Full Evaluation of Tax Expenditures:
Credit for Rehabilitation of Historic Properties
Background and Evaluation Parameters
Presented to the Government Oversight Committee on 4/23/21

Enacted	Statute(s)	Taxpayers Affected	Est. Revenue Loss
2007	36 MRSA §5219-BB 27 MRSA §511	Approximately 30 individual and corporate taxpayers	FY22 $8,950,000 FY23 $9,200,000

Source for Estimated Revenue Loss: Maine State Tax Expenditure Report 2022 – 2023.

Background Information

Program Description

The Credit for Rehabilitation of Historic Properties after 2007 36 MRSA §5219-BB, provides an income tax credit to taxpayers who rehabilitate certain income-producing[1] historic properties in Maine.[2]

The credit was enacted in 2007 and is available to taxpayers with qualified rehabilitation expenditures determined to meet program standards after January 1, 2008[3] and on or before December 31, 2025.[4]

Taxpayers may qualify for one of two options for the Maine credit:

(A) The Substantial Rehabilitation Credit provides a tax credit for 25% of a taxpayer's certified qualified rehabilitation expenditures on a certified historic structure in Maine for which the corresponding federal credit under the Internal Revenue Code (IRC) Section 47 is also claimed.[5]

(B) The Small Project Rehabilitation Credit provides a tax credit for 25% of a taxpayer's certified qualified rehabilitation expenditures on a certified historic structure in Maine for projects which

[1]The incentive is limited to income-producing properties by a reference in Title 36 to the Internal Revenue Code §47. The Code limits the tax incentive to "depreciable structures" which are those used in a business or income-producing activity (see IRS publication 946 irs.gov/pub/irs-pdf/p946.pdf).

[2] The program description is derived from a combination of statute, Historic Preservation Commission rules and OPEGA's understanding of the program.

[3] A previous form of the credit was located at 36 MRSA §5219-R.

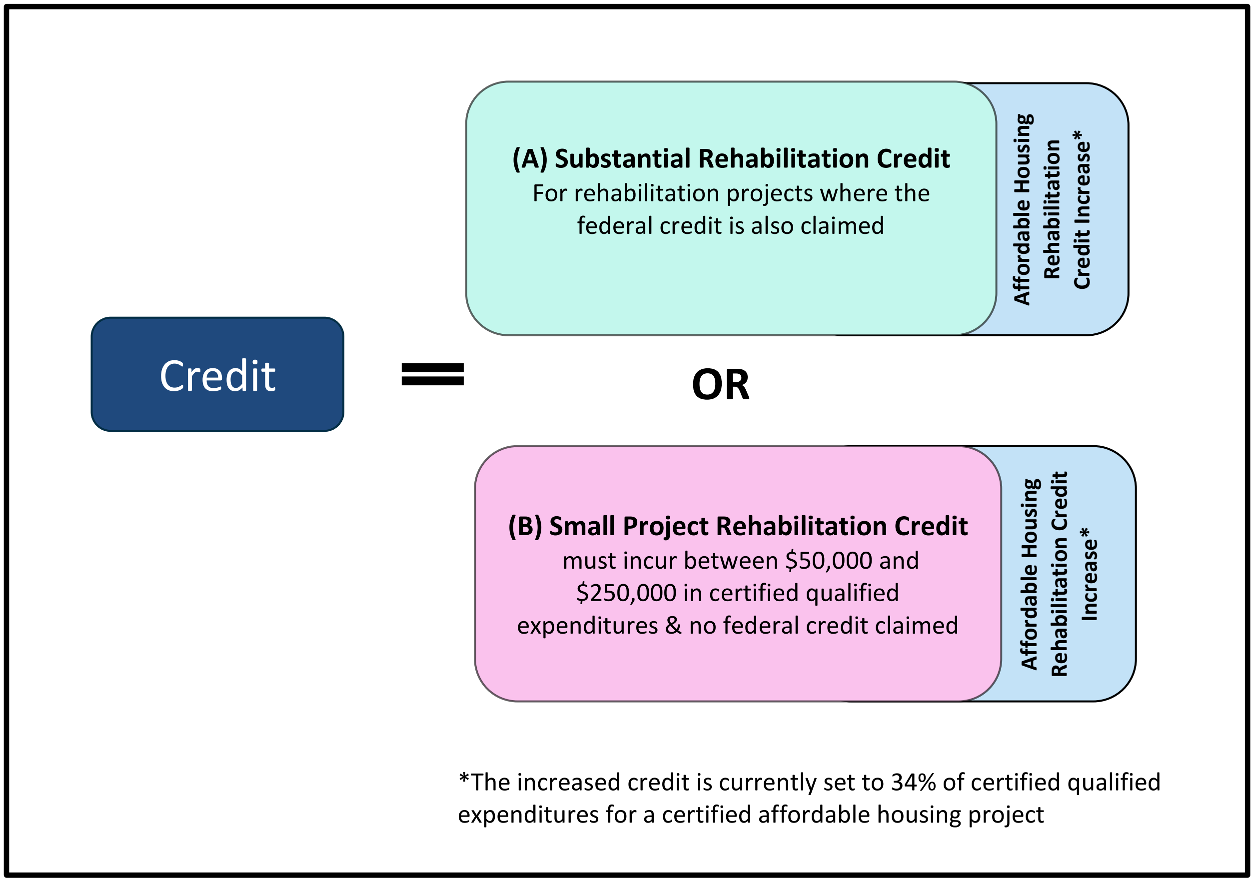
[4] The timeline for determinations of eligible expenses (qualified rehabilitation expenditures) has been extended multiple times in the credit's history. Most recently, PL 2019, ch. 659 extended the date from December 31, 2023 to December 31, 2025 as the date prior to which determinations of qualified expenditures must be made by the National Park Service or Maine Historic Preservation Commission.

[5] According to the Maine Historic Preservation Commission, for a project to qualify it must meet the "substantial rehabilitation test." In essence, this test requires that the cost of rehabilitation must exceed the pre-rehabilitation cost of the building. See National Park Service guidance for the particulars of this standard: nps.gov/tps/tax-incentives/before-apply/eligibility-requirements.htm.

do not qualify for the federal credit under IRC §47. This credit is available to taxpayers who incur between $50,000 and $250,000 in certified qualified rehabilitation expenditures. This option makes a credit available for small projects in Maine that have not qualified for the federal credit.[6]

For affordable housing projects that are certified by the Maine State Housing Authority under 30-A MRSA section 4722(1)(DD), the Substantial Rehabilitation Credit or the Small Project Rehabilitation Credit is increased. Currently, the increased credit is 34% of the certified qualified expenditures for a certified affordable housing project. The rate of the increased credit starts at 30% increases in one percentage point increments until a maximum 35% credit is achieved.[7] The increased credit is subject to repayment if the structure does not remain an affordable housing project for 30 years.[8]

§5219-BB Credit for Rehabilitation of Historic Properties After 2007



[6] These projects have not qualified for the federal credit because the amount of qualified rehabilitation expenditures do not meet the federal adjusted basis requirement. See irs.gov/businesses/small-businesses-self-employed/rehabilitation-tax-credit-historic-preservation-faqs#Eligibility%20and%20Definitions.

[7] The Commission and the Maine State Housing Authority are required to annually notify the State Tax Assessor if the total aggregate square feet of new affordable housing does not equal or exceed 30% of the total aggregate square feet of rehabilitated and developed completed projects eligible for the project. Upon notification of this fact, the State Tax Assessor increases the rate of the credit increase by one percentage point. See 36 §5219-BB(3) and 30-A §4722(1)(DD).

[8] Under 30-A MRS §4722(1)(DD) the amount subject to repayment is the credit increase amount plus interest on that amount at the rate of 7% per annum from the date that the property is placed in service.

The Director of the Maine Historic Preservation Commission is required by statute (27 MRSA §511) to certify information for applicants to demonstrate eligibility for the Substantial Rehabilitation Credit or the Small Project Rehabilitation Credit under 36 MRSA §5219-BB. Eligibility for these credits requires certification that: (1) the rehabilitation of the certified historic structures is consistent with the United States Secretary of the Interior's Standards for Rehabilitation and (2) that the historic structure is listed in or are eligible for listing in the National Register of Historic Places or located in a certified local district.

The maximum credit allowed by law (36 MRSA §5219-BB(4)) may not exceed 5 million dollars (for projects with multiple eligible building components, this limit is 5 million dollars per building).

Twenty-five percent of the allowed credit must be taken in the taxable year the credit is first claimed and 25% in each of the next 3 taxable years. The credit is refundable. The credit is subject to recapture, meaning the credit can be required to be paid back to the state under certain conditions outlined in IRC §47.

<u>Program Reporting</u>

Under the law governing this tax credit, the Commission is required to produce an annual report on applications for the credit, the number of affordable housing units created, total housing units created, number of affordable housing units preserved, total aggregate square footage rehabilitated and developed, total aggregate square footage of housing, total aggregate square footage of affordable housing, total certified rehabilitation expenses and total new construction expenses.

On a biennial basis, the Commission is also required to submit a report to the joint standing committee of the Legislature having jurisdiction over taxation matters on (1) the use of the credit as an incentive for rehabilitation of historic structures and economic development, and (2) an analysis of whether the loss of revenue to the State as the result of the credit exceeds the tax revenue and other revenues generated by rehabilitation. Along with the analysis, the Committee is tasked with making recommendations as to whether the credit should be extended, repealed or amended.

Proposed Changes to the Credit

There is a bill before the 130th Legislature, LD 201, An Act To Reduce Greenhouse Gas Emissions and Promote Weatherization in the Buildings Sector by Extending the Sunset Date for the Historic Property Rehabilitation Tax Credit, that proposes to extend the date for incurring eligible rehabilitation expenses which qualify for the tax credit for rehabilitation of historic properties from December 31, 2025 to December 31, 2040.

Evaluation Parameters

Statutory Guidance

Pursuant to Maine Revised Statutes, Title 3, section 999, prior to the beginning of a full tax expenditure evaluation, the GOC is required to approve:

(1) the purpose, intents or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments.

(2) the intended beneficiaries of the tax expenditure

(3) the evaluation objectives, and

(4) performance measures appropriate for analyzing the evaluation objectives.

Purpose, intents or goals

Based on a review of the enabling statute and subsequent legislative developments, OPEGA did not identify a clear statement of legislative intent for the Credit for Rehabilitation of Historic Properties after 2007.

Given the absence of an explicit statement of legislative intent, OPEGA conducted additional research to identify goals that might be appropriate to consider in evaluating this tax credit. For this research, we reviewed: state statute associated Maine Historic Preservation Commission's and Maine Housing's administration of the credit, reports produced by Maine Historic Preservation Commission, and reports from the National Park Service on the federal credit. From that research, OPEGA identified some possible goals for the GOC to consider as they decide on the program intents for the purpose of OPEGA's evaluation. The GOC may determine that some or all of them are appropriate for evaluation or may determine different goals than OPEGA provides here.

Possible Goals to Be Evaluated	Sources
(1) Rehabilitation of Historic Properties	• Statute directing MHPC to report on the credit (27 MRS §511(5)), refers to the credit as "an incentive for rehabilitation of historic structures and economic development."
(2) Historic Preservation	• The Maine Historic Preservation Commission, which administers the credit, is established "in order to preserve the architectural, historic and environmental heritage of the people of the State of Maine, and to develop and promote the cultural, educational and economic benefits of these resources" in 27 MRS §501.

	• Additionally, reports from the National Park Service on the federal credit, upon which part of Maine's credit piggybacks, state that historic preservation is a goal of the credit.[9]
(3) Community Revitalization	• The Annual Report for Fiscal Year 2019 on the Federal Tax Incentives for Rehabilitating Historic Buildings states that the credit is "to promote historic preservation and community revitalization through historic rehabilitation" and claim that the "program has been instrumental in…attract[ing] new private investment to communities small and large throughout the nation.[10]" • Community revitalization is related to Goal 3 (Economic Activity & Jobs) but different in that it refers to the development/redevelopment of communities in whole, not just jobs produced.
(4) Economic Activity & Jobs	• The biannual report required by 27 MRSA §511.5B and produced by MHPC includes measures of economic activity & jobs produced. Statute directing MHPC reporting on the credit (27 MRS §511(5)), refers to the credit as "an incentive for rehabilitation of historic structures and economic development." • Reports on the federal credit "It generates much needed jobs and economic activity, enhances property values in older communities, creates affordable housing, and augments revenue for Federal, state, and local governments, leveraging many times its cost in private expenditures on historic preservation."[11]
(5) Affordable Housing	• The Annual Report for Fiscal Year 2019 on the Federal Tax Incentives for Rehabilitating Historic Buildings points to the creation of affordable housing as one of the benefits of the credit.[12] • The design of the credit allows a larger credit if affordable housing is created.

Intended Beneficiaries

Based on a review of the enabling statute and subsequent legislative developments, OPEGA did not identify a clear statement of intended beneficiaries for the Credit for Rehabilitation of Historic Properties after 2007.

Based on some of the possible goals identified for this credit, it could be seen as broadly providing public benefits to the State of Maine. The GOC may want to consider seeking input from administrating

[9] For instance, "to promote historic preservation and community revitalization through historic rehabilitation" Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2019. *National Parks Service, U.S. Department of the Interior,* pg.4. nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2019annual.pdf;
See also "The Tax Reform Act of 1976 first established Federal tax incentives for rehabilitating historic buildings. In its report on this law, the Joint Committee on Taxation of the United States Congress declared, 'Congress believes that the rehabilitation and preservation of historic structures and neighborhoods is an important goal.'" From "Report to the Secretary of the Interior on the Federal Historic Preservation Tax Incentives Program." *National Park Service*. December 2016. nps.gov/tps/tax-incentives/taxdocs/htc-program-final-report-2016.pdf

[10] Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 2019. *National Parks Service, U.S. Department of the Interior,* pg. 4. nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2019annual.pdf

[11] Ibid.

[12] Ibid.

agencies and stakeholders on whom the credit is intended to benefit. However, given the nature of the expenditure, the GOC may feel comfortable proceeding without specifying intended beneficiaries.

Evaluation objectives

The evaluation objectives specify what OPEGA will assess in its evaluation of the Credit for Rehabilitation of Historic Properties after 2007. The statute governing the full evaluation of tax expenditures outlines a menu of possible evaluation objectives which may include:

Objectives Allowed Under 3 MRSA §999 subsection 1 paragraph A
(a) The fiscal impact of the tax expenditure, including past and estimated future impacts;
(b) The extent to which the design of the tax expenditure is effective in accomplishing the tax expenditure's purposes, intent or goals and consistent with best practices;
(c) The extent to which the tax expenditure is achieving its purposes, intent or goals, taking into consideration the economic context, market conditions and indirect benefits;
(d) The extent to which those actually benefiting from the tax expenditure are the intended beneficiaries;
(e) The extent to which it is likely that the desired behavior might have occurred without the tax expenditure, taking into consideration similar tax expenditures offered by other states;
(f) The extent to which the State's administration of the tax expenditure, including enforcement efforts, is efficient and effective;
(g) The extent to which there are other state or federal tax expenditures, direct expenditures or other programs that have similar purposes, intent or goals as the tax expenditure, and the extent to which such similar initiatives are coordinated, complementary or duplicative;
(h) The extent to which the tax expenditure is a cost-effective use resources compared to other options for using the same resources or addressing the same purposes, intent or goals; and
(i) Any opportunities to improve the effectiveness of the tax expenditure in meeting its purposes, intent or goals.

For the Credit for Rehabilitation of Historic Properties after 2007, OPEGA recommends that the evaluation address each of objectives listed above ((a)-(i)) to the extent warranted based on assessment of the relevance of the objective to this tax credit, the availability of necessary data and the level of resources required.

OPEGA will perform additional work as necessary, and as possible within existing resources, to provide context for OPEGA's assessment of this program in Maine, including review of literature or reports concerning these programs nationally or in other states.

Performance measures for analyzing evaluation objectives

In accordance with statute, the performance measures used to address the evaluation objectives must be clear and relevant to the specific tax expenditure and the approved objectives. OPEGA's preliminary research indicates that there may be readily available data for many of the measures offered below. In such instances, OPEGA's approach will be to assess the adequacy of the existent information and provide any additional context which may aid the GOC in its assessment of the program's performance. Measures will be addressed in the report to the degree possible based on the level of resources required and the availability of necessary data.

Possible performance measures for GOC consideration
(a) $ Amount of tax credits claimed (in past and future estimates)
(b) $ Impact on State budget (revenue loss and net impact)
(c) $ Federal credit leveraged for Maine projects
(d) $ New construction generated by the rehabilitation of historic properties
(e) $ Tax assessments of rehabilitated buildings (before & after)
(f) # Jobs created by the rehabilitation of historic properties (construction and in businesses housed in rehabilitated structures)
(g) # Affordable housing units preserved and generated by the rehabilitation of historic properties
(h) #, location, and types of projects supported by the credits