

CREDIT FOR PRESERVATION OF HISTORIC BUILDINGS

REVENUE INTERIM COMMITTEE
MEGAN MOORE - JANUARY 2024

| | | | |
|---------------------|--|---|-----------------|
| Tax Type | Individual/Corporate | Refundable | No |
| Enacted | 1998 | Carryover | 7 years forward |
| Terminates | N/A | Revenue Impact (6-Year Average) - Individual | \$34,731 |
| MCA Sections | 15-30-2342 , 15-31-151 | Revenue Impact (6-Year Average) - Corporate | \$6,675 |

EXPLANATION OF CREDIT

The credit for preservation of historic buildings is an individual income and corporate income tax credit equal to 25% of the federal rehabilitation credit. The credit is not refundable but may be carried forward 7 years.

The federal credit is equal to 20% of qualified rehabilitation expenditures, which means the Montana credit is equal to 5% of total eligible expenditures.

FEDERAL REHABILITATION CREDIT REQUIREMENTS

The federal rehabilitation credit is provided for in [26 U.S.C. 47](#). The credit is calculated based on **qualified rehabilitation expenditures**.

Qualified Rehabilitation Expenditure

| | |
|--|--|
| <ul style="list-style-type: none"> ✓ An amount chargeable to a capital account for property for which depreciation is allowed under 26 U.S.C. 168 ✓ Nonresidential real property ✓ Residential rental property ✓ Real property with a useful expected life of more than 12.5 years ✓ An addition or improvement to any of the above | <ul style="list-style-type: none"> ✗ Expenditure for which straight line depreciation is not used ✗ Cost of acquisition ✗ Cost for enlargement of existing building ✗ Tax-exempt use of property |
|--|--|

Qualified rehabilitation expenditures must be made for a **qualified rehabilitated building**, which requires that the building:

- be **substantially rehabilitated**;
- be placed into service before beginning the rehabilitation;
- is a **certified historic structure**; and
- is subject to depreciation.

A building is **substantially rehabilitated** if the **qualified rehabilitation expenditures** during the rehabilitation period exceed the greater of the adjusted basis¹ of the building or \$5,000.

The Secretary of the Interior must determine that the building is a **certified historic structure**, which requires that it be listed on the National Register or be located in a registered historic district and be certified by the Secretary as being of historic significance to the district.

PURPOSE

The legislation enacting the credit for preservation of historic buildings did not contain a purpose statement. Reviewing the statements by bill proponents during the Senate hearing offers some insight into the possible purpose of the credit.

Bill sponsor, Rep. Dan Harrington, expressed a goal of saving deteriorating historical buildings in Montana and making them a productive part of the community. Brian Cockhill, director of the Montana Historical Society, added that the credit will allow developers to restore historic structures. Executive director of the Butte Local Development Corporation, Evan Barrett, also noted that the federal rehabilitation credit was lowered from 25% to 20% and that the Montana credit would make up that difference.²

LEGISLATIVE HISTORY

The current version of the credit for preservation of historic buildings is identical to the law enacted by the 1997 Legislature.

The 2001 Legislature amended the credit available to individual taxpayers to provide for an alternative credit equal to 20% of the cost of implementing a conservation easement.³ However, the alternative credit terminated on December 31, 2011.

The Legislature amended the credit for preservation of historic buildings once, in 2001, but those changes terminated in 2011.

TAXPAYER USE OF CREDIT

CREDITS REDUCED GENERAL FUND BY MORE THAN \$2 MILLION SINCE 1998

Claims for the credit for preservation of historic buildings totaled about \$2.3 million over the last 24 years.⁴ Individual income credits accounted for about one-and-a-half times more than corporate credits: \$1.4 million compared with \$870,000.

¹ The adjusted basis is the cost of the building plus or minus adjustments, which could include capital improvements (increase) or depreciation (decrease). "[Rehabilitation Credit \(Historic Preservation\) FAQs.](#)" IRS, accessed Dec. 29, 2023.

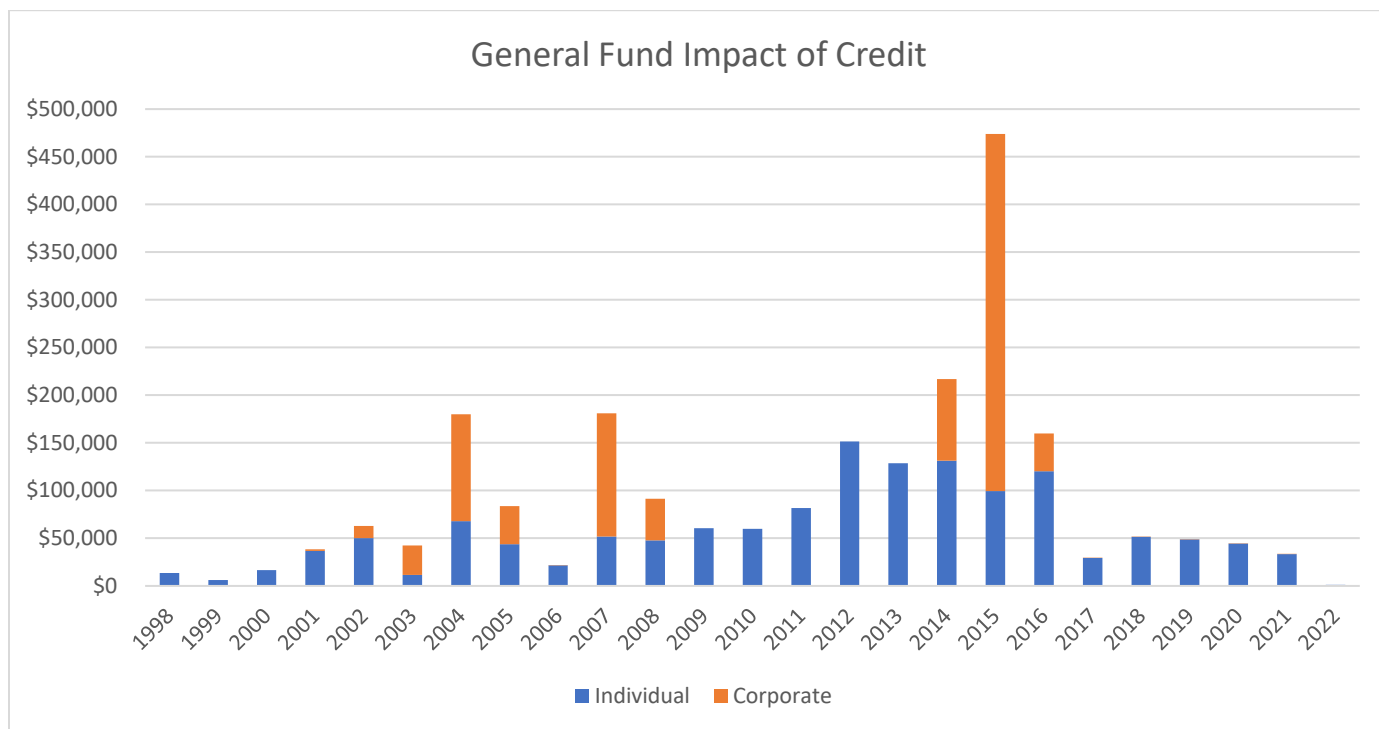
² Testimony in Senate Taxation Committee, April 8, 1997.

³ [Ch. 538, L. 2001.](#)

⁴ Data is not available for corporate income credits claimed in 1998, 1999, or 2000, and 2022 corporate income tax data is not yet available.

In most years, credits claimed amounted to less than \$100,000, but exceptions include 2004, 2007, and 2012 through 2016.

The alternative individual income tax credit for conservation easement costs does not appear to have increased individual credits claimed. The total individual credits claimed between 2002 and 2011, the 10-year period the credit was available, was just under \$500,000 compared with more than \$800,000 claimed from 2012 to 2022.



Due to confidentiality concerns, the number of corporate credits claimed is only available for years in which no credits were claimed. Exact figures for individual credits are also not available because of confidentiality.

However, the partial individual credit numbers suggest more individuals claimed the credit in nearly every year. Aside from two years with no available credit counts (1999 and 2003), individual credit claims ranged from a low of seven in 2022 to a high of 62 in 2015.

The following tables show credits claimed by tax type and, for the individual credits, distinguish between the credit amount listed on the tax form and the actual amount used based on tax liability. It is possible that some individuals listed as claiming the credit did not have sufficient tax liability to use the credit in a given year.

CREDITS FOR PRESERVATION OF HISTORIC BUILDINGS, 1998-2011

| Tax Year | Individual Income Credits | | | | | | | Corporate Income Credits | | | |
|----------|---------------------------|-----------|--------------|----------|--------------------|---------|---------------|--------------------------|----------|------------|-----------|
| | Resident | | Non-resident | | Part-year Resident | | Total Claimed | Total Used | Number | Total Used | |
| | # | \$ | # | \$ | # | \$ | # | \$ | # | \$ | |
| 1998 | 11 | \$15,275 | 0 | \$0 | * | \$331 | >11 | \$15,606 | \$13,696 | No data | |
| 1999 | * | \$7,788 | 0 | \$0 | 0 | | * | \$7,788 | \$6,051 | | |
| 2000 | 12 | \$28,759 | * | \$265 | * | \$1,599 | >12 | \$30,623 | \$16,409 | | |
| 2001 | 15 | \$71,980 | 0 | \$0 | 0 | \$0 | 15 | \$71,980 | \$36,759 | * | \$1,709 |
| 2002 | 16 | \$74,777 | * | \$9,916 | 0 | \$0 | >16 | \$84,693 | \$50,028 | * | \$12,884 |
| 2003 | * | \$17,811 | * | \$2,846 | 0 | \$0 | * | \$20,657 | \$11,389 | * | \$30,948 |
| 2004 | 25 | \$97,748 | 0 | \$0 | 0 | \$0 | 25 | \$97,748 | \$68,009 | * | \$111,843 |
| 2005 | 16 | \$51,108 | * | \$6,250 | 0 | \$0 | >16 | \$57,358 | \$43,746 | * | \$39,876 |
| 2006 | 11 | \$200,670 | * | \$3,701 | 0 | \$0 | >11 | \$204,371 | \$21,752 | * | \$50 |
| 2007 | 15 | \$222,787 | * | \$16,601 | 0 | \$0 | >15 | \$239,388 | \$51,680 | * | \$129,479 |
| 2008 | 17 | \$60,116 | * | \$15,471 | 0 | \$0 | >17 | \$75,587 | \$47,924 | * | \$43,370 |
| 2009 | 19 | \$134,543 | * | \$53,684 | 0 | \$0 | >19 | \$188,227 | \$60,568 | 0 | \$0 |
| 2010 | 20 | \$495,691 | * | \$44,158 | 0 | \$0 | >20 | \$539,849 | \$59,699 | 0 | \$0 |
| 2011 | 21 | \$105,214 | * | \$29,549 | 0 | \$0 | >21 | \$134,763 | \$81,679 | 0 | \$0 |

CREDITS FOR PRESERVATION OF HISTORIC BUILDINGS, 2012-2022

| Tax Year | Individual Income Credits | | | | | | | Corporate Income Credits | | | |
|-------------|---------------------------|-----------|--------------|-----------|--------------------|----------|---------------|--------------------------|------------|-------------------|-----------|
| | Resident | | Non-resident | | Part-year Resident | | Total Claimed | | Total Used | Total Used | |
| | # | \$ | # | \$ | # | \$ | # | \$ | \$ | # | \$ |
| 2012 | 21 | \$199,776 | * | \$32,291 | 0 | \$0 | >21 | \$232,067 | \$151,311 | 0 | \$0 |
| 2013 | 32 | \$492,477 | 13 | \$63,320 | 0 | \$0 | 45 | \$555,797 | \$128,501 | 0 | \$0 |
| 2014 | 21 | \$443,810 | 11 | \$53,875 | 0 | \$0 | 32 | \$497,685 | \$131,378 | * | \$85,520 |
| 2015 | 16 | \$363,789 | 46 | \$241,925 | 0 | \$0 | 62 | \$605,714 | \$99,411 | * | \$374,586 |
| 2016 | 19 | \$301,456 | 33 | \$416,873 | * | \$50,000 | >52 | \$768,329 | \$120,103 | * | \$39,653 |
| 2017 | 13 | \$186,753 | 30 | \$373,205 | 0 | \$0 | 43 | \$559,958 | \$29,281 | * | \$50 |
| 2018 | 18 | \$27,884 | 24 | \$287,573 | * | \$796 | >42 | \$316,253 | \$51,379 | * | \$50 |
| 2019 | 19 | \$36,554 | 35 | \$285,746 | * | \$16 | >54 | \$322,316 | \$48,715 | * | \$53 |
| 2020 | 13 | \$41,494 | 30 | \$317,235 | 0 | \$0 | 43 | \$358,729 | \$44,437 | * | \$50 |
| 2021 | 13 | \$42,749 | 17 | \$224,282 | * | \$12,500 | >30 | \$279,531 | \$33,337 | * | \$193 |
| 2022 | 2 | \$828 | 5 | \$105,872 | 0 | \$0 | 7 | \$106,700 | \$1,236 | Not yet available | |

*Number not disclosed due to confidentiality concerns

CREDIT ADMINISTRATION

The Department of Revenue (DOR) does not have concerns about administration of the credit for preservation of historic buildings. Because the credit is a percentage of the federal credit, administration of the credit is straightforward.

DOR does recommend a change to [15-30-2342](#) to remove subsection (2) related to spouses filing separately on the same form. With the implementation of [Senate Bill 399](#) (2021), that filing status no longer exists.

15-30-2342. Credit for preservation of historic buildings. (1) There is allowed as a credit against the taxes imposed by **15-30-2103** a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in **15-31-151**.

(2) The credit may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners.

Decision Point: The committee may wish to request legislation to repeal 15-30-2342(2) per the Department of Revenue's recommendation.

CREDITS IN OTHER STATES

Thirty-five states offer historic tax credits for income-producing properties and 25 states allow the credits for homeowners.⁵ Because Montana's credit is only for income-producing properties, the information in this section will focus on credits for those properties.

MONTANA HAS THE LOWEST CREDIT PERCENTAGE

State credits range from a low of 5% of qualified rehabilitation expenditures in Montana to 50% in New Mexico. Fifteen states have a credit percentage of 25% and seven states offer a 20% credit.

Nine states have a credit percentage that varies based on a factor such as the spending on the project or the size of the community in which the project is located.

MANY STATES USE CARRYFORWARD OR TRANSFER, REFUNDS LESS COMMON

Montana is one of 26 states that allow carryforward of the credit amount that exceeds a taxpayer's income tax liability. Twelve states have a 10-year carryforward period, and another seven states allow a 5-year carryforward. Montana is one of three states that use a 7-year carryforward.

⁵ Information in this section from: National Trust for Historic Preservation, "[State Historic Tax Credit Resource Guide](#)," January 2023, p. 8-11.

Twenty-two states allow for the transfer of unused credit to another taxpayer. Fourteen states allow the taxpayer to choose between carrying forward a credit or transferring it.

Eight states provide a refund to taxpayers with credits that exceed their tax liability.

Three states do not allow a credit to be carried forward, transferred, or refunded.

20 STATES CAP ANNUAL AGGREGATE CREDITS

Montana is among the 15 states that do not cap annual aggregate credits. Among the 20 states with caps, Indiana's is the lowest, at \$250,000, and Louisiana's \$125 million is the highest.

Montana's credits claimed totaled less than \$250,000 in all years except 2015, when taxpayers claimed about \$474,000.

22 STATES LIMIT PER-PROJECT CREDITS

Limits in the 22 states with per-project maximum credits range from \$25,000 in New Mexico to \$10 million in Kentucky and Ohio.

Montana is one of 13 states that does not limit the credit amount. However, Montana's 7-year carryforward effectively limits the credit amount to the taxpayer's tax liability over the 7 years.