

Rehabilitation Credit: *Certified Historic Structure, Certified Rehabilitation, Late Submission of the Historic Preservation Application*

The Internal Revenue Code and Department of the Treasury Regulations require a rehabilitation of a certified historic structure to be a certified rehabilitation, while also allowing for a late certification in certain situations.

This information is intended to provide a basic understanding of these issues, including a description of the relevant parts of Treasury Regulation § 1.48-12(d)(1), (3), and (7) which directly addresses the late submission of Part 1 or Part 3 of the Historic Preservation Certification Application (National Park Service Form 10-168).

The information does not constitute legal authority and may not be relied upon as such. The information does not amend, modify or add to the Income Tax Regulations or any other legal authority.

Most of the Department of the Treasury Regulations governing the rehabilitation credit are contained in Treasury Regulations § 1.47-7 and § 1.48-12. Furthermore, the provisions of the Internal Revenue Code including the investment credit, general business credit, at-risk rules, passive activity limitation, and alternative minimum tax can affect a taxpayer's ability claim the rehabilitation credit.

To better understand the consequences that result from the late submission of Part 1 or Part 3 of the Historic Preservation Certification Application, it is important to review the pertinent sections of the Internal Revenue Code and the Treasury Regulations.

When the Credit is Determined

Internal Revenue Code § 47(b) provides that qualified rehabilitation expenditures (QREs),

with respect to any qualified rehabilitated building (QRB), are taken into account for the taxable year in which such QRB is placed in service. However, Treasury Regulation § 1.48-12(f)(2) provides that under certain circumstances the credit may be available prior to the date the entire property is placed in service, while clarifying, in that case, the building must meet the definition of a QRB for the taxable year the rehabilitation credit is determined. For an illustration of this rule, see the Example in Treasury Regulation § 1.48-12(f)(2)(iii).

Certified Rehabilitation of a Certified Historic Structure and Late Submission of the Historic Preservation Application, Part 1

Internal Revenue Code § 47(c)(2)(B)(iv) and Treasury Regulation § 1.48-12(d)(3) require a rehabilitation to be a "certified rehabilitation." Internal Revenue Code § 47(c)(2)(C) and Treasury Regulation § 1.48-12(d)(3) define a certified rehabilitation to mean any rehabilitation of a certified historic structure which the Secretary of the Interior (through the National Park Service (NPS)) has certified to the Internal Revenue Service (IRS) as being consistent with the historic character of such property or the district in which the property is located. In general, a taxpayer claiming the rehabilitation credit must provide this information on Form 3468, Investment Credit. Treasury Regulation § 1.48-12(d)(7).

Definition of Certified Historic Structure and Late Submission of Historic Preservation Application, Part 1

Internal Revenue Code § 47(c)(3) and Treasury Regulation § 1.48-12(d)(1) define the term certified historic structure to mean any building (and its structural components) which is listed on the National Register of Historic Places (National Register), or located in a registered historic district and certified by the NPS to the IRS as being of historic significance in the district.

A request to list or designate a building as a certified historic structure is made by submitting an Historic Preservation Application, Part 1, Evaluation of Significance, to the NPS.

For purposes of Treasury Regulation § 1.48-12(d)(1), a building will be considered to be a certified historic structure at the time it is placed in service if the taxpayer reasonably believes on that date the building will be determined to be a certified historic structure and has requested on or before the placed in service date a determination from the Department of Interior that the building is a certified historic structure within the meaning of Treasury Regulation § 1.48-12(d)(1) and the Department of Interior later determines that the building is a certified historic structure.

Simply stated, Treasury Regulation § 1.48-12(d)(1) requires that the taxpayer submit Part 1 of the Historic Preservation Certification Application before the property is placed in service. However, a Part 1 would not have to be submitted prior to the placed in service date if the building were already individually listed in the National Register. If a building were listed in the National Register, the property owner would have already requested a determination from the Department of Interior that the building was a certified historic structure. It is important to note that a building that is simply located within a registered historic district is not a building already individually listed in that National Register. This is true even if the building was specifically listed as one of the contributing buildings in the registered historic district nomination if Part 1 has not been submitted prior to placing the property in service. However, a taxpayer that failed to file NPS Form 10-168, Part 1 of the Historic Preservation Certification Application with the Department of Interior may be able to request relief under Treasury Regulations § 301.9100-1 through § 301.9100-3.

Late Certification

As previously stated, Internal Revenue Code § 47(c)(2)(B)(iv) and Treas. Reg. § 1.48-12(d)(3)

require a rehabilitation to be a “certified rehabilitation.” A request for final certification is made by submitting an Historic Preservation Application, Part 3, Request for Certification of Completed Work, to the NPS. Final approval occurs when the NPS certifies on the Historic Preservation Application, Part 3, a determination that the completed rehabilitation meets the Secretary of the Interior’s Standards for Rehabilitation and is consistent with the historic character of the property and, where applicable, the district in which it is located.

Late Submission of Historic Preservation Application, Part 3

In general, a taxpayer claiming the rehabilitation credit must enter the date that the final certification of completed work was received from the Secretary of the Interior with the tax return for the taxable year in which the credit is claimed along with evidence that the building is a certified historic structure. Treasury Regulation § 1.48-12(d)(7)(i).

However, if the final certification of completed work has not been issued by the Secretary of the Interior at the time the tax return is filed for a year in which the credit is claimed, the taxpayer must attached a copy of the Historic Preservation Certification Application (Part 2-Description of Rehabilitation), with an indication that it was received by the Department of the Interior or the State Historic Preservation Officer, together with proof that the building is a certified historic structure (or that such status has been requested); and after the final certification of completed work has been received, file Form 3468 with the first income tax return filed after receipt of the certification. Treasury Regulation § 1.48-12(d)(7)(ii).

Treasury Regulation § 1.48-12(d)(7)(ii) indicates that if the taxpayer fails to receive the final certification of completed work within 30 months after filing the tax return on which the credit was claimed, the taxpayer must submit a written statement to the IRS at the address shown on irs.gov stating such fact prior to the last day of the 30th month. Similarly, Treasury Regulation §

1.48-12(f)(2) indicates that if the taxpayer fails to complete physical work on the rehabilitation prior to the date that is 30 months after the date that the taxpayer filed a tax return on which the credit is claimed, the taxpayer must submit a written statement to the IRS to the address shown on irs.gov. In both cases the taxpayer will be requested to extend the normal 3-year statute of limitation period provided in Internal Revenue Code § 6511(a) for the return on which the credit was claimed.

If a taxpayer claims the rehabilitation credit, but never receives Part 3 approval from the NPS, the taxpayer should file an amended return(s) to remove the credit from the tax return in the year(s) reported, and any year to which an unused credit is carried.

A taxpayer does not have a certified rehabilitation until it receives a Part 3 approval. In other words, the taxpayer is ultimately not entitled to the rehabilitation credit unless the Department of the Interior has certified the rehabilitation project by signing Part 3 of the Historic Preservation Certification Application.

Statute of Limitations

In general, the statute of limitation is three years from the due date of the return. Internal Revenue Code § 6511(a) provides that a claim for credit or refund of an overpayment of any tax shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever the periods expire the later.

If a taxpayer placed a certified rehabilitation in service, but never determined the rehabilitation credit, the taxpayer would have 3 years from the due date of the return filed for the year the property was placed in service, to file a claim for refund. Once this period expires, the taxpayer will not be eligible to claim the rehabilitation tax credit.

[Revised April 2022]