

 <p><b>New York State Parks, Recreation and Historic Preservation</b></p> <p>Section: <b>Historic Preservation</b></p>	<p>Program Guideline Title: <b>State Historic Tax Credit Transfer Program</b></p> <p>Directive: <b>HP-PRO-009</b></p> <p>Effective Date: <b>04/23/2026</b></p>
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**Summary**

In 2026, the Legislature enacted amendments to the New York State Tax Law that allow taxpayers undertaking certain historic property rehabilitation projects to transfer the commercial state historic tax credit (“SHTC”) to other entities. These amendments authorize the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”) to administer this SHTC transfer program by reviewing and approving SHTC transfer applications before transmitting the transfer approval certificate to the New York State Department of Taxation and Finance (“DTF”), which agency processes the tax credit. These amendments also authorize OPRHP to establish other procedures and standards deemed necessary for the transferability of these credits.

The amendments are set forth in New York State Tax Law Sections 210-B (26), 606(oo), and 1511(y), collectively referred to as “the State Historic Tax Credit Statute”.

The New York State Historic Preservation Office (“SHPO”) is a bureau within OPRHP, and it manages the federal and state historic rehabilitation tax credits in partnership with the National Park Service, the Internal Revenue Service, and the New York State DTF.

Under the State Historic Tax Credit Statute, SHPO also administers the SHTC Transfer Program. The terms “OPRHP” and “SHPO” shall have the same meaning and shall be interchangeable in this Program Guideline.

By adopting this Program Guideline, OPRHP establishes needed procedures and standards. One purpose of this Program Guideline is to set forth OPRHP’s application requirements and approval procedure for the SHTC Transfer Program. In addition, this Program Guideline will clarify how OPRHP interprets the broad statutory language by defining key terms and other details on the practical administration of the program and by expressly allowing the use of certain tax credit transfer practices that allow owners, investors and certain not-for-profit organizations to monetize the SHTC by transferring the credits to finance historic property projects.

Consistent with legislative intent, OPRHP seeks to administer the SHTC Transfer Program in a manner that promotes increased utilization and value of these credits to owners and investors and to provide the flexibility and incentives needed to generate the investment needed to undertake these projects.

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## Program Guideline

### A. General “Ground Rules” for the SHTC Transfer Program (Definitions in section D. below)

1. Beginning in tax year January 1, 2026, an “Eligible Taxpayer” or “Eligible Transferor” of a “Qualified Rehabilitation Project” or a “Small Project” is permitted to transfer up to the entire SHTC allowed in such year to an “Eligible Transferee”.
2. The dollar amount of the SHTC is currently capped at \$5,000,000 per certified historic structure.
3. The SHTC may not be claimed prior to the first taxable year the Federal Historic Tax Credit is claimed, *i.e.*, the year the project is placed in service.
4. The SHTC shall only be transferred once to a single Eligible Transferee during the taxable year the SHTC is earned. After the SHTC is transferred to the Eligible Transferee, further sale or transfer of the SHTC is prohibited. Notwithstanding the foregoing and as further detailed in sections below, the Eligible Taxpayer or Eligible Transferor may relinquish or direct the credit to a “Qualified-Not For-Profit-Intermediary” as a conduit. This relinquishment is exempt from the “one-time transfer” allowed annually under the SHTC Program.
5. The Eligible Transferor submits the SHTC Transfer Application and all required documentation to OPRHP who then reviews and issues the Transfer Approval Certificate to the Eligible Transferee. The Transfer Approval Certificate is also submitted to DTF. Provided DTF determines all other requirements for claiming such credit are met, an Eligible Transferee shall be entitled to apply the transferred SHTC to a tax imposed under Articles 9-A, 11, or 33 of the New York State Tax Law.

### B. OPRHP’s SHTC Transfer Application Requirements and Procedures:

1. The SHTC Transfer Application. The SHTC Transfer Application is a form provided by OPRHP and a copy of which is available at the link below. The deadline to submit the SHTC Transfer Application to OPRHP is January 15th of the year following the tax year. The Eligible Taxpayer/Eligible Transferor is primarily responsible for preparing and submitting the SHTC Transfer Application to OPRHP. However, all parties involved in the transfer, *i.e.*, the Eligible Taxpayer/Eligible Transferor, the Eligible Transferee, and if applicable, the Qualified Not-For-Profit Intermediary (“QNPI”) are required to sign the application and certify the information provided in the application is true and accurate under penalty of law.
2. The SHTC Transfer Contract. The Eligible Taxpayer/Eligible Transferor must attach a copy of an executed transfer contract to the SHTC Transfer Application. Currently,

OPRHP will accept non-standardized transfer contracts provided they include the information and contract terms set forth below. OPRHP reserves the right to require the future use of an official “form” transfer contract to be developed by the agency.

3. SHTC Transfer Contract Required Information and Contract Terms:
  - a. The building identification numbers for all buildings in the Qualified Rehabilitation Project;
  - b. If known, the actual date each building, or portion thereof, was placed into service; If estimated, the transfer contract shall be amended with the actual placed-in-service date on or before January 15th of the year following the tax year and prior to OPRHP’s issuance of the Transfer Approval Certificate.
  - c. The schedule of years for which the SHTC may be claimed and, in the case of Qualified Rehabilitation Projects consisting of multiple buildings with different placed-in-service years, the dollar amount of the credit previously claimed;
  - d. The amount of consideration received by the Eligible Taxpayer/Eligible Transferor for the transferred credit;
  - e. The percentage of, and the expected dollar amount of, the credit earned for the relevant tax year being (i) transferred to the Eligible Transferee or (ii) relinquished to the QNPI as a conduit to the Eligible Transferee.
  - f. If the transfer involves a Qualified Not-For-Profit Intermediary (“QNPI”), in addition to subdivision e. (ii) above, the Transfer Contract shall be signed by the QNPI and include contract terms indicating the amount, timing, and any other terms and conditions of consideration to be received by the QNPI from the relinquishment of the SHTC to the Eligible Transferee;
  - g. For Qualified Rehabilitation Projects that meet the definition set forth in subsection D (1) (c) below and are financed by the State of New York, a contract term stating the QNPI’s proceeds shall be used to finance the Qualified Rehabilitation Project;
  - h. A contract term stating the Eligible Taxpayer/Eligible Transferor, and in no circumstance the Eligible Transferee, shall remain liable for the obligations and liabilities imposed on the Qualified Rehabilitation Project and its owners, including but not limited to any payments in connection with DTF’s recapture of the SHTC; and
4. Guaranty. OPRHP reserves the right to require a guaranty running to the State of New York from an acceptable guarantor for the obligations and liabilities imposed on the Qualified Rehabilitation Project and its owners;
5. Submit SHTC Transfer Application Annually. The Eligible Taxpayer/Eligible Transferor must submit a SHTC Transfer Application for each taxable year that a SHTC is transferred. If a transfer contract applies to a multi-year project, the same transfer contract can be resubmitted with a new SHTC Transfer Application.

6. Amendments. Any amendment to the SHTC Transfer Application and transfer contract must be submitted prior to the issuance of the SHTC Transfer Approval Certificate.

**C. OPRHP's Transfer Approval Certificate and Submission to Department of Taxation and Finance**

1. OPRHP reviews the SHTC Transfer Application to determine if it should be approved, in accordance with the statutory requirements and these Program Guidelines.
2. OPRHP reserves the right to request more information and documents as needed to determine if the transfer will be approved.
3. If found to be in compliance, OPRHP issues the Transfer Approval Certificate to the Eligible Transferee, with a copy to the Eligible Taxpayer/Eligible Transferor and QNPI if applicable.
4. OPRHP submits the Transfer Approval Certificate together with the SHTC Transfer Application and all required attachments to DTF within 30 days of approval.
5. The Eligible Transferee must attach a copy of the Transfer Approval Certificate to its tax return for the tax year for which the SHTC is being claimed.

**D. Definitions**

1. The term "Qualified Rehabilitation Project" means a commercial/income producing historic property that has been approved to receive the Federal Historic Tax Credit that meets one of the following three criteria:
  - a. The project is located within a census tract which is identified as being at or below 100% of the New York State median family income as calculated as of April 1 of each year using the most recent five-year estimate from the American Community Survey published by the United State Census Bureau; or
  - b. The project is located within a state park, state historic site, or other land owned by the state that is under the jurisdiction of the OPRHP; or
  - c. The project is undertaken for the provision of affordable housing. An affordable housing project must meet the criteria set forth in (i) and (ii) below:
    - (i) the Eligible Taxpayer/Eligible Transferor has entered into a regulatory agreement with any State or Federal Agency or Authority, or any other government entity that is authorized to engage in the financing, construction, or oversight of affordable housing within such entity's jurisdiction, and where such regulatory agreement sets forth affordability requirements applicable for a period of not less than thirty (30) years and that is binding on all successors of the eligible taxpayer/owners; and

- (ii) the project is an “eligible low-income building” pursuant to NYS Public Housing Law Article 2-A, Section 21(5) because it meets one of four affordability “tests” as defined in the following provisions:
    - (1) 26 U.S.C. § 42(g)(1)(A) or the “20-50 test”; or
    - (2) 26 U.S.C. § 42(g)(1)(B) or the “40-60 test”, or in the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, “25 percent” shall be substituted for “40 percent” (26 U.S.C. § 142(d)(6)).
    - (3) 26 U.S.C. § 42(g)(1)(C) or the “Average Income Test”; or
    - (4) NYS Public Housing Law Section 21(5)(b) or the “40-90 test”.
- 2. The term “Small Project” means a Qualified Rehabilitation Project with qualified rehabilitation expenditures totaling \$2,500,000 or less.
- 3. The term “Eligible Taxpayer” or “Eligible Transferor” shall mean the (i) property owner of the Qualified Rehabilitation Project or (ii) a member, partner or shareholder of the property owner that is specially allocated the SHTC by the property owner without regard to how any tax credit authorized pursuant to 26 U.S.C. § 47 with respect to a Qualified Rehabilitation Project may be allocated (note that SHTC may be specially allocated to a member or partner solely to facilitate a transfer of the SHTC).
- 4. The term “Eligible Transferee” shall mean the person or entity who receives and claims the SHTC pursuant to the terms of the transfer contract and without regard to how any tax credit authorized pursuant to 26 U.S.C. § 47 with respect to a Qualified Rehabilitation Project may be allocated and notwithstanding that such person or entity owns no interest in the Qualified Rehabilitation Project or in any entity with an ownership interest in the Qualified Rehabilitation Project.
- 5. The term “Qualified Not-For-Profit Intermediary” (“QNPI”) means a New York not-for-profit organization that acts as a conduit by receiving the SHTC from an Eligible Transferor in order to transfer the SHTC to an Eligible Transferee. Additional “qualifying” details are in subsection E (2) below.
  - a. For Qualified Rehabilitation Projects that are in census tracts or on OPRHP lands as defined above in Sections D (1) (a) and D (1) (b), in its discretion OPRHP determines the entity possesses the requisite purpose, mission, and demonstrated track record to foster arts, culture, humanities, historical societies and related historical activities within the State of New York.
  - b. For Qualified Rehabilitation Projects that promote affordable housing, in its discretion OPRHP determines the entity meets the definition of a “qualified nonprofit organization” as set forth in 26 U.S.C. § 42 (h)(5).

6. The term “Pass-Through Entity” means an entity that is not a taxpayer under federal or state law such as a limited liability company, a partnership, or an S corporation, which is deemed to be a reporting entity for income tax purposes and files annual information returns allocating items of income, loss, credits, and certain other tax attributes to each member, partner, or shareholder as applicable.

## **E. Allowable SHTC Practices**

### **1. Pass Through Entities**

Transfer of a SHTC may be initiated by the property owner of a Qualified Rehabilitation Project, which may be a Pass-Through Entity, or by a partner or member allocated the SHTC by the property owner, which partner or member may be a Pass-Through Entity. The allocated SHTC credit to such partner or member is exempt from the “one-time transfer” contemplated by this SHTC Transfer Program. If not so transferred or allocated by the property owner, such SHTC shall be presumed to be allocated or otherwise treated the same as the Federal Historic Tax Credit (*i.e.*, may be claimed by the “master tenant” in the event the appropriate federal tax elections are made and may then be allocated to the members of the master tenant).

### **2. Utilizing a Qualified Not-For-Profit Intermediary (“QNPI”)**

When an Eligible Taxpayer/Eligible Transferor (including a partner or member of the property owner, as discussed above) relinquishes the SHTC to a Qualified Not-For-Profit Intermediary (QNPI”), the QNPI transfers the SHTC to the Eligible Transferee and may retain a fee.

Provided the QNPI meets all requirements set forth below, the relinquishment of the credits to the QNPI does not count towards the single allowable SHTC transfer per year:

- a. The QNPI must meet the applicable purpose, mission and/or demonstrated track record as set forth in Section D (5) (a) and D (5) (b) referenced above;
- b. QNPIs must be in good standing with all governmental agencies to act in this capacity and must not be affiliated with or controlled by a for-profit organization;
- c. The QNPI sells the SHTC to an Eligible Transferee less a reasonable QNPI administrative fee;
- d. The QNPI must be a party to the transfer contract and provide applicable information requested in the SHTC Transfer Application.

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## Forms

[SHTC Transfer Application](#)

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## Other Related Information

Additional information about OPRHP Historic Rehabilitation Tax Credit Programs can be found at <https://parks.ny.gov/preservation/programs/tax-credit/income-producing>.

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## History

04/23/2026 Program Guideline adopted.