4/23/2021

MEREDA

Testimony Regarding Proposed Parameters for OPEGA Full Tax Expenditure Review of Maine Historic Property Rehabilitation Tax Credit

Chairman Libby, Chairman McDonald, and members of the Government Oversight Committee;

My name is Elizabeth Frazier and I am an attorney at Pierce Atwood. On behalf of our client, the Maine Real Estate & Development Association, as well as the Maine Historic Tax Credit Coalition (the Coalition) – Greater Portland Landmarks, GrowSmart Maine, Maine Alliance for Smart Growth, Maine Preservation, CEI, and the Genesis Fund – we wish to comment on the proposed parameters for a full tax expenditure evaluation of the Credit for the Rehabilitation of Historic Properties, also known as the Maine Historic Property Rehabilitation Tax Credit (MHRTC).

As noted by the Office of Program Evaluation and Government Accountability (OPEGA), Maine statute at 3 MRSA § 999 requires the Government Oversight Committee (the Committee) to approve the following general parameters:

1. **Purpose, Intent or Goals.** The purpose, intents or goals of the tax expenditure, as informed by original legislative intent as well as subsequent legislative and policy developments;
2. **Intended Beneficiaries.** The intended beneficiaries of the tax expenditure;
3. **Evaluation Objectives.** The evaluation objectives; and
4. **Performance Measures for Evaluation Objectives.** Performance measures appropriate for analyzing the evaluation objectives.

OPEGA has further provided you with their recommendations for these parameters specific to the MHRTC. We agree with OPEGA's conclusion that no evaluation parameters are included in the MHRTC law, as is often the case with newer tax expenditures. As such, we wish to applaud OPEGA for its work in assessing which factors will most closely provide qualitative and quantitative data for a fair evaluation of this important credit. Indeed, we concur with most of the identified parameters. However, we would like to put forth a couple of factors for your consideration, with respect to each of the statutory factors outlined above.

1. **Purpose, Intent or Goals.** We agree that the purpose and goals of the program include: rehabilitation of historic properties and historic preservation, community revitalization, and economic activity and job creation. In addition, the inclusion of a higher tax credit value for affordable housing (as well as resulting construction of affordable housing units) argue for including affordable housing as another purpose. We also believe that the passage of recent legislation to extend the sunset date for the credit evidences as legislative intent that the program also result in greenhouse gas and building efficiencies.

2. **Intended Beneficiaries.** We believe OPEGA has correctly identified the broad audience of beneficiaries for this credit under its discussion on page 5. We do not believe it is OPEGA's intent to consider only the direct recipients of the tax credit to be the beneficiaries. However, because the first page of the proposed parameters do state that "taxpayers affected" are approximately 30 individuals, we wanted to provide some clarification as to who we believe are the intended beneficiaries as evidenced by legislative intent.

   As OPEGA notes, the credit broadly provides public benefits to the State of Maine. OPEGA further notes that the Committee may wish to move forward without identifying specific beneficiaries. In some ways, this makes sense – the beneficiaries are many. However, for reasons discussed below, we believe it is important to identify beneficiaries at this stage, to ensure adequate evaluation. For this reason, MEREDA suggests that the Committee consider the following as intended beneficiaries of this program:

- Maine citizens, who will have the opportunity to see and enjoy historic properties in their communities and around the State that might otherwise have been lost and are real contributors to the character and culture of our cities, towns and state;
- Municipalities, who have received increased revenue both from the higher property taxes paid on the rehabilitated property and from the indirect development and added property tax revenue that typically accompanies MHRTC projects;
- Maine taxpayers, who benefit from the direct and indirect spending attracted to Maine by these projects – often from out-of-state funding sources. This infusion of capital represents an investment in Maine that ultimately helps grow our economy and ease the tax burden across the board; and
- Historic building owners and property developers, who directly benefit from the credit to help close the funding gap to make the rehabilitation of these historic properties possible.

3. **Evaluation Objectives.** We agree with OPEGA's assessment that the statutory objectives under 3 MRSA § (999)(1)(a) are generally appropriate. However, we raise concern with (d), which is "the extent to which those actually benefiting from the tax expenditure program are the intended beneficiaries." Id at § 999(1)(a)(d).

   We believe inclusion of this evaluation objective is only practical to the extent this Committee is able to identify the beneficiaries. If the Committee does not identify specific beneficiaries, we believe it will be difficult for OPEGA to conduct an objective review of the criteria under (d). Id.

   Our view is that the building owners and developers that employ the credit are agents to accomplish the purposes outlined above in 2. The law was not passed so that they would be beneficiaries, but rather that they would be able to accomplish the other purposes outlined.

4. **Performance Measures for Evaluation Objectives.** As a general matter, we believe OPEGA has correctly identified the majority of possible performance measures for the evaluation of the MHRTC. However, we would encourage the committee to add a performance measure that looks at: 1) the amount of outside public and private capital investment attracted to Maine as a result of the program; and 2) the amount of indirect spending and revenue arising from the rehabilitation of historic properties.

In closing, the Coalition wishes to thank OPEGA for its efforts thus far in recommending the evaluation parameters for its review of the MHRTC. We believe that, with the minor modifications suggested above, we can ensure that the MHRTC Full Tax Expenditure review is thorough, accurate, and informative for future policy development.

We welcome an opportunity to continue to work with OPEGA and the Committee as it moves through the evaluation process.

Thank you for your consideration of these comments.

Elizabeth M. Frazier
On behalf of MEREDA and the Maine Historic Tax Credit Coalition
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207-838-2257

Connors, Etta

From:	Nixon, Lucia
Sent:	Friday, April 23, 2021 12:42 PM
To:	Connors, Etta
Cc:	Hojara, Kari
Subject:	FW: OPEGA Review of the Historic Rehabilitation Tax Credit

From: Greg Paxton <greg@mainepreservation.org>
Sent: Thursday, April 22, 2021 6:34 PM
To: Hojara, Kari <Kari.Hojara@legislature.maine.gov>
Cc: Nixon, Lucia <Lucia.Nixon@legislature.maine.gov>; Mohney, Kirk <kirk.mohney@maine.gov>; Johnson, Mike D <mike.d.johnson@maine.gov>
Subject: RE: OPEGA Review of the Historic Rehabilitation Tax Credit

This message originates from outside the Maine Legislature.

Dear Kari,

Thank you for your communications about OPEGA's review of the Historic Rehabilitation Tax Credit. I am writing with some technical comments on the document: *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.*

P1
Para 2: [Existing text:] "The credit was enacted in <u>2007</u>"

Deep background comment: In 2006 the legislature passed a State tax credit that applied only to the Augusta Armory. It has not since been rehabilitated, however.
In 2007 the legislature passed a State tax credit for Hathaway/Lockwood Mill in Waterville. Its $30.4MM rehab was completed in 2009.
The Taxation Committee then expressed an interest in looking at a broader historic tax credit. In the <u>2008</u> session the legislature passed the present credit and it retroactively allowed expenditures back to Jan 1, 2008.

[Existing text:] "(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 <u>which do not qualify for the federal credit under IRC §47. This credit is available</u> 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 <u>that have not qualified for the federal credit."</u> [underline added]

Comment: Please consider this amendment:
"(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 do not qualify for the federal credit under IRC §47. This credit is available~~ to taxpayers who *that incur between $50,000 and $250,000 in certified qualified rehabilitation expenditures <u>and do not claim the federal credit.</u> This option makes a credit available for small projects in Maine <u>without requiring that the taxpayer claim the federal credit.</u>*

[Note the existing text asserts that you <u>cannot</u> qualify for the federal credit if you receive the Small Project Rehabilitation Credit, but the project can meet all the requirements for the federal credit and the owner simply not claim it – it's the

owner's choice in such cases of whether to choose only the state credit. Note, however, that some Small Projects may not qualify for the federal credit but still receive the state credit. Also note that the figure on P2 states it correctly.]

Footnote: [Existing text:] "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." [underline added]

Comment: The credit has been extended twice. Consider this language:
4. The timeline for ~~determinations~~ completion of eligible expenses (qualified rehabilitation expenditures) was extended in 2011 from a sunset in 2013 to 2023 and in 2020 [not 2019] the timeline to require only approval of qualified expenditure plans by the National Park Service or Maine Historic Preservation Commission was extended to December 31, 2025. [Note this language captures both the two chronology changes and the change from requiring project completion at the sunset date to requiring only approval of rehabilitation plans by the sunset.]

Footnote: [Existing text:] "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." [underline added]

Comment: substitute "value" for cost, or better yet:
It is actually the "adjusted basis," which is the value the owner places on the building (without the land) at the time of purchase, plus any capital investments since, minus any depreciation. Perhaps that detail can be left out. However, I note that you use "adjusted basis" in footnote 6, so you may wish to use it here, too.

You may also wish to add to Footnote 5 at the end: The requirement that the Substantial Rehabilitation Credit claimants must also claim the federal credit results in a federal incentive of currently 20% of qualified rehabilitation expenditures being received in all these projects, bringing these outside resources to Maine.

P2

[Existing text:] "The rate of the increased credit starts at 30% increases in one percentage point increments until a maximum 35% credit is achieved." [underline added]

Comment: Consider: The rate of the increased credit started at 30% but has increased in one-percentage-point increments to 34% currently, based on affordable housing goals. The maximum increase authorized is 35%[7]

Footnote 6: [Existing text:] "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...." [underline added]

Suggestion: These projects have not claimed the federal credit ~~because the~~ and are not required to ~~amount of qualified rehabilitation expenditures do not~~ meet the federal adjusted basis requirement. See irs.gov....

P3

Para 1 [Existing text:] "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."

Minor comment: Since (1) above is termed Part 2 of the certification process and (2) above is Part 1 certification, it would be better to reverse the content of (1) & (2).

[Existing text of para 2 – edited in place:] "The maximum credit allowed by law (36 MRSA §5219-BB(4)) may not exceed 5 million dollars [add] per year (for ~~projects~~ functionally-related complexes under one ownership with multiple eligible buildings, or 5 million dollars per year for individual buildings ~~components, this limit is 5 million dollars per building~~)."

Comment: the law was changed in 2013 to allow an annual limit of $5 million because the $5 million cap on complexes could limit investment to one building.

End of Para 3 - edited: "The credit is subject to recapture, meaning the credit can be required to be paid back to the state ~~under certain conditions~~ if any of the ownership changes within 5 years, as outlined in IRC §47."

Comment: This is the key cause of recapture. For the record, no project is known to have been recaptured since the current credit was passed in 2008.

Sorry for the lateness and hope all this minutia is helpful.

Best wishes,

Greg

Please note our change of address

Greg Paxton
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Maine Preservation
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From: Hojara, Kari <Kari.Hojara@legislature.maine.gov>
Sent: Friday, April 9, 2021 9:50 AM
To: Elizabeth Frazier <efrazier@PierceAtwood.com>; Greg Paxton <greg@mainepreservation.org>; Nancy Smith <nsmith@growsmartmaine.org>; Ali Barrionuevo <ali@mainepreservation.org>; Sarah Hansen <shansen@portlandlandmarks.org>; Amy Winston <Amy.Winston@ceimaine.org>; John W. Egan <John.Egan@ceimaine.org>; Andrea C. Maker <amaker@PierceAtwood.com>
Cc: Nixon, Lucia <Lucia.Nixon@legislature.maine.gov>
Subject: OPEGA Review of the Historic Rehabilitation Tax Credit

Good morning,

You are receiving this email because you have previously expressed interest in OPEGA's planned review of the Credit for Rehabilitation of Historic Properties after 2007 (Historic Rehabilitation Tax Credit or HRTC). You may find it useful to sign up for the Government Oversight Committee's interested parties list for the duration of the review period. You can do so here.

The Credit for Rehabilitation of Historic Properties after 2007 (Historic Rehabilitation Tax Credit or HRTC) is one of the next tax expenditures scheduled for a full evaluation by the Office of Program Evaluation and Government Accountability (OPEGA) under 3 MRSA §999.

For OPEGA's full evaluations of tax expenditures, the GOC must approve: (1) program purpose, (2) program beneficiaries, (3) evaluation objectives, and (4) performance measures. As part of this approval process, the Committee is required to seek stakeholder comment to ensure OPEGA's review is appropriately focused.

On **April 23rd**, the GOC will receive stakeholder input on the proposed evaluation parameters for OPEGA's evaluation of the HRTC. A copy of the document that the GOC will receive from OPEGA can be found on OPEGA's website: legislature.maine.gov/documents/opega

Please note that the April 23 opportunity for stakeholder input is centered on the evaluation parameters and is not intended for general comment on whether or not there is merit to the tax expenditure.

If you wish to provide written comments on the parameters, please email them to goc@legislature.maine.gov for distribution to Committee members. If you wish to virtually attend and speak at the meeting on the 23rd, please let me know and I will provide a link for registration for the meeting when it becomes available.

You may listen live to the meeting through OPEGA's website (https://legislature.maine.gov/opega/goc-meetings/) or watch the meeting on the Committee's YouTube channel (GOC Channel). The meeting will begin at 9am on April 23. As there will be other items on the agenda, I am unable to predict what time the GOC will begin discussing these matters.

If you have any questions, please feel free to contact me.

Sincerely,

Kari Hojara

Kari Hojara, Ph.D | Analyst
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