

The National Register of Historic Places: What it is and how it works

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The Historic Preservation Division of the Mississippi Department of Archives and History frequently gets calls and letters from people all over Mississippi asking how they can have their homes officially designated as historic buildings. Others inquire how they can qualify for tax credits for restoring old buildings, and many ask what we would recommend as the first step in seeking to protect a historic property from a threat of demolition. All of these concerns are related to a federal program called the National Register of Historic Places.

Established by Congress under the National Historic Preservation Act of 1966, the National Register of Historic Places is a list of buildings, districts, historic sites, archaeological sites, and other properties that are officially recognized by the United States government as being especially worthy of protection and preservation. Its primary purpose is to help federal, state, and local governments identify historically significant properties so that they can be protected from the effects of federal government activities. This is especially important in the planning of large construction projects, such as highways or reservoirs, but it is applicable to many other kinds of federally-sponsored or federally-funded projects as well. Additionally, National Register listing can make some kinds of properties eligible for certain tax benefits or grant assistance. Although the National Register was originally intended as a planning tool, it has come to be regarded by the public at large as an honor roll of historic properties, providing national recognition of their significance.

The listing of a property on the National Register does not restrict a private owner's use or disposition of the property in any way, unless development of the property involves federal funding, federal rehabilitation tax credits, or participation in some other federal program. There are no requirements for public accessibility; indeed, information about sensitive sites can be restricted from the public.

There are many different kinds of properties listed on or eligible for the National Register, including archaeological sites, battlefields, bridges, cemeteries, forts, and historic districts, but most of the inquiries we receive are for buildings, most typically houses. Properties may be proposed for the National Register in several ways. Some are identified in surveys conducted by or funded by our office, but these are usually districts or large groups of properties. Because of the small size of our staff and the large workload we handle, our office normally does not prepare nominations for individual buildings on request from the public. Instead, we rely on the public to submit nominations to us.

Anyone may sponsor a property for nomination to the National Register. One need not be the owner, but federal regulations do allow private property owners the right to block the listing of their own properties.

Typically, the nomination process for an individual, privately-owned building begins when a person contacts our office to make an initial inquiry. We will respond by asking that person to fill out a questionnaire that asks some basic questions about the property and why it is thought to be important. The questionnaire is then returned to our office along with some recent photographs of the building. On the basis of the information provided to us, we will evaluate the building to determine if it appears to meet the criteria of eligibility for the National Register. If the building does not appear eligible, we will send a letter explaining why not. If the building does appear to be eligible, we will then send the sponsor a packet containing a nomination form and instructions.

It is the responsibility of the sponsor to see that the nomination is completed. Some sponsors choose to prepare the nomination themselves, but because the requirements for writing a nomination are quite rigorous and can be very daunting to the layman, many sponsors prefer to seek assistance from consultants who specialize in preparing National Register nominations. A list of consultants is included with the nomination packet.

A National Register nomination is a formal document that includes a detailed description of the property and any changes it has undergone, a statement explaining why the property is significant and briefly summarizing its history, a precise statement of boundaries or a legal description, several large black-and-white photographs, and a topographic map indicating the location. In Mississippi, individual building nominations must also include a sketch of the floor plan.

When the nomination is complete, it will be scheduled for presentation to the Mississippi Historic Preservation Professional Review Board, an appointed committee that meets three times each year to consider proposed nominations for approval. Before consideration by the Review Board we will notify both the owner of the property and the local government within whose jurisdiction it is located. We will follow that with another letter advising them of the Review Board's decision. If the nomination is approved by the Review Board, the staff insures that the documentation is complete and ready for submission. Upon finalization the nomination is sent to the National Register office of the US Department of the Interior in Washington, DC, for final approval. After several weeks the National Register office will either notify us of their decision or return the nomination to us for additional work. When we receive notification that the property has been listed, we will notify the owner and the local government. The whole process usually takes about six months after we receive the nomination, but can take longer, especially if additional information or revisions are needed.

In order for a building to qualify for the National Register, it must meet certain criteria. These are rather complex, but essentially boil down to two factors, significance and integrity.

Significance is the capacity of a property to embody, represent, or help us understand some important aspect of the history of the nation, state, or local community. An eligible property may represent an important event or development, the contributions of a notable person, an important type of building or architectural style, or some other historical theme. In essence, it must have historical meaning. As a general rule, a property must have acquired significance from historical events or developments at least fifty years ago, unless it can be documented to be exceptionally important.

Integrity is the degree to which a property retains its historical identity and authenticity, in such characteristics as appearance, materials, and location. For example, a house that is significant because it was the home of a very prominent person should look about like it did when that person lived there. If it has changed too much, it is not eligible.

A building or any other kind of historic site or structure that possesses a high degree of both significance and integrity is very likely to be eligible for the National Register of Historic Places.

At the present time, Mississippi has over 1250 listings in the National Register, of which over 130 are historic districts containing as few as two or three buildings to as many as 700 or more. Many others are archaeological or historic sites. Most of the listings, however, are individual buildings.

For more information about the National Register of Historic Places, write to the Historic Preservation Division, Mississippi Department of Archives and History, P. O. Box 571, Jackson, Mississippi 39205, or call us at (601) 576-6940.

RESULTS OF LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES

Eligibility for Federal tax provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 revises the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984, and as of January 1, 1987, provides for a 20 percent investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15 percent and 20 percent Investment Tax Credits (ITCs) for rehabilitations of older commercial buildings are combined into a single 10 percent ITC for commercial or industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Eligibility for State tax credits. In March 2006, Governor Haley Barbour signed Senate Bill 3067, which created the Mississippi state historic preservation tax incentives program to encourage the rehabilitation of historic buildings. The Mississippi Department of Archives and History is responsible for the administration of the program, which provides for a state income tax credit equal to 25% of the qualified expenses of rehabilitating historic structures used for residential or business purposes. Properties do not need to be income-producing to qualify for the state tax credit; therefore, rehabilitations of owner-occupied residences are eligible. For further information or to receive an application packet, contact the Department at 601-576-6940 or refer to the web site at www.mdah.state.ms.us.

Consideration in planning for Federal, federally licensed, and federally assisted projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow for the Advisory Council on Historic Preservation to have an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Consideration in issuing a surface coal mining permit: In accordance with the Surface Mining and Control Act of 1977, there must be consideration of historic values in the decision to issue a surface coal mining permit where coal is located. For further information, please refer to 30 CFR 700 et seq.

Qualification for Federal grants for historic preservation when funds are available: Presently, funding is unavailable.

RIGHTS OF OWNERS TO COMMENT AND/OR OBJECT TO LISTING IN THE NATIONAL REGISTER OF HISTORIC PLACES

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing may submit, to the State Historic Preservation Officer, a notarized statement certifying that the party is the sole or partial owner of private property and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility of the property for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow for the

Advisory Council on Historic Preservation to have an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If you choose to object to the listing of your property, the **notarized** objection must be received by Kenneth H. P'Pool, Director, Historic Preservation Division, P. O. Box 571, Jackson, Mississippi 39205 by the day of the Review Board meeting.

If you wish to comment on the nomination of your property to the National Register, please send your comments to the State Historic Preservation Office before the Mississippi Historic Preservation Professional Review Board considers this nomination. A copy of the nomination and information on the National Register and the Federal tax provisions are available from the above address upon request.

National Register Historic Districts Frequently Asked Questions

An area in your community is being considered for nomination to the National Register of Historic Places as a historic district. The National Register is the nation's official list of historic properties significant to the heritage of our communities, and it is a great honor for properties to receive this designation.

Usually, property owners and other citizens have questions about the effects that National Register listing might have on their property or community. In order to help answer some of those inquiries, we have prepared the following responses to some of the most frequently asked questions:

QUESTION: Exactly what is the National Register and what is its purpose?

ANSWER: Established by Congress under the National Historic Preservation Act of 1966, the National Register of Historic Places is a list of buildings, districts, structures, historic sites, archaeological sites, and other properties that are officially recognized by the United States government as being worthy of preservation because of their significance to some aspect of our history. The National Register is administered by the National Park Service under the Secretary of the Interior and is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archaeological resources. Properties listed in the National Register are distinguished by having been documented and evaluated according to uniform criteria established under federal regulations.

The National Register's primary purpose is to help federal, state, and local governments identify historically significant properties so that those properties can be protected from the effects of federal government activities. This is especially important in the planning of large construction projects, such as highways or reservoirs, but it is applicable to many other kinds of federally sponsored or federally funded projects as well. Additionally, National Register listing can make properties eligible for certain tax benefits or grant assistance. Although the National Register was originally intended as a planning tool, it has come to be regarded by the public at large as an honor roll of historic properties, providing national recognition of their significance to local, state, or national heritage.

QUESTION: Will National Register listing affect my property rights?

ANSWER: No. The listing of a property in the National Register does not restrict a private owner's use or disposition of the property in any way. The owner of private property may do anything that is normally permitted under city and county ordinances, even demolish a historic building, although this is not an option that is encouraged. The National Register does not prohibit a private owner from making alterations to the property; but, if changes are made that significantly alter the historic appearance of the property, it can be delisted from the National Register.

QUESTION: Do I have to open my home for tours once it is listed in the National Register?

ANSWER: No. There is no requirement that buildings listed in the National Register be accessible to the public. That matter is totally at the discretion of the property owner.

QUESTION: Will the government maintain my property for me after it is listed in the National Register?

ANSWER: No. However, certain financial incentives do exist to assist in the rehabilitation of historic buildings. Presently, there is a 20% federal investment tax credit for certified rehabilitation of income-producing properties listed in the National Register. "Certification" of the project means that the work has been done according to the Secretary of the Interior's *Standards for Rehabilitation*, which is a common sense guideline to making older buildings functional for modern times while retaining the characteristics that make them historic. Because the *Standards* promote a "repair" (rather than "replace") philosophy, following them costs no more, on average, than any other construction.

In addition to this federal tax credit, Mississippi also offers a 25% tax credit on state income taxes. This state credit applies to both income-producing properties and owner-occupied residences and can be used in conjunction with the federal tax credit on qualified projects.

Owners of properties listed in the National Register are also eligible to apply for federal restoration grant-in-aid, whenever funds are appropriated by Congress (this is rare and usually applies only in emergency situations such as on the Mississippi Gulf Coast after Hurricane Katrina). Also, state law permits municipalities to exempt rehabilitated structures in designated historic districts from municipal ad valorem taxes for a period of up to seven years.

QUESTION: If my property is listed in the National Register, could it restrict potential federal projects that might affect my property?

ANSWER: Prior to funding, permitting, or licensing of a project, federal agencies are required by law to assess the effects that the project will have on culturally significant properties. In order to make this assessment, the agency must determine if there are properties in the project area that are either already listed in the National Register or are *eligible* for listing in the National Register. Since the law stipulates that National Register *eligible* properties must be treated by the federal agency as if they were already listed in the National Register, the actual National Register listing status is of no consequence in this situation. Both National Register listed and National Register eligible properties are required to receive the same consideration.

Should it be found that the proposed project would impact National Register listed or eligible properties, the federal agency must participate in a review process that attempts to find ways of mitigating any adverse effects on the historic property. This does not mean that the projects cannot be undertaken; however, alternatives to damaging historically significant sites must be explored. This review process permits public input and has frequently protected property owners (especially homeowners) from the adverse impacts of federal construction projects.

QUESTION: Will privately owner property be designated as a "Mississippi Landmark" once it is listed in the National Register?

ANSWER: Not without a written request from the property owner. The "Mississippi Landmark" program is a state designation, established under the State Antiquities Act (Section 39-1-7 et seq. of the Mississippi Code of 1972, as amended), and is totally separate from the National Register program. The designation of a property as a "Mississippi Landmark" is not dependent upon its listing in the National Register, or vice versa.

The Mississippi Landmark program primarily applies to publicly owned properties, since historic buildings and sites owned by the state, county, or municipal governments are automatically covered under the law. Privately owned properties may be designated as a "Mississippi Landmark" *only upon the written request* of the property owner. Once designated, proposed alterations to "Mississippi Landmark" properties must be reviewed and approved by the Department of Archives and History.

QUESTION: What are the advantages to being listed in the National Register?

ANSWER: The financial advantages of National Register listing are the eligibility for federal and state tax incentives to rehabilitate certain historic properties and the eligibility to apply for federal restoration grants-in-aid when available.

The chief benefit, however, may be an intangible one—the pride that comes from official recognition that a building, site, or district possesses cultural and historical significance. Most Mississippians are proud of our state's heritage and are honored when properties in their communities are entered in the National Register of Historic Places. With more than 200 historic districts already listed in the National Register, many Mississippians are enjoying both the financial incentives and sense of accomplishment derived from helping to preserve part of the special character and unique history of our state.

A BRIEF SUMMARY OF THE NATIONAL REGISTER OF HISTORIC PLACES

The National Register of Historic Places is a program designed to identify, recognize, and to some degree, protect significant historic resources. Listing on the National Register does not restrict the rights of property owners, nor does it prevent destruction of historic properties, but there are benefits to both the private owner and the general public.

THE NATIONAL REGISTER DOES:

- ◆ Identify and evaluate significant buildings, structures, sites, objects, and districts according to the established National Register criteria.
- ◆ Make the public aware of historic resources by documenting their importance.
- ◆ Provide information about historic resources that can be used as a planning tool for federal, state, local, and private agencies.
- ◆ Expedite the review of federal undertakings that could affect historic resources and attempt to mitigate adverse effects on identified historic properties.
- ◆ Make owners of historic properties eligible for federal grants for preservation projects, when such funds are available.
- ◆ Enable income-producing depreciable historic properties to use tax incentives when rehabilitated according to the Secretary of the Interior's Standards.
- ◆ List properties only if they meet the National Register criteria and the owner, or a majority owners, agree to the listing.

THE NATIONAL REGISTER DOES NOT:

- ◆ Limit or restrict the rights of Property owners to use, develop, or sell their historic properties; require that historic properties be maintained, repaired, or restored; or require that historic properties be open to the public.
- ◆ Provide markers or plaques for listed properties. Owners may purchase plaques and markers if desired.
- ◆ Automatically facilitate local landmark designation or local district zoning. Nor does it require the review of state, local, or privately funded projects that could affect historic properties.
- ◆ Automatically stop federal undertakings that could affect historic resources.
- ◆ Assure that owners of historic properties will receive grants when funds are available.
- ◆ Automatically provide state or local tax benefits or low-interest loans to owners.
- ◆ List historic properties according to local criteria or if the owner or majority of owners object to the listing.

FINANCIAL INCENTIVES FOR REHABILITATION

The tax codes of the United States and of the state of Mississippi provide substantial financial incentives for taxpayers who rehabilitate Mississippi's historic buildings. Historic rehabilitation tax benefits have been provided by the federal tax code since 1976, and in 2006 the state of Mississippi created a state tax credit, as well. In some cases, rehabilitation projects may qualify property owners for both state and federal tax credits. This handout describes both the federal and state programs, which are administered in Mississippi by the Mississippi Department of Archives and History.

FEDERAL HISTORIC PRESERVATION TAX INCENTIVES PROGRAM

The Historic Preservation Tax Incentives Program is one of the most effective federal programs to promote the rehabilitation and preservation of our nation's irreplaceable historic resources. Since the tax credits were established, the National Park Service (NPS) has administered the program in partnership with the Internal Revenue Service and the State Historic Preservation Office, which in Mississippi is the Department of Archives and History (MDAH).

Current tax incentives for preservation, established by the Tax Reform Act of 1986, include a 20% credit for the substantial rehabilitation of historic structures used for income-producing purposes, and a 10% credit for the rehabilitation of non-historic buildings constructed before 1936 and used for income-producing purposes other than residential. However, on December 22, 2005, President Bush signed House Resolution 4440, the ***Gulf Opportunity Zone Act of 2005***, commonly referred to as the GO Zone legislation, which provides economic development incentives for the areas of the country that were devastated by Hurricane Katrina. One of the many benefits offered in the legislation is a provision to increase the preservation tax credits from 20% to 26% and from 10% to 13% for properties located in the GO Zone, provided the qualified rehabilitation expenditures with respect to such buildings are incurred on or after August 28, 2005, and before January 1, 2009.

Mississippi counties located in the GO Zone are as follows: Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Humphreys, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo.

A tax credit is better than a deduction. An income tax deduction merely lowers the amount of income subject to taxation, but a credit lowers the amount of tax owed. In general, for each dollar of tax credit earned, the amount of income tax owed will be reduced by one dollar.

The requirements for both the 20% and 10% federal credits are summarized below.

20% REHABILITATION TAX CREDIT

The 20% rehabilitation tax credit equals 20% of the amount spent in a ***certified rehabilitation*** of a ***certified historic structure***. Thus, under ideal circumstances, if an owner spent \$100,000 restoring a historic building, he would get 20%, or \$20,000, worth of tax credit. Unused tax credit can be "carried back" one year and "carried forward" up to 20 years. Long-term lessees may also apply for the credit if their lease is 27.5 years for residential property or 39 years for nonresidential property.

How does a Building Become a Certified Historic Structure?

A ***certified historic structure*** is a building that is either:

1. Listed individually in the National Register of Historic Places, or
2. Located in a National Register-listed historic district **and** certified by NPS as contributing to the historic significance of that district. To request certification by the NPS, Part 1 of the Historic Preservation Certification Application, "Evaluation of Significance," must be submitted to MDAH. After MDAH reviews the application, it will be forwarded to NPS for final review and approval.

To determine if a property is listed on the National Register, a property owner may contact the Historic Preservation Division of MDAH at (601) 576-6940. Owners of historic buildings that are not yet listed either individually or as part of a historic district may use the Historic Preservation Certification Application, Part 1, to request a *preliminary determination of significance*. If the NPS determines that the property meets the National Register criteria, the owner may proceed with the rehabilitation project while the process of nominating the building or a district is underway.

What is a Certified Rehabilitation?

The National Park Service must approve, or "certify," all rehabilitation projects seeking the 20% tax credit. A ***certified rehabilitation*** is a rehabilitation of a certified historic structure that is approved by NPS as meeting the Secretary of the Interior's *Standards for Rehabilitation*. The Standards cover both interior and exterior work.

IRS Requirements

To be eligible for the 20% rehabilitation tax credit, a project must also meet the following basic tax requirements of the Internal Revenue Code:

- The building must be *depreciable*. It must be used in a trade or business or held for the production of income (offices; commercial, industrial or agricultural enterprises; or rental housing). It may not serve exclusively as the owner's private residence.
- The property must be placed in service (i.e., returned to use). Furthermore, the owner must hold the building for five full years after completing the rehabilitation, or pay back the credit. If the owner disposes of the building within a year after it is placed in service, 100% of the credit is recaptured. For properties held between one and five years, the tax credit recapture amount is reduced by 20% per year.
- The rehabilitation must be *substantial*, which means that during a 24-month period selected by the taxpayer, rehabilitation expenditures must exceed the **greater** of \$5,000 or the adjusted basis of the building. The adjusted basis is generally the purchase price, minus the cost of land, plus improvements already made, minus depreciation already taken. If the rehabilitation is completed in phases, the same rules apply, except that a 60-month measuring period is used. This phase rule is available only if there is a set of architectural plans and specifications for all phases of the rehabilitation, and it can reasonably be expected that all phases will be completed.
- The building must be a *certified historic structure* when it is placed in service. This means, generally, for buildings not individually listed in the National Register that Part 1 of the Historic Preservation Certification Application must have been filed before the building was placed in service.

Application Process

To qualify for the tax incentives, property owners must complete the appropriate part or parts of the Historic Preservation Certification Application. Completed applications, along with photographs, are sent first to MDAH for review, and then are forwarded to NPS for final review and approval. The three-part application is used to: (1) request that a property be designated a *certified historic structure*, (2) describe the proposed rehabilitation, and (3) request certification of completed work. MDAH and the NPS review the rehabilitation project for compliance with the Secretary of the Interior's *Standards for Rehabilitation*. The entire project is reviewed, including related demolition and new construction, and is certified only if the overall rehabilitation project meets the Standards. It is **strongly** recommended that the application be submitted for review and approval before starting work so that potential problems in compliance with the Standards, which might jeopardize the tax credit, can be avoided.

Allowable Expenditures

Qualified rehabilitation expenditures include costs associated with the work undertaken on a structural component of a historic building—such as walls, roofs, windows, floors—as well as central air conditioning and heating systems, plumbing and plumbing fixtures, electrical wiring and lighting fixtures, elevators, and other components related to the operation or maintenance of the building. There are also “soft costs” that qualify, such as architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs. The credits do not apply to such costs as acquiring or furnishing the building, new additions, new building construction, or parking lots, sidewalks, landscaping, or other facilities related to the building.

Tips for Getting Your Project Approved, or “Certified”

- *Apply as soon as possible—preferably before beginning work.* Consult with MDAH as soon as possible to receive an application and regulations. Submit your application early in the project planning and wait until the project is approved in writing by NPS before beginning work. Owners who undertake projects without prior approval from NPS do so at their own risk.
- *Thoroughly photograph the building inside and out before beginning any work.* Without sufficient “before rehab” photographs, it may be impossible for the NPS to approve a project. **NPS prefers 35mm photographs (color) rather than digital or instant Polaroid photos.** Photo documentation should include views of each exterior elevation and all major interior spaces, typical minor spaces, and significant details such as porches, mantelpieces, staircases, etc.
- Read and follow the Secretary of the Interior's *Standards for Rehabilitation* and the *Guidelines for Rehabilitating Historic Buildings*. If you have questions about how the Standards apply to your building, consult with MDAH. All work, including both exterior and interior work, is reviewed for compliance with the Standards.
- Applicants should understand that this is a **federal** program. Just because an owner has received approval from a local preservation commission for a rehabilitation project does not mean that the work will be certified by NPS. Without NPS certification, there can be no federal tax credit.
- In order to receive project approval, a Historic Preservation Certification Application must be submitted to MDAH, which first reviews the form before forwarding it to NPS for a decision. To receive the necessary application forms, Secretary of the Interior's *Standards for Rehabilitation*, and other pertinent information, please contact the Historic Preservation Division of MDAH at (601) 576-6940.

10% REHABILITATION TAX CREDIT

The 10% tax credit is available for the rehabilitation of **non-historic** buildings that were built before 1936 and that will be used for income-producing purposes other than residential. A building that was moved after 1936 is ineligible for the 10% rehabilitation tax credit. **Owners of historic buildings whose rehabilitation is denied certification for the 20% credit may not claim the 10% credit.**

As with the 20% tax credit, the rehabilitation must be *substantial*, meaning that the cost of the rehabilitation must exceed the **greater** of either \$5,000 or the adjusted basis of the property, which is generally the purchase price, minus the cost of land, plus improvements already made, minus depreciation already taken. The property must be *depreciable*. The 10% credit applies only to buildings rehabilitated for *non-residential* uses. Rental housing would not qualify; however, hotels would since they are considered to be in commercial use.

Buildings listed in the National Register of Historic Places are NOT eligible for the 10% credit. Buildings located in National Register historic districts are presumed to be historic and are, therefore, not eligible for the 10% credit unless the owner files Part 1 of the Historic Preservation Certification Application and receives a determination from the National Park Service that the building does not contribute to the district and is not a certified historic structure. To determine if a property is listed individually on the National Register or located in a National Register historic district, or to request Part 1 of the Historic Preservation Certification Application, contact the Historic Preservation Division of MDAH at (601) 576-6940.

Projects undertaken for the 10% credit must meet the following physical test for retention of external walls and internal structural framework:

- at least 50% of the building's walls existing at the time the rehabilitation began must remain in place as external walls at the work's conclusion, and
- at least 75% of the building's existing external walls must remain in place as either external or internal walls, and
- at least 75% of the building's internal structural framework must remain in place.

Claiming the 10% Rehabilitation Tax Credit

The credit must be claimed on IRS form 3468 for the tax year in which the rehabilitated building is placed in service. There is no formal review process for rehabilitations of non-historic buildings.

Other Tax Provisions Affecting Use of Preservation Tax Incentives

A number of provisions in the Internal Revenue Code affect the way in which real estate investments are treated. These provisions include the *alternative minimum tax*, the "*at-risk*" rules, and the *passive activity limitation*. What these provisions mean, in practice, is that many taxpayers may not be able to use all of the tax credits earned in a certified rehabilitation project. For help in determining the tax and other financial implications of these provisions on your tax situation, it is recommended that a tax attorney, accountant, or other professional tax advisor, legal counsel, or the IRS be consulted.

This has been a brief introduction to the federal historic preservation tax incentives program. The Internal Revenue Service coordinates the tax aspect of this program. Specific tax questions can be directed to Colleen Gallagher, the Internal Revenue Service's national coordinator for the historic preservation tax incentives program. Her telephone number is (651) 726-1480, or she may be reached by e-mail at Colleen.K.Gallagher@irs.gov. Questions pertaining to proposed rehabilitation work or to completing the tax application forms should be addressed to MDAH at (601) 576-6940.

MISSISSIPPI'S STATE HISTORIC PRESERVATION TAX INCENTIVES PROGRAM

In March 2006, Governor Haley Barbour signed Senate Bill 3067, which created the Mississippi state historic preservation tax incentives program to encourage the rehabilitation of historic buildings. The Mississippi Department of Archives and History (MDAH) is responsible for the administration of the program, which provides for a state income tax credit equal to 25% of the qualified expenses of rehabilitating historic structures used for residential or business purposes. Properties do not need to be income-producing to qualify for the state tax credit; therefore, rehabilitations of owner-occupied residences are eligible. Only expenditures incurred after January 1, 2006, qualify.

Properties qualifying for the 20% (or 26% in the Gulf Opportunity Zone) federal preservation tax credit will also qualify for the state tax credit. In effect, the combined federal and state credits can reduce the cost of a certified rehabilitation of an income-producing historic structure by 45% (51% for properties located in the Gulf Opportunity Zone).

Eligible Properties

Properties eligible to receive the credits are those:

- individually listed in the National Register of Historic Places,
- contributing to the significance of a National Register historic district, or
- designated as Mississippi Landmarks.

Eligible Projects

1. To be eligible, the qualified rehabilitation expenditures must exceed:
 - \$5,000 in the case of an owner-occupied dwelling, or
 - 50% of the total basis in the property in the case of all properties other than owner-occupied dwellings. (Generally, "basis" is the purchase price, less the cost of the land, plus any improvements already made to the property, minus the depreciation taken on the property.)
2. All work must meet the Secretary of the Interior's *Standards for Rehabilitation*.
3. Only rehabilitation expenditures incurred after January 1, 2006, qualify.
4. Not-for-profit entities are ineligible to receive the credits.

Application Process

To qualify for the state tax credit, property owners must submit a three-part State Historic Preservation Certification Application, along with photographs, to MDAH. However, for properties that also qualify for the federal credits, the property owner need only submit the federal certification application, along with the one-page form, "Statement of Intent: Mississippi State Historic Preservation Tax Credit." The three-part application is used to: (1) request certification that the property is eligible to receive the credit; (2) request a determination that the proposed rehabilitation is in compliance with the Secretary of the Interior's *Standards for Rehabilitation*; and (3) request certification that the project, as completed, meets the Standards. MDAH reviews the entire project, including related demolition and new construction, and certifies the project only if all work meets the Standards. It is **strongly** recommended that the application be submitted for review and approval before starting work so that potential problems in compliance with the Standards, which might jeopardize the tax credit, can be avoided.

Photographs

Along with the Historic Preservation Certification Application, a complete set of color photographs, no smaller than 4"x6" in size and showing both the interior and exterior of the building **before** the start of the project, must be submitted. Photographs must be clear and of high quality, showing each exterior elevation (front, rear, and both sides) and all major and representative minor interior spaces. In addition, photos of significant features, such as porches, mantelpieces, staircases, ceiling medallions, etc., should be included. No Polaroids, photocopies, photographs sent via e-mail, or photographs on disk, CD, or DVD will be accepted. When the project is completed, a full set of "after rehab" photographs must be submitted with the request for final certification.

Qualified Expenditures

Allowable expenditures include costs associated with the work undertaken on a structural component of a historic building—such as walls, roofs, windows, floors—as well as central air conditioning and heating systems, plumbing and plumbing fixtures, electrical wiring and lighting fixtures, elevators, and other components related to the operation or maintenance of the building. In addition, there are "soft costs" that qualify, such as architectural and engineering fees, site survey fees, development fees, and other construction-related costs. The tax credit does not apply to such costs as acquiring or furnishing the building, new additions, new building construction, or parking lots, sidewalks, landscaping, or other facilities related to the building. (Qualified rehabilitation expenditures are defined in Section 47(c)(2)(A) of the Internal Revenue Code of 1986, as amended.)

Claiming the Credit

The Department shall issue a certificate verifying the eligible credit, and this certificate shall be attached to all income tax returns on which the credit is claimed. If the amount of the tax credit exceeds the total state income tax liability for the year in which the rehabilitated property is placed in service, the unused tax credit may be carried forward for the ten (10) succeeding tax years.

Additional Information

For additional information about the state and federal tax incentives, and to determine if a property is listed on the National Register of Historic Places or is a Mississippi Landmark, please contact the Department at the address or telephone number listed below. The National Park Service's web site (<http://www2.cr.nps.gov/tps>) contains additional information about the federal tax program, as well as technical guidance, including the Secretary of the Interior's *Standards for Rehabilitation* and the Preservation Briefs.

An application packet, which includes the State Historic Preservation Certification Application form, instructions, a sample completed application, and a copy of the Secretary of the Interior's *Standards for Rehabilitation*, is available for \$6.00 from the following address:

Historic Preservation Division
Mississippi Department of Archives and History
 P.O. Box 571
 Jackson, MS 39205-0571
 601-576-6940
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