Historic Preservation: Incentivizing Companies Through Tax Credits

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I. INTRODUCTION: THE IMPORTANCE OF HISTORIC PRESERVATION

The preservation of historic structures not only helps preserve the cultural history of communities across the United States, but it also provides these communities with an enormous amount of economic benefits that come in the form of jobs, revenue, and increased property values. Company investment in historic structures has been a vital part of historic preservation and bringing these benefits to communities all across the country. The single largest way to get companies to invest in local historic structures is to provide a monetary incentive in the form of tax credits.

This Note looks at the role tax credits play in incentivizing businesses to invest in historic preservation. Particular interest is placed on the unique characteristics different states use in their tax credit programs and how different states are better able to incentivize investing in historic preservation through their respective tax credit programs. First, the Note will give a brief background on historic rehabilitation tax credits at the federal and state level and look at the economic benefit historic rehabilitation provides for states, local communities, and companies. The next part will comparatively analyze the tax credit programs of three different states to determine what types of characteristics best incentivize companies to invest. Finally, this Note recommends that states alter their tax credit programs to include several features that will likely increase company investment in historic structures in their state.

II. BACKGROUND: THE DEVELOPMENT OF HISTORIC PRESERVATION TAX CREDITS

In recent decades, historic preservation, or landmarking, has developed into one of the most vital tools to protect American architectural culture and heritage.[1] Historic preservation is utilized to maintain traces of historical events, persons, and spaces that have shaped communities across the United States.[2] Today, historic preservation is a complex system of laws, policies, and advocacy groups at the national and local levels of government with participation from private and public sectors.[3] The benefits of historic preservation—including increased economic activity, job growth, increased tourism, neighborhood stabilization, and the promotion of arts and culture—are far reaching and drastically outweigh any possible disadvantages that come with preservation.[4] As a result, the Federal and state governments provide tax incentives or credits for individuals and companies who invest their money in purchasing and rehabilitating historic structures.[5] The tax credits help to encourage companies to rehabilitate and invest in historic structures.

A. The Development and Process of Historic Preservation

Preservation began late in the nineteenth century when citizens of Virginia sought to

1. *See generally* NORMAN TYLER ET AL., HISTORIC PRESERVATION: AN INTRODUCTION TO ITS HISTORY, PRINCIPLES, AND PRACTICE (2d ed. 2009) (explaining the preservation movement in common language).

2. James R. Brindell, *Improving the Standards and Process of Historic Designation*, 44 URB. LAW. 265, 265 (2012).

3. *See* DONOVAN RYPKEMA ET AL., MEASURING ECONOMIC IMPACTS OF HISTORIC PRESERVATION (2011), http://www.preserveamerica.gov/docs/economic-impacts-of-historic-preservation-study.pdf (discussing data surrounding historical tax credits).

4. *See Economic Reasons for Investing in Historic Preservation*, ADVISORY COUNCIL ON HIST. PRESERVATION (Apr. 14, 2009), http://www.achp.gov/recovery/economic.html (discussing the overall economic impacts of historic preservation).

5. Kari Wolff, *Communities and investors benefit from historic tax credit programs*, KAN. CITY BUS. J. (Sept. 8, 2016), https://www.bizjournals.com/kansascity/news/2016/09/08/communities-and-investors-benefit-from-historic.html.

preserve Mount Vernon, the historic home of George Washington.[6] However, historic preservation did not gain momentum until the early twentieth century, when Congress enacted the Antiquities Act of 1906, which gave the President power to designate historic landmarks and structures located on federal land.[7] In the 1960s, Congress began increasing historic preservation efforts and raising public awareness, which culminated in the National Historic Preservation Act of 1966 (NHPA).[8] The NHPA authorized the Secretary of Interior to maintain a National Register of Historic Places, such as districts, buildings, and certain monuments to protect historic property at a national level.[9]

Additionally, the NHPA encourages states to maintain their own preservation programs by following the guidelines and criteria set forth by the NHPA.[10] Governors of each state are required to designate a State Historic Preservation Officer (SHPO) to implement and oversee a state preservation program, as well as implement the required federal preservation program.[11] The responsibilities of the SHPO include conducting a survey of historic properties statewide, identifying and nominating historic properties to the National Register, and overseeing the applications for listing historic properties on the National Register.[12]

Preservation also occurs at the local level, and the SHPO is required to assist local governments in developing their own preservation programs.[13] Once a local program is certified, it is authorized to carry out the responsibilities delegated to it by the NHPA and is eligible for funds through the program.[14]

More than 90,000 properties are listed in the National Register, and almost every county in the United States has at least one historical structure listed.[15] A wide range of historic buildings are preserved each year.[16] For example, commercial buildings may be restored for commercial or residential usage, while residential buildings can be restored as housing units or commercial usage.[17] The National Register is "expansive in its inclusion and potential inclusion of historic, corporately owned or operated property because of its relatively lenient criteria for listing."[18] To be considered eligible for the National Register, a property must meet the criteria set forth by the federal preservation officers. The property must be at least 50 years old, and it must be associated with historically important events,

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6. Laura Luisi, Comment, *A New Devil in the White City: The Demolition of Prentice Women's Hospital and the Failure of Chicago's Landmarks Ordinance*, 48 J. MARSHALL L. REV. 391, 392 (2014).

7. Antiquities Act, 16 U.S.C. §§ 431–33 (1988).

8. Luisi, *supra* note 6, at 394–95.

9. *Id.* at 395.

10. *Id.*

11. Mark D. Brookstein, Note, *When History is History: Maxwell Street, Integrity, and the Failure of Historic Preservation Law,* 76 CHI.-KENT L. REV. 1847, 1865 (2001).

12. *Id.*

13. *Id.* at 1867.

14. *Id.*

15. *National Register of Historic Places Program: About Us*, NAT'L PARK SERV., https://www.nps.gov/nr/about.htm (last visited Oct. 11, 2017).

16. Mimi Morris, *The Economic Impact of Historic Resource Preservation*, CAL. CULTURAL & HIST. ENDOWMENT 13 (Nov. 2012), http://resources.ca.gov/docs/cche/EconomicImpact_of_HistoricResourcePreservation.pdf.

17. *Id.*

18. Michael Treinen, Note, *Opposing Forces Yet Mutual Catalysts: Reconciling Corporate Policy with the Preservation of Iowa's Historic Buildings*, 29 J. CORP. L. 819, 822 (2004).

activities, people, or achievements.[19] Nominations for historic preservation sites can be sent to the SHPO and proposed nominations are reviewed by the state's historic preservation office and National Register Review Board.[20]

B. Economic Benefits of Historic Preservation

Historic Preservation and rehabilitation efforts have resulted in a wealth of economic benefits to local communities across the United States. According to the Advisory Council on Historic Preservation, in 2008, preservation projects that were approved for a tax credit generated 55 jobs each, and historic preservation activities in Texas alone have generated more than $1.4 billion of economic activity each year.[21] Preservation projects involving rehabilitation have a local impact on the economy due to the hiring of local construction workers and service personnel.[22] For instance, Colorado, Texas, and California have estimated that historic preservation programs have created tens of thousands of new jobs in their states.[23] Historic preservation has a large impact on tourism in states across the country. More than 15 states, including Colorado, Tennessee, and Arizona, report a positive economic impact of cultural tourism and historic preservation in their states.[24]

Preservation efforts also help to maintain property values in both residential and commercial areas and visitors to these sites spend billions of dollars.[25] Regional variations in property values make nationwide studies on the impact of historic preservation on property values impossible.[26] However, local studies where historic districts are compared to non-historic districts provide conclusive data showing how property values in historic districts increase much faster than those in non-historic districts.[27] Studies on property valuation show "a uniform pattern of some percentage of increase to property values resulting from rehabilitation efforts to historic properties or properties located in historic designation districts."[28]

Although this is not an exhaustive list of the economic benefits of historic preservation and rehabilitation, it is a good representation of how it can contribute to state economies and why the federal and local governments want to encourage corporations to invest in historic preservation sites.

C. Incentives and Tax Credits

To encourage preservation of historic resources, the government provides incentives for those who own and rehabilitate a structure designated as a historic preservation site.[29]

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19. *National Register of Historic Places Program: Fundamentals*, NAT'L. PARK SERV., https://www.nps.gov/nr/national_register_fundamentals.htm (last visited Aug. 24, 2017).

20. *Id.*

21. *Economic Reasons for Investing in Historic Preservation, supra* note 4 (discussing the economic benefits Texas has seen from with the passing of its preservation tax credit).

22. Morris, *supra* note 16, at 17.

23. *Id.* at 17–18.

24. *Id.* at 19.

25. *Id.* at 13.

26. *Id.*

27. Morris, *supra* note 16, at 13.

28. *Id.*

29. *National Register of Historic Places Program: Fundamentals*, *supra* note 19 (explaining government incentives provided to those who own and rehabilitate historic preservation sites).

Some of these incentives include federal preservation grants for rehabilitation, federal and state level tax credits, and preservation easements[30], which are described in Section 170 of the Internal Revenue Code as conservation easements.[31]

While tax credits are not the only incentive for those interested in purchasing and rehabilitating a historic structure, they arguably provide the biggest enticement.[32] Congress adopted a tax incentive in the Tax Reform Act of 1976, and two years later, the Supreme Court decision in *Penn Central Transportation Co. v. City of New York* [33] established that historic preservation was a valid outlet to utilize land-use controls, such as certain building and renovation restrictions.[34] Both federal and state laws offer tax credits that can come in the form of local property tax freezes or income tax credits.[35] Tax freezes exclude the value of funds spent on rehabilitation of a historic structure for a certain number of years, whereas a tax credit refunds a portion of rehabilitation expenditures.[36] Numerous examples exist showing how tax credits and the designation of a structure as a historic landmark play a large role in an investor's decision to purchase and rehabilitate a historic property.[37]

1. Federal Tax Credit

The National Park Service administers the federal historic tax credit program.[38] The program offers up to 20% tax credits for historic sites listed under the National Register that also meet the evaluation requirements of historic property.[39] The Internal Revenue Code defines the income tax credit for the rehabilitation of certified historic structures.[40] Companies housed in historic property are eligible for double the tax credit.[41] Historic tax credits cover costs that pertain to the construction of the historic structure, accounting expenses, architectural fees, and engineering costs.[42] The qualified rehabilitation expenditures must exceed the cost of the structure or $5,000 to be eligible for the tax credit.[43]

In addition to tax credits at the Federal level, certified historic structures are also

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30. *Id.*

31. 26 U.S.C. § 170 (2016).

32. *See* David J. Kohtz, Note, *Improving Tax Incentives for Historic Preservation*, 90 TEX. L. REV. 1041, 1043 (2012) (discussing how tax incentives function as a good way to encourage preservation by saving taxpayers money).

33. *See* Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104 (1978) (holding historic preservation is a legitimate use of land use controls).

34. Khotz, *supra* note 32, at 1043.

35. *Id.*

36. *Id.*

37. *See* Steve Fogarty, *State tax credit to determine fate of Amherst's Central School building*, THE CHRONICLE (Aug. 25, 2016, 11:57 AM), http://www.chroniclet.com/Local-News/2016/08/25/State-tax-credit-to-determine-fate-of-Amherst-s-Central-School-building.html (stating that the company director for Sprenger Healthcare Systems wants to convert the school building into an assisted living facility but the plan was entirely dependent on receiving a tax credit from the Ohio Preservation Program).

38. Wolff, *supra* note 5.

39. *Id.*

40. Rehabilitation Credit, 26 U.S.C. § 47 (2012).

41. Treinen, *supra* note 18, at 824.

42. *Id.*

43. Larry R. Garrison, *State Tax Incentives for the Rehabilitation of Historical Properties*, 25 J. MULTISTATE TAX'N & INCENTIVES 16, 16 (2015).

eligible for state level income tax credits, which are provided in all but ten states.[44] The incentives vary by state but most mirror the rehabilitation tax credit provided at the Federal level in the Internal Revenue code.[45] However, some important distinctions between the two tax credits do exist. As opposed to tax credits for the rehabilitation of structures for commercial use, some states allow tax credits for restoring historical homes. Many states allow the tax credit "to offset taxes paid by corporations and individual taxpayers where applicable for personal-use property."[46] For "pass-through entities,"or entities not subject to income tax, such as proprietorships, partnerships, and limited liability companies, the tax credit can pass through to the partners or shareholders.[47] This issue was decided in *Historic Boardwalk v. Commissioner of Internal Revenue*.[48]

In *Historic Boardwalk*, "the Third Circuit concluded that the investor was not a 'bona fide partner' because the investor 'lacked a meaningful stake in either the success or failure' of the venture giving rise to the rehabilitation credits."[49] Because there was no risk of loss to the investor, he could not be considered a partner in accordance with LLC laws.

2. State Tax Credits and Incentives for Companies

State tax credits can be a major asset to companies seeking to invest in historic structures.[50] In fact, many companies base their decision of whether to rehabilitate a historic structure, buy a newly built structure, or simply build their own structure on receiving the state tax credit.[51] This is because company investment in historic properties tends to occur on a larger scale than investments by smaller entities—which necessitates greater spending and gives companies a bigger incentive to utilize tax credits.[52]

While tax credits provide one of the largest incentives to companies investing in historic preservation, there are several ways that businesses benefit from investing in these properties. Investment in historic properties by companies and large businesses provides some major strategic benefits, such as obtaining additional resources available for preservation, increasing corporate philanthropy, and helping to ensure a strong local economy.[53] "Businesses have made significant efforts in, and have reaped notable benefits

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44. *Id.* (stating that Alaska, Hawaii, Idaho, Michigan, Nevada, New Hampshire, New Jersey, North Carolina, Tenessee, and Wyoming do not have any state rehabilitation tax incentives).

45. *Id.* at 1.

46. *Id.* at 2.

47. *Id.*

48. Historic Boardwalk Hall, LLC v. Comm'r Internal Revenue, 694 F.3d 425 (3d Cir. 2012).

49. Steven A. Dean, *Space Madness: Subsidies and Economic Substance*, 99 CORNELL L. REV. ONLINE 151, 156 (2014).

50. *See generally* Treinen, *supra* note 18, at 824 (discussing advantages of state tax credits for companies seeking historic structures).

51. *See Oklahoma Historic Tax Credit*, *infra* note 109 (stating that many investments in historic properties would not have developed without the tax credit).

52. *See* Treinen, *supra* note 18, at 829 (discussing how federal and state incentives do not do enough to offset the high costs of rehabilitating a historic building when building a new building will cost less in many cases).

53. *Id.*; *see* Michael E. Porter & Mark R. Kramer, *The Competitive Advantage of Corporate Philanthropy,* HARV. BUS. REV. 5, 11 (Dec. 2002), http://www.expert2business.com/itson/Porter%20HBR%20Corporate%20philantropy.pdf (describing how corporations benefit from corporate philanthropy, such as historic preservation, in several ways, including improving their competitive context, increasing long-term business prospects, and obtaining social gains in their respective communities).

from [historic preservation]."[54] As a result, "corporations, and local economies in general, have warmed somewhat to the notion that historic preservation can and does run parallel to corporate objectives, even for larger facilities."[55] All of these benefits likely play a role in a company's decision to rehabilitate a historic structure. However, tax credits and the amount of tax dollars saved remain the most vital incentive for companies to rehabilitate historic properties.[56] It is worth analyzing the unique tax credits administered by each state to determine which policies can further encourage and best incentivize historic preservation by companies.

III. Analysis: Varying State Tax Credit Programs and Their Impact on Preservation Investment

Corporate investment in historic preservation and rehabilitation faces numerous hurdles, including accessibility, high costs of renovation and maintenance, and the increased regulations that go along with renovating and managing a property designated as a historic preservation site.[57] This is why state tax incentives can play a crucial role in convincing companies to invest in a historic preservation structure. This section will first analyze the primary differences between state rehabilitation tax credit programs and how they could impact companies. Next, the Note will look at the benefits and shortfalls of specific state programs to determine what characteristics are most attractive for companies willing to invest in a historic preservation site.

A. Characteristics and Structure of Historic Rehabilitation Tax Credits

Because most states now have tax credits for historic rehabilitation, it is vital to understand their common attributes and differences to determine which state programs are doing the most to attract company investment in historic sites in conjunction with the federal tax credit provided by the federal government.[58]

1. Specific Percentage Rates

State historic tax credit programs share several common characteristics that are utilized in different ways to effectuate the purpose of encouraging investment in historic preservation sites, while also ensuring that taxpayers are not negatively taking advantage of tax laws. First, all state programs have a specific percentage rate of the amount of tax credits for which each project is eligible. The percentage rates are typically in the range of 20% to 30% of qualified rehabilitation expenditures.[59] For example, Alabama allows a tax

54. Treinen, *supra* note 18, at 819.

55. *Id.* at 828.

56. *See* Shores*, infra* note 97, at 199 (stating that Missouri's relative success in preserving and rehabilitating historic structures can be attributed to its tax credit program).

57. Treinen, *supra* note 18, at 835; *see, e.g.*, Bryan Steinkohl, Comment, *Now Taking the Field, the State Government: Landmark Status of Baseball Stadiums As Regulatory Takings*, 29 LOY. L.A. ENT. L. REV. 233, 233 (2009) (discussing how Wrigley Field owners and the city of Chicago were at odds about renovating historic Wrigley Field).

58. *See generally State HTC Program Descriptions*, NOVOGRADAC & COMPANY LLP*,* https://www.novoco.com/resource-centers/historic-tax-credits/state-htcs/state-htc-program-descriptions (last visited Oct. 15, 2017) (listing all of the state historic tax credit programs and relevant information about them).

59. Harry K. Schwartz, *State Tax Credits for Historic Preservation*, NAT'L TR. FOR HIST. PRESERVATION

credit of "25% of qualified rehabilitation expenditures for certified historic buildings used for income-producing or residential purposes."[60] However, these percentages can vary a great deal, which can alter a company's decision to invest in a historic property.[61] A state that provides for higher percentage rates in the amount of tax credits for a historic rehabilitation project is eligible to attract more company investment because of the amount of money that it can save in renovating the structure.[62]

2. Annual Aggregate Caps

Another common characteristic of state historic rehabilitation tax credits is the annual aggregate cap or limit that is put on individual rehabilitation projects.[63] The annual limits are put into place to work in conjunction with the percentage rates of qualified expenditures. Unlike the percentage amounts, these caps vary a great deal from state to state. For example, Ohio has an annual cap of $60 million, Indiana has a cap of just $450,000, and Maryland has no annual cap at all.[64]

The distinctive caps can have a drastic effect on a company's decision to invest in a historic structure.[65] A much higher cap gives the company more freedom and options to renovate the historic structure as they see fit. However, a lower cap can hinder a company's ability to make major renovations to a historic structure because they want to invest a great deal of money but remain eligible for the tax credit with the money they invest.[66] For example, Harry K. Schwartz of the National Trust For Historic Preservation, finds that "[a] well-thought-out and skillfully drafted tax incentive for historic preservation cannot achieve its objectives if the total amount of credits that can be awarded annually is subject to a statutory limit—particularly if the limit is fixed at a low figure."[67] This is especially true for companies because they tend to invest much more in historic structures than individuals do simply because of their available resources and the magnitude of their projects, which can vary from large real estate ventures to office spaces or other commercial use projects.[68]

3. Rehabilitation Requirements

In addition to the percentage rate for qualified historic structures and the annual cap eligible for the tax credit, state programs necessitate that historical rehabilitation projects

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1, 3 (2013), http://ncshpo.org/State-Tax-Credits-Report%202013.pdf.

60. *Alabama's New Historic Preservation Tax Credit*, NOVOGRADAC & COMPANY LLP, https://www.novoco.com/sites/default/files/atoms/files/alabama_historic_preservation_tax_credit_factsheet_073014.pdf (last visited Oct. 15, 2017).

61. *See State HTC Program Descriptions*, *supra* note 58 (stating that New Mexico allows a tax credit equal to 50% of qualified expenditures); *see also* Schwartz, *supra* note 59, at 3 (discussing the appropriate rates to assign).

62. *See* Schwartz, *supra* note 59, at 3 (arguing that percentage rates should not be so low as to not provide an incentive for a developer deciding whether or not to undertake the project).

63. *Id.* at 1.

64. *See generally State HTC Programs Descriptions*, *supra* note 58 (discussing the rehabilitation caps and limits put on individual projects by various states).

65. *See* Schwartz, *supra* note 59, at 1 (explaining how statutory caps may discourage applicants).

66. *Id.*

67. *Id.*

68. Morris, *supra* note 16, at 13.

meet certain requirements in order to be eligible for tax credits.[69] These include building requirements that are registered in the National Register of Historic Places, construction limitations that only allow renovations that do not alter the historic structure to a large extent, and claimants not being subject to certain taxes in the industry they specialize in, such as insurance companies and banks.[70] In New York, the certified historic structure can be registered in the National Register of Historic Places or "located in a state or national registered historic district and is certified as being of historic significance to the district."[71] Companies will be more likely to invest in a historic structure in a state that has a clear and comprehensible framework, along with less stringent requirements for building guidelines and eligibility criteria.[72]

The Secretary of Interior's Standards for Rehabilitation, which are used to determine eligibility for the federal tax credit, provide a solid framework for states to utilize in determining what projects should be eligible for state tax credits.[73] Not only do these standards provide a comprehensive and clear guideline for investors to renovate a historic property, but they also do not overburden the investor with requirements that could hinder or delay a renovation project. Additionally, companies that are subject to industry specific tax laws as opposed to state corporate income tax laws are much less likely to invest in a state where they are not permitted to take advantage of the tax credit.[74] States that do not extend tax credits to these types of companies essentially disincentivize companies from investing in historic structures in their state.[75]

4. Transferability of the Tax Credit

One final characteristic that distinguishes state historic tax credit programs is the transferability of the tax credit. Transferability refers to "the ability to make an outright transfer or assignment of the tax credit to another person or entity."[76] Historic structures are freely sold and changes in ownership occur frequently. Many companies consider whether the tax credit is freely transferable and whether they may buy or sell an income tax credit or be refunded for unused tax credits as the owner of a historic structure.[77] Oklahoma for example, provides that "tax credits may be freely transferred to another party that has no other interest in the rehabilitated building except to purchase the right to utilize the state tax credits to reduce their state tax liability"[78] A policy of a freely transferable tax

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69. *See* Schwartz, *supra* note 59, at 2, 4 (detailing some possible and actual state requirement for project eligibility).

70. *Id.* at 4.

71. S.B. 8392, 2006 S. Assemb. (N.Y. 2006), https://www.novoco.com/sites/default/files/atoms/files/new_york_sb_8392_073014.pdf.

72. *See* Schwartz, *supra* note 59 (explaining how companies are more likely to invest in historical structures within a state that has clear laws regarding historical structures).

73. Standards for Rehabilitation, 36 C.F.R. § 67.7 (2017). *See* Schwartz, *supra* note 59, at 2 (discussing what a successful state tax program should require of eligible buildings).

74. *See* Schwartz, *supra* note 59, at 3 (suggesting that a provision should be made in state programs to extend the tax credit to these types of companies).

75. *Id*. at 11.

76. *Id*. at 2.

77. *Id*. *See also* Jennifer A. Zimmerman & Danny Bigel, *The Transferability and Monetization of State Tax Credits-Part II*, 25 J. MULTISTATE TAX'N & INCENTIVES 8, 8 (discussing how more states are now offering transferable income tax credits to incentivize business growth).

78. *Frequently Asked Questions About Tax Credits For Rehabilitation*, OKLA. HIST. SOC'Y 5 (Aug. 2004),

credit makes investing in a historic structure more appealing for companies knowing the tax credit they receive can be bought and sold at their discretion.[79]

B. The Structure and Impact of Specific State Tax Credit Programs

An array of historic rehabilitation tax credit programs exist. Because of this, it is beneficial to examine how the characteristics and structure of different state programs may impact companies in their decision to undertake a historic rehabilitation project. Historic state tax credit programs in Iowa, New York, and Oklahoma provide a sufficient outlet to compare and contrast what types of features do and do not work. Because these states have unique tax credit programs that vary a great deal from one another, they provide a good illustration of what characteristics are the most beneficial in stimulating investment in historic rehabilitation. Not only do these state preservation programs have different characteristics in terms of their annual cap, percentage rates, eligibility requirements, and transferability, but they are also different in terms of their population, state gross domestic product, economic growth rate, and property values. These differences highlight how tax credit programs with varied characteristics can incentivize companies in numerous types of states.

1. Iowa Tax Credit Program

The Iowa State Historic Preservation and Cultural and Entertainment District (HPCED) Tax Credit Program has been hailed as a major success throughout the state.[80] Iowa adopted the HPCED program in 2000, and it "allows property owners or developers to claim tax credits equal to 25 percent of qualified rehabilitation costs for eligible historic properties in Iowa."[81] The 25% rate is standard among state credit programs, and while it is not one of the highest tax credit amounts for qualified rehabilitation expenditures, it still provides some incentive for companies to invest in a historic structure.[82]

The annual aggregate cap for individual projects is $45 million.[83] This cap is on the higher end of the total amount of tax credits that may be awarded to taxpayers.[84] While it does provide some incentive to companies interested in investing in a historic structure, the cap is still a hindrance to companies that wish to take on a large rehabilitation project and invest a large sum of money, but still want to take advantage of the tax credit.[85]

A qualified rehabilitation project under the HPCED program includes any property listed on the National Register of Historical Places, property of historical significance in a district, property designated as a local landmark by a city or county, or "[a] barn

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http://www.okhistory.org/shpo/factsheets/fs14tax.pdf [hereinafter OKLA. HIST. SOC'Y].

79. *See* Schwartz, *supra* note 59, at 3 (advocating for state programs with freely transferable tax credits).

80. *See generally* Zhong Jin & Mike Lipsman, *Iowa's Historic Preservation and Cultural and Entertainment District Tax Credit Program Evaluation Study*, IOWA DEP'T OF REVENUE (Mar. 2009), https://tax.iowa.gov/sites/files/idr/HistoricPreservationCreditStudyMar09.pdf (noting various economic impacts from tax credits in Iowa).

81. *Id.* at 3.

82. *See* Schwartz, *supra* note 59, at 3 (noting the typical range that state tax credit programs utilize is between 20% to 30% of qualified rehabilitation expenditures).

83. *See generally Map of State HTC Programs*, *supra* note 58.

84. *Id.*

85. *See* Schwartz, *supra* note 59, at 1 (noting that "[e]ven if the annual limit is relatively high, the very act of imposing a cap alters the nature of the program").

constructed prior to 1937."[86]

Eligibility for the tax credit includes any individual under a partnership, limited liability company, S corporation, estate, or trust.[87] The wide range of eligibility provides a strong incentive for investment because many different types of business entities can utilize the tax credit and will be more likely to invest in historic rehabilitation projects as a result.

The HPCED Tax Credit Program allows the tax credit to be transferred and is fully refundable so that the taxpayer can receive funds directly for any amount of the tax credit that goes unused during the year.[88] This transferability is ideal for companies looking to invest in historic structures because it allows them to manage the tax credits as they see fit—whether that means transferring the credit or obtaining a refund for any unused credits.[89]

The HPCED Program has been labeled as a major success in Iowa as is confirmed by the numerous large-scale rehabilitation projects by companies all across the state.[90] One example is the IBM development of the historic Roshek Building in Dubuque, Iowa. According to Jill Connors, Director for Resource Development for Gronen Restoration, the large investment IBM has undertaken to restore the historic Roshek Building, has created thousands of jobs, and infused $46 million into the local economy.[91] According to Connors, "It is safe to say that IBM would not have chosen Dubuque had it not been for this tax credit program."[92] While it is clear Iowa's HPCED Program has had a positive impact on historic preservation and the state economy, more companies could be swayed to invest in historic sites based on small alterations to the program.

2. New York Tax Credit Program

In New York, owners of income producing properties are eligible for a 20% tax credit for qualified rehabilitation expenditures.[93] While lower than Iowa's percentage, this percentage is still standard among state tax credit programs and provides an adequate, but not ideal, incentive for companies to invest in historic structures.[94] By limiting the tax credit to just 20% of the qualified expenditures for rehabilitation, it does not encourage

86. H.F. 2453, 85th Gen. Assemb. 3 (Iowa 2014), https://iowaculture.gov/sites/default/files/History%20-%20Preservation%20-%20Tax%20Incentives%20-%20Resources%20-%20Iowa%20Code%20404A%20%28PDF%29.pdf.

87. *Id.* at 4.

88. Jin & Lipsman, *supra* note 80, at 20; *see* Schwartz, *supra* note 59, at 3 (discussing refundable tax credits as a solution to transferability issues in state programs).

89. *See* Schwartz, *supra* note 59, at 3 (recommending mechanisms that allow the tax credit to be utilized by taxpayers as they see fit).

90. *See generally, e.g.*, Jin & Lipsman, *supra* note 80, at 3 (showing that 99 projects have been awarded 213 HPCED tax credits totaling $89.9 million); *see also Historic Fort Des Moines to get $41M makeover*, KCCI-TV (Oct. 12, 2016, 12:05 PM), http://www.kcci.com/news/historic-fort-des-moines-to-get-41m-makeover/42073468 (discussing a $41 million investment by Blackbird Investments to renovate a housing complex that was eligible for $8.2 million in state tax credits).

91. Jin & Lipsman, *supra* note 80, at 10–11.

92. *Id.* at 10.

93. *New York State Historic Properties Tax Credits Commercial and Homeowner Programs*, N.Y. ST. OFF. OF PARKS, RECREATION AND HIST. PRESERVATION, https://www.parks.ny.gov/shpo/tax-credit-programs/documents/NYSTaxCreditPrograms.pdf (last visited Oct. 15, 2017) [hereinafter *New York State Historic Properties*].

94. *See* Schwartz, *supra* note 59, at 3 (discussing appropriate rates for historical rates for historical preservation tax credits).

investors to finance a greater amount in the structure because a smaller amount of the funds spent will be offset by the tax credit.[95]

Additionally, New York's tax credit is capped at $5 million. This relatively low cap on historic rehabilitation projects greatly hinders company incentive to invest in a historic structure because it creates a constraint as a result of not being able to utilize the tax credit for a historic structure that needs more than $5 million in renovations. A cap of just $5 million does not accurately represent the expenses of large-scale historic renovation projects undertaken by many companies.[96] While an argument can be made that New York does not need such a large cap because the State attracts more business as one of the major economic hubs in the United States, this does not take away from the fact that it can increase the frequency of historic rehabilitation projects in the State by giving companies a greater tax credit incentive.[97]

Similar to Iowa's HPCED Program, New York's Program allows any person, firm, limited liability corporation, or other business entity to participate in the program.[98] "Any commercial, office, industrial or rental residential building qualifies" as long as "it is listed on the National Register of Historic Places either individually or as a contributing building in a historic district."[99] Also, the property must be located in a federal census tract or "Qualified Census Tract", which requires a median family income at or below the median income level of New York.[100] This additional requirement limits the ability of companies to fund historic rehabilitation projects throughout the state by constraining the project to a select few locations.

Although the New York tax credit program allows unused tax credits to be refunded and carried forward indefinitely, the tax credit is not transferable.[101] A non-transferable tax credit limits a company's ability to sell the tax credit or transfer the credit to an entity that later owns the property. While New York's Program is a step in the right direction in terms of incentivizing historic preservation, it is evident that some characteristics of the Program, such as the annual cap amount, the requirement that a historic property be located in a historic district, and inability to transfer the tax credit, can be changed to better incentivize company investment in historic structures.

New York has seen positive economic results as a result of its tax credit program. A study by the New York Landmarks Conservancy found that more than $800 million is invested in New York's historic buildings annually, creating 9,000 jobs each year.[102] While

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95. *See* Janette M. Lohman et al., *State Rehabilitation Tax Credits: A Rebirth of History Across the U.S.*, 12 J. MULTISTATE TAX'N & INCENTIVES 23 (2000) (stating that the most successful state tax credit programs are the ones that tend to support the greatest sized renovations, which entails high tax credit percentages for investors).

96. *See, e.g.*, Amanda Renko, *Jones Court Developers Optimistic for State Funding*, STARGAZETTE (Sept. 30, 2016, 5:58PM), http://www.stargazette.com/story/news/local/2016/09/30/jones-court-developers-optimistic-state-funding/91335598/ (discussing state funding for turning the old Jones Court complex into affordable housing worth $20 million).

97. Lauren K. Shores, Comment, *Defending the Historic Preservation Tax Credit*, 77 MO. L. REV. 199, 210 (2012).

98. *New York State Historic Properties*, *supra* note 93 (emphasis omitted) (describing New York's historic properties tax credit program).

99. *Id.* at 1 (emphasis omitted).

100. *Id.*

101. *Id.*

102. *Historic Preservation: At the Core of a Dynamic New York City*, N.Y. LANDMARKS CONSERVANCY 1 (Apr. 2016), http://nylandmarks.org/pdfs/Economic_Study_Landmarks_Conservancy.pdf.

this success is no doubt a result of New York's preservation efforts and tax credit program, there is no telling how much more economic activity and growth can be advanced by improving the State's tax credit program to make it more attractive for company investment.

3. Oklahoma Tax Credit Program

Oklahoma provides a tax credit of up to 20% of qualified rehabilitation expenditures.[103] Like New York, this percentage is standard among tax credit programs but does provide a limitation for investors looking to invest a large amount of funds in historic structures and utilize the tax credit to offset the money spent. Unlike Iowa and New York, however, Oklahoma has no annual aggregate cap on the amount of tax credits that may be awarded. This no-limit characteristic is ideal because it does not put a constraint on the amount of historic rehabilitation projects and allows companies to take on large-scale projects as they are more likely to do. While some may argue that there will be an unpredictable impact on state budgets if there is no annual aggregate cap in place, this risk is substantially outweighed by the numerous economic benefits historic preservation has on the state, including increased revenue, an increase in property values, and the creation of new jobs.[104]

Additionally, Oklahoma's historic rehabilitation tax credit is freely transferrable to any party that has purchased the rights to utilize the tax credit.[105] As previously mentioned, this policy of having a freely transferrable tax credit can make investing in a historic structure more appealing for companies knowing that the tax credit can be bought and sold to third parties at their discretion and parties do not have to establish an ownership interest in the rehabilitated property to use the tax credit.

Numerous business entities and any person that has a registered property in the National Register of Historic Places is eligible for the historic tax credit.[106] The only requirements that need to be met are the Secretary of Interior's standards and guidelines for rehabilitation projects.[107] While these standards provide a clear framework for eligible properties, they also encourage investment by companies because they will not be bogged down by requirements that dictate the way they invest their money in these historic structures.

Relatively speaking, Oklahoma's tax credit program is regarded as investor friendly and less stringent than many other programs.[108] As a result of these investor friendly characteristics, the State has witnessed a great deal of economic benefits. A study by the Tulsa Foundation for Architecture found that the tax credit was a "fiscally responsible" tax incentive and that many investments in Oklahoma would not have occurred if it were not for the tax credit program.[109]

According to the Foundation, "[t]he historic tax credit has been a remarkable success

103. OKLA. HIST. SOC'Y, *supra* note 78.
104. Shores*, supra* note 97, at 232.
105. OKLA. HIST. SOC'Y, *supra* note 78, at 5.
106. Shores*, supra* note 97, at 208.
107. *Id*. at 201 n.18.
108. *See* OKLA. HIST. SOC'Y, *supra* note 78 (discussing incentives and benefits of the tax credit program).
109. *Oklahoma Historic Tax Credit: Impact on the Oklahoma Economy*, TULSA FOUND. FOR ARCHITECTURE (2016), http://tulsapreservationcommission.org/wp-content/uploads/2016/06/flyer.pdf.

in creating jobs, in generating tax revenues at the state and local levels, and in increasing the understanding of and appreciation for the wonderful history of Oklahoma as represented in its historic buildings."[110] The study found that the tax credit has attracted over $520 million in rehabilitation investment, which has created over 6,000 new jobs or an average of 450 per year.[111] Additionally, every $1 awarded in historic tax credits creates over $11 in economic activity.[112] These are just a few examples of how a tax credit program with characteristics that encourage company investment can develop into positive economic impacts for a state.

IV. RECOMMENDATION: MAXIMIZING PERCENTAGE RATES AND MINIMIZING ANNUAL CAPS

It is evident that some states are better able to take advantage of the benefits from historic rehabilitation due largely in part to the structure of their historic rehabilitation tax credit program.[113] This Note recommends (a) maximizing percentage rates for historic rehabilitation projects; (b) eliminating or maximizing annual aggregate caps for projects; (c) clearly illustrating the requirements of qualifying for tax credits, while in some instances; (d) loosening requirements to make it easier for companies to qualify; and (e) making the tax credit fully transferable. This proposal that states can implement by adopting or amending their state rehabilitation tax credit programs would help incentivize corporate investment in historic structures by allowing companies to take full advantage of tax credits without all the unnecessary burdens that some regulations result in.

A. Maximizing Percentage Rates

States that allow for a higher percentage rate in the amount of tax credits that a project is eligible for are more likely to attract corporate investment because the investor will save more money through the tax credits.[114] This is especially true because companies tend to invest in historic structures on a larger commercial scale than other investors and this makes tax credits an important factor when companies are looking to invest and save a substantial amount of money in the process.[115] According to Harry K. Schwartz of the National Trust For Historic Preservation, "the percentage rate of the credit should be fixed at a level high enough to constitute a meaningful incentive, typically in the range 20% to 30% of qualified rehabilitation expenditures."[116] States, such as Georgia, Iowa, Ohio, Wisconsin, and New York benefit from percentage rates in the 20% to 30% range because these rates provide an incentive to investors looking to obtain a significant tax credit in

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110. *Id.* (emphasis omitted).

111. *Id.*; *see* Steve Lackmeyer, *Study Says Historic Tax Credit Boost Oklahoma's Economy with Job Creation*, THE OKLAHOMAN (June 3, 2016 1:52PM), http://newsok.com/article/5499488 (providing an overview of the study by the Tulsa Foundation Study and discussing specific rehabilitation projects in Oklahoma City that utilized the tax credit, such as Sieber Hotel apartments, Main Street Arcade, and Skirvin Hilton Hotel).

112. *Id*.

113. *See* Schwartz, *supra* note 59, at 1; *see* Renee Kuhlman, *Historic Tax Credits: A Good Return for the Money*, MAIN STREET AM. (June 17, 2015), https://www.mainstreet.org/mainstreetamerica/blogs/hl-admin/2017/05/11/historic-tax-credits-a-good-return-for-the-money.

114. *See generally* Schwartz, *supra* note 59 (explaining that investors are likely to invest in states that allow higher percentage tax credits).

115. *See* Morris, *supra* note 16, at 13.

116. Schwartz, *supra* note 59, at 3.

their rehabilitation project.[117] Fortunately, most state tax credit programs allow for tax credits within the 20% to 30% range.[118] In light of this evidence, all states should allow a percentage rate of no lower than 20%.

B. Maximizing or Eliminating Annual Aggregate Caps

Similar to maximizing percentage rates, annual aggregate caps on historic rehabilitation projects should be increased or eliminated completely in order to provide greater incentives for companies looking to invest. As mentioned previously, companies are looking to invest on a larger scale than many other investors because of their resources and interests.[119] If the total amount of tax credits that can be awarded by a state is limited to a small amount, such as only $5 million in Kentucky, companies are less likely to invest in historic property in the state because of the small amount of funds that are eligible for the tax credit.[120] Programs with these low caps tend to discourage investment due to uncertainty as to whether the project will be selected for the tax credit, whether tax credits are still available for disbursement, and having to compete with other projects attempting to obtain a tax credit.[121]

On the other hand, states such as Ohio, Colorado, and Wisconsin, with very high or no annual caps on rehabilitation projects, encourage large-scale company investment with large amounts set aside for providing tax credits.[122] Numerous studies show that over time, states collect a profit from their investment in historic rehabilitation projects.[123] The numerous positive economic effects of historic rehabilitation suggest that states are better off investing more in historic tax credit caps.[124] As a result, there should be no annual aggregate cap on historic rehabilitation projects.

C. Clear and Concise Requirements

Historic rehabilitation tax credit programs should have clear requirements in accordance with the federal rehabilitation tax credit program. These requirements should be illustrated in a way that is transparent and easily accessible for those interested in investing in historic properties in the state. Additionally, the Secretary of Interior's Standards for Rehabilitation, which are used to determine eligibility for the federal tax

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117. *See id.* (describing some state tax incentives are more effective than others); *see also* Kuhlman, *supra* note 113 (describing how Maryland, Ohio, and Wisconsin HTC programs pay back the state for its investment in the tax credit programs); Donovan Rypkema & Briana Paxton, *Beyond Tourism: Historic Preservation in the Economy and Life of Savannah and Chatham County*, HIST. SAVANNAH FOUND. 19–20, http://www.placeeconomics.com/wp-content/uploads/2016/08/HSF-Beyond-Tourism-Report-2015-v4.pdf (last visited Oct. 15, 2017) (describing the benefits that Georgia's 25% state tax credit has provided the community).

118. *See* Schwartz, *supra* note 59, at 5–10 (listing the tax credits for different states).

119. *See* Morris, *supra* note 16, at 13.

120. *The Kentucky Historic Preservation Tax Credit*, KY. HERITAGE COUNCIL 2, http://heritage.ky.gov/NR/rdonlyres/CF36108F-E05B-42F5-8D5C-94AFF25B025D/0/KHPTCinstructions.pdf (last visited Oct. 15, 2017); *see also* Schwartz, *supra* note 59, at 6.

121. Schwartz, *supra* note 59, at 1.

122. *Id.* at 4, 8–9.

123. *See*, *e.g.*, Kuhlman, *supra* note 113 (explaining how numerous studies have found that states collect a profit from historic rehabilitation projects).

124. *See Economic Reasons for Investing in Historic Preservation*, *supra* note 4 (discussing the overall economic impacts of historic preservation).

credit, provide an adequate starting point for states to utilize in determining what projects should be eligible for state tax credits. These standards are detailed and require that material aspects of the historic structure remain in place, while not burdening investors with unnecessary obstructions to renovate the structure as they see fit.[125] For example, standard number ten requires that, "[n]ew 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."[126]

States with more stringent requirements than those set out by the National Park Service risk deterring investors who do not want to be bogged down by requirements when renovating the historic structure. New York's tax credit requirements, for example, require that the historic property be located on a "qualified census tract" in order to qualify for the tax credit.[127] This requirement unnecessarily limits historic rehabilitation projects in the state.[128]

D. Freely Transferable Tax Credit

All state historic tax credit programs should allow the tax credit to be freely transferable to further incentivize companies to invest in historic structures and obtain tax credits. By making historic rehabilitation tax credits freely transferable, companies are free to buy, sell, and transfer the tax credit to anyone at their own discretion.[129] Companies will be more willing to take advantage of tax credits that are freely transferable because those provide them with more choices if they decide to ever sell a historic structure or allow the tax credit to go unused.[130] A freely transferable tax credit, high annual caps, and allowing eligibility for tax credits by following standards set forth by the federal government provide the greatest incentives for companies to invest in historic rehabilitation.

State tax credit programs should maximize percentage rates that qualified property is eligible for and should be no lower than 20%. Annual aggregate caps should be eliminated to provide a proper incentive for companies to invest in large-scale projects. The requirements for properties eligible for the tax credit should be clear, concise, and follow the Federal government's Secretary of Interior standards for the tax credit. Lastly, the tax credit should be freely transferable.

V. CONCLUSION: THE FUTURE OF TAX CREDITS

The recommendations for tax credit programs outlined in this Note will help to incentivize companies to invest greater amounts in historic structures. In turn, this will provide states with all of the economic benefits that accompany historic preservation. In some states, legislatures are calling for an end to historic rehabilitation tax credits because

125. *See* Standards for Rehabilitation, 36 C.F.R. § 67.7 (2017).

126. *Id.*

127. *New York State Historic Properties*, *supra* note 93 (explaining the requirements of New York's tax requirements).

128. *Id.*

129. *See* Schwartz, *supra* note 59, at 3 (suggesting that a freely transferable tax credit puts it in the hands of those that can use it).

130. *See* Zimmerman & Bigel, *supra* note 77, at 1 (discussing how more states are now offering transferable income tax credits to incentivize business growth).

some lawmakers believe it will save money for their respective states.[131] As this Note contends, evidence shows that states that invest more in historic rehabilitation will reap more economic benefits than those that do not. It is vital that states keep and alter their tax credit programs to better incentivize investment by companies and reap the economic benefits that come with it.

131. *See* Audrey Wachs, *A Proposed Cut to Historic Preservation Tax Credits in Oklahoma Raises Concerns*, THE ARCHITECT'S NEWSPAPER (July 19, 2016), https://archpaper.com/2016/07/oklahoma-senate-bill-977-preservation-cut (discussing a proposal by two Republican lawmakers in Oklahoma to cut historic rehabilitation tax credits in the State).