PRESERVATION OF HISTORIC STRUCTURES TAX CREDIT

EVALUATION SUMMARY | JULY 2022 | 2022-TE33

TAX TYPE	Income	REVENUE IMPACT (TAX YEAR 2018)	$3.5 million
YEAR ENACTED	2014	NUMBER OF TAXPAYERS (TAX YEAR 2018)	79
REPEAL/EXPIRATION DATE	January 1, 2030		

KEY CONCLUSION: The credit has incentivized rehabilitation and restoration work on historic structures in Colorado, but in some cases may also subsidize work that has already been completed prior to property owners applying for the credit.

WHAT DOES THIS TAX EXPENDITURE DO?

The Preservation of Historic Structures Credit (Historic Structures Credit) [Section 39-22-514.5, C.R.S.] provides an income tax credit for property owners who rehabilitate or preserve a residential or commercial certified historic structure in Colorado. The credit is calculated as a percentage of qualified rehabilitation expenditures, ranging from 20 to 35 percent, depending on the structure type (residential or commercial) and location.

WHAT IS THE PURPOSE OF THIS TAX EXPENDITURE?

Statute does not explicitly state a purpose for the credit. Based on the legislative history of the provision, testimony from bill sponsors and stakeholders during legislative hearings, and its statutory language, we considered a potential purpose: to incentivize the restoration and rehabilitation of historic structures.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly may want to:

- Consider amending statute to establish a purpose and performance measures for the credit.
- Assess whether allowing qualified expenses that occurred prior to an application to be eligible for the credit, meets the intent of the credit.

PRESERVATION OF HISTORIC STRUCTURES CREDIT

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

The Preservation of Historic Structures Credit (Historic Structures Credit) [Section 39-22-514.5, C.R.S.] provides an income tax credit for property owners who rehabilitate or preserve a residential (non-income producing and owner occupied) or commercial (income producing or commercial) certified historic structure in Colorado. Statute defines a property owner as any taxpayer or nonprofit organization that owns the title to the structure, purchase agreement, or option to purchase the title; or has a leasehold interest of at least 5 years for residential structures or rural commercial structures; or has a leasehold interest of at least 39 years for non-rural commercial structures [Section 39-22-514.5(2)(i), C.R.S.]. In order to qualify, the structure must be at least 50 years old and be designated individually or as a contributing property (i.e., adds to the sense of time, place, and historical development) in the National Register of Historic Places, the State Register of Historic Properties, or within a designated historic district of one of the State's 67 Certified Local Governments (CLG). Additionally, the preservation or rehabilitation work must be "substantial," which statute defines as qualified rehabilitation expenditures (QRE) of over $5,000 for residential structures or over $20,000 for commercial structures [Section 39-22-514.5(2)(p), C.R.S.].

The credit amount is calculated as a percentage of qualified rehabilitation expenditures, ranging from 20 to 35 percent, depending on the structure type (residential or commercial) and location. For residential and commercial structures, qualified rehabilitation expenses include "hard costs" associated with the physical preservation of a historic structure, such as site preparation, building materials, and labor. However, some items do not qualify, such as landscaping, interior furnishings, and additions or repairs to additions made after the property was designated as a historic property. Additionally, for commercial structures "soft costs" — such as appraisals, engineering, interior design, and realtor fees are only eligible if they are capitalized (i.e., added to the cost basis of the property instead of fully expensed when the cost is incurred). Exhibit 1 shows the credit calculation for residential and commercial structures, additional amounts for location, and caps on the amount of the credit. For example, a residential structure in a rural area can receive a tax credit of up to 35 percent of qualified rehabilitation expenses and up to a maximum of $50,000 over a 10-year period. A commercial structure in a rural area can receive up to a 35 percent tax credit on qualified expenses less than $2 million; then up to 30 percent for all qualified rehabilitation expenses in excess of $2 million, up to a maximum of $1 million in tax credits annually. There is no statewide cap on the amount of tax credits that can be certified for residential structures; however, total credits reserved for commercial structures cannot exceed $10 million annually.

EXHIBIT 1. AMOUNT OF CREDIT FOR QUALIFIED STRUCTURES

	Residential	Commercial
Base Credit Percentage of Qualified Rehabilitation Expenses	20%	25% up to $2 million 20% over $2 million
Declared Disaster Area[1] or Rural Area[2]	+5% | +15%	+5% | +10%
Maximum Credit Amount	$50,000 every 10 years per structure, per owner	$1 million annually
Statewide Credit Cap	None	$10 million annually[3]

SOURCE: Office of the State Auditor description of calculation of the credit based on statutory requirements in Section 39-22-514.5, C.R.S.

[1] Located in an area that the president of the United States has determined to be a major disaster area under section 102 (2) of the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", 42 U.S.C. sec. 5121 et seq., or that is located in an area that the governor has determined to be a disaster area under the "Colorado Disaster Emergency Act", (Section 24-33.5-701, et seq., C.R.S). The entire State of Colorado was declared as a disaster area in 2020 due to the COVID-19 pandemic.

[2] A municipality with a population of less than 50,000 people that is not located within the Denver metropolitan area, or an unincorporated area of any county that is not located within the Denver metropolitan area in which the total population of the county is less than 50,000 people. [Section 39-22-514.5(2)(o.5), C.R.S.]. The Denver metropolitan area is defined as " all of the land area within the boundaries of the counties of Adams, Arapahoe, Boulder, and Jefferson, all of the area within the boundaries of the city and county of Broomfield and the city and county of Denver, and all of the area within the boundaries of the county of Douglas; except that the area within the boundaries of the town of Castle Rock and the area within the boundaries of the town of Larkspur in the county of Douglas shall not be included in such area." [Section 39-22-514.5(2)(d.3), C.R.S.]

[3] $5 million is reserved for "small" projects that have qualified expenses less than $2 million, and $5 million is reserved for "large" projects with qualified expenses over $2 million.

Statute [Section 39-22-514.5(2)(c), C.R.S.] requires that rehabilitation and preservation work on the structure comply with the guidelines set forth in the U.S. Secretary of the Interior's Standards for Rehabilitation (Standards for Rehabilitation). History Colorado's State Historic Preservation Office (SHPO) develops the standards for approval for the substantial rehabilitation of qualified structures, in consultation with the Governor's Office of Economic Development and International Trade (OEDIT) for commercial structures, including the application and requirements to ensure that the qualified expenses comply with the Standards for Rehabilitation. Applications for residential structures are reviewed and approved by either a CLG or SHPO if the CLG does not review applications. As of March 2022, 20 of the 67 CLGs review applications for residential structures (Aurora, Black Hawk, City of Boulder, Boulder County, Castle Rock, Crested Butte, Denver, Durango, Georgetown, Greeley, La Junta, Lake City, Littleton, Longmont, Manitou Springs, Pagosa Springs, Saguache, Starkville, Steamboat Springs, and Telluride). Applications for commercial structures are reviewed and approved by OEDIT in consultation with SHPO. All credits are reserved on a first-come, first-served basis. Exhibit 2 outlines how the owner or leaseholder of a residential or commercial structure applies for and receives approval for a tax credit.

EXHIBIT 2. TAX CREDIT APPLICATION AND APPROVAL PROCESS FOR QUALIFIED HISTORIC STRUCTURES

Residential	Commercial

Structure meets requirements of being at least 50 years old and designated as a Historic Structure.

A property owner may submit an application or start rehabilitation work prior to the structure receiving historic designation; however, the application will not be approved until the structure is designated as a Historic Structure.

Property owner submits application.

All applications must include a scope of work, photos of the structure, and estimated qualified rehabilitation expenses.

Expenses up to 24 months prior to the application submission may qualify for the credit. If a project has already been completed, the property owner must submit the application within 120 days of the project completion.

Residential	Commercial
to Certified Local Government or SHPO $5,000 minimum QRE	to OEDIT $20,000 minimum QRE

Project scope is approved.

Residential	Commercial
Certified Local Government or SHPO approves the scope within 90 days.	OEDIT and SHPO approve the scope within 90 days.
	OEDIT reserves a tax credit and property owner must begin work within 12 months. At least 20 percent of the project expenses must be incurred within 18 months.

Project completed and property owner submits final application.

Residential	Commercial
Within 120 days of project completion, the property owner submits final expenses to the Certified Local Government or SHPO for approval.	Within 1 year of completing the project and the structure is placed in service, the property owner submits final approval to OEDIT.

All final applications must include a scope of work, photos of the work completed, and a list of qualified rehabilitation expenses.

Residential	Commercial
	All qualified rehabilitation expenses must be audited by a CPA. Final application should include total project costs, and estimates of increased economic activity (jobs created, wages, housing units built, etc.)

Tax credit approved and certificate issued.

Residential	Commercial
Certified Local Government or SHPO approves the certificate within 90 days.	OEDIT and SHPO approve the certificate within 90 days. If qualified expenses that were in the original project scope exceed the estimated expenses, OEDIT may place the project on a waitlist to receive additional tax credits for the additional expenses (up to $1 million total).

SOURCE: Office of the State Auditor description of the Preservation of Historic Structures application and credit certification process based on statutory requirements (Section 39-22-514.5, C.R.S.) and OEDIT policies.

For taxpayers to apply the credit to their state income tax liabilities, they must complete a Department of Revenue (Department) form (Form DR 0104CR lines 34 to 36 for individuals, Form DR 0112CR lines 21 to 23 for C corporations, Form DR 0105 Schedule G lines 6 to 8 for fiduciaries, and Form DR 0106CR lines 20 to 22 for partnerships and S corporations) and include the approved credit amount and credit certificate number. Each taxpayer must apply the credit to the earliest applicable tax year, as early as the year the project was completed, and any unused credit amount can be carried forward for 10 years. Unused credit amounts are not refunded to the taxpayer. For commercial structures, taxpayers may sell or transfer a portion or all of their tax credit to a third party, but must submit a transfer agreement to OEDIT; residential tax credits are not transferable.

The Historic Structures Credit was enacted in 2014 under the Colorado Job Creation and Main Street Revitalization Act (House Bill 14-1311), as an alternative credit to the existing Historic Property Preservation Credit (Historic Property Credit) [Section 39-22-514, C.R.S.]. The 'old' Historic Property Credit, enacted in 1990, allowed for a 20 percent tax credit on qualified rehabilitation expenses up to a maximum of $50,000 for both residential and commercial structures; this credit expired as of January 1, 2020.

Since the Historic Structures Credit was passed in 2014, and took effect in 2016, the General Assembly has only substantially changed the credit once, which occurred during the 2018 Legislative Session. House Bill 18-1190 made several substantial changes to the credit, including:

- Extending the expiration date of the credit from Tax Year 2020 to Tax Year 2029.
- Modifying the minimum rehabilitation costs for commercial structures from 25 percent of the owner's purchase price, minus any land value, to a flat amount of $20,000.
- Introducing a higher credit amount for properties in rural areas (35 percent of qualified rehabilitation expenses for residential structures

and between 30 and 35 percent for commercial structures), and reducing the lease-term requirement for commercial tenants in rural areas from 39 years down to 5 years.

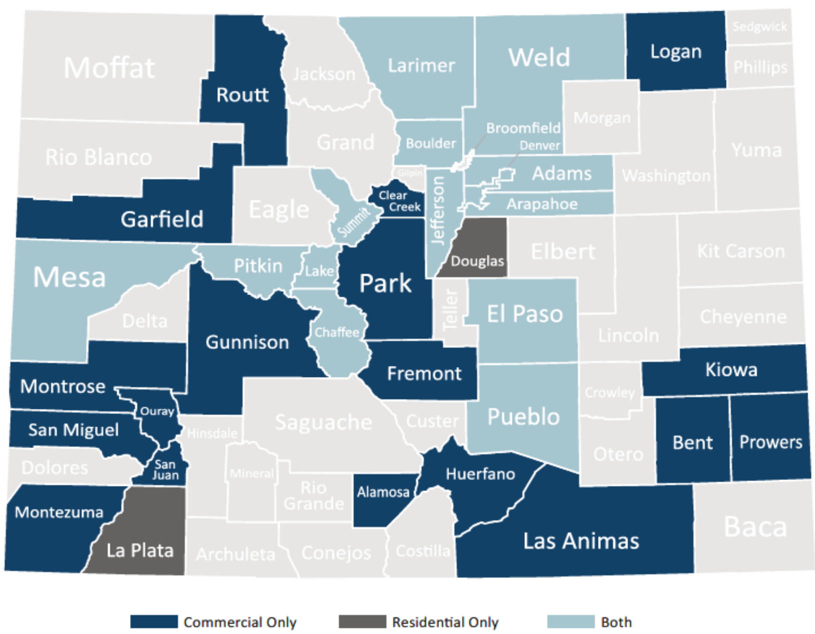
- Separating the residential credits from the $10 million statewide cap. Only commercial structures are subject to a cap on the amount of credits that can be certified annually, and OEDIT is required to reserve half of the credits for small projects that have qualified expenses up to $2 million, and half for large projects that have qualified expenses over $2 million. If there are excess credits available in either project category, OEDIT may move excess credits to the other project category.

While the bill was passed in 2018, the additional rural credit percentage and the $10 million commercial structure cap did not take effect until January 1, 2020.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not directly state the intended beneficiaries of the Historic Structures Credit. We inferred, based on statutory language and our review of its legislative history, that the credit was intended to benefit taxpayers who own or lease historic structures and wish to renovate those properties, and for investors who do not own historic structures, but invest in the rehabilitation and restoration of historic commercial structures. In addition, historic preservation projects can help revitalize main streets, maintain or improve properties that may be of interest to tourists, rehabilitate structures for affordable or senior housing, and increase the aesthetic quality or commercial viability of the properties. Therefore, the credit may also benefit the community the property is located in by increasing property values, encouraging tourist and business activity in the area, and increasing available housing while also preserving structures that are important to community heritage and history. Between 2016 and March 2022, residential structures were approved for the tax credit in 16 counties and commercial structures were approved for the tax credit in 32 counties. Exhibit 3 shows the counties where residential and/or commercial projects were approved for a Historic Structures Credit since 2016.

EXHIBIT 3. COUNTIES WHERE RESIDENTIAL AND COMMERCIAL PROJECTS WERE APPROVED FOR A CREDIT, JANUARY 2016 THROUGH MARCH 2022



SOURCE: Office of the State Auditor analysis of data on residential structure projects from History Colorado and commercial structure projects from OEDIT.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute does not explicitly state a purpose for the credit. Based on the legislative history of the provision, testimony from bill sponsors and stakeholders during legislative hearings, and its statutory language, we considered a potential purpose: to incentivize the restoration and rehabilitation of historic structures. In addition, recent legislative changes to the Historic Structures Credit made through House Bill 18-1190 increased the amount of the credit for rural areas and the incentive for restoration and rehabilitation in rural areas, which indicates that the General Assembly intended to increase the number of preservation projects in rural areas.

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We could not definitively determine whether the Historic Structures Credit is meeting its purpose because no purpose is provided in statute or its enacting legislation. However, we determined that the Historic Structures Credit is likely meeting the purpose that we considered for this evaluation, but there are some instances where the State funds work that the credit did not incentivize. Specifically, while the credit appears to provide a moderate to large incentive for some property owners to rehabilitate and restore historic structures, and has led to an overall increase in rehabilitation projects—especially for commercial structures and structures in rural areas—in some instances, property owners apply for and receive the credit for work that was going to occur regardless of the credit.

Statute does not provide performance measures for this expenditure, therefore we created and applied the following performance measures to determine the extent to which the credit is meeting the inferred purpose.

PERFORMANCE MEASURE #1: *To what extent did the Historic Structures Credit incentivize property owners to restore historic structures?*

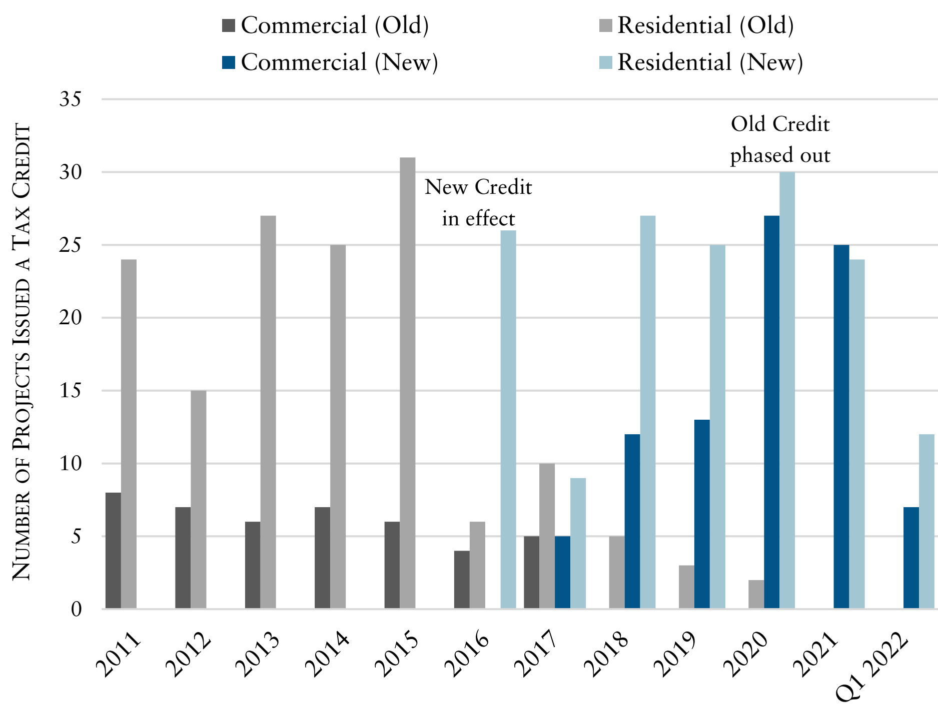
RESULT: We found that between 2016 and March of 2022, 153 residential structure projects, and 137 commercial structure projects were approved for the Historic Structures Credit. Exhibit 4 shows the year the project was approved and whether the structure was residential or commercial.

EXHIBIT 4. NUMBER OF PROJECTS APPROVED FOR A HISTORIC STRUCTURES CREDIT BETWEEN 2016 AND 2022		
Year	Residential	Commercial
2016	26	9
2017	9	20
2018	27	18
2019	25	24
2020	30	35
2021	24	26
Q1 2022[1]	12	5
TOTAL	**153**	**137**

SOURCE: Office of the State Auditor analysis of History Colorado and Office of Economic Development and International Trade data on structures approved for the Preservation of Historic Structures tax credit.
[1]Data for 2022 is for January through March.

Overall, we found that the use of the credit has increased, especially among commercial property owners in comparison to the 'old' Historic Property Credit. Exhibit 5 shows the number of projects, by type of structure, issued a credit under the old Historic Property Credit, and the new Historic Structures Credit. While the number of total structures approved for the credit has increased since 2016, this is mostly due to a significant increase in commercial projects, while the number of residential projects has remained roughly the same.

EXHIBIT 5. NUMBER OF REHABILITATION PROJECTS UNDER THE OLD HISTORIC PROPERTY CREDIT COMPARED TO THE NUMBER OF REHABILITATION PROJECTS UNDER THE NEW HISTORIC STRUCTURES CREDIT



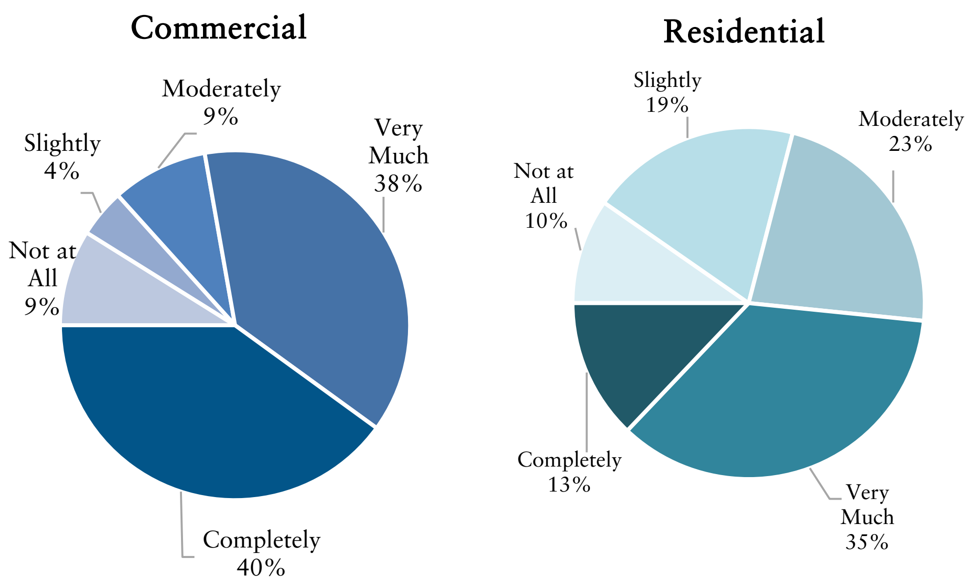
SOURCE: Office of the State Auditor analysis of History Colorado and Office of Economic Development and International Trade data on structures issued a Preservation of Historic Structures or Historic Property tax credit.

Commercial projects likely increased under the new credit because House Bill 14-1311, which created the new Historic Structures Credit, significantly increased the amount of the credit available for commercial structures (from $50,000 to $1 million per project), as well as made the credit transferable, which made preservation projects for commercial structures more feasible. Residential projects likely remained relatively level under the old and new credits because the benefits and requirements of the old credit were nearly identical to the current Historic Structures Credit for residential structures.

Although a significant number of projects have been approved under the credit, it is possible that some of the property owners would have gone forward with projects regardless of the credit. Therefore, we surveyed stakeholders to assess whether the credit acted as an incentive for the property owner to undertake a historic preservation project, and how the availability of the credit affected the timing of when the project occurred and/or the scope of work that was completed.

Specifically, we surveyed 69 residential property owners, and 103 commercial property owners that were approved for the credit and for whom we had contact information. We received responses from 28 (41 percent) residential property owners and 36 (35 percent) commercial property owners, which represented 31 residential projects and 45 commercial projects. Overall, property owners reported that the tax credit was a strong incentive for undertaking the restoration and rehabilitation projects. Specifically, Exhibit 6 shows the breakdown of owner responses to the question *"To what extent did the state Preservation of Historic Structures credit influence your decision to undertake the rehabilitation and restoration project, including impacts on the scope and timing of the work?"* For residential structures, about 71 percent of owners responded that the credit had at least a moderate influence on their decision to undertake rehabilitation and restoration work. For commercial structures, 87 percent of respondents reported that the credit had at least a moderate impact on their decision—with 78 percent indicating that the credit impacted their decisions "very much" or "completely"—and without it, the project scope and timing would have been affected or the rehabilitation would not have occurred at all.

EXHIBIT 6. EXTENT TO WHICH THE HISTORIC STRUCTURES TAX CREDIT INCENTIVIZED OWNERS OF HISTORIC STRUCTURES TO UNDERTAKE PRESERVATION WORK



SOURCE: Responses to Office of the State Auditor survey for taxpayers that, according to the Governor's Office of Economic Development and International Trade, History Colorado, and Certified Local Governments, were approved for a tax credit between 2016 and 2022.

Common responses for property owners who were "very" or "completely" incentivized by the credit were that historic restoration is much more expensive than replacing items with new materials, and that the credit made projects possible that otherwise would have been cost prohibitive, or expanded the scope of the original project to include additional work. The few property owners who completed the project but stated that they were not incentivized by the tax credit reported that they replaced items due to safety or insurance requirements.

Additionally, one reason that the commercial credit stakeholders responded that they were incentivized by the availability of the credit more often than residential property owners is because the commercial credit can be sold or transferred, allowing organizations that do not owe income tax [i.e., nonprofits and other 501(c) organizations, or businesses that have just opened and not generated any revenue] to leverage selling the credit to attract private financing for a project or to pay off debts accrued during the project. Of the 36 commercial credit survey respondents that were issued a tax credit, 29 (81 percent) reported that they transferred or sold a portion or all of the tax credit that was issued.

Although survey respondents indicated that the credit was an important factor in their decision to go forward with projects, many also indicated that they had already started work on the project prior to applying for the credit, which may indicate that the project was likely to go forward, at least in part, regardless of the credit. Specifically, out of the 45 commercial structure projects, 17 (38 percent) projects were started prior to applying for the tax credit and some survey respondents stated that they found out about the credit after starting the work, or began preservation work prior to receiving historic designation. These responses align with OEDIT data which show that about 17 percent of property owners recorded a construction start date at least 1 year prior to applying for the tax credit. SHPO does not collect data on the residential project construction start dates. However, for residential structures, survey respondents indicated that of the 31 projects, 16 (52 percent) were started prior to applying for the tax credit. Some respondents reported that they found out about the credit while getting permitting approved for work, had urgent items that needed to be repaired, or needed to repair items to insure the property. We also asked property owners to estimate the percentage of total qualified expenses that occurred prior to submitting an initial application to understand whether projects were fully completed prior to the application, or were in progress and the credit could impact the scope and timing of the work. We found that for some projects, a substantial amount of work was completed before the property owner submitted an application for the tax credit. Specifically, 12 survey respondents (5 commercial and 7 residential) reported that 75 to 100 percent of the project work had occurred prior to their application. While statute allows qualified rehabilitation expenses to include expenses that occurred up to 24 months prior to the application, credits approved for these expenses may result in the state funding work that was going to be completed without the tax credit. Due to data limitations, we were unable to determine the percent of project expenses that occurred prior to the property owner submitting an application.

PERFORMANCE MEASURE #2: *To what extent did the increased credit percentage incentivize property owners to restore historic structures in rural areas?*

RESULT: It appears that the increased credit for rural areas, effective for applications beginning in 2020, may have increased the number of projects approved in rural areas. Specifically, we found that between January 2020 and March 2022, 11 residential projects and 35 commercial projects were completed in rural areas; an additional 32 commercial projects have a tax credit reserved in rural areas but the projects have not yet been completed. In general, more residential projects were completed in rural areas, and more commercial projects were approved for the Historic Structures Credit after the enhanced credit for rural areas went into effect in January 2020. Prior to these statutory changes, residential projects in rural areas occurred in only two counties, and made up about 6 percent of residential projects, and after the enhanced rural credit was implemented, residential projects were completed in seven rural counties and made up about 20 percent of residential projects. For commercial projects, prior to the enhanced rural credit, commercial projects were approved in 13 rural counties and made up about 37 percent of total approved projects, and after the enhanced rural credit was implemented, commercial projects were approved in 21 rural counties and made up about 62 percent of commercial projects.

While projects in non-rural areas generally made up the majority of projects, the number of non-rural projects did not show similar increases as the rural projects in the same time period. Although we cannot directly conclude that the statutory changes increasing the amount of the credit were the cause of this increase, it is possible that these changes did incentivize some projects that may not have occurred in rural areas without the changes.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

The Department reported that the Historic Structures Credit had a state revenue impact of $178,000 in Tax Year 2016, about $2.4 million in Tax Year 2017, and $3.5 million in Tax Year 2018, with a corresponding tax benefit for taxpayers who claimed the credit. Because credits can be carried forward for up to 10 years, it is likely that taxpayers claim the credits across multiple tax years, and there is not a direct relationship of credits certified by OEDIT, History Colorado, and CLGs on an annual basis to the credits claimed in each tax year. For example, in Calendar Year 2018, taxpayers were certified for $4.5 million in credits, but only $3.5 million in credits were claimed that year. Because of the carryforward, the credit's revenue impact fluctuates based on the amount of credits taxpayers claim in future years. Due to a lack of data, we could not determine how many of the credits claimed were carried forward from prior years out of the amounts certified, but not yet claimed by taxpayers.

In addition to the credit's direct financial benefits to taxpayers that claim the credit for project expenses, historic preservation work provides a direct economic impact when eligible expenses occur within Colorado. While we did not have data on the total percentage of project expenses that occurred in Colorado, in our survey, we asked owners of structures to estimate the percentage of labor and materials purchased directly from Colorado vendors. On average, owners for commercial projects responded that about 78 percent of the total material and labor costs of the project were directly sourced from Colorado and residential property owners responded that, on average, 68 percent of total qualified expenses were directly sourced from Colorado. Therefore, to the extent that the project only occurs because of the credit, the State receives a direct economic impact that exceeds the cost of the credit. In addition, the State may receive an additional economic impact from project expenses that do not qualify for the credit, such as expenses that are not QRE (e.g. additions to the property, landscaping, furnishings, or legal fees), were outside the original scope, or were above the maximum amount allowed for the credit. Specifically, for commercial structure projects issued a tax credit between 2017 and March 2022, property owners reported total expenses of $315.5 million. About 62 percent ($195.8 million) of the total expenses were QRE that could be used to calculate the amount of the tax credit, the remaining 38 percent ($119.7 million) was additional economic impact due to the rehabilitation work. However, because of a lack of data, we were unable to reliably estimate the percentage of total expenses that occurred as direct spending in Colorado. Data on total project expenses is not collected for residential projects, so we were unable to determine the extent of any additional economic impact for residential historic rehabilitation.

There are also additional potential indirect economic benefits, specifically for rehabilitated commercial structures, such as increased economic activity as businesses move into rehabilitated structures. OEDIT collects data from commercial structure owners on estimated increases in owner income after the rehabilitation project, payroll for employees, and any capital improvements that occurred after the rehabilitation project. According to data from OEDIT, nearly half of the projects approved were for structures that were currently vacant and included projects that created retail and commercial space in downtown areas as well as housing, and event and lodging space. Additionally, stakeholders reported that the restoration projects often result in increased property values, and therefore, increases in property taxes that benefit the local governments. This data is not collected, but in our survey we asked owners to report whether they have seen property tax increases since completing rehabilitation work. While structures that are owned by non-profits are not subject to property tax, most of the property owners reported in the survey that they have had increases in their property taxes. However, we could not quantify the amount of tax increases directly related to the credit versus other factors that have significantly increased property values in the state. While OEDIT data and stakeholder reports support that there are ongoing additional economic benefits when historic structures are restored, we could not reliably estimate the actual economic impact of restoration projects.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

If the credit was eliminated, taxpayers that undertake historic preservation and rehabilitation work would no longer receive a state tax benefit for the work. According to Department data from Tax Year 2017, individual taxpayers claimed an average credit of about $16,100, and corporations claimed an average credit of about $467,200. Based on more recent data on certified credits from History Colorado and OEDIT, in Calendar Year 2021 for residential structures, the average credit certified was $17,700 and for commercial structures, it was $482,900.

Based on the survey responses from residential and commercial property owners who undertook historic preservation work and claimed the credit, it is likely that if the credit was eliminated, some historic preservation work would not occur; however, there is not sufficient data to analyze the extent to which this would happen. Anecdotally, stakeholders reported that in 'worst case' economic scenarios, without the tax credit it may not be financially viable to make necessary repairs, and instead structures deteriorate and need to be demolished. If there is not funding to construct a replacement structure, the property may remain vacant and does not generate any economic activity. Stakeholders reported this is especially problematic in some rural areas, where economic activity and affordable housing for the community remains an issue. In other scenarios where the structure is not demolished, without the tax credit it may be unaffordable for homeowners to properly repair their home in the event of deterioration or major damage, as insurance often does not cover historic materials. Without the credit, property owners may choose to 'quick flip' a structure instead with cheaper, non-historic repairs that are not meant to maintain the historic nature of the structure for the long-term.

For some property owners the federal credit is available for historic property that can offset 20 percent of qualified costs, therefore, some property owners would still have a tax incentive to encourage them to go forward with projects. However, the federal credit is more restrictive, and many projects that qualify for the state credit would not qualify for the federal credit. For example, owner-occupied properties are not eligible. Furthermore, the federal credits are not transferable, which would limit the ability of commercial property owners to leverage the sale of the credit to finance the project, particularly for non-profit entities that cannot use a tax credit.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

We identified 35 other states that provide a historic property tax credit, though the credits vary substantially. Specifically:

- TYPE OF PROJECTS COVERED—23 states offer a credit for residential and commercial structures, while 1 state offers only a residential credit and 11 states offer only a credit for commercial properties.

- CREDIT AMOUNT—Tax credit amounts range from 5 percent to 50 percent of qualified rehabilitation expenditures, although a majority of states (30 states) have tax credit rates ranging from 20 percent to 30 percent of qualified rehabilitation expenditures.

- TOTAL CREDITS CAP—18 states have established caps on total state credits awarded, with the highest annual cap being $140 million and the lowest annual cap being $250,000.

- INDIVIDUAL CREDITS CAP—24 states have established individual project caps, from $5,000 in 1 state to a maximum of $5 million in 7 states.

- TRANSFERABILITY—22 states allow credits to be transferred to another taxpayer, which allows credit holders to sell credits and receive the cash value of the credit before filing their taxes.

- REFUNDABILITY—9 states allow their tax credits to be refunded.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

HISTORIC PROPERTY PRESERVATION TAX CREDIT [SECTION 39-22-514, C.R.S.]—Commonly known as the 'old' Historic Property Preservation Tax Credit, this credit provided an income tax credit for taxpayers who make expenditures to preserve a historic property that they own or lease. The credit amount was calculated as 20 percent of qualified rehabilitation expenditures, up to a maximum credit of $50,000 per qualified property. While the ability to qualify for this credit expired as of January 2020, taxpayers that applied and qualified prior to 2020 can still claim unused credits as a carryforward from previous years. According to Department data, the State provided a total of at least $979,000 in credits under the Historic Property Preservation Tax Credit from Tax Years 2016 to 2018, the most recent years for which data was available.

FEDERAL REHABILITATION TAX CREDIT—The federal Rehabilitation Tax Credit [26 USC 47] provides a credit against federal tax liabilities that is equal to 20 percent of qualified rehabilitation expenditures within a set 24-month period for certified historic structures that are business or income producing properties that spend the greater of $5,000 or the adjusted basis of the building in qualified rehabilitation expenditures, with no cap on the credit amount. Owner-occupied residential properties do not qualify for the federal credit. In Colorado, from federal Fiscal Year 2017 to 2021, there were 23 projects certified for the federal credit, which incurred about $106.7 million in qualified rehabilitation expenditures. Property owners are eligible to claim both the federal and state credits for the same project, and according to data from OEDIT, nearly half of the commercial structure property owners approved for a state tax credit reported that they also applied for a federal tax credit.

ENTERPRISE ZONE VACANT COMMERCIAL BUILDING REHABILITATION CREDIT—The State provides a tax credit for the lesser of 25 percent of qualified expenditures or $50,000 for owners or tenants of a building that is in an Enterprise Zone that is at least 20 years old and has been vacant for at least 2 years [Section 39-30-105.6, C.R.S.]. A taxpayer cannot take the 'old' Historic Structures Credit under Section 39-22-514, C.R.S. or the federal Rehabilitation Tax Credit [26 USC 47] in combination with the Enterprise Zone Vacant Commercial Building Credit for the same expenditures, but can claim this credit in conjunction with the current Historic Structures Credit [Section 39-22-514.5, C.R.S.]. According to Department data, the State provided a total of about $774,000 in credits under the Enterprise Zone provision from Tax Years 2016 to 2018, the most recent years for which data was available.

AFFORDABLE HOUSING TAX CREDIT—Historic preservation tax credits can be combined with other state and federal programs, such as the Affordable Housing Tax Credit [Section 39-22-2102, C.R.S.], in order to further reduce capital costs while providing affordable housing options.

STATE HISTORICAL FUND GRANTS—The State Historical Fund awards a portion of the State's gaming revenue to public and non-profit entities in Colorado engaged in a range of historic preservation activities by issuing competitive grants under Article XVIII, Section 9 of the Colorado Constitution and Sections 44-30-701, 702, and 1201, C.R.S. The Colorado Main Street Program has received about $2.5 million in grants from the State Historical Fund through Fiscal Year 2021 to supplement funding for historic preservation and economic development efforts. Colorado first participated in the program in 1982 through a pilot program, which is currently administered by the Department of Local Affairs. The program is affiliated with the National Main Street Center, a national organization promoting revitalization of central commercial districts across the country, through historic preservation. In 2014, a total of almost $20 million was distributed by the program to 14 participating communities and resulted in 98 building rehabilitations.

COLORADO HISTORICAL FOUNDATION—The Colorado Historical Foundation is a private, non-profit organization that supports history and preservation projects throughout the state through a Revolving Loan Fund, which partners with the State Historical Fund, to provide low interest rate loans as an additional source of funding for historic preservation. Loans are typically between $250,000 and $750,000, and the borrower must utilize loan proceeds for costs associated with construction to rehabilitate a designated historic property, or as bridge loans to cover cash shortfalls for a qualified restoration or rehabilitation project.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

We lacked data necessary to determine the extent to which the Historic Structures Credit has resulted in the repair or rehabilitation of eligible structures because there is not a data set of eligible historic properties in the State. While SHPO uses the National Register of Historic Places and the State Register of Historic Properties to determine eligibility for an applicant, not all structures on the list are eligible for the credit (i.e., bridges or parks) and some places may be duplicated between the two lists. Additionally, historic districts listed on the National Register are counted as a single unit and not as the total number of contributing structures in the district. Furthermore, while CLGs report to SHPO the number of contributing properties in their historic districts, not all of their contributing properties might meet eligibility for the credit. Additionally, there may also be duplication with CLG registered properties and properties listed on the National Register of Historic Places, and not all CLGs have conducted a full survey of historic structures and instead report an estimate. Therefore, we did not have data on the total number of eligible historic structures that could receive the credit, or on rehabilitation and restoration work that was completed but did not qualify for the credit, or where the property owner did not apply for the credit.

Additionally, we lacked complete data on credits for residential structures prior to Calendar Year 2019. While some information on residential historic structure credits exists for years prior to 2019, the application records that CLGs provided to SHPO do not include total qualified rehabilitation expenses for projects, total project costs, or property owner contact information, which we used to conduct our stakeholder survey. In 2019, SHPO transitioned to a Salesforce database that CLGs and SHPO now use to submit tax credit certification information. The Salesforce database centralizes additional project information, but total project costs and construction start dates are not collected. Specifically, SHPO does not collect project information until the project is complete and a tax credit certificate is issued, therefore we could not determine the frequency with which a project is started, and possibly completed, prior to applying for the tax credit or whether there are projects that are currently in progress and have submitted an initial application.

Finally, we lacked data necessary to compare taxpayer's actual credits claimed to the amount for which they were certified and the amount they carried forward. Specifically, while the Department has collected data specific to the Historic Structures Credit, certificate numbers for the tax credit were not always included in the taxpayer returns and we could not match taxpayers who claimed the credit with their certification data.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

THE GENERAL ASSEMBLY MAY WANT TO CONSIDER AMENDING STATUTE TO ESTABLISH A STATUTORY PURPOSE AND PERFORMANCE MEASURES FOR THE HISTORIC STRUCTURES CREDIT. As discussed, statute and the enacting legislation for the credit do not state the credit's purpose or provide performance measures for evaluating its effectiveness. Therefore, for the purposes of our evaluation, we considered a potential purpose: to incentivize the restoration and rehabilitation of historic structures. We identified this purpose based on the statutory language, how the credit operates, and stakeholder input. We also developed performance measures to assess the extent to which the credit is meeting this potential purpose. However, the General Assembly may want to clarify its intent for the credit by providing a purpose statement and corresponding performance measure(s) in statute. This would eliminate potential uncertainty regarding the credit's purpose. For example, the enacting legislation was titled the Colorado Job Creation and Main Street Revitalization Act; however, statute does not require that structures be located on or near main-street areas or result in job creation, and does not include mechanisms for OEDIT to prioritize reserving credits that assist in broader economic development plans for economically distressed areas. Additionally, the General Assembly may want to consider whether the credit is intended to provide financial assistance, even for projects that occur regardless of the credit, in order to prioritize preserving community heritage and history and ensuring more long-term financial sustainability for projects. A purpose statement and performance measures would allow our office to more definitively assess the extent to which the credit is accomplishing its intended goal(s).

THE GENERAL ASSEMBLY MAY WANT TO ASSESS WHETHER ALLOWING QUALIFIED EXPENSES THAT OCCURRED PRIOR TO AN APPLICATION TO BE ELIGIBLE FOR THE CREDIT MEETS ITS INTENT. Under statute, property owners can claim qualified rehabilitation expenses that occurred up to 24 months prior to submitting an application and rehabilitation plan for residential and commercial structures, at their own risk. According to stakeholders, this is beneficial because applicants may have otherwise met all of the program requirements but may not have been aware of the Historic Structures Credit when they began rehabilitating their structure, may have needed to begin work in order to secure the services of a contractor, or may have been required to replace or repair parts of the structure before an application could be submitted (i.e., roof repair for homeowners insurance, or foundation work to stabilize the structure). Further, in some cases, even after work has been completed, the property owner may decide to do an additional rehabilitation project that they previously could not afford, or in the case of commercial credits, the property owner can sell the credit to pay down debts accrued during the rehabilitation or to fund additional rehabilitation work. According to stakeholders, there are several advantages to having a flexible timeline for when rehabilitation expenses can be used to calculate the amount of the tax credit, as project costs may increase that make a previously ineligible structure eligible (i.e., exceeding $5,000 in expenses for a residential structure), encouraging property owners to make historic replacements for immediately necessary repairs, and encouraging property owners to add on additional work once they become aware of the credit. In some instances, stakeholders reported that property owners may complete a small project and then use the tax credit to fund another larger project. However, as discussed, when the State provides a tax credit for historic rehabilitation work that was going to be completed regardless of the credit, it is funding historic preservation work rather than incentivizing it. As previously discussed, because the statute does not contain a purpose for the credit, it is unclear whether this allowance is in line with the General Assembly's intent for the credit. Therefore, the General Assembly may want to evaluate the importance of this flexibility for when property owners can incur qualified rehabilitation expenses against the potential revenue impact to the State for rehabilitation work that the tax credit did not incentivize.