)(2)(D).

FACTS:

Taxpayer owns and operates a b -unit low-income housing pro ect located in City (Pro ect). The total cost of the Pro ect was in excess of c. Funding for the Pro ect was provided by several sources, including HOME funds and AHP funds.

Participating urisdiction granted d of HOME funds to General Partner, a State nonprofit organi ation. The terms of the grant re uired the funds to be used in the construction of the Pro ect and that the Pro ect would have to comply with certain rent income limitations as re uired by the Department of Housing and Urban Development's HOME program rules. General Partner is not re uired to pay back any of the HOME funds unless it does not comply with the rent limitations. General Partner made a non- interest bearing second mortgage loan of d to Taxpayer. The loan is nonrecourse. No payments are due for a period of e years. General Partner prepared and Taxpayer executed a mortgage promissory note document and a mortgage document. The promissory note provides that the loan is due and payable on Date, and there is no provision that would provide for forgiveness or cancellation of the loan under any circumstance. The mortgage was filed with the county clerk (and the mortgage tax paid) of County, and the documents complied, in all respects, with the legal re uirements of an enforceable promissory mortgage note and mortgage.

General Partner also received a grant of AHP funds in the amount of f from the Bank A AHP. The funds were disbursed by Bank B. The agreement for these funds is contained in a promissory note between Bank B and General Partner. The note provides that the entire indebtedness will be forgiven if General Partner and Taxpayer comply with the terms of the agreement for a period of g years from the date of execution of the note. There is no intent to repay this debt. The terms of the promissory note re uired that the funds be used in the construction of the Pro ect. General Partner used the funds to make a non-interest bearing third mortgage loan to Taxpayer with no payments due for e years. This loan is also nonrecourse. The promissory note provides that the loan is due and payable on Date, and there is no provision in the promissory note that would provide for forgiveness or cancellation of the loan under any circumstance.

Taxpayer represents that the value of the Pro ect will at all times exceed the debt secured by the Pro ect.

Taxpayer intends to sell the Pro ect as soon as practicable after the end of the 15-year compliance period. Prior to the sale, General Partner holds a right of first refusal to purchase the Pro ect for a minimum purchase price as determined under § 42(i)( ).

LA AN ANAL SIS:

Section 42(a) provides, in general, that for purposes of § 38, the amount of the low-income housing credit determined under § 42 for any taxable year in the credit period is an amount e ual to the applicable percentage of the ualified basis of each ualified low-income building.

Under § 42(b)(2)(B)(i), for buildings placed in service after 198 , the 0 percent present-value credit applies to new buildings which are not federally subsidi ed for the taxable year. Under § 42(b)(2)(B)(ii), for buildings placed in service after 198 , the 30 percent present-value credit applies to new buildings which are federally subsidi ed for the taxable year and existing buildings.

Section 42(d)(5)(A) provides that if, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of the grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of the building for the taxable year and all succeeding taxable years is reduced by the portion of the grant which is so funded.

Section 42(i)(2)(A) provides that, except as otherwise provided in § 42(i)(2), a new building will be treated as federally subsidi ed for any taxable year if, at any time during the taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under § 103 or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to the building or the operation thereof.

Section 42(i)(2)(D) provides that the term below market Federal loan means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under § 12 4(d)(i) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under § 106, 10 , or 108 of the Housing and Community Development Act of 19 4 (as in effect on the date of enactment of this sentence).

Section 42(i)( )(A) provides that no Federal income tax benefit will fail to be allowable to the taxpayer with respect to any ualified low-income building merely by reason of a right of first refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of the building or by a ualified nonprofit organi ation (as defined in § 42(h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under § 42(i)( )(B).

Section 42(i)( )(B) provides that for purposes of § 42(i)( )(A) the minimum purchase price is an amount e ual to the sum of (i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5- year period ending on the date of the sale to the tenants), and (ii) all Federal, State, and local taxes attributable to the sale.

Section 1.42-3(a) provides that a below market loan funded in whole or in part with funds from an AHP established under section 21 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is not, solely by reason of the AHP funds, a below market Federal loan as defined in § 42(i)(2)(D). Thus, any building with respect to which the proceeds of the loan are used during the tax year is not, solely by reason of the AHP funds, treated as a federally subsidi ed building for that tax year and subse uent tax years for purposes of determining the applicable percentage for the building under § 42(b).

In the instant case, we believe that we should first determine whether the notes between General Partner and Taxpayer constitute grants or loans. Under the facts, the terms of both notes between General Partner and Taxpayer re uire repayment in full, as each promissory note is due and payable on Date, and neither note allows for forgiveness or cancellation under any circumstance. Also, under the facts, the value of the Pro ect will at all times exceed the debt secured by the Pro ect. Thus, we conclude that both notes are loans. After making that determination, the source of the funds becomes relevant for purposes of § 42(d)(5), § 42(i)(2), and § 1.42-3. The source of the second mortgage note is directly from a grant of HOME funds to General Partner. The source of the third mortgage note is directly from the grant of AHP funds to General Partner.

Conse uently, based solely upon the above facts and Taxpayer's representations as set forth above, we conclude that for purposes of § 42: (1) the purported loan of HOME funds between Genera l Partner and Taxpayer is treated as a below market Federal loan under ,and§ 42(i)(2)(D), and (2) the purported loan of AHP funds between General Partner and Taxpayer is treated as a below market loan under § 1.42-3(a), and not as a below market Federal loan under § 42(i)(2)(D).

CA EAT(S):

No opinion is expressed or implied regarding the application of any other provision of the Code or regulations. Specifically, no opinion is expressed or implied regarding whether the Pro ect ualifies for the low-income housing credit under § 42, the application of the at-risk rules under § 42(k) to the Pro ect's financing, or the application of § 42(i)(2)(E)(i) to the HOME loan. A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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#3 Grant to City / Loan to Project Owner

Private Letter Rulings

Private Letter Ruling 8813024, 12/30/1987, IRC Sec(s). 42

UIL No. 0042.00-00

Headnote:

Reference(s): Code Sec. 42;

Private Letter Ruling 8813024

Code Sec. 42 CREDITS AGAINST TAX -- low-income housing credit -- loan from city .

Limited partnership purchased property on which it will construct low-income housing project designed to meet Sec. 42 requirements. Portion of financing for construction of project is loan from city T to partnership. RULED: City T loan won't constitute grant under Sec. 42(d)(5)(B). Loan won't constitute below market federal loan per Sec. 42(i)(2)(c).

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Full Text:

Dec. 30, 1987

This letter is in response to a letter dated December 1, 1987, and subsequent correspondence that we received from the Partnership's authorized representatives, in which they request that we issue a private letter ruling to Partnership in regard to the low-income housing credit under section 42 of the Internal Revenue Code.

The following facts and representations have been submitted for consideration:

Partnership, a State M limited partnership, was formed on a, among N, a State M corporation, as the General Partner and O, P and as the Limited Partners. Partnership is an accrual basis partnership with a tax year ending December 31, and both Partnership and its partners file federal income tax returns with the Internal Revenue Service Center in City R. Partnership and its partners are under the jurisdiction of the District Director, City S.

City T is a municipality of State M. The housing project owned by Partnership (the Project) is located within the boundaries of City T.

Parntership has purchased property on which it will construct the Project, a low-income housing project that is designed to meet the requirements of Section 42 of the Code. A portion of the financing for the construction of the Project is a loan in the principal amount of b from City T to Partnership (the City T Loan). A copy of the draft promissory note that is anticipated to evidence the City T Loan (the Draft Promissory Note) is attached to your representatives' letter dated December 1, 1987, as Exhibit B.

City T will fund the City T Loan through receipt of a grant from the Department of ousing and Urban Development (UD) in the amount of b (the UD grant). The UD grant was made pursuant to ud's ousing Development Grant Program (the DG Program) for ud Project c. hile the DG Program regulations, 24 CFR Part 850, require City T to enter into an agreement with Partnership that governs the disbursement of the UD grant funds to Partnership and restricts the Project to certain low-income standards, the DG Program imposes no restrictions upon the financial relationship between City T and Partnership. Accordingly, City T is free to make a grant to Partnership, to loan the funds at a below market interest rate, or to make a market rate loan to fund the Project. hile the City T Loan was initially contemplated to bear interest at a below market rate, City T has tentatively agreed to an adjustment of the interest rate consistent with the terms of the Draft Promissory Note. The increased interest rate would take effect from the date of initial funding of the City T Loan.

The DG Program is based on the premise that the grantee, City T, will benefit from the construction of the targeted housing project through (i) an increased number of decent, safe and sanitary housing units of modest design for families and individuals without other reasonable and affordable housing alternatives; (ii) an increase in employment opportunities; and (iii) an increase in its property tax base. Because City T is not required to repay the UD grant funds to UD, the amount that it will receive from Partnership in repayment of the City T Loan will constitute, pursuant to 24 CFR 850.71, an additional source of funds which may be used by City T to invest in other low-income housing projects. In this fashion the UD grant triggers both a current and a future benefit.

The Project will consist of d rental units, of which e units will constitute low-income housing as defined in the UD grant. To construct the Project, Partnership received a first loan from U under the UD Coinsurance Program in the amount of f, bearing 9.5 interest. The City T Loan will be secured by a second deed of trust with respect to the Project.

Current payments of interest and principal are limited under the terms of the City T Loan to 80 of the surplus cash as that term is defined in the Regulatory Agreement. UD routinely requires the operators of UD insured low-income housing projects to enter into Regulatory Agreements which control the use of the rental receipts of the project in question. Typically, surplus cash is defined as the excess funds over operating expenses, UD required reserves for repair or improvement of the project, and, if applicable, payment of principal and interest on a first mortgage; here, the U loan. UD may, in the appropriate circumstances, include in the Regulatory Agreement a provision which permits the owner of a low-income housing project to withdraw funds prior to the current payment of 100 of the second mortgage debt service. This type of provision has the effect of encouraging the holder of a second mortgage to agree to permit the owner of the project in question to receive some current cash flow, thus providing an incentive to the owner to operate the project efficiently and to maximize the project's cash flow. Such an arrangement is evidenced in this particular transaction by the reservation of 20 of surplus cash as an incentive to the owners to maximize cash flow.

Both Partnership and City T have agreed that they will not discriminate against prospective tenants in the Project on the basis of their eligibility for housing assistance under any federal, state, or local housing assistant program. Partnership has agreed to operate the Project in accordance with the DG Program requirements for a period of twenty years and restrictive covenants have been recorded to enforce these requirements. Through the extension of the DG Program funding and the City T Loan, UD and City T have both found that the Project furthers the housing policy of the United Stated and of State M.

On the basis of the foregoing, the following rulings are requested with respect to the receipt of the City T Loan by Partnership:

1. The City T Loan does not constitute a grant within the meaning of Section 42(d)(5)(B) of the Code.

2. The City T Loan does not constitute a below market federal loan as defined in Section 42(i)(2)(C) of the Code.

Section 38(a) of the Code provides for a general business credit against tax that includes the current year business credit. Section 38(b)(5) provides that the current year business credit includes the low-income housing credit determined under section 42(a).

Section 42(a) of the Code, which was added by section 252 of the Tax Reform Act of 198 , 198 -3 (ol. 1) C.B. 10 (the Act), provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any tax year in the credit period shall be an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

Section 42(b)(1)(A) of the Code prescribes an applicable percentage of 9 for new buildings that are placed in service in 1987 and that are not federally subsidized. Section 42(b)(1)(B) prescribes, for other buildings placed in service in 1987, an applicable percentage of 4 for new buildings that are federally subsidized and for existing buildings.

Section 42(b)(2) of the Code provides that in general, in the case of any qualified low-income building placed in service by the taxpayer after 1987, the term applicable percentage means the percentage appropriately prescribed by the Secretary of Treasury for the month in which the building is placed in service. The percentage thus prescribed will yield over a 10-year period amounts of credit under section 42(a) that have present value equal to (i) 70 percent of the qualified basis of a building described in section 42(b)(1)(A), and (ii) 30 percent of the qualified basis of a building described in section 42(b)(1)(B).

Section 42(c) of the Code provides that the qualified basis of any qualified low-income building for any tax year is an amount equal to the product of the eligible basis of the building times its applicable fraction. The section then defines the term applicable fraction for these purposes. Essentially, it is that portion of the total residential rental space in the building that is attributable to the building's low-income residential rental space. Section 42(d)(1) provides that for these purposes the eligible basis of a new building is its adjusted basis, and under section 42(d)(5)(A) the eligible basis of any building for its entire 15-year compliance period is its eligible basis on the date it is placed in service. Pursuant to the general rule of section 1011(a) and section 1012 the adjusted basis of a taxpayer's new, self-constructed building, on the date it is placed in service, is its cost.

Section 42(d)(5)(B) of the Code provides that if, during any tax year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with federal funds (whether or not includable in gross income), the eligible basis of such building for such tax year and all succeeding tax years shall be reduced by the portion of such grant that is so funded.

For purposes of section 42(b)(1) of the Code, section 42(i)(A) describes the new buildings that shall be treated as federally subsidized for any tax year, and it includes any new building with respect to which there is outstanding, at any time during that tax year, any below market federal loan the proceeds of which are used (directly or indirectly) with respect to the building or its operation. Section 42(i)(2)(C) defines the term below market federal loan for these purposes as any loan funded in whole or in part with federal funds if the interest rate payable on such loan is less than the applicable federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made).

Two sets of Temporary Income Tax Regulations have been promulgated that provide guidance with respect to several subsections of section 42 of the Code, but they do not cover the areas of Partnership's concern. Other than the law cited above our only authority for the meaning of grant and below market federal loan for these purposes is found in the legislative history of the Act.

2 .R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-91 (198), 198 -3 (ol. 4), C.B. 91, states only that a federal grant includes any grant funded in whole or in part by the federal government, to the extent funded with federal funds. It gives these examples of such grants (that may not be included in eligible basis): Community Development Block Grants, Urban Development Action Grants, Rental Rehabilitation Grants, and ousing Development Grants.

The Conference Report defines a federal subsidy as including a direct or indirect federal loan, if the interest rate on such loan is less than the applicable federal rate. A federal loan under the Farmers' ome Administration section 515 program is an example of such a federal subsidy, as is a reduced interest rate loan attributable in part to a federal grant. The determination of whether rehabilitation expenditures are federally subsidized is made without regard to the source of financing for the construction or acquisition of the building to which the rehabilitation expenditures are made.

Based on the facts presented it appears that the UD grant to City T is an outright grant, one that City T does not have to repay to UD. The DG Program permits City T to lend the UD grant funds to low-income housing developers either at market interest rates or at below market rates, or to make outright grants to such developers.

Evidently, the two-step character of a federal grant (to a local governmental unit) followed by a grant or loan (from that unit to a building owner) must be recognized and respected for purposes of both section 42(d)(5) and section 42(i)(2) of the Code. First, it seems clear from section 42(d)(5)(B) that although federal funds are involved, a grantor (of a federal grant to which this subsection applies) is not necessarily the federal government nor is the grant funds necessarily all federal funds, since the eligible basis of the building must be reduced only by the portion of the grant that is funded with federal funds. Second, it seems clear that a first step grantee is not necessarily a second step grantor of the federal funds based on the language in the Conference Report that is used in giving an example of a federal subsidy: . . . . a reduced interest rate loan attributable in part to a federal grant. A grantee of federal funds, in certain cases, apparently, is free to make a grant or extend a loan to a building owner using only those federal funds, or those funds plus funds from non-federal sources; and section 42(i) indicates that if it is a loan, it may or may not be at the market interest rate.

e have concluded that we should look only to the proposed financial arrangement between City T and Partnership to determine whether funds will be granted or loaned, and that we should make that determination without regard to the source of the funds or the terms under which they were received by City T. After making that determination the source of the funds becomes relevant for purposes of sections 42(d)(5) and 42(i)(2) of the Code.

e conclude that the City T Loan is not a grant of any classification because the amount extended by City T to Partnership, b, will have to be repaid in full, with interest. Section 42(d)(5)(B) of the Code does not apply to require a reduction in the eligible basis of the Project.

The City T Loan is a loan the proceeds of which are to be used directly or indirectly for construction of the Project. It is a loan funded wholly with federal funds. hether or not such a loan is a below market federal loan, within the meaning of section 42(i)(2)(C) of the Code, ordinarily would depend solely on the interest rate payable on the loan. e have concluded in this case, however, that in order to ensure that it is not a below market federal loan (and the Project is not federally subsidized) FOR AN OF T E TAX EARS DURING T E PRO ECT'S 15- EAR COMPLIANCE PERIOD, a modification of the Draft Promissory Note is required.

Therefore, this ruling will be based, in part, on the following revisions to the Draft Promissory Note to which the Partnership has agreed:

(A) Paragraph 1(b) will be revised to make it clear that the interest rate payable on the Loan is the applicable federal rate in effect UNDER SECTION 1274(D)(1) OF T E CODE (as of the date on which the loan is made).

(B) Paragraph 1(c) will be revised to read: REPA MENT. During the construction period, interest shall accrue on all Loan disbursements and shall be deferred until completion of construction, and shall be added to the principal of the Loan to form a new principal balance. Commencing upon completion of

App. 091

construction, but in no event later than December 1, 1988, monthly installments of interest and principal (computed on the basis of a 360-day year of twelve 30-day months) shall be paid on the first day of each succeeding month until the entire indebtedness has been paid; however, payments due under this Note shall be limited to 100% of the surplus cash, as defined in the Regulatory Agreement between U and the Maker, until Jaunary 1, 2005, and 80% of the surplus cash at all times on or after January 1, 2005. Any accrued interest and unpaid principal shall be paid as a balloon payment at the end of the fortieth year from the date of the Loan.

Based on the representations in the letter dated December 1, 1987, and subsequent correspondence, and on the above revisions being made to the Draft Promissory Note, when executed by the parties, we rule as follows:

1. The City T Loan will not constitute a grant within the meaning of section 42(d)(5)(B) of the Code.

2. The City T Loan will not constitute a below market federal loan as defined in section 42(i)(2)(C) of the Code.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to the issues addressed in this ruling have not been adopted. This ruling is issued under the authority of Rev. Proc. 87-7, 1987-2 I.R.B. 15, that enables the Service to issue rulings that previously would have been precluded by the provisions of section 5.07(2) of Rev. Proc. 87-1, 1987-1 I.R.B. 7. Therefore, this ruling may be modified or revoked by the Service. However, when the criteria in section 16.05 of Rev. Proc. 87-1 are satisfied, a ruling is not modified or revoked retroactively, except in rare or unusual circumstances.

Copies of this letter are being sent to the persons you have designated to receive it in accordance with the Power of Attorney on file in this office.

A copy of this letter should be filed with the income tax return of each partner in Partnership for the taxable year in which the transaction covered by this ruling is consummated.

END OF DOCUMENT -

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From: Jones, Norman [mailto:NJones@winthrop.com]
Sent: Tuesday, February 24, 2015 12:25 AM
To: Stamas, Alana [IDR]
Cc: Mary Gronen; barbs@gronenproperties.com
Subject: Examples for Iowa IDR Rules on QREs.docx

Alana,

We've added three more examples to the end of the attached, discussing three TIF scenarios that are likely to occur.

Some research to follow in relation to the questions we discussed on Friday. Again, others in the group are reviewing this concurrently and there may be changes or corrections to offer.

Thanks very much.

--Norm

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QRE Examples for IDR proposed rules:

General Explanation for Forgivable Loans:

Generally, where loan forgiveness is triggered by conditions that are under the borrower's control and which are expected to occur, the transaction should not be treated as a loan for tax purposes. When such transaction should be properly treated as a grant, the recipient should report such amounts as income. Where a forgivable loan should properly be treated as a grant for federal tax purposes, each Example below which refers to a grant will apply identically to the forgivable loan.

1. *Grant to For-profit Project Owner*.

Facts: City receives a grant of federal funds, and makes a grant to a for-profit project owner. The project owner recognizes taxable income in the amount of the grant. Project owner incurs rehabilitation costs using, in part, the grant funds.

Treatment: The income recognition of the grant creates tax basis for the project owner in the grant funds received. Therefore the project owner will have tax basis in the rehabilitation costs incurred. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the grant funds.

2. *Grant to Nonprofit Project Owner*.

Facts: City receives a grant of federal funds, and makes a grant to a nonprofit project owner. The nonprofit project owner reports such grant as income on its federal Form 990. Project owner incurs rehabilitation costs using, in part, the grant funds.

Treatment: The income recognition of the grant (whether taxable or nontaxable income creates tax basis for the nonprofit project owner in the grant funds received. In the case of a nonprofit, the taxability of such income is a separate inquiry depending on the tax-exempt purposes of the nonprofit. Therefore the nonprofit project owner will have tax basis in the rehabilitation costs incurred using such grant funds. Under federal tax law, nonprofits do not have federal QREs. However, under state statute, provided such costs are the type includable as QREs, the nonprofit project owner has incurred QREs using, in part, the grant funds.

3. *Grant to Nonprofit / Non-forgivable Loan to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a nonprofit organization. The nonprofit organization reports such grant as income on its federal Form 990. The nonprofit makes a non-forgivable loan to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such loan proceeds.

Treatment: Project owner has tax basis in the loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the Project owner has basis in the rehabilitation costs incurred using the loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the loan funds.

Additional Explanation: Project owner's repayment of principal on such loan is treated under federal tax principles as not deductible by the Project owner, and may be income to the lender, depending on the lender's basis in the amounts loaned. In this case, the nonprofit has tax basis in the grant funds received in (and therefore the amounts loaned out) because the nonprofit reported such grant as income on its federal Form 990.

4. *Grant to Nonprofit / Capital Contribution to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a nonprofit organization. The nonprofit organization reports such grant as income on its federal Form 990. The nonprofit makes a capital contribution to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such capital contribution.

Treatment: Project owner has tax basis in the capital contributions only to the extent that the contributing partner had basis in the funds contributed. In this case, the nonprofit organization has tax basis in the grant funds received in (and the capital contributions out) because the nonprofit reported such grant as income on its federal Form 990. Therefore, the Project owner has basis in the rehabilitation costs incurred using the capital contribution. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the capital contribution.

5. *Capital Contribution to Corporation / Non-forgivable Loan to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a corporation or S corporation. The corporation treats such grant as a nonshareholder contribution to capital under IRC §118. The corporation makes a non-forgivable loan to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such loan.

Treatment: Project owner has tax basis in the loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the project owner has basis in the rehabilitation costs incurred using the loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the loan funds.

Additional Explanation: Project owner's repayment of principal on such loan is treated under federal tax principles as not deductible by the Project owner, and may be income to the lender, depending on the lender's basis in the amounts loaned. In this case, the corporation does not have tax basis in the grant funds received (and therefore the amounts loaned out) because the corporation does not have basis in the funds received under IRC §362(c)(2). Accordingly, as the loan is repaid to the corporation, the corporation will recognize income.

6. *Capital Contribution to Corporation / Capital Contribution to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a corporation or S corporation. The corporation treats such grant as a nonshareholder contribution to capital under IRC §118. The corporation makes a capital contribution to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such capital contribution.

Treatment: Project owner has tax basis in the capital contributions only to the extent that the contributing partner had basis in the funds contributed. In this case, the corporation does not have tax basis in the grant funds received (and therefore the capital contribution out) because the corporation does not have basis in the funds received under IRC §362(c)(2). Therefore, the project owner will not have basis in the rehabilitation costs incurred using the capital contribution. Accordingly, the project owner will not be able to generate QREs using such capital contributions.

Additional Explanation: Project owner's return of capital to the corporation is treated under federal tax principles as a non-taxable return of capital to the extent that the corporation has basis in its partnership interest. In this case, as stated above, the corporation does not have tax basis in the grant funds received (and therefore the capital contribution out) because the corporation does not have basis in the funds received under IRC §362(c)(2). Accordingly, as the capital contribution is returned to the corporation, the corporation will recognize income.

7. *Tax Increment Financing to Project Owner*.

Facts: City awards tax increment financing ("TIF") to project owner. The TIF awarded is "pay-as-you-go" meaning that the City agrees to pay the project owner a portion of the tax increment as and when collected on a semiannual basis for a period of years after completion. None of the TIF was received during the construction of the project or spent on project costs.

The project owner pledges the TIF revenue stream to a bank lender to secure an amortizing loan ("Bank Loan"), the proceeds of which are spent on costs of the project. The project owner uses the TIF revenue stream as and when collected to pay debt service on the Bank Loan.

Treatment: The project owner will recognize income as and when TIF revenue is received and will have interest expense to the extent interest is incurred on the Bank Loan. The TIF revenue is treated as a series of grants, as and when received during a period of project operations, each of which is used to pay debt service on the Bank Loan. Because the TIF revenue will not be used to pay project costs, no QREs could have been funded with the TIF. Project owner has tax basis in the Bank Loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the project owner has basis in the rehabilitation costs incurred using the Bank Loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the Bank Loan funds.

8. *Tax Increment Financing to Project Owner (Second Example)*.

Facts: City awards TIF to project owner. The City incurs its own indebtedness ("Loan 1") and uses the proceeds to make a loan to the project owner ("Loan 2"). Instead of paying TIF revenue to project owner as and when received, the City retains the TIF and forgives a portion of Loan 2 equal to the TIF retained. The City uses the retained TIF revenue to pay debt service on Loan 1. To the extent that TIF revenue is insufficient to result in forgiveness of Loan 2, the project owner continues to be obligated to pay any balance of Loan 2.

Treatment: In this case, the City has undertaken the additional role of lender, lending against the TIF revenue stream. Loan 2 by the City essentially serves the same function as the Bank Loan in Example 7. In this case, the City's retainage of the TIF revenue serves the purpose of securing the project owner's obligation to pay Loan 2. The treatment of the project owner in this case is the same as in Example 7.

9. *Tax Increment Financing to Project Owner (Third Example).*

Facts: The facts are the same as in Example 8 except that the City transfers the proceeds of Loan 1 to the project owner as a grant instead of a loan. The project owner uses such grant to pay for project costs. The project owner has no obligation to repay the City. The City retains the TIF revenue as and when received.

Treatment: In this case, the City has converted the TIF into a grant to the project owner, which was used to pay project costs. Such grant to should be treated like the other grants described in these Examples.

10045120v1

From: Jones, Norman [mailto:NJones@winthrop.com]
Sent: Tuesday, February 24, 2015 2:28 PM
To: Stamas, Alana [IDR]
Cc: Mary Gronen; barbs@gronenproperties.com
Subject: IDR examples

Alana,

Attached is some further clean up on the examples. Note the additional language in Example 2.

I think the best way to get comfortable with #2 or #4 is to focus on the fact that outside of very few explicit exceptions in the Code (Sec. 362(c) being one of them), a person's basis in cash is equal to the amount of cash. And therefore, each nonprofit who reports such grant as income (vs. reporting it as a nonshareholder contribution which would implicate Sec. 362(c)) has basis in the grant equal to the grant.

At this point, I think our group is done with these examples and we'll look to respond to any questions or comments that you have.

Barb and Mary were trying to see what the program parameters of CDBG funds were. Did you two find out anything?

Thanks very much.

--Norm

Norman L. Jones
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Please click here for our disclaimers and limitations.

QRE Examples for IDR proposed rules:

General Explanation for Forgivable Loans:

Generally, where loan forgiveness is triggered by conditions that are under the borrower's control and which are expected to occur, the transaction should not be treated as a loan for tax purposes. When a forgivable loan should properly be treated as a grant for federal tax purposes, each Example below which refers to a grant will apply identically to the forgivable loan.

1. *Grant to For-profit Project Owner*.

Facts: City receives a grant of federal funds, and makes a grant to a for-profit project owner. The project owner recognizes taxable income in the amount of the grant. Project owner incurs rehabilitation costs using, in part, the grant funds.

Treatment: The income recognition of the grant creates tax basis for the project owner in the grant funds received. Therefore the project owner will have tax basis in the rehabilitation costs incurred. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the grant funds.

2. *Grant to Nonprofit Project Owner*.

Facts: City receives a grant of federal funds, and makes a grant to a nonprofit project owner. The nonprofit project owner reports such grant as income on its federal Form 990. Project owner incurs rehabilitation costs using, in part, the grant funds.

Treatment: In general, a person has basis in cash equal to the amount of the cash. Examples 5 and 6 describe a special exception in the federal tax code (IRC §362(c)(2)) in which property acquired with cash has a zero basis, and therefore in effect the acquirer had a zero basis in the cash. However, where the nonprofit has received a grant and reported such amount on its federal Form 990 as income, such special situation can not apply. Accordingly, except in that situation, a nonprofit will have basis in the grant funds received. Therefore the nonprofit project owner will have tax basis in the rehabilitation costs incurred using such grant funds.

Additional Explanation: Under federal tax law, nonprofits do not have federal QREs. However, under state statute, provided such costs are the type includable as QREs, the nonprofit project owner has incurred QREs using, in part, the grant funds. In the case of a nonprofit, the taxability of grant income is a separate inquiry involving the tax-exempt purposes of the nonprofit.

3. *Grant to Nonprofit / Non-forgivable Loan to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a nonprofit organization. The nonprofit organization reports such grant as income on its federal Form 990. The nonprofit makes a non-forgivable loan to the project owner using, in part, such funds. Project owner incurs rehabilitation expenditures using, in part, such loan proceeds.

Treatment: Project owner has tax basis in the loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds under principles of IRC §1012. Therefore, the project owner has basis in the rehabilitation costs incurred using the loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the loan funds.

Additional Explanation: Project owner's repayment of the principal of such loan is treated under federal tax principles as not deductible by the Project owner, and may be income to the lender, depending on the lender's basis in the amounts loaned. In this case, the nonprofit has tax basis in the grant funds received in (and therefore the amounts loaned out) because the nonprofit reported such grant as income on its federal Form 990.

4. *Grant to Nonprofit / Capital Contribution to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a nonprofit organization. The nonprofit organization reports such grant as income on its federal Form 990. The nonprofit makes a capital contribution to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such capital contribution.

Treatment: Project owner has tax basis in the capital contributions only to the extent that the contributing partner had basis in the funds contributed. In this case, the nonprofit organization has tax basis in the grant funds received in (and the capital contributions out) because the nonprofit reported such grant as income on its federal Form 990. Therefore, the Project owner has basis in the rehabilitation costs incurred using the capital contribution. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the capital contribution.

5. *Capital Contribution to Corporation / Non-forgivable Loan to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a corporation or S corporation. The corporation treats such grant as a nonshareholder contribution to capital under IRC §118. The corporation makes a non-forgivable loan to the project owner using, in part, such funds. Project owner incurs rehabilitation expenditures using, in part, such loan.

Treatment: Project owner has tax basis in the loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the project owner has basis in the rehabilitation costs incurred using the loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the loan funds.

Additional Explanation: Project owner's repayment of principal on such loan is treated under federal tax principles as not deductible by the Project owner, and may be income to the lender, depending on the lender's basis in the amounts loaned. In this case, the corporation does not have tax basis in the amounts loaned out because the corporation because of the application of IRC §362(c)(2). Accordingly, as the loan is repaid to the corporation, the corporation will recognize income.

6. *Capital Contribution to Corporation / Capital Contribution to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a corporation or S corporation. The corporation treats such grant as a nonshareholder contribution to capital under IRC §118. The corporation makes a capital contribution to the project owner using, in part, such funds. Project owner incurs rehabilitation expenditures using, in part, such capital contribution.

Treatment: Project owner has tax basis in the capital contributions only to the extent that the contributing partner had basis in the funds contributed. In this case, the corporation does not have tax basis in the grant funds received (and therefore the capital contribution out) because the corporation does not have basis in the funds received under IRC §362(c)(2). Therefore, the project owner will not have basis in the rehabilitation costs incurred using the capital contribution. Accordingly, the project owner will not be able to generate QREs using such capital contributions.

Additional Explanation: Project owner's return of capital to the corporation is treated under federal tax principles as a non-taxable return of capital to the extent that the corporation has basis in its partnership interest. In this case, as stated above, the corporation does not have tax basis in the capital contribution out because of the application of IRC §362(c)(2). Accordingly, as the capital contribution is returned to the corporation, the corporation will recognize income.

7. *Tax Increment Financing to Project Owner*.

Facts: City awards tax increment financing ("TIF") to project owner. The TIF award is "pay-as-you-go" meaning that the City agrees to pay the project owner a portion of the tax increment as and when collected on a semiannual basis for a period of years after completion. None of the TIF was received during the construction of the project or spent on rehabilitation costs. The project owner pledges the TIF revenue stream to a bank lender to secure an amortizing loan ("Bank Loan"), the proceeds of which are spent, in part, on rehabilitation costs. The project owner uses the TIF revenue as and when collected to pay debt service on the Bank Loan.

Treatment: The project owner will recognize income as and when TIF revenue is received or accrued and will have interest expense to the extent interest is incurred on the Bank Loan. The TIF revenue is treated as a series of grants to project owner, as and when received during a period of project operations, each of which is used by project owner to pay debt service on the Bank Loan. Because the TIF revenue was not available to be used to pay rehabilitation costs, no QREs could have been funded with the TIF revenue. Project owner has tax basis in the Bank Loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the project owner has basis in the rehabilitation costs incurred using the Bank Loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the Bank Loan funds.

8. *Tax Increment Financing to Project Owner (Second Example)*.

Facts: City awards TIF to project owner. The City incurs its own indebtedness ("Loan 1") and uses the proceeds to make a loan to the project owner ("Loan 2"). Instead of paying TIF revenue to project owner as and when received, the City retains the TIF and forgives a portion of Loan 2 equal to the TIF retained. The City uses the retained TIF revenue to pay debt service on Loan 1. To the extent that TIF revenue is insufficient to result in forgiveness of Loan 2, the project owner continues to be obligated to pay any principal balance on Loan 2.

Treatment: In this Example, the City has acted in an additional role of lender, lending against the TIF revenue stream. Loan 2 by the City is the equivalent of the Bank Loan in Example 7. In this case, the City's retainage of the TIF revenue serves the purpose of securing the project owner's obligation to pay Loan 2. The treatment of the project owner in this case is the same as in Example 7.

9. *Tax Increment Financing to Project Owner (Third Example).*

Facts: The facts are the same as in Example 8, except that the City transfers the proceeds of Loan 1 to the project owner as a grant instead of a loan. The project owner uses such grant to pay for rehabilitation costs. The project owner has no obligation to repay the City. The City retains the TIF revenue as and when received.

Treatment: In this case, the City has converted the future TIF revenue stream into a current lump sum grant to the project owner, which was used to pay rehabilitation costs. Such grant should be treated like the other grants described in these Examples.

10045120v2

QRE Examples for IDR proposed rules:

General Explanation for Forgivable Loans:

Generally, where loan forgiveness is triggered by conditions that are under the borrower's control and which are expected to occur, the transaction should not be treated as a loan for tax purposes. When<~~such transaction should be properly treated as a grant, the recipient should report such amounts as income. Where~~> a forgivable loan should properly be treated as a grant for federal tax purposes, each Example below which refers to a grant will apply identically to the forgivable loan.

1. *Grant to For-profit Project Owner*.

Facts: City receives a grant of federal funds, and makes a grant to a for-profit project owner. The project owner recognizes taxable income in the amount of the grant. Project owner incurs rehabilitation costs using, in part, the grant funds.

Treatment: The income recognition of the grant creates tax basis for the project owner in the grant funds received. Therefore the project owner will have tax basis in the rehabilitation costs incurred. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the grant funds.

2. *Grant to Nonprofit Project Owner*.

Facts: City receives a grant of federal funds, and makes a grant to a nonprofit project owner. The nonprofit project owner reports such grant as income on its federal Form 990. Project owner incurs rehabilitation costs using, in part, the grant funds.

Treatment: <~~The income recognition of the grant (whether taxable or nontaxable income creates tax basis for the nonprofit project owner~~><In general, a person has basis in cash equal to the amount of the cash. Examples 5 and 6 describe a special exception in the federal tax code (IRC §362(c)(2)) in which property acquired with cash has a zero basis, and therefore in effect the acquirer had a zero basis in the cash. However, where the nonprofit has received a grant and reported such amount on its federal Form 990 as income, such special situation can not apply. Accordingly, except in that situation, a nonprofit will have basis> in the grant funds received<~~.~~><~~ In the case of a nonprofit, the taxability of ~~><such><~~ income is a separate inquiry~~

><~~depending on~~><~~the tax-exempt purposes of the nonprofit~~>. Therefore the nonprofit project owner will have tax basis in the rehabilitation costs incurred using such grant funds.<~~–~~>

<*Additional Explanation:*> Under federal tax law, nonprofits do not have federal QREs. However, under state statute, provided such costs are the type includable as QREs, the nonprofit project owner has incurred QREs using, in part, the grant funds.< In the case of a nonprofit, the taxability of >~~such~~<grant>< income is a separate inquiry >~~depending on~~<involving>< the tax-exempt purposes of the nonprofit><.>

3. *Grant to Nonprofit / Non-forgivable Loan to Project Owner.*

Facts: City receives a grant of state funds and makes a grant to a nonprofit organization. The nonprofit organization reports such grant as income on its federal Form 990. The nonprofit makes a non-forgivable loan to the project owner using, in part<,> such funds. Project owner incurs rehabilitation expenditures using, in part, such loan proceeds.

Treatment: Project owner has tax basis in the loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds<~~.~~>< under principles of IRC §1012.> Therefore, the <~~Project~~><project> owner has basis in the rehabilitation costs incurred using the loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the loan funds.<~~–~~>

Additional Explanation: Project owner's repayment of <the >principal <~~on~~><of> such loan is treated under federal tax principles as not deductible by the Project owner, and may be income to the lender, depending on the lender's basis in the amounts loaned. In this case, the nonprofit has tax basis in the grant funds received in (and therefore the amounts loaned out) because the nonprofit reported such grant as income on its federal Form 990.

4. *Grant to Nonprofit / Capital Contribution to Project Owner.*

Facts: City receives a grant of state funds and makes a grant to a nonprofit organization. The nonprofit organization reports such grant as income on its federal Form 990. The nonprofit makes a capital contribution to the project owner using, in part such funds. Project owner incurs rehabilitation expenditures using, in part, such capital contribution.

Treatment: Project owner has tax basis in the capital contributions only to the extent that the contributing partner had basis in the funds contributed. In this case, the nonprofit organization has tax basis in the grant funds received in (and the capital contributions out) because the nonprofit reported such grant as income on its federal Form 990. Therefore, the Project owner has basis in the rehabilitation costs incurred using the capital contribution.

Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the capital contribution.<~~–~~>

5. *Capital Contribution to Corporation / Non-forgivable Loan to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a corporation or S corporation. The corporation treats such grant as a nonshareholder contribution to capital under IRC §118. The corporation makes a non-forgivable loan to the project owner using, in part<,> such funds. Project owner incurs rehabilitation expenditures using, in part, such loan.

Treatment: Project owner has tax basis in the loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the project owner has basis in the rehabilitation costs incurred using the loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the loan funds.

Additional Explanation: Project owner's repayment of principal on such loan is treated under federal tax principles as not deductible by the Project owner, and may be income to the lender, depending on the lender's basis in the amounts loaned. In this case, the corporation does not have tax basis in the <~~grant funds received (and therefore the~~ >amounts loaned out<~~)~~> because the corporation <~~does not have basis in the funds received under~~><because of the application of> IRC §362(c)(2). Accordingly, as the loan is repaid to the corporation, the corporation will recognize income.

6. *Capital Contribution to Corporation / Capital Contribution to Project Owner*.

Facts: City receives a grant of state funds and makes a grant to a corporation or S corporation. The corporation treats such grant as a nonshareholder contribution to capital under IRC §118. The corporation makes a capital contribution to the project owner using, in part<,> such funds. Project owner incurs rehabilitation expenditures using, in part, such capital contribution.

Treatment: Project owner has tax basis in the capital contributions only to the extent that the contributing partner had basis in the funds contributed. In this case, the corporation does not have tax basis in the grant funds received (and therefore the capital contribution out) because the corporation does not have basis in the funds received under IRC §362(c)(2). Therefore, the project owner will not have basis in the rehabilitation costs incurred using the capital contribution. Accordingly, the project owner will not be able to generate QREs using such capital contributions.

Additional Explanation: Project owner's return of capital to the corporation is treated under federal tax principles as a non-taxable return of capital to the extent that the corporation has basis in its partnership interest. In this case, as stated above, the corporation does not have tax basis in the <~~grant funds received (and therefore the~~ >capital contribution out<~~)~~> because <~~the corporation does not have basis in the funds received under~~><of the application of> IRC §362(c)(2). Accordingly, as the capital contribution is returned to the corporation, the corporation will recognize income.

7. *Tax Increment Financing to Project Owner.*

Facts: City awards tax increment financing ("TIF") to project owner. The TIF <~~awarded~~><award> is "pay-as-you-go" meaning that the City agrees to pay the project owner a portion of the tax increment as and when collected on a semiannual basis for a period of years after completion. None of the TIF was received during the construction of the project or spent on <~~project~~><rehabilitation> costs. The project owner pledges the TIF revenue stream to a bank lender to secure an amortizing loan ("Bank Loan"), the proceeds of which are spent<, in part,> on <rehabilitation >costs<~~ of the project~~>. The project owner uses the TIF revenue<~~ stream~~> as and when collected to pay debt service on the Bank Loan.

Treatment: The project owner will recognize income as and when TIF revenue is received <or accrued >and will have interest expense to the extent interest is incurred on the Bank Loan. The TIF revenue is treated as a series of grants< to project owner>, as and when received during a period of project operations, each of which is used <by project owner >to pay debt service on the Bank Loan. Because the TIF revenue <~~will~~><was> not< available to> be used to pay <~~project~~><rehabilitation> costs, no QREs could have been funded with the TIF< revenue>. Project owner has tax basis in the Bank Loan proceeds received by reason of issuing a promissory note in exchange for the loan proceeds. Therefore, the project owner has basis in the rehabilitation costs incurred using the Bank Loan proceeds. Provided such costs are the type includable as QREs, the project owner has incurred QREs using, in part, the Bank Loan funds.

8. *Tax Increment Financing to Project Owner (Second Example).*

Facts: City awards TIF to project owner. The City incurs its own indebtedness ("Loan 1") and uses the proceeds to make a loan to the project owner ("Loan 2"). Instead of paying TIF revenue to project owner as and when received, the City retains the TIF and forgives a portion of Loan 2 equal to the TIF retained. The City uses the retained TIF revenue to pay debt service on Loan 1. To the extent that TIF revenue is insufficient to result in forgiveness of Loan 2, the project owner continues to be obligated to pay any <principal >balance <~~of~~><on> Loan 2.

Treatment: In this <~~case~~><Example>, the City has <~~undertaken the~~><acted in an> additional role of lender, lending against the TIF revenue stream. Loan 2 by the City <~~essentially serves~~><is> the <~~same function as~~><equivalent of> the Bank Loan in Example 7. In this case, the City's retainage of the TIF revenue serves the purpose of securing the project owner's obligation to pay Loan 2. The treatment of the project owner in this case is the same as in Example 7.

9. *Tax Increment Financing to Project Owner (Third Example)*.

Facts: The facts are the same as in Example <~~8~~><8,> except that the City transfers the proceeds of Loan 1 to the project owner as a grant instead of a loan. The project owner uses such grant to pay for <~~project~~><rehabilitation> costs. The project owner has no obligation to repay the City. The City retains the TIF revenue as and when received.

Treatment: In this case, the City has converted the <future >TIF< revenue stream> into a <current lump sum >grant to the project owner, which was used to pay <~~project~~><rehabilitation> costs. Such grant<~~ to~~> should be treated like the other grants described in these Examples.

Document comparison by Workshare Compare on Tuesday, February 24, 2015 2:08:50 PM

Input:	
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Description	#10045120v1<IMANAGE> - Examples for Iowa IDR Rules on QREs
Document 2 ID	interwovenSite://WVIMAN/IMANAGE/10045120/2
Description	#10045120v2<IMANAGE> - Examples for Iowa IDR Rules on QREs
Rendering set	WWDefault

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<~~Moved from~~>	
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Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	38
Deletions	33
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	77

From: Mary Gronen [mailto:maryg@gronenproperties.com]
Sent: Sunday, March 01, 2015 9:53 PM
To: King, Steve [DCA]
Subject: FW: Today's Call

Steve,
Please see the attached comments on the admin rules that were discussed on Thursday among our core Smart Growth group. All have reviewed and are in agreement with said comments.

We keep getting asked this same question and are not sure how to answer it, so would appreciate your guidance. Why is it that the admin rules deviate so much from the legislation that was passed? I have to admit that I don't fully understand this either. Please let me know on it.

Please don't hesitate to let us know of any questions you may have. Thanks very much.

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From: Vos, Dave [mailto:dgv@alexandercompany.com]
Sent: Thursday, February 26, 2015 5:08 PM
To: Mary Gronen; Stone, Jason M.; Jim Beal (jim.beal@rsmi.com); Larry James (larry.james@faegrebd.com)
Cc: Norman L. Jones (NJones@winthrop.com); Barb Sergio; David Adelman (dadelman@cgagroup.com); Lawrence IV, Wayman C. (WLawrence@foley.com)
Subject: Today's Call

All,

Attached are my comments on the rules that we discussed during today's call.

Thanks

David Vos, AIA
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dgv@alexanderscompany.com

No Comments on
Division I

ITEM 15. Amend **223—Chapter 48, Division I**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 303 and ~~chapter~~ 404A ~~as amended by 2009 Iowa Acts, Senate File 481~~.

ITEM 16. Reserve rules **223—48.18** to **223—48.20.**

ITEM 17. Add the following **new** division heading before rule 223—48.21(303,404A):

DIVISION II
PROJECTS FOR WHICH PART 2 APPLICATIONS WERE APPROVED AND AGREEMENTS WERE ENTERED INTO ON OR AFTER JULY 1, 2014

ITEM 18. Adopt the following **new** rules 223—48.21(303,404A) to 223—48.37(303,404A):

223—48.21(303,404A) Purpose. A historic preservation and cultural and entertainment district tax credit (hereinafter referred to as "historic tax credit") may be applied against the income tax imposed under Iowa Code chapter 422, division II, III, or V, or Iowa Code chapter 432 for qualified rehabilitation projects that have entered into and complied with an agreement with the department of cultural affairs (hereinafter referred to as "the department") and complied with all applicable terms, laws, and rules. The program is administered by the department with the assistance of the department of revenue. The general assembly has mandated that the department and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department evaluates whether projects comply with the prescribed standards for rehabilitation. The department shall make determinations on applications submitted to the program. The department may consult with the department of revenue on any matters related to Iowa Code chapter 404A, the administrative rules of the department, and any agreement entered into under Iowa Code chapter 404A, including but not limited to issues related to whether projects or claimed expenditures comply with the tax aspects of the program. After consulting with the department of revenue and verifying whether the requirements of the program and any agreement have been fulfilled, the department shall make the determination on an eligible taxpayer's tax credit claim. This chapter sets forth the administration of the program by the department. The administrative rules for the department of revenue's administration of the program can be found in rules 701—42.19(404A,422), 701—42.54(404A,422), 701—52.18(404A,422), and 701—58.10(404A,422).

General note: Capitalize defined terms throughout.

223—48.22(404A) Definitions. The definitions listed in rules 223—1.2(17A,303) and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, for purposes of this chapter, unless the context otherwise requires:

"Agreement" means an agreement between an eligible taxpayer and the department concerning a qualified rehabilitation project as provided in Iowa Code section 404A.3(3) and rule 223—48.32(404A).

"Applicant" means an eligible taxpayer described in rule 223—48.27(404A).

"Assessed value" means the value of the eligible property on the most current property tax assessment at the time that the relevant application or agreement is submitted or the agreement is signed, as applicable.

"Barn" means an agricultural building or structure, in whatever shape or design, which was originally used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

"Certificate" means a historic preservation and cultural and entertainment district tax credit certificate issued pursuant to Iowa Code section 404A.3(5).

"Commencement date" means the date set forth in the agreement, which date shall not be later than the end of the fiscal year in which the agreement is entered into.

"Commercial property" means property classified as commercial, industrial, railroad, utility, or multiresidential for property tax purposes under rules 701—71.1(405,427A,428,441,499B), 701—76.1(434), and 701—77.1(428,433,437,438).

"Completion date" means the date on which property that is the subject of a qualified rehabilitation project is placed in service, as that term is used in Section 47 of the Internal Revenue Code.

"Department" means the department of cultural affairs.

Tenant
Master
Lease ?

"Director" means the director of the department of cultural affairs.

"Eligible taxpayer" means the fee simple owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under Section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project.

"Federal rehabilitation credit" or *"federal credit"* means the tax credit allowed under Section 47 of the Internal Revenue Code.

"Federal standards" means the U.S. Secretary of the Interior's standards for rehabilitation set forth in 36 CFR Section 67.7.

"Government funding" or *"funding originating from a government"* includes but is not limited to:

1. Any funding the applicant received from a government; or
2. Funding from a third party or a series of third parties where those funds originally came from a government or were derived from a government payment, grant, loan, tax credit or rebate or other government incentive; or
3. Funding from a third party or a series of third parties where those funds are derived from, secured by, or otherwise received in anticipation of a government payment, grant, loan, tax credit or rebate or other government incentive.

"Historically significant" means a property that is at least one of the following:

1. Property listed on the National Register of Historic Places or eligible for such listing.
2. Property ~~designated as of historic significance to~~ a district listed in the National Register of Historic Places or eligible for such designation.
   certified as contributing to the significance of
3. Property or district designated a local landmark by a city or county ordinance.
4. A barn constructed prior to 1937.

"Large project" means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $750,000.

"Noncommercial property" means property other than "commercial property" as defined in this rule.

"Nonprofit organization" means an organization described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503, or 504 of the Internal Revenue Code. "Nonprofit organization" does not include a governmental body, as that term is defined in Iowa Code section 362.2.

"Placed in service" means the same as used in Section 47 of the Internal Revenue Code.

"Property" means the real property that is the subject of a "qualified rehabilitation project" or that is the subject of an application to become a qualified rehabilitation project.

"Program" means the historic preservation and cultural and entertainment district tax credit program set forth in this chapter.

"Qualified rehabilitation expenditures" or *"QREs"* means the same as defined in Section 47 of the Internal Revenue Code. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered "qualified rehabilitation expenditures" if they are any of the following:

1. Expenditures made for structural components, as that term is defined in Treasury Regulation § 1.48-1(e)(2).
2. Expenditures made for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, and development fees.

"Qualified rehabilitation expenditures" does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code.

"Qualified rehabilitation expenditures" may include expenditures incurred prior to the date an agreement is entered into under Iowa Code section 404A.3(3).

For more information, consult department of revenue 701—subrule 42.54(2).

"Qualified rehabilitation project" or *"project"* means a project for the rehabilitation of property in this state that meets all of the following criteria:

1. The property is historically significant as defined in this rule.

2. The property meets the federal standards as defined in this rule.

3. The project is a substantial rehabilitation as defined in this rule.

"Related entities" means any entity owned or controlled in whole or in part by the applicant; any person or entity that owns or controls in whole or in part the applicant; or any entity owned or controlled in whole or in part by any current or prospective officer, principal, director, or owner of the applicant.

"Related persons" means any current or prospective officer, principal, director, member, shareholder, partner, or owner of the applicant.

"Small project" means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of $750,000 or less.

"Substantial rehabilitation" means qualified rehabilitation costs that meet or exceed the following:

1. In the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation or at least $50,000, whichever is less; or

2. In the case of noncommercial property, costs totaling at least $25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

"Tax credit" or *"historic tax credit"* means the historic preservation and cultural and entertainment district tax credit established in Iowa Code chapter 404A.

This rule is intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

223—48.23(404A) Amount of the tax credit. An eligible taxpayer that has entered into and complied with an agreement under Iowa Code section 404A.3(3) and has complied with the program statute and rules is eligible to claim a historic preservation and cultural and entertainment district tax credit ~~of a maximum~~ of 25 percent of the qualified rehabilitation expenditures of a qualified rehabilitation project that are specified in the agreement. Notwithstanding any other provision in Iowa Code chapter 404A, this chapter, or any provision in the agreement to the contrary, the amount of the tax credits shall not exceed 25 percent of the final qualified rehabilitation expenditures verified by the department pursuant to Iowa Code section 404A.3(5)*"c."*

* "specified" covers cap - no need to have "up to" language. Perhaps use "allowed" instead of "specified"

This rule is intended to implement Iowa Code section 404A.2 as amended by 2014 Iowa Acts, House File 2453.

223—48.24(404A) Management of annual aggregate tax credit award limit. The department shall not register, as described in rule 223—48.31(404A), more projects in a given fiscal year for tentative awards than there are tax credits available for that fiscal year under Iowa Code section 404A.4. The department will determine the projects for which sufficient tax credits are available based on the estimated qualified rehabilitation expenditures identified in the registration application, plus allowable cost overruns as described in paragraph 48.32(1)*"c."*

48.24(1) *Registration scoring.* If applicants' total tax credit requests from a fiscal year allocation exceed the tax credit allocation for that fiscal year, the department will prioritize its determinations based on the applicants' registration scores. If, after determining the projects for which sufficient tax credits are available, the department determines there are insufficient tax credits in the fiscal year allocation to fully award the next highest scoring project, then to maximize the use of the available tax credits, the department in its sole discretion may register the project with the next highest score whose tentative tax credit award amount, including allowable cost overruns as described in paragraph 48.32(1)*"c,"* would not cause the department to exceed the annual aggregate tax credit award limit, so long as the project meets the minimum score as described in rule 223—48.31(404A). If there are no more projects that meet the minimum score described in rule 223—48.31(404A) that can be fully funded, the department in its sole discretion may make the remaining tax credits available for small projects or allow the remaining tax credits for the fiscal year to carry forward to the succeeding fiscal year to the extent permitted by Iowa Code section 404A.4.

- Unless applicant agrees to reduced award w/i cap limit.

48.24(2) *Registrations for future tax credit allocations.* Registrations for future tax credit allocations require a new application. When registering projects for a particular fiscal year, the department shall not award, reserve, or register tax credits from future fiscal years' tax credit allocations. An applicant whose project is not registered due to an insufficient score or noncompliance with the application or the program statute or rules may submit future applications for future fiscal year tax credit allocations.

This rule is intended to implement Iowa Code section 404A.4 as amended by 2014 Iowa Acts, House File 2453.

223—48.25(404A) Application and agreement process, generally.

48.25(1) All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the department from time to time. The current forms and instructions will be posted to the department's Web site.

48.25(2) An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

48.25(3) The application and agreement process consists of six steps:

a. The applicant submits a Part 1 application, which is used to evaluate the property's integrity and significance.

b. Unless the Part 1 application is denied, the applicant participates in a preapplication meeting with the department to discuss what to expect for the remainder of the application process.

c. If the Part 1 application is approved and the preapplication meeting is completed, the applicant submits a Part 2 application, which is used to evaluate the proposed rehabilitation work.

d. If the Part 2 application is approved, the applicant submits a registration application, which is used to score the applicant's rehabilitation plan and financial readiness. If the project is awarded a sufficient registration score, satisfies other requirements of the application and program, and sufficient tax credits are available, the department may register the project.

e. If the project is registered, the applicant may enter into an agreement with the department that establishes the ~~estimated~~ amount of the tax credit award and the terms and conditions that must be met to maximum receive the tax credits. An applicant must enter into and comply with an agreement in order to participate in the program and claim any tax credits.

f. Once the project is completed and the property is placed in service, the applicant submits a Part 3 application, which is used to evaluate whether the completed work meets the federal standards and the other requirements of the agreement, laws, and regulations of the program.

A more detailed description of each step is provided in rules 223—48.28(404A) through 223—48.33(404A).

This rule is intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

223—48.26(404A) Small projects. Projects with anticipated final qualified rehabilitation expenditures of more than $750,000 will be evaluated as large projects. Projects with $750,000 or less in anticipated final rehabilitation expenditures will be evaluated as small projects. If an applicant anticipates that the final qualified rehabilitation expenditures will exceed $750,000, the applicant may only submit its application as a large project. The department will not permit a small project applicant to submit additional or amended applications that would cause the final qualified expenditures to exceed $750,000.

48.26(1) *Small project fund.* The department shall allocate at least 5 percent of its annual fiscal year tax credit award limit to small projects.

48.26(2) *Aggregate award limit.* For applicants that receive credits from the small project allocation, the cumulative total award for multiple applications for a single property shall not exceed $750,000 in qualified rehabilitation expenditures plus any allowable cost overruns as described in paragraph 48.32(1)*"c,"* regardless of the final qualified rehabilitation expenditures. The department will not accept an application by the same owner for a property for which credits were previously received through the small project fund if the application causes the cumulative total to exceed $750,000, plus any allowable cost overruns as described in paragraph 48.32(1)*"c."*

48.26(3) *Application and agreement process.* The Part 1, Part 2, and Part 3 application process and the agreement requirements are the same for small projects as for large projects. The registration process for small projects differs from that for large projects. See subrule 48.31(9) for more information on the registration process for small projects.

This rule is intended to implement Iowa Code section 404A.4 as amended by 2014 Iowa Acts, House File 2453.

223—48.27(404A) Who may apply for the tax credit. Only an eligible taxpayer may apply for the tax credit. To be an eligible taxpayer, the applicant must be either (1) the fee simple owner or (2) someone that will ultimately qualify for the federal rehabilitation credit with respect to the qualified rehabilitation project. A nonprofit organization as described in rule 223—48.22(404A) may apply for the tax credit if the nonprofit organization is the fee simple owner of the property.

48.27(1) *Applicants that are fee simple owners.* If the applicant qualifies as an eligible taxpayer on the basis that the applicant is the fee simple owner of the property, the applicant will be expected to provide proof of title as described in subrule 48.28(2).

48.27(2) *Applicants that will qualify for the federal credit.* If the applicant qualifies as an eligible taxpayer on the basis that the applicant will qualify for the federal rehabilitation credit with regard to the property, the applicant will be asked to provide increasingly substantial evidence as described in rule 223—48.30(404A) that the applicant will qualify for the federal credit, culminating with proof of actual fee simple ownership or a long-term lease that meets the requirements of the federal rehabilitation credit before the agreement is entered into with the department. Applicants that are eligible to apply under this subrule must obtain from the fee simple owner of the property a notarized written statement which indicates that the owner is aware of the application and has no objection and include the statement with the application.

48.27(3) *Who may not apply.* Government bodies as defined in Iowa Code section 362.2 may not apply. Additionally, an applicant may not apply for tax credits on a project if all of the work has been completed and the qualified rehabilitation project has already been placed in service.

This rule is intended to implement Iowa Code sections 404A.1 and 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.28(404A) Part 1 application—evaluation of significance. The Part 1 application is used to evaluate the property's historic significance and integrity to determine whether the property is eligible to be a qualified rehabilitation project.

48.28(1) *Types of property that are eligible.* Property must be historically significant and maintained in a manner that is consistent with the federal standards.

48.28(2) *Proof of status as eligible taxpayer.* The Part 1 application may be submitted by an eligible taxpayer as described in rule 223—48.27(404A).

a. To prove the applicant is the fee simple owner, the applicant will be expected to provide title documentation. If the title is held in the name of an entity, the application must be accompanied by documentation which indicates that the signatory is the authorized representative of the entity.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the approved federal Part 1 application, unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit, and the applicant must provide proof of permission from the fee simple owner as described in subrule 48.27(2).

48.28(3) *Submission period.* Part 1 applications may be submitted year-round.

48.28(4) *Required information.* Applicants must provide the department a site plan, photographs of the property, a copy of the county assessor's statement for the property, and such other information as the department may require.

48.28(5) *Review process.* The department will evaluate the appearance and condition of the building and verify the information provided by the applicant. Generally, the department will review fully completed Part 1 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department must request additional information, the

30 days for projects w/ FHTC. Part 1

90-day review period will restart when the requested information is received by the department. The application may be rejected if any requested information is not provided.

48.28(6) *Response from department.* Upon completion of the review, the department shall issue a determination regarding whether the property meets the requirements to be considered historically significant.

48.28(7) *Period of validity.* A determination that the property meets the requirements to be considered historically significant shall be valid for five years from the issuance of the determination provided that the property is maintained in a manner consistent with the federal standards and that the fee simple owner of the property remains the same during such period. Changes to the property that are not approved by the department shall automatically invalidate the determination of historical significance, and reestablishment of the historical significance of the property as well as submittal of a new Part 1 application for a determination that the property is eligible shall be required.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

or related party

223—48.29(404A) Preapplication meeting. The purpose of the preapplication meeting is to provide feedback to the applicant and other interested parties that will enable the applicant to better plan and prepare for submission of the Part 2 and registration applications.

48.29(1) *Meeting requests.* Once the completed Part 1 application is submitted, the applicant may request a preapplication meeting by using the form available on the department's Web site. must wait?

48.29(2) *Timing of the preapplication meeting.* The meeting must take place no fewer than 30 days after the submission of the Part 1 application and prior to submission of the Part 2 application. Meetings may be held by teleconference at the department's discretion.

48.29(3) *Required information.* The applicant must bring at least the following items to the meeting: preliminary drawings, photographs of the exterior (all elevations) and interior, preliminary list of character-defining features and treatments or a draft Part 2 application, and a list of questions for which specific guidance is needed. The department may request additional information. If the preapplication meeting will be held by telephone, the required documents must be submitted electronically at least one week prior to the meeting date.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.30(404A) Part 2 application—description of rehabilitation. The purpose of the Part 2 application is to determine whether the proposed rehabilitation work meets the federal standards. The applicant must describe the rehabilitation work to be undertaken on the property. The review of the Part 2 application is a preliminary determination only and is not binding upon the department. A formal certification of rehabilitation shall be issued only after the rehabilitation work is completed.

48.30(1) *Proof of status as eligible taxpayer.* The Part 2 application must be submitted by an eligible taxpayer as described in rule 223—48.27(404A).

a. An applicant that is the fee simple owner does not need to provide any additional information regarding ownership unless there has been a change in ownership since the Part 1 application was approved.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the signature page of the approved federal Part 2 application signed by the National Park Service. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit and must provide proof of permission from the fee simple owner as described in subrule 48.27(2).

48.30(2) *Submission period.* Part 2 applications may be submitted at any time after the project has received an approved Part 1 and the applicant has participated in the preapplication meeting.

48.30(3) *Required information.*

a. The applicant must provide any information requested by the department, including but not limited to:

(1) A detailed description of the rehabilitation;

(2) An estimate of the total costs related to the rehabilitation and other work to be completed on the property, regardless of whether the costs will ultimately be qualified rehabilitation costs;

(3) An estimate of the qualified rehabilitation expenditures; and

(4) Photographs.

b. The applicant must also identify whether the applicant plans to submit a registration application as a small project or a large project. For more information on the differences in the registration application process for large and small projects, see rule 223—48.26(404A).

48.30(4) *Review process.* ~~Using the federal standards,~~ The department will evaluate the proposed work to determine whether the proposed project, including any new construction, is consistent with the federal standards, the historic character of the property and, where applicable, the registered or potential district in which the property is located. Generally, the department will review fully completed Part 2 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department must request additional information, the 90-day review period will restart when the requested information is received by the department. The application may be rejected if any requested information is not provided.

30 days for projects w/ FHTC Part 2

48.30(5) *Response from the department.* The review of the complete Part 2 application shall result in one of three responses:

a. The project is eligible to submit a registration application because the proposed rehabilitation described in the application is consistent with the historic character of the property or the district in which the property is located and the project, as proposed, appears to meet the federal standards; or ~~The project is eligible to submit a registration application~~;

b. The project is eligible to submit a registration application because the proposed rehabilitation described in the application will likely meet the federal standards if the stipulated conditions are met. ~~The project is eligible to submit a registration application~~; or

c. The rehabilitation described in Part 2 of the application is not consistent with the historic character of the property or the district in which the property is located and the project does not meet the federal standards. The project is ineligible for registration. The project may amend or submit a new Part 2 application for the property.

48.30(6) *Amendments.* Deviation from the original rehabilitation proposal could result in the denial of final project approval and revocation of the tax credit award. Applicants must submit amendments to the department prior to undertaking any work not in the original approved Part 2 application. Amendments must be submitted on forms approved by the department and available on the department's Web site.

Why? work can occur w/o a Part 2 so why not amendment if so is it a default & subject to recapture?

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.31(404A) Registration application. If the department has approved Part 1 and Part 2 applications for a project, the applicant may submit a historic tax credit registration application during the applicable registration period. The registration application is used to determine whether the project is ready to proceed both financially and logistically. The registration application is also used to confirm whether the substantial rehabilitation test has been met and whether the project is a small project or a large project. The registration application is also used to obtain background information, including information that may disqualify an applicant from participating in the program, as well as other information about the applicant, related persons, and related entities. Though the application process is largely the same for small projects as it is for large projects, there are some differences. For details on those differences, see rule 223—48.26(404A).

48.31(1) *Proof of status as eligible taxpayer.* An eligible taxpayer as defined in rule 223—48.22(404A) may submit a registration application.

a. An applicant that is the fee simple owner must notify the department of any changes in ownership status since the Part 2 application was filed.

b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant's application will be scored based on the steps taken toward ownership as described in subrule 48.31(6). The applicant must certify that the applicant understands that the applicant will not qualify for any state historic tax credit if the applicant is not the fee simple owner or otherwise qualified for the federal credit. The applicant must also provide proof of permission from the fee simple owner as described in subrule 48.27(2).

or "Eligible Taxpayer"

48.31(2) *Submission period.* In general, applications for registration will only be accepted during the established application period as identified by the department from time to time on its Web site. However, applications for small project registration will be accepted year-round.

48.31(3) *Required information.* The registration application must include the following information as well as any additional information the department or the department of revenue may request: total project cost, an estimated schedule of qualified rehabilitation expenditures and a schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

48.31(4) *Certification and release of information.* The applicant must identify and list all related persons and related entities, as those terms are defined in rule 223—48.22(404A). The applicant must release information requested by the department regarding the applicant, related persons, and related entities. The applicant must also certify that all representations, warranties, documents, or statements made or furnished in connection with the registration application are true and accurate. The certification and release of information are intended to identify information that will disqualify an applicant from participating in the program or that may have an adverse impact on the project. The certification and release of information are also intended to provide the department with information regarding the economic, ownership, and management realities related to the project by providing information about the actual persons and businesses affiliated with the applicant, the actual persons and businesses that will derive financial benefits from the project, as well as other businesses affiliated with the individuals involved with the project.

a. The department ~~shall~~ may reject an application for registration if any of the following materially occurs or exists:

- right to cure?

(1). The applicant fails to answer the questions and provide all requested information and documents.

(2) The applicant provides false or inaccurate information or documents to the department.

(3) The applicant, a related person, or a related entity has not filed any local, state, or federal tax returns that are due.

(4) The applicant, a related person, or a related entity has any overdue local, state, or federal tax liability, including any tax, interest, or penalty.

(5) The applicant, a related person, or a related entity is currently in default, has an uncured breach, or is otherwise not in compliance with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(6) The applicant, a related person, or a related entity has any past-due amounts owed to the state of Iowa, any agency of the state of Iowa, any other entity or instrumentality of the state of Iowa, or any person or entity that is eligible to submit claims to the state offset system under Iowa Code section 8A.504.

example: 8609 uncorrected
forgot to pay property tax on a parking space in a condo
"department shall reject application"?!?

(7) The department reasonably determines, in its sole discretion, that registering the project, entering into an agreement with the department, or permitting the applicant's tax credit claim would cause the applicant or another person to default on, breach, or otherwise not comply with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

reasonably

(8) The department determines, in its sole discretion, that the applicant will not be able to provide representations, warranties, conditions, or other terms of an agreement that would be acceptable to the department.

reasonably

(9) Information is disclosed to the department that would cause the department, in its sole discretion, to decline to enter into an agreement with the applicant.

b. Scope of inquiry. The department may ask the applicant to disclose information and documents about other entities affiliated with the applicant, a related person, or a related entity if the department determines that the information regarding the applicant, related persons, and related entities does not adequately disclose to the department the economic, ownership, and management structure and realities related to a project.

48.31(5) *Review period.* In general, the department and the department of revenue will review fully completed registration applications within 30 calendar days of receipt. The 30-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department or the department of revenue must request additional information, the 30-day review period will restart when the requested information is received by the department or the department of revenue, as the case may be. The department will reject an application if any requested information is not provided.

48.31(6) *Scoring process.* All completed applications will be reviewed and scored. In order for a project to be considered for registration, the application must meet a minimum score as established from time to time by the department and set forth in the current registration application. Scoring of the application will take into account readiness criteria, which may include the following:

a. Rehabilitation planning and project readiness. Projects will be scored based on whether the Part 2 application was approved with or without conditions.

b. Secured financing. Weighted preference will be given to projects that have financing or equity or both in place.

c. Steps taken towards ownership. Weighted preference will be given to the projects of applicants that are currently fee simple owners of the property.

d. Local government support. Weighted preference will be given to projects that have received support from their local jurisdiction.

e. Rehabilitation time line. Weighted preference will be given to projects that will be completed in the shortest amount of time.

f. Zoning and code review. Weighted preference will be given to the projects of applicants that can demonstrate a determination by the authority having jurisdiction that the project complies with the guidelines for construction permitting.

g. Such other information as the department may find relevant and request on the registration application.

48.31(7) *Additional evaluation criteria.* If ~~the estimated maximum tax credit awards for all projects that scored above the minimum score threshold based on the criteria in subrule 48.31(6) exceed the fiscal year tax credit allocation and~~ there is a tie between two or more projects ~~for the lowest score that meets the minimum threshold,~~ the department will use the following criteria to ~~evaluate those projects that are tied for the lowest score~~: determine which projects shall receive an allocation under 48.24(1)

a. Statewide economic priorities. Weighted preference will be given to projects that ~~address~~ statewide economic priorities, including: permanent job creation; whether the project is in a federal or state disaster area; and whether the project is in a cultural and entertainment district or specifically mentioned in a great places contract.

tie may not actually be the lowest score that meets threshold but rather two or more projects that cannot be funded under the r.o.p.

b. Vacant property. The department will consider whether the properties are underutilized or not occupied and give preference to those projects on properties that are the most underutilized.

c. Preservation of rural resources. The department will evaluate projects based on the population size of the surrounding community with preference given to projects in communities with the lowest number of residents.

shall

d. Previous application. The department will give weighted preference to projects for which the registration application had been successfully completed and which met the minimum score threshold during a previous application period but were not registered due to lack of available tax credits.

e. Other criteria. The department may give preference to projects based on such other criteria as the department may find relevant and request in the registration application.

48.31(8) *Registration.* Upon reviewing and scoring all applications that are part of the application period, the department ~~may~~ register the qualified rehabilitation projects to the extent sufficient tax credits are available based on the estimated qualified rehabilitation costs identified in the registration applications. Only projects that meet the minimum score established by the department may be registered. As described in rule 223—48.24(404A), in the case of insufficient funding, preference will be given to the projects with the highest registration score based on the criteria in subrules 48.31(6) and 48.31(7). At the time the project is registered, the department shall make a preliminary determination as to the amount of tax credits for which the project qualifies. The department shall make best efforts to notify the applicant within 45 calendar days after the close of the registration period as to whether the applicant's project has been registered. The registration notice shall include the amount of the applicant's tentative tax credit award, along with a notice that the amount is a preliminary, nonbinding determination only. The department will notify applicants whose projects were not registered and state whether the failure to register the project was due to the failure of the project to meet the minimum score, the lack of available tax credits, or another reason.

48.31(9) *Small project registration application.* The department may establish for small projects a registration application form and process that differ from the application form and process used for large projects. The forms will be available on the department's Web site. Small projects may submit registration applications year-round; however, the registration application must be submitted no later than 180 calendar days after receipt of approval of the Part 2 application from the department. Small project registration applications will be evaluated on a first-come, first-served basis, subject to the availability of tax credits.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.32(404A) Agreement. Upon successful registration of the project as described in subrule 48.31(8), the eligible taxpayer shall have 90 calendar days to finalize project funding and the purchase or lease of the property, if necessary, prior to entering into an agreement with the department. A condition precedent to any agreement will be proof that the eligible taxpayer is the actual fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit. An eligible taxpayer shall not be eligible for historic tax credits unless the eligible taxpayer enters into an agreement with the department concerning the qualifying rehabilitation project and satisfies the terms and conditions that must be met to receive the tax credit award.

90 days may not be enough. many transactions take 120 days or more to close.

48.32(1) *Terms and conditions.* The agreement shall contain mutually agreeable terms and conditions, which shall, at a minimum, provide for the following:

a. The maximum amount of the tax credit award. Notwithstanding anything in this chapter to the contrary, no tax credit certificate shall be issued until the department and the department of revenue verify the amount of final qualified rehabilitation expenditures and compliance with all other requirements of the agreement, Iowa Code chapter 404A, and the applicable rules.

b. The rehabilitation work to be performed.

c. The budget of the qualified rehabilitation project, including the projected qualified rehabilitation expenditures, and those expenditures not qualified, and allowable cost overruns. The amount of allowable cost overruns provided for in the agreement shall not exceed the following amounts:

(1) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of not more than $750,000, 15 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(2) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $750,000 ~~but not more than $6 million,~~ 10 percent of the projected qualified rehabilitation expenditures provided for in the agreement. for the first $6 million and 5 percent thereafter

~~(3) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than $6 million, 5 percent of the projected qualified rehabilitation expenditures provided for in the agreement.~~

d. A schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

e. The commencement date.

f. The completion date.

g. The agreement termination date, which shall not be earlier than five years from the date on which the tax credit certificate is issued.

h. Such other terms, conditions, representations, and warranties as the department may determine are necessary or desirable to protect the interests of the state.

48.32(2) *Amendments.* The department may for good cause amend an agreement. However, the department may not amend an agreement to allow cost overruns in excess of the amount described in paragraph 48.32(1)"*c.*" In addition, the commencement date, completion date, and agreement termination date may not be amended if such an amendment would violate the statutorily prescribed time limits. Any amendment approved by the department shall be signed by both parties.

48.32(3) *Authority.* Only the director or deputy director may enter into agreements on behalf of the department. Any agreement entered into on behalf of the department by a person other than the director or deputy director shall be void.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.33(404A) Part 3 application—request for certification of completed work and verification of qualified rehabilitation expenditures. Part 3 of the application is used to determine whether the project has complied with the terms of the agreement as well as with applicable laws, rules and regulations. QREs are incurred.

48.33(1) *Submission period.* ~~The fully completed~~ Part 3 application must be submitted no more than 180 calendar days after the property is placed in service.

48.33(2) *Required information.* ~~The Part 3~~ application must include the following information:

why? multi tenant buildings may place in service 180 days prior to completion. Developer will want to get Part 3 in ASAP

a. Certification that the eligible taxpayer is the fee simple owner or is qualified for the federal rehabilitation credit and has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit.

b. Using the qualified rehabilitation expenditures schedule form provided on the department's Web site, a schedule of total expenditures for the project, which shall identify in detail the final qualified rehabilitation expenditures and those expenditures that are not qualified.

c. A schedule of all funding sources used to finance the project, including those funding sources used to finance or reimburse both qualified rehabilitation expenditures and expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated from any government, whether federal, state, or local.

d. CPA examination. An eligible taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the department, along with a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the department or the department of revenue in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied. The department may waive the examination requirement for projects if all of the following requirements are satisfied:

(1) The final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the department, do not exceed $100,000.

(2) The qualified rehabilitation project is funded exclusively by private funding sources.

e. Any information the department or the department of revenue may require for program evaluation.

Too much time 30 days is more than reasonable. If 90 than allow certain documentation to be provided before cost cert. such as Part 3. As it stands we have to wait 90 days +/- for final invoicing + accountant audit + 90 days for review = 180 days. Cost to large projects can be hundreds of thousands.

48.33(3) *Review period.* The department and the department of revenue will make best efforts to review Part 3 applications within 90 calendar days after the application is filed. However, this time frame is not binding upon either the department or the department of revenue. The department and the department of revenue shall review the information submitted by the eligible taxpayer and determine whether a tax credit certificate may be issued. See rule 223—48.36(404A) for more information on certificate issuance.

223—48.34(404A) Fees. Applicants must pay a nonrefundable fee for the processing of Parts 2 and 3 of an application. The filing fees will be posted on the department's Web site and may be updated from time to time. The review fee for Part 2 will be due with the filing of the Part 2 application and will be based on the estimated qualified rehabilitation costs. The fee for review of Part 3 will be due with the filing of the Part 3 application and will be based on the final qualified rehabilitation costs.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.35(404A) Compliance.

48.35(1) *Annual reports.* The eligible taxpayer shall, for the length of the agreement, annually certify to the department compliance with the requirements of the agreement. The certification shall be due each year on the anniversary of the date upon which the agreement was entered into. Instructions and forms shall be made available on the department's Web site.

48.35(2) *Burden of proof.* The eligible taxpayer shall have the burden of proof to demonstrate to the department that all requirements of the agreement, Iowa Code chapter 404A, and the applicable rules are satisfied. The taxpayer shall notify the department in a timely manner of any changes in the qualification of the rehabilitation project or in the eligibility of the taxpayer to claim the tax credit provided under this chapter, or of any other change that may have a negative impact on the eligible taxpayer's ability to successfully complete any requirement under the agreement.

48.35(3) *Events of default, revocation, recapture.* If after entering into the agreement but before a tax credit certificate is issued, the eligible taxpayer or the qualified rehabilitation project no longer meets the requirements of the agreement, Iowa Code chapter 404A, and the applicable rules, the department may find the taxpayer in default and may revoke the tax credit award.

a. *Voluntary abandonment.* An applicant may choose to irrevocably decline the tax credit that is the subject of the agreement at any time after the agreement is entered into. To irrevocably decline the tax credit, the applicant shall send a letter to the department stating the applicant's decision to irrevocably decline the tax credit. The department shall notify the applicant by certified U.S. mail or courier that the tax credit has been irrevocably declined. The tax credit shall be reallocated to the extent permitted by Iowa Code section 404A.4. If the applicant wishes to apply for a tax credit on the same qualified rehabilitation project at a later date, the applicant must complete the application process as though the project is a new project.

b. *Revocation and recapture for prohibited activity; liability of certain transferees.* If an eligible taxpayer obtains a tax credit certificate from the department by way of a prohibited activity, the eligible taxpayer and any transferee shall be jointly and severally liable to the state for the amount of the tax credits so issued, interest and penalties allowed under Iowa Code chapter 422, and reasonable attorney fees and litigation costs, except that the liability of the transferee shall not exceed an amount equal to

Replace with statute language

NO!

the amount of the tax credits acquired by the transferee. The department of revenue, upon notification or discovery that a tax credit certificate was issued to an eligible taxpayer by way of a prohibited activity, shall revoke any outstanding tax credit and seek repayment of the value of any tax credit already claimed, and the failure to make such a repayment may be treated by the department of revenue in the same manner as a failure to pay the tax shown due or required to be shown due with the filing of a return or deposit form. A qualifying transferee is not subject to the liability, revocation, and repayment imposed under this paragraph. For purposes of this paragraph: material

(1) "Prohibited activity" means a breach or default under the agreement with the department, the violation of any warranty provided by the eligible taxpayer to the department or the department of revenue, the claiming of a tax credit issued under this chapter for expenditures that are not qualified rehabilitation expenditures, the violation of any requirements of Iowa Code chapter 404A or rules adopted pursuant to Iowa Code chapter 404A, misrepresentation, fraud, or any other unlawful act or omission. uncured

(2) "Qualifying transferee" means a transferee who acquires a tax credit certificate issued under this chapter for value, in good faith, without actual or constructive notice of a prohibited activity of the eligible taxpayer who was originally issued the tax credit, and without actual or constructive notice of any other claim to or defense against the tax credit, and which transferee is not associated with the eligible taxpayer by being one or more of the following:

1. An owner, member, shareholder, or partner of the eligible taxpayer who directly or indirectly owns or controls, in whole or in part, the eligible taxpayer.

2. A director, officer, or employee of the eligible taxpayer.

3. A relative of the eligible taxpayer or a person listed in paragraph "1" or "2" of this subparagraph or, if the eligible taxpayer or an owner, member, shareholder, or partner of the eligible taxpayer is a legal entity, the natural persons who ultimately own such legal entity.

4. A person who is owned or controlled, in whole or in part, by a person listed in paragraph "1" or "2" of this subparagraph.

(3) "Relative" means an individual related by consanguinity within the second degree as determined by common law, a spouse, or an individual related to a spouse within the second degree as so determined, and includes an individual in an adoptive relationship within the second degree.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.36(404A) Certificate issuance; claiming the tax credit. After consultation with the department of revenue to determine whether the terms of the agreement, Iowa Code chapter 404A, and the applicable rules have been met, the department shall issue a tax credit certificate to the eligible taxpayer stating the amount of tax credit under Iowa Code section 404A.2 the eligible taxpayer may claim, or the department shall issue a notice that the eligible taxpayer is not eligible to receive a tax credit certificate. The department shall issue the tax credit certificate or the notice not later than 60 days following the completion of the examination review, if applicable, and the verifications and consultation required under this rule. Notwithstanding the foregoing, the eligibility of the tax credit remains subject to audit by the department of revenue in accordance with Iowa Code chapters 421 and 422. For information on how to claim the tax credit, see department of revenue rules 701—42.54(404A,422), 701—52.47(404A,422), and 701—58.10(404A,422).

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

223—48.37(303,404A) Appeals. Any person wishing to contest an application denial, the amount of the tax credit award, award revocation, or any department action that entitles the person to a contested case proceeding shall file an appeal, in writing, within 30 days of the department action giving rise to the appeal. Any person who does not seek an appeal within 30 days of the department action that gives rise to a right to a contested case proceeding shall be precluded from challenging the department action. Appeals will be governed by the procedures set forth in this rule, together with the process set out in

Iowa Code sections 17A.10 to 17A.19. Challenges to an action by the department of revenue related to tax credit transfers, claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to department of revenue 701—Chapter 7.

48.37(1) *Contents.* The appeal shall contain the following in separate numbered paragraphs:

a. A statement of the department action giving rise to the appeal.

b. The date of the department action giving rise to the appeal.

c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.

d. Reference to the particular statutes, rules, or agreement terms involved, if known.

e. A statement setting forth the relief sought.

f. The signature of the person or that person's representative and the mailing addresses, telephone numbers, and e-mail addresses of the person and the person's representative.

48.37(2) *Contested case proceedings.* The presiding officer in any contested case proceeding shall be an administrative law judge who specializes in tax matters.

These rules are intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

From: Rebecca McCarley [mailto:rebecca@octaspark.com]
Sent: Tuesday, March 10, 2015 9:52 AM
To: King, Steve [DCA]; Cownie, Mary [DCA]; Bennett, Berry [DCA]
Cc: Sam@chihousing.com; 'Jake Christensen'; JohnG@gronenproperties.com; 'Emily Meyer'
Subject: RE: historic tax credit

Steve –

I apologize for my late response. I had started emailing you back immediately, and then did not follow through. I just realized that I had not yet sent a response.

In general, I don't like distinctions being made in rules for projects using federal credits vs projects not using federal credits….or even more abstractly, projects that qualify vs not qualify. I think that creates confusion and the feeling of exceptions being made for one or the other. The state program should largely be a standalone program, with some streamlining of process when federal info has been compiled. Particularly for policies like a measuring period, it seems like it should be uniformly applied in either or any situation.

I would recommend a five year measuring period for qualified rehabilitation costs. This was what it was set at one point in time to align with the maximum time for the federal credit. Similar to the federal credit, I think the contract period for QREs might extend prior to the measuring period or to the end of the year in which the measuring period ends. But, it seems like there needs to be defined measuring period, particularly when you are introducing the program for a new applicant. Without any measuring period, then you are straying far from requiring a "substantial" rehabilitation at all. The minimum expenditure requirements were set at the current levels ($50,000 or 50% commercial, $25,000 or 25% residential) based on the five year measuring period, so I think that it would be appropriate to maintain that timeframe.

I'm not sure how writing that into admin rules interacts with no definition in code, so I will leave someone else to determine the extent that any period can be specified or required under current legislation.

Thanks,
Rebecca

From: King, Steve [DCA] [mailto:Steven.King@iowa.gov]
Sent: Friday, February 27, 2015 1:51 PM
To: Rebecca McCarley; Cownie, Mary [DCA]; Bennett, Berry [DCA]
Cc: Sam@chihousing.com; 'Jake Christensen'; JohnG@gronenproperties.com; 'Emily Meyer'
Subject: RE: historic tax credit

Rebecca,
This remains as good a question as the first time you asked it and I didn't provide a response. We will work on an official response to include it in the rules comments.

Does the stakeholder group have a preference or suggestion for what they prefer?

My stated preference:
Projects that qualify for the federal program would be required to follow the Chap. 47 defined rehab period.

Projects that wouldn't qualify for the federal program (i.e. Barns, private residences, non-profits that are fee-simple owners) would be allowed to incur costs over a longer period provided they are able to substantiate the pre-rehab condition and the costs incurred for the previous work.

Believing that many of these projects will fit into the small project category and won't be speculative in nature and are likely owner-financed, I think the longer rehab period could easily be identified within the Agreement.

The grayest area in the scenario's that I can think of will be small businesses that may decide not to pursue a federal credit, they would qualify for the federal program, but if they were self-financing the work they might not meet the 24 month rehab period. In that situation, it still seems like putting those terms in the agreement is the most flexible solution.

I trust this group to let me know if I'm guilty of over-reaching any authority provided by the statute.

Steve King
Deputy State Historic Preservation Officer
steve.king@iowa.gov | 515.281.4013 | 515.865.7538-cell

From: Rebecca McCarley [mailto:rebecca@octaspark.com]
Sent: Thursday, February 26, 2015 9:24 PM
To: King, Steve [DCA]; Cownie, Mary [DCA]; Bennett, Berry [DCA]
Cc: Sam@chihousing.com; 'Jake Christensen'; JohnG@gronenproperties.com; 'Emily Meyer'
Subject: historic tax credit

Steve –

One question that I still have lingering. Under the new legislation, am I correct in saying that there is no rehabilitation/measuring period to meet the minimum expenditure requirements? Minimum expenditures remain defined as $25,000 for residential (or 25%) and $50,000 for commercial (or 50%), but there is no defined rehab period so they no longer have to be met in the original 24 months, adjusted 36 months, or readjusted five years from Part 2 approval. So, the minimum expenditures might be occur over 24 months, or over five years, or over 10 years, or any other timeframe, in order for the project to qualify? Obviously, for some rehabilitation projects, there will be an apparent start and end, with the building then placed into service. However, for other rehab projects where the building is never placed out of service, the "rehab" period then can become a bit more nebulous (such as a historic house or commercial building already in use).

Thanks,
Rebecca

From:	James, Jr., Larry
To:	Stamas, Alana [IDR]
Subject:	Iowa State Historic Credit - QRE question 031115 2.DOCX
Date:	Wednesday, March 11, 2015 2:35:46 PM
Attachments:	Iowa State Historic Credit - QRE question 031115 2.pdf

Alana,

Please find attached a short memo regarding the proposed State Historic Tax Credit administrative code.

Very Truly Yours,

Larry James, Jr.

Counsel

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MEMORANDUM

TO: Alana Stamas, Iowa Department of Revenue

FROM: Peter Berrie, William Callison, Angela Christy, Larry James

DATE: March 11, 2015

RE: Iowa Historic Tax Credits - QRE Question

The memo addresses some of the issues that have arisen in connection with the determination of "qualified rehabilitation expenditures" (QREs) for Iowa historic credit purposes. In particular, the Iowa Department of Revenue has proposed rules that state, in part:

> Expenses incurred for property described in paragraph "a" of this subrule will not be qualified rehabilitation expenditures unless actually incurred by the eligible taxpayer.
>
> (1) For eligible taxpayers other than nonprofit organizations, expenses paid for with grants and forgivable loans are not considered incurred by the eligible taxpayer unless the grants and forgivable loan are treated as taxable income by the eligible taxpayer and properly includable in calculating the basis of the property.

In addition to concerns that others have raised, the above rule creates a problem as to forgivable loans. Often forgivable loans are not treated as taxable income until the conditions to forgiveness have been satisfied, which often does not occur until many years after the loan proceeds have been spent.

In any event, we believe the treatment of grants in the context of taxable entities can be reduced to a few simple rules. They follow:

1. QRE is a federal tax classification. The definition of QRE for Iowa purposes directly connects to the definition of QRE for federal income tax purposes. The Iowa regulations should so state, and not attempt to set forth, what a QRE is or is not.

2. Excludable Grant. In the event a for-profit owner directly receives a grant that is excludable from gross income for federal income tax purposes, owner does not obtain basis from expenditure of grant proceeds. In our experience, this is the case generally in situations where

the owner is a corporation. See IRC §118, §362(c)(2). The IRS has taken the position that grants to partnerships are income and are not excludable under §118-type principles.

3. Includable Grant. Where a grant is made directly to a partnership owner (or to an LLC taxed as a partnership), the grant generally constitutes taxable income and its expenditure creates basis and QREs. In the unlikely event that such a grant is excluded from income under §118-type principles, then basis would not be created and there would not be QREs.

4. Grant to An Entity Other Than the Taxpayer, and Subsequent Loan or Capital Contribution by That Entity to Taxpayer. In either case, irrespective of whether the recipient of the grant is taxed on the grant, the character of the loan or capital contribution to the owner entity is the same. If the owner entity spends the loan/capital contribution on basis-worthy items it obtains basis and QREs.

From: David Adelman [mailto:dadelman@cgagroup.com]
Sent: Sunday, March 22, 2015 9:00 PM
To: King, Steve [DCA]; Cownie, Mary [DCA]; mary.cownie@gmail.com
Cc: Stamas, Alana [IDR]; Daniels, Victoria [IDR]; Humes, Adam [AG]
Subject: memo for call tomorrow

Steve, Mary, Victoria and Alana-

First and foremost, thank you for incorporating many of the changes suggested by my clients. I appreciate your hard work and providing the very comprehensive memo on Thursday evening.

I believe the Dept of Revenue rules are ok from the standpoint of the Smart Growth Coalition and Hubbell (my two clients)

As I write this email, the only concerns I have heard is addressed in the attached memo (a DCA rule). If I receive any additional information I will forward it on but wanted you to review in hopes the Department will accept the suggestion on the call or prepare your remarks as to the justification of keeping the rule as is.

Thank you for all your work and consideration.

David

David Adelman | Cornerstone Government Affairs
Austin | Baton Rouge | Chicago | Des Moines | Houston | Jackson | Richmond | Washington, DC

(515) 491-1015 mobile | (515) 418-9871 direct

321 East Walnut Street, Suite 140
Des Moines, IA 50309

on the web @ www.cgagroup.com

MEMORANDUM

TO: Kristen Vander Molen, Department of Cultural Affairs & Alana Stamas, Department of Revenue
FROM: David Adelman – Lobbyist, Smart Growth Coalition
DATE: Monday, March 23, 2015
RE: Comments to draft rules for adopted filing and response to public comments sent March 19, 2015

The Smart Growth Coalition (the "Coalition") respectfully submits the following comments as it relates to the Department of Cultural Affairs ("DCA") draft rules for adopted filing sent to Stakeholders on March 19, 2015 on behalf of Directors Mary Cownie and Courtney Kay-Decker. The Coalition requested in comments dated February 3, 2015 that DCA amend Iowa Administrative Rule 223 – 48.28(2) and 223 –48.30(1) and suggested proposed amendments as provided by Ashley Aust, Corporate Counsel, Hubbell Realty Company on February 12, 2015. The proposed amendments to correct Iowa Administrative Rule 223 – 48.28(2) and 223 –48.30(1) were not accepted by DCA. We hope the DCA views the comments set forth below as constructive and will make the necessary changes in order to comply with the legislation passed by the 85th General Assembly and signed by the Governor. Without the change set forth below, the Coalition feels that the changes set forth in the draft rules will significantly delay the application process and cause a chilling effect on historic preservation and economic growth in Iowa.

The Coalition respectfully requests that the draft rules are amended to incorporate the following amendments for the reasons set forth below:

> We propose that 48.28(2)(b) is amended as follows:
>
> "b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the ~~approved~~ federal Part 1 application <u>and attachments, if any,</u> unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal <u>rehabilitation</u> credit, and the applicant must provide proof of permission from the fee simple owner as described in subrule 48.27(2)."
>
> We propose that 48.30(1)(b) is amended as follows:
>
> "b. If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the ~~signature page of the approved~~ federal Part 2 application ~~signed by the National Park Service~~ <u>and attachments, if any.</u> The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit and must provide proof of permission from the fee simple owner as described in subrule 48.27(2)."

"Eligible Taxpayer" is defined in Iowa Code Section 404A as "the owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project."

Iowa Administrative Rules 223 – 48.28(2) provides that "if the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the approved federal part 1 application…." Iowa Administrative Rules 223 – 48.30(1)(b) provides that "if the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the signature page of the approved federal part 2 application signed by the National Parks Service."

For the federal part 1 application and the federal part 2 application, the National Parks Service has 90 days, as the minimum, to review each federal part 1 application and to review each federal part 2 application. For the state part 1 application and the state part 2 application, DCA has a 90-day review period as set forth by the draft rules and in addition to the federal part 1 application and the federal part 2 application 90-day review. By requiring the approved federal part 1 application and the approved federal part 2 application as set forth in sections 48.28 and 48.30 respectively, DCA is causing delays consisting of approximately six to nine months to a qualified rehabilitation project and may cause a qualified rehabilitation project to be deemed infeasible by eligible taxpayers. If the qualified rehabilitation project is deemed infeasible by an eligible taxpayer, historic preservation of qualified rehabilitation projects will not occur and buildings that meet the qualified rehabilitation project definition will be demolished. This section of the draft rules and the process for the state part 1 application and the state part 2 application undermines the purpose of the Historic Preservation and Cultural and Entertainment District Tax Credits.

In the response to public comments provided by DCA on March 19, 2015, DCA states "the Departments disagree because there are differences between the federal program and state program that are relevant to this issue. The federal program does not include a requirement that applicants must be the "eligible taxpayer" as defined under the Iowa statute. Therefore, the requirements of the state program are necessarily different."

The Coalition respectfully disagrees with the DCA's position on this requested change because 36 CFR §67.3(1) states as follows:

> "Ordinarily, only the fee simple owner of the property in question may apply for the certifications described in §§67.4 and 67.6 hereof. If an application for an evaluation of significance or rehabilitation project is made by someone other than the fee simple owner, however, the application must be accompanied by a written statement from the fee simple owner indicating that he or she is aware of the application and has no objection to the request for certification."

The Code of Federal Regulations sets forth an acceptable review process for "another person who will qualify for the federal rehabilitation credit allowed under Section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project" as defined by Iowa Code 404A.1(3). Therefore, it is acceptable for the DCA to require "a written statement from the fee simple owner indicating that he or she is aware of the application and has no object to the request for certification" and a certification from the applicant that the applicant plans to apply and expects to qualify for the federal credits as set forth in the draft rules. However, the additional requirements of the approved federal part 1 application and the approved federal part 2 application are unnecessary and detrimental to the purpose of the Historic Preservation and Cultural and Entertainment District Tax Credits.

Iowa Administrative Rule 223 – 48.31 and 48.32 provide the mechanism for DCA to control the "differences between the federal program and state program that are relevant to this issue" as follows. Iowa Administrative Rule 223 – 48.31 states that "the applicant's application will be scored based on the steps taken toward ownership as described in subrule 48.31(6)" and rule 223 – 48.31(6)(c) states "[w]eighted preference will be given to projects of applicants that are currently fee simple owners of the property." Furthermore, Iowa Administrative Rule 223 – 48.32 states a "condition precedent to any agreement will be proof that the eligible taxpayer is the actual fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credits."

From: Stone, Jason M. [mailto:JasonStone@davisbrownlaw.com]
Sent: Monday, March 23, 2015 12:38 PM
To: Stamas, Alana [IDR]
Subject: SHTC

Dear Alana:

Just to follow-up on my call, here are my thoughts on the DOR Rules. I am providing these on my behalf and not on behalf of any client:

1. While I still have questions about why non-profit use is being targeted and I am concerned about the contract and how the rules will be implemented, overall, I think the new rules are an improvement and better align with the new Iowa statute and federal law. However, here are a couple of potential tweaks to consider that might improve the language for all parties involved:

A. 42.54(3) contains a sentence that states: In accordance with Internal Revenue Code 47, the types of property and services claimed as qualified rehabilitation expenditures must be for "structural components," as that term is defined in Treasury Regulation 1.48-1(e)(2), and amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees and other construction-related costs." That isn't a wholly accurate statement. The concept of structural components is relevant and does have an impact on QREs, but it is actually relates to a slightly different issue. It would be much better to simply cross-reference IRC 47(c)(2) and T. Reg. 1.48-12(c), which define QREs for federal purposes. It would eliminate overly narrow and overly broad statements within the current language.

B. The section that addresses non-profits should be modified to reference tax-exempt entities as defined in IRC 168(h)(2). The term non-profit is broader than the term tax-exempt (e.g. an Iowa non-profit could be subject to tax and the state and federal level). IRC 168(h)(2) contains the federal definition that is used in determining tax-exempt use, which I understand is your issue. Therefore, it would be best to tie into that.

C. The section that addresses non-profits is also overly-broad and needs to be narrowed. There are certain exceptions to tax-exempt use that are not captured by your language. For example, property used by a tax-exempt entity in an unrelated trade or business subject to tax is treated differently than standard tax-exempt use. To better align with the federal law, I would simply state something like this after noting that grants, etc, do not create QREs except as otherwise allowed by federal law: "In making that determination, Section 47(c)(2), including Section 47(c)(2)(B)(v), which limits qualified rehabilitation expenditures for certain tax-exempt use property, will be taken into account." It highlights the issue for people and doesn't unintentionally modify federal law in violation of the Iowa statute.

Call if you have questions.

Sincerely,
Jason

DAVISBROWN LAW FIRM
Jason M. Stone, JD, LL.M| Shareholder| Direct: 515-246-7912| Mobile: 515-554-0956|Fax: 515-471-7912
The Davis Brown Tower|215-10th Street, Suite 1300|Des Moines, Iowa 50309|www.DavisBrownLaw.com

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From: Mary Ottoson [mary@hobarthistoricrestoration.com]
Sent: Monday, March 23, 2015 2:43 PM
To: King, Steve [DCA]
Subject: Comments on new adopted filing 3/23/15

Steve,

Please find our comments from today's conference call attached. We would have spoken up, but it seemed that time was short and there were others ahead of us, that DCA wanted to allow to comment.

Thank you for the opportunity.

Mary Ottoson

[cid:image003.png@01D06577.C72AF820]Mary Ottoson
3330 Southgate Ct. SW, Suite 250C, Cedar Rapids, IA 52404 P 319.826.6532 C 708.218.6885 F 319.826.6534http://www.hobarthistoricrestoration.com<http://www.hobarthistoricrestoration.com/>

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TO: Steve King, Department of Cultural Affairs
FROM: Mary Ottoson, Hobart Historic Restoration
DATE: Monday, March 23, 2015
Re: Comments to draft rules for adopted filing and response to public comments sent March 19, 2015

Dear Steve,

Below you will find a brief summary of our comments to what DCA and IDR released on March 19, 2015. They are broken up by category and refer to the "Responses to Public Comments on ARC1836C and ARC1837C" and "DCA proposed rules for adopted filing."

Please review and consider these comments prior to filing on March 27, 2015.

Thank you.

Mary Ottoson
Mary@hobarthistoricrestoration.com
319-826-6532

SHPO STAFFING

SHPO Response #96, page 18 of 25 in "Responses to Public Comments on ARC 1836C….":
In response to the comment on how fees, as referenced in proposed subrule 223—48.34, are budgeted, *see* App. at 044, the fees are intended to be used for the effective administration of the program. With the help of these dollars, in the last 18 months, the Department of Cultural Affairs has increased the number of full-time employees that administer the state historic tax credit program; the program has been moved on-line for greater efficiency and transparency; and staff has established a formal system for meeting with applicants to provide more in-depth assistance to program users. The Department has amended the proposed rules to include the fee schedule. *See* response 18.

Our comment:
So if SHPO/DCA has raised fees to help get more staff, then why is there an argument that staff shouldn't be held to the 90 day review time? If there is more staff, and there are more funds available to hire and maintain that staff, then review within 90 days should be feasible and mandatory. It is unacceptable fees have increased to support more staff, but timelines are not mandatory and there is still the potential (as currently experiencing) for review times exceeding 90 days.

90 DAY REVIEW PERIOD

SHPO Response #65, page 14 in "Responses to Public Comments on ARC1836C…"
In response to the comment on subrule 223—48.28(5), *see* App. at 020, regarding the non-binding nature of the 90–day review period, it would not be prudent to make the stated review period a mandatory requirement. In addition, there is no statutory requirement that the Department of Cultural Affairs review the application within a specific period of time. While the Department recognizes the importance of a timely review to the applicant, to make the review period mandatory would require that there be a consequence in the event that the Department did not meet the mandatory timeline, such as automatic approval of the application. Such a consequence would be imprudent. Properties should not receive automatic approval simply because the Department may not review the project within a specific time period. All projects need thorough review.

Our comment:
Why should the applicants get penalized for slow staff review? SHPO/DCA needs to be held accountable or action taken, just as with Section 106 reviews (my general understanding is that Section 106 is a federal mandate for any projects receiving federal funding, they must undergo a Section 106 review by the state SHPO. SHPO has 30 days to review and comment. If no comment is received within 30 days, the project may proceed as planned.). SHPO needs to be held to the same schedule with tax credits, but they have 90 days to adequately review applications.

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And if SHPO finds that they are still understaffed (after raising application fees to hire more staff, which they have), then request more money for staffing instead of the tax credit program. If there is $10M for the July round, then why not request to use just 2% of $10M, then SHPO could hire at least 1 if not 2 people to conduct reviews. It is not acceptable that applicants have to just sit and wait and hope that SHPO reviews within 90 days. Developers have experienced periods of longer than 90 days and very recently (currently).

Our comment on New Adopted Filing Rules:

- Page 27 – 90 day review period in 48.30(4). SHPO should have to respond within 90 days or forfeit their right to deny the project. A good compromise would be if SHPO doesn't respond within 90 days, the project is automatically "conditionally approved" and SHPO has up to 120 days to submit their conditions. If SHPO conditions are not expressed to the applicant in writing, by the 120 days, then the project may automatically proceed as submitted. There needs to be some incentive and requirement for SHPO to review projects in a timely manner. Applicants are expected to be timely and efficient, so much SHPO. Especially when they increase fees, to add staff. If they have more staff, they should be able to review on time. Also see page 39 and top of 40.

FEE-SIMPLE OWNERSHIP AND SCORING

Our comment on SHPOs Responses related to Fee-Simple Ownership:

It appears that more points are given to applicants who own property as outright fee simple ownership, where many other state programs actually require you to wait and not purchase property. Since more programs require waiting to purchase (until you have approval, such as with CDBG, Workforce Housing, Grayfield, etc), then why wouldn't the State Historic Tax Credit act the same? These extra points should be removed for being a fee simple owner at the time of registration. As long as you qualify under federal ruling, that you will be a fee simple owner, that should be sufficient. Otherwise, it's literally going against other state tax credit rules and programs.

Our comment on New Adopted Filing Rules:

- Page 20 – should be made clear at 48.25 (2) that if an applicant is not the current fee simple owner, a Federal Part 1 and Federal Part 2 approval is required prior to any state review of a State Part 1 and Part 2. This should also be stated on page 22, under 48.27 (2).
- However, we would like to reiterate what the Smart Growth Coalition recommended as amended language on March 23, 2015 with regards to 48.28(2)(b) and 48.30(1)(b).

PART 2 AND AMENDMENTS

Our comment on New Adopted Filing Rules:

- Page 4, b) This reads like Part 2 can only be submitted during registration, when funds are available. Confusing. I thought Part 2s could be reviewed at any time during year? But that awards of tax credits are only made during Registration periods (whether that be 1, 2 or 3 times per year).
- Page 5, d) This is not realistic. What happens if between a Part 2 review and Registration, you find out the building has structural issues or material costs skyrocket…all of a sudden the applicant can't amend the Part 2 with edited rehab cost estimate? As long as amendments are filed prior to registration, then it shouldn't matter if amendments are made. The nature of rehabilitation is that during discovery, estimates fluctuate. This rule seems contradict the possiblity of having the little bit of overage that the former rules allowed for in Part 3 as outlined on page 7, d? Rules state that applicants will get 25% of the final rehab costs as outlined in Part 3 and that the original estimate will be used and then any remainder funds will be taken from the "earliest year in which tax credits are available." So which is it? What is the cap on that amount difference again? 10%?
- Page 9, 48.10(1): this reads that rehab must begin the same state fiscal year that Part 2 is approved. Well what if a Part 2 is approved well before a registration is made (for whatever reason)? Let's say, hypothetically that a project submits a Part 2 in May 1,2015 with an anticipated project cost of $3,000,000. SHPO takes over 90 days to review, putting them with an approval on August 1, 2015. They missed July Registration so they have to wait until January 16. In the meantime, they received the Part 2 approval on August 1. In October, they found out they'd have another $500,000 in engineering fees, architectural fees, and expected materials due to a structural issue that was uncovered in further investigation. This new rule on page 9 says they cannot submit an amended Part 2 with that new amount, even though the $500,000 is well over 10% allowable overrun (see page 37, 3)) of

the total anticipated project cost and was found out well before the next Registration in January 2016. This new rule should be removed. As long as the amendments are made prior to the Registration (and no amendments regarding estimated costs are allowed after successful registration), it shouldn't matter. Materials fluctuate, things change and unforeseen problems arise with buildings that SHPO is basically saying they don't care about. Also see page 28, 48.30(6). This can make or break a project and have it ready for financing and therefore ready to be approved with Registration. Again, as long as amendments are sent and approved prior to Registration, estimated rehab amount amendments should be allowed.

- Page 10, 48.10(2) again this should read "fiscal year in which the SHPO approved Part 2 of the application and successful registration". Part 2 virtually means nothing anymore, with regards to timeframe of starting work. It's the registration that kickstarts the rehab clock.
- Page 28 – 48.30(5) c – amendments should be able to be made with Part 2, prior to registration. Just because an amendment is needed should not disqualify a project from registering. This is not ok. Who is say what the difference is between an "approved project with conditions" and a project that is "ineligible for registration…but may amend its Part 2 application." That seems a very fine line that SHPO has total and sole discretion on. A flat rejection is different from asking an applicant to send amendments or meet certain conditions. This paragraph blurs that line.

GOVERNMENT FUNDING, INVESTORS AND QRES

Our comment on New Adopted Filing Rules:

- Page 15, 48.22(404A) "government funding." Definitions of government funding 1-3 are potentially troublesome, particularly #3. Would this rule out any funding from investors, since they are in theory, "anticipating" government funding through the use of tax credits? How far back can you trace funds, to determine they are "originally" some type of government funds?
- We would like to echo Smart Growth Coalition's comments submitted to DCA on 3/23/15.
- IDR should give an opinion, upfront (not at Part 3 review) at the very least on specific state funds (forgivable grants like CDBG Round 6, grayfield tax credits, workforce housing tax credits, etc.) upfront. The funding source is the same, regardless of any setup for any project.

PART 3

Our comment on New Adopted Filing Rules:

- Page 5, Item 3. Amend subrule 48.6(1), (c)(2) what about projects after 7/1/14? There's no mention of that and when part 3s must be submitted.

SCORING and PREVIOUS APPLCIATIONS

Our comment on New Adopted Filing Rules:

- Page 34, 48.31 (6) (d) Previous applications that scored high but didn't receive funding should still receive preference for future applications, regardless of a tiebreaker necessity or not. If applicant had a strong and acceptable application and everything was ready to go, but didn't get funding due to the high amount of other projects….why should they continue to be potentially/probably penalized or passed over?

SCORING AND SMALL PROJECTS

Our comment on New Adopted Filing Rules:

- Page 35, 48.31(9) There seems to be contradiction/confusion as to small projects and scoring. They can submit anytime throughout the year as long as it's within 180 calendar days of Part 2 approval? They are on a first come, first serve basis? Then they don't have to follow scoring and competitive nature of new rules? This defeats the purpose of the new system. Even small projects should be competitive and have to have a minimum score, not just first come first serve.

AWARDS

Our comment on New Adopted Filing Rules:

- Page 19, 48.23 (3rd sentence from the top), change it from fully to adequately. This will allow projects the opportunity to get funded, even if not in their entire request.