

Nebraska Historic Tax Credit General Information

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(Nebraska Job Creation and Mainstreet Revitalization Act)

Overview

The Nebraska Job Creation and Mainstreet Revitalization Act (Act) (Laws 2014, LB191 (<http://www.revenue.nebraska.gov/incentiv/LB191.pdf>) and **Neb. Rev. Stat. §§ 77-2901 to 77-2912** (http://www.nebraskalegislature.gov/laws/search_range_statute.php?begin_section=77-2901&end_section=77-2912)) is jointly administered by History Nebraska and the Nebraska Department of Revenue (DOR). The Act provides up to \$15 million in Nebraska Historic Tax Credits (NHTCs) to be allocated annually, beginning January 1, 2015 and ending December 31, 2022. This credit is equal to



20% of eligible expenditures incurred for improvements to qualifying historically significant real property and is limited to \$1 million of tax credits per project. NHTC may be used against income tax, the premium tax imposed on insurance companies, or the franchise tax imposed on financial institutions. This credit is transferrable and subject to certain limitations.

The applicant must apply with History Nebraska for certification of the historical status of the property, approval of the proposed improvements, and allocation of NHTC. After completing the improvements and placing the property in service, the applicant must then apply with History Nebraska for a completed rehabilitation certification. Please refer to **History Nebraska** (<https://history.nebraska.gov/historic-preservation/historic-tax-incentive-programs>) for more information.

After History Nebraska has certified the completed rehabilitation project, the applicant must submit a Part 4— Request for Certification of Credits (Part 4) through **NHTC's web application** (<https://nhtc.ne.gov/revshsnhtc/public/login.faces>), and include a Checklist developed by DOR to assist in gathering necessary documentation, Schedule I and II along with all documentation required to support the eligible expenditures to DOR for review and approval. Applicants may contact DOR prior to submitting their Part 4 to review documents and address common issues. DOR will notify the applicant of the approved eligible expenditures, the certified credit amount, and the amount of the fee required to be paid to DOR by the designated due date before any tax credit certificates are issued.

Terms

Eligible Expenditures

An eligible expenditure is any cost incurred for the improvement of historically significant real property located in Nebraska including, but not limited to, qualified rehabilitation expenditures as defined in IRC § 47(c)(2), and related regulations, as long as the improvement is in conformance with the standards as defined below. Eligible expenditures also include expenditures incurred up to six months prior to the first submission date of the Part 2 application for architectural fees, accounting and legal fees, or costs related to protecting the historically significant real property from deterioration.

Historically Significant Real Property (Property)

Historically Significant Real Property means a building or structure used for any purpose, except for a single-family detached residence. A property can be determined to be historically significant in four ways



under **Neb. Rev. Stat. § 77-2902(3)**

(<https://nebraskalegislature.gov/laws/statutes.php?statute=77-2902>):

- Individually listed in the National Register of Historic Places;
- Located within a National Register district and contributing to the historical significance of the district;
- Individually designated pursuant to a certified local preservation ordinance; or
- Located within a district designated under a certified local historic preservation ordinance and contributing to the historical significance of the district or the district's economic viability.

Improvement

Improvement means a rehabilitation, preservation, or restoration project that contributes to the basis, functionality, or value of the property with a total cost meeting the minimum required levels of at least \$25,000 in all cities; or the greater of \$25,000 or 25% of the assessed value of the property if the project is in Lincoln or Omaha.

Placed in Service

Placed in service means that either a temporary or final certificate of occupancy has been issued for the improvement or the improvement is sufficiently complete to allow for its intended use.

Standards

Standards means the Secretary of the Interior's Standards for the Treatment of Historic Properties as promulgated by the U.S. Department of the Interior; or specific standards for the rehabilitation, preservation, and restoration of historically significant real property contained in a properly adopted local preservation ordinance or resolution that has been approved by the State Historic Preservation Officer.

Who Can Apply for the NHTC

Any natural person, political subdivision, limited liability company, partnership, private domestic or private foreign corporation, or domestic or foreign nonprofit corporation can apply for the NHTC.



Application, Tax Credit Allocation, and Tax Credit Certification Process

- Prior to commencing the rehabilitation work, the applicant must first apply with History Nebraska to receive a tax credit allocation under the Act. History Nebraska is responsible for certifying the historical status of the property, assigning priority dates, allocating tax credits, and approving the proposed work. Once the project is complete and placed in service, the applicant must request a completed rehabilitation certification from History Nebraska within 12 months.

Contact **History Nebraska** (<https://history.nebraska.gov/historic-preservation/historic-tax-incentive-programs>) for more information on the application process, application forms, application timeline, and how to request an allocation of NHTCs.

History Nebraska (<https://history.nebraska.gov/historic-preservation/historic-tax-incentive-programs>)

1500 R Street

PO Box 82554

Lincoln, NE 68501

402-471-4787

- After the project is complete and History Nebraska has issued the completed rehabilitation certification, the applicant will apply to DOR to examine the eligible expenditures, and calculate and certify tax credits. If more than 30 days have passed since the request for completed rehabilitation certification was filed with the History Nebraska, the applicant may petition DOR directly without a determination from History Nebraska.
- The applicant must submit a Part 4 electronically through NHTC's web application at nhtc.ne.gov (<https://nhtc.ne.gov/revshsnhtc/public/login.faces>), along with the Checklist developed by DOR, and all documentation supporting the eligible expenditures.
- Pre-application review is available prior to formal submission of the Part 4. If requested, DOR will perform a pre-application review after the NHTC Part 3 is approved.
- DOR will issue a letter requesting additional documentation for any eligible expenditure that was not adequately supported. The related credits may be denied if the supporting documentation is not provided on or before the date prescribed in the letter.
- If necessary, DOR will issue a pre-denial letter prior to making a final determination that reduces eligible expenditures and credits. If the applicant disagrees with any proposed



denials and credits they may provide the required information on or before the date prescribed in the predenial letter.

- DOR will issue an NHTC Eligible Expenditure and Credit Determination approving or denying (in whole or in part) the submitted eligible expenditures and calculating the tax credits based on the approved eligible expenditures and the allocated credits within 60 days after submission of the Part 4, unless the parties agree to extend the deadline to 90 days.
- If the applicant disagrees with DOR's NHTC Eligible Expenditure and Credit Determination they may appeal to the District Court of Lancaster County within 30 days after the issuance of the determination. See **Neb. Rev. Stat. § 84-917** (<https://nebraskalegislature.gov/laws/statutes.php?statute=84-917>).
- In order for DOR to issue certificates of credit for the approved credits, the applicant must pay DOR the Part 4 fee through electronic funds withdrawal prior to the designated date in the NHTC Eligible Expenditure and Credit Determination. The fee is equal to 0.85% of the amount of credits approved by DOR.

Expenditures


Date to Begin Calculating Eligible Expenditures

Qualified eligible expenditures incurred on and after the first submission date of the Part 2 application to the History Nebraska through the end of the applicant fiscal year when the project was placed in service.

Expenditures Incurred Prior to the Submission Date

Expenditures incurred up to six months prior to the first submission date of the Part 2 application are not allowable unless they are for architectural fees, accounting and legal fees, or costs related to the protection of the historically significant real property from deterioration.

Expenses Incurred for the Protection of Historically Significant Buildings. Neb. Rev. Stat. § 77-2905(5) (<https://nebraskalegislature.gov/laws/statutes.php?statute=77-2905>)

Expenses incurred for the protection of a historically significant building are only permitted for temporary or emergency repairs that are limited to the least degree of intervention and preparatory to other work. The documentation necessary to substantiate such expenditures will vary based on the work involved. For example, a 

picture of a hole in a roof will establish that the roof needed to be patched (not replaced), but expenses to repair a wall will need to be supported by a statement from a third party engineer, for example, indicating that collapse was imminent if the repair did not occur.

Expenditures Incurred by an Original Applicant When a Building is Sold

Expenditures incurred by an applicant who transfers ownership of a building to a new owner before a project is placed-in-service may be included in the new owner's calculation of eligible expenditures as long as the prior owner does not claim those expenditures in a separate NHTC application.

Types and Transferability of NHTCs

DOR will issue two types of tax credit certificates. Both types may be used to offset income tax, the premium tax imposed on insurance companies, or the franchise tax imposed on financial institutions.

Type A

- An NHTC that can be used by the taxpayer to offset a tax, or distributed through the ownership structure like a Type B credit (see below), but can also be transferred, sold, or assigned one or more times, either in whole or in part, by or to any person or legal entity before it is used to offset a tax. Political subdivisions and entities exempt from income tax under IRC § 501(c)(3) will be issued all Type A credit certificates.

Type B

- An NHTC that can be used by the applicant to offset a tax, or distributed through multiple ownership tiers of a partnership, limited liability company, or an S corporation to the owners in the same manner as the partners, members, or shareholders account for their proportionate shares of the entity's income or losses; or pursuant to an executed agreement among the partners, members, or shareholders documenting an alternate distribution method. These credits cannot be transferred, sold, assigned, or distributed outside the ownership structure. Any entity other than political subdivisions and entities exempt from income tax under IRC § 501(c)(3) will be issued tax credit certificates that have been divided equally (50%) between Type A and Type B.

Issuance of NHTCs

The original issuance of the tax credit certificates will be to the applicant.



All transfers, sales, assignments or distributions of NHTCs must be submitted to DOR within 15 days of the

transfer through the NHTC web application at nhtc.ne.gov

(<https://nhtc.ne.gov/revshsnhtc/public/login.faces>). See **Neb. Rev. Stat. § 77-2909(4)** (<https://nebraskalegislature.gov/laws/statutes.php?statute=77-2909>).

Once a transfer is confirmed by a transferee, or a distribution request is approved by DOR, it cannot be reversed.


Claiming Credits

Tax credits may be claimed starting with the taxable year that the improvement is placed in service. The members/partners/shareholders of a flow-through entity may not use Type B NHTCs (non-transferable credits) to offset a tax liability in any tax year prior to the year in which they obtained an ownership interest in the entity.

The tax credit is nonrefundable; however, any credit that is not used can be carried forward until fully utilized or until December 31, 2027, whichever is earlier.

Recapture of the NHTCs

If at any time during the five years after the improvement is placed in service, History Nebraska determines that the property has been the subject of work not in substantial conformance with the approved application or the documents from which the tax credit was calculated, the tax credits will be subject to recapture. For instance, failure to use straight line depreciation, except where it is not required, would not be in substantial conformance with the credit calculation and is a recapture event. As a condition of DOR issuing tax credit certificates, NHTCs are subject to recapture from the person owning the property on the date History Nebraska determines the recapture event occurred. Refer to **History Nebraska** (<https://history.nebraska.gov/historic-preservation/historic-tax-incentive-programs>) for more information on the causes of recapture.

- If a recapture event occurs, all or some of the tax credits will be recaptured from the property owner, based on the date History Nebraska determines the recapture event occurred.
- If the property owner is a partnership, a limited liability company, or an S corporation, the liability for the recaptured credits will be proportionate to the partners', members', or shareholders' ownership in the applicable entity.
- A property owner will be given a written notice and allowed six months to correct any nonconformance before recapture is made. 

1st year after the property is placed into service 100%

2nd year after the property is placed into service 80%

3rd year after the property is placed into service 60%

4th year after the property is placed into service 40%

5th year after the property is placed into service 20%



Questions with regard to the NHTC that are within DOR's responsibilities under the program should be directed to:

Landon Friesen
Attorney, Policy Section
Nebraska Department of Revenue
301 Centennial Mall South
PO Box 94818
Lincoln, NE 68509-4818
402-471-1445
landon.friesen@nebraska.gov (<mailto:landon.friesen@nebraska.gov>)

Questions with regard to the NHTC that are within History Nebraska's responsibilities under the program should be directed to:

History Nebraska (<https://history.nebraska.gov/historic-preservation/historic-tax-incentive-programs>)
1500 "R" Street
PO Box 82554
Lincoln, NE 68501
402-471-4787



Nebraska Historic Tax Credits: A Performance Review of the Job Creation and Mainstreet Revitalization Act



The Legislative Audit Office is a nonpartisan division of the Legislature, directed by the Performance Audit Committee. The Committee selects topics for the Office to audit, details the scope of such audits, and makes recommendations as to how the Legislature should proceed after the Office completes its report.

The Job Creation and Mainstreet Revitalization Act

The Job Creation and Mainstreet Revitalization Act tax incentive program, commonly referred to as the Nebraska Historic Tax Credit (NHTC), was created by the Legislature in 2014. The intent of NHTC is to facilitate renovation of older buildings, encouraging economic growth in previously vacant or underutilized spaces.

Investors can earn tax credits up to 20% of eligible historic preservation expenditures. A project can receive between \$5,000 and \$1 million in credits. The program is capped at \$15 million in allocated credits per year.

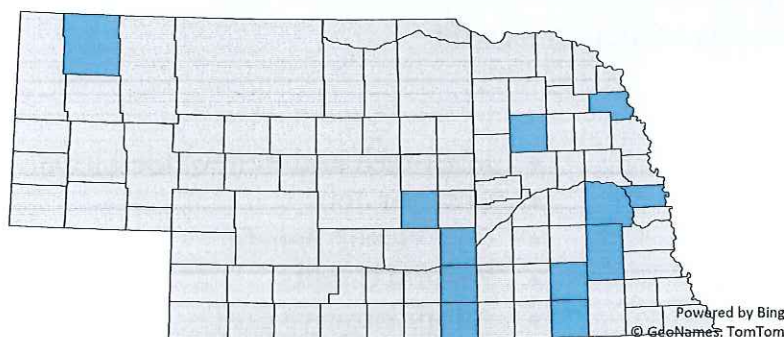
Program Participation

A total of 146 applications were submitted between 2015 and 2019. Of those, 68 had completed construction, allowing the us to examine total investments. Audited expenditures were available for 39 completed projects, allowing the us to look at credit usage.

Geographic Locations

Of the 68 completed projects, Douglas County had 52 projects. Lancaster County had 4 projects, and Jefferson County and Thurston County had 2 projects each. The remaining counties—Adams, Dawes, Madison, Hall, Saline, Saunders, Sherman, and Webster—each had 1 project.

Twelve counties had at least one NHTC project.



Source: Audit Office analysis of NHTC data.

Additional Audit Findings

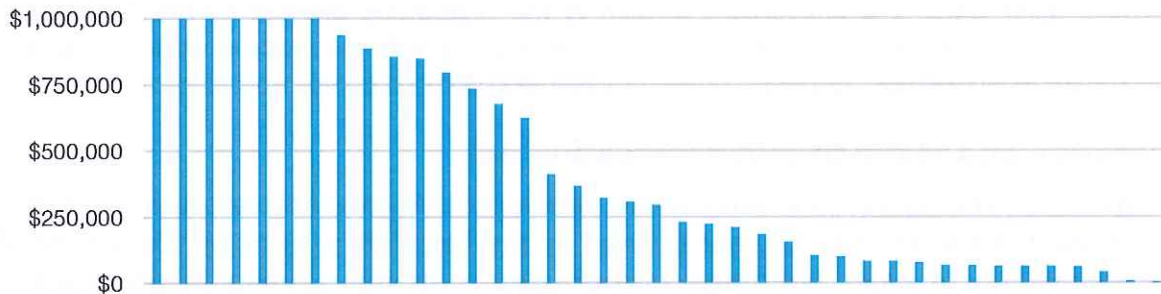
While most of the audit results are tied to the metrics used, the Audit Office also found the following:

- There may be more efficient options for stimulating historic property preservation.
- Restrictions on transferability do not limit legal credit transfers but do make them more costly.
- Certain goals described during legislative debate are not currently reflected in the law. These include encouraging use by nonprofits, for smaller projects, and in varied geographic locations.
- Information on participant syndication agreements and tenant businesses would assist future audits.
- An annual report to the Legislature would help monitor current and forecast future costs of the program.

Investment and Credits

Between 2015 and 2019, 68 projects invested more than \$232 million in historic preservation. Nearly \$200 million, or 86%, was in Douglas County. Of these 68, 39 were issued nearly \$17 million in tax credit. Seven projects received the maximum \$1 million in credits, while 19 projects received less than \$250,000.

The program attracted projects of varying sizes.



Source: Audit Office analysis of Department of Revenue data.

Independently Viable Projects

According to tax incentive experts, some of these preservation projects would have proceeded without the tax credit. Academic research suggests that tax incentives are responsible for tipping 12%-25% of business decisions, and we have used these estimates in previous tax incentive audits. However, this program presented an opportunity to look at participating projects on a case-by-case basis to estimate whether it was more likely or less likely the project would have taken place without the credit.

Tax credit programs are intended to “tip” projects that are not financially viable into viability, and we identified three factors that can suggest the credit was *not essential* to project viability. The first two factors are construction before the program application had been submitted and the amount of the credit was a small proportion of the total project costs. The third examined publicly available Tax Increment Financing program applications, which have more detailed budgeting information for projects, to determine if the NHTC was necessary for viability.

Of the 68 projects reviewed, we identified 14 (21%) that we believe were likely independently viable, meaning the projects would likely have been undertaken even without receipt of the Nebraska Historic Tax Credit. Of these 14 projects,

- Seven were under construction at least 6 months before the application was filed, including four projects that were under construction for at least a year prior to the start of the program;
- Six had small amounts of credit in proportion to the total project cost; and
- Six publicly attested to financial viability without the credit.¹

Metrics Reviewed in Report

- Job Creation
- Average Wages
- Investment
- New to Nebraska
- Compliance Cost
- Rural Areas
- Distressed Areas
- High-tech and Renewable Firms
- Cost per Job
- Cost versus Benefit
- Federal Credits
- Administrative Cost
- Fiscal Protection
- Local Impact

¹ The number of projects totals more than 14 because 4 projects met more than one factor.



Historic Preservation Tax Incentives

NPS.gov (<https://www.nps.gov/>) / Home (<https://www.nps.gov/subjects/taxincentives/index.htm>) / The Secretary's Standards for Rehabilitation

The Secretary of the Interior's Standards for Rehabilitation

The **Standards for Rehabilitation** provide direction in making appropriate choices in planning the repairs, alterations, and additions that may be part of a rehabilitation project. The accompanying **Guidelines** apply the Standards and describe specific treatments that do and do not meet the Standards. The Standards for Rehabilitation are **codified in 36 CFR Part 67** (<https://www.nps.gov/subjects/taxincentives/upload/regs-nps-36-cfr-67.pdf>), are regulatory for the Historic Preservation Tax Incentives program, and are the Standards most often used by local historic district commissions nationwide.

The Standards for Rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation. The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a rehabilitation project must be determined by the Secretary to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located. The following Standards are to be applied to specific rehabilitation projects in a reasonable manner, **taking into consideration economic and technical feasibility** (<https://www.nps.gov/subjects/taxincentives/upload/role-economic-technical-feasibility-applying-standards.pdf>).



1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Guidelines for Rehabilitating Historic Buildings

The [Guidelines \(https://www.nps.gov/crps/tps/rehab-guidelines/index.htm\)](https://www.nps.gov/crps/tps/rehab-guidelines/index.htm) assist in applying the Standards to rehabilitation projects in general; consequently, they are not meant to give case-specific advice or address exceptions or rare instances. For example, they cannot tell a building owner which features of an historic building are important in defining the historic character and must be preserved or which features could be altered, if necessary, for the new use. Careful case-by-case decision-making is best accomplished by seeking assistance from qualified historic preservation professionals in the planning stage of the project. Such professionals include architects, architectural historians, historians, archeologists, and others who are skilled in the preservation, rehabilitation, and restoration of the historic properties. These [Guidelines are also available in PDF format \(https://www.nps.gov/crps/tps/rehab-guidelines/rehabilitation-guidelines-1997.pdf\)](https://www.nps.gov/crps/tps/rehab-guidelines/rehabilitation-guidelines-1997.pdf).

The [Guidelines on Sustainability for Rehabilitating Historic Buildings \(https://www.nps.gov/orgs/1739/upload/sustainability-guidelines.pdf\)](https://www.nps.gov/orgs/1739/upload/sustainability-guidelines.pdf) stress the inherent sustainability of historic buildings and offer specific guidance on the application of the Standards to solar technology, weatherization, and other energy saving treatments. These [Guidelines are also available as an interactive web feature \(https://www.nps.gov/crps/tps/sustainability-guidelines/index.htm\)](https://www.nps.gov/crps/tps/sustainability-guidelines/index.htm).



The [Guidelines on Flood Adaptation for Rehabilitating Historic Buildings \(https://www.nps.gov/orgs/1739/upload/flood-adaptation-guidelines-2021.pdf\)](https://www.nps.gov/orgs/1739/upload/flood-adaptation-guidelines-2021.pdf) provide information about how to adapt historic buildings to be more resilient to flooding risk in a manner that will preserve their historic character and that will meet Standards for Rehabilitation.

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SUBJECTS

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(<https://www.nps.gov/subjects/nationalregister>)

ORGANIZATIONS

Cultural Resources Partnerships and Science Directorate
(<https://www.nps.gov/orgs/1345>)

Technical Preservation Services
(<https://www.nps.gov/orgs/1739>)

