

# AIA Rochester

A001

## ROC2015- Historic Tax Credits: The Basics of Federal & New York State

Steven J. Weiss, Partner, Cannon Heyman & Weiss, LLP  
Timmon M. Favaro, Partner, Cannon Heyman & Weiss, LLP  
Julian Adams, Director, Community Preservation Services Bureau, NYS Parks Recreation & Historic Preservation

April 17, 2015



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Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.



# Course Description

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If you are embarking on a historic rehabilitation project, come to this session and learn the basics of how to structure a project using the New York State and Federal Rehabilitation Tax Credit programs. Partners from the law firm of Cannon Heyman & Weiss, LLP and staff from the New York State Historic Preservation Office will cover the basic requirements and common pitfalls to avoid. Topics will include: the application process, how the program works, applying the Secretary of the Interior Standards, qualified rehabilitation expenses, how to prevent recapture, and other tax rules and requirements.



# Learning Objectives

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At the end of the this course, participants will be able to:

1. Participants will be able to anticipate and address basic requirements and common pitfalls that face property owners who wish to utilize the historic tax credit programs.
2. Participants will be able to assess, in general terms, an urban neighborhood's potential for listing in the National Register of Historic Places.
3. Participants will be able to provide general information to clients, property owners, and neighborhood leaders regarding the tax rules and requirements for utilizing the homeowners and commercial tax credit programs.
4. Participants will be able to inform residents and building owners in urban neighborhoods of the benefits and impacts of preservation on these areas.



# Parks, Recreation and Historic Preservation



**The New York State Office of Parks, Recreation and Historic Preservation** is the steward of valuable natural, historic, and cultural resources and provides safe and enjoyable recreational and educational opportunities for all New Yorkers and visitors





The **New York State Historic Preservation Office** (SHPO) offers programs and services that help individuals and communities achieve the social, economic, and environmental benefits associated with historic preservation

**Identify** ▪ **Recognize** ▪ **Preserve** ▪ **Protect** ▪ **Collaborate**

**The New York State and National Registers of Historic Places** are the official lists of properties significant in state and national history



# PRESERVATION TAX CREDITS FOR INCOME-PRODUCING PROPERTIES

20% Federal Commercial  
Rehabilitation Tax Credit

+

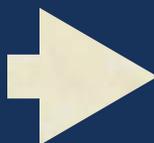
20% NYS Commercial  
Rehabilitation Tax Credit

=

40% Investment Tax Credit for  
Historic Commercial Properties



# PRESERVATION PARTNERSHIP PROGRAM



- For commercial, industrial, agricultural or rental residential properties
- Tax credit is a dollar-for-dollar reduction in state and federal tax liability
- Single review process for federal and state credits

# WHAT BUILDINGS QUALIFY?

- Listed Individually on the State or National Register of Historic Places
- Listed in a State or National Register Historic District
- Located in a Local Historic District which has been certified by the National Park Service
- Individual Buildings & Historic Districts that are eligible for the registers or in the Process of Listing



# SUBSTANTIAL REHABILITATION

Value of the Property

*minus*

Value of the Land

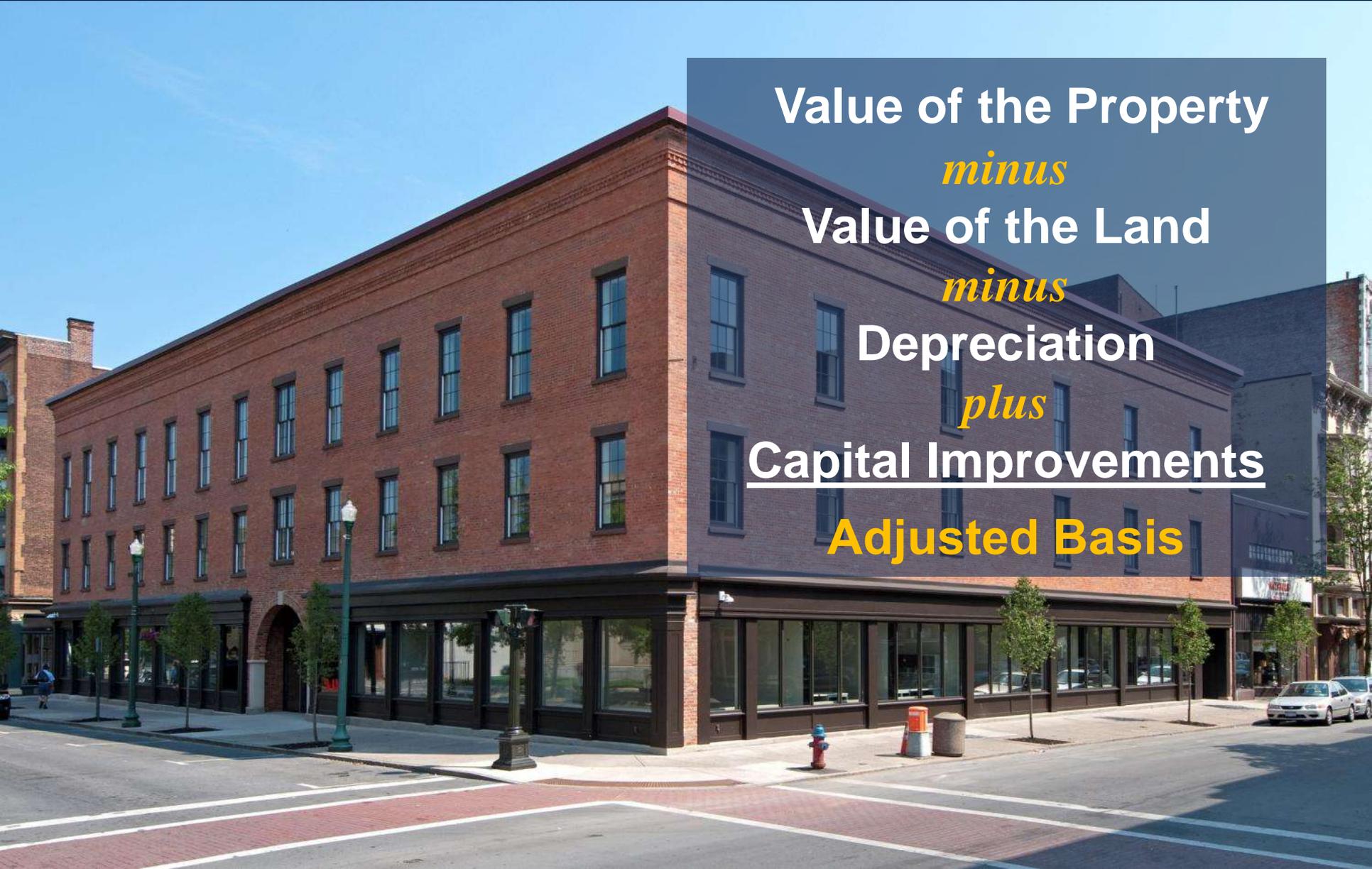
*minus*

Depreciation

*plus*

Capital Improvements

**Adjusted Basis**



# COMMERCIAL HISTORIC REHABILITATION TAX PROJECT CHECKLIST

- Are you working with a building that is listed individually or located in a listed historic district? Or, is the building eligible for listing or in the process of listing?
- Does the project pass the substantial rehabilitation test?
- Is your project located in an eligible census tract?

## QUICK TIPS

- CONTACT THE SHPO EARLY - BEFORE WORK BEGINS
- If your project is complex, consult experts to assist with documentation, design, and financial planning

# APPLICATION - PART 1: SIGNIFICANCE

- **Buildings in historic districts**: Provide photos, maps, a brief description of the building, and a brief summary of the building's history
- **Individually listed buildings**: skip to Part 2
- **Buildings to be listed by project's completion**: Supply SHPO with a draft registers nomination, including photos & maps



# APPLICATION - PART 2: PROPOSED WORK

## NARRATIVE:

- Describe existing conditions, including major building features

## SUPPORTING DOCUMENTATION:

- Photographs to document ALL areas of the property
- Floor plans and elevation drawings should reflect current conditions and proposed work
- Include historic photographs if available



The Secretary of the Interior's  
Standards for the Treatment of Historic Properties

with Guidelines for  
Preserving, Rehabilitating  
Restoring, & Reconstructing  
Historic Buildings



U.S. Department of the Interior • National Park Service • Heritage Preservation Services

The Secretary of the Interior's  
**Standards for  
Rehabilitation**

Revised 1990



U.S. Department of the Interior  
National Park Service  
National Center for Cultural Resources  
Technical Preservation Services  
Washington, DC

# PRESERVE HISTORIC MATERIAL



**Repair rather than replace deteriorated historic features**

**If deterioration is so severe that replacement is necessary, the new feature should match the old in design, color, texture, overall visual quality, and materials**

# PRESERVE DISTINCTIVE FEATURES

Preserve a property's historic character by focusing on specific elements, such as distinctive details, methods of construction, and examples of craftsmanship



# PRESERVE HISTORIC FLOOR PLANS

The interior organization of a building, its sequences of spaces, and circulation patterns, is important in conveying its historic context and development



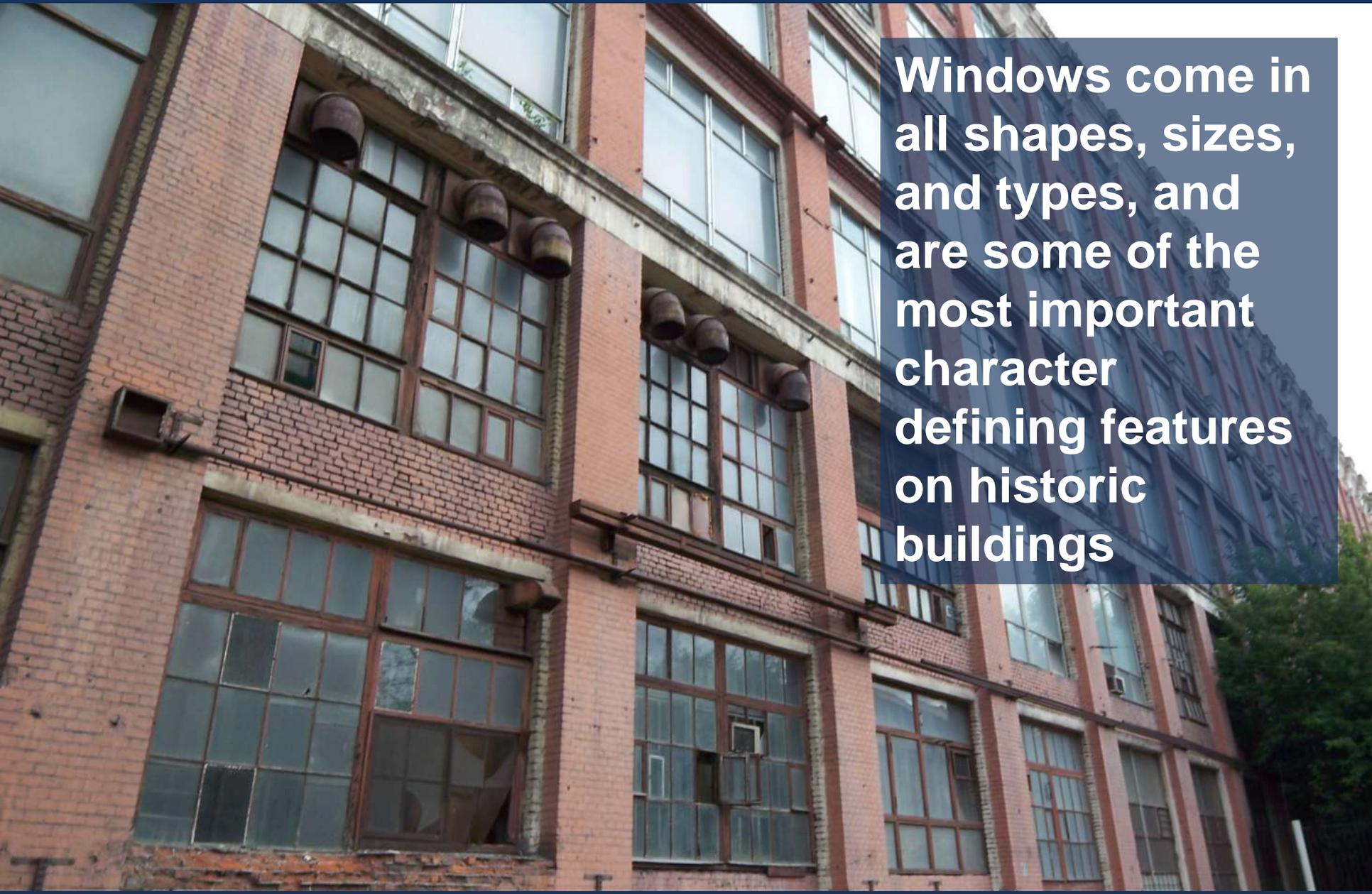
# PRESERVE IMPORTANT INTERIOR SPACES



**Public assembly spaces can be the most significant interior spaces of certain building types**

# WINDOWS – REPAIR OR REPLACE

Windows come in all shapes, sizes, and types, and are some of the most important character defining features on historic buildings



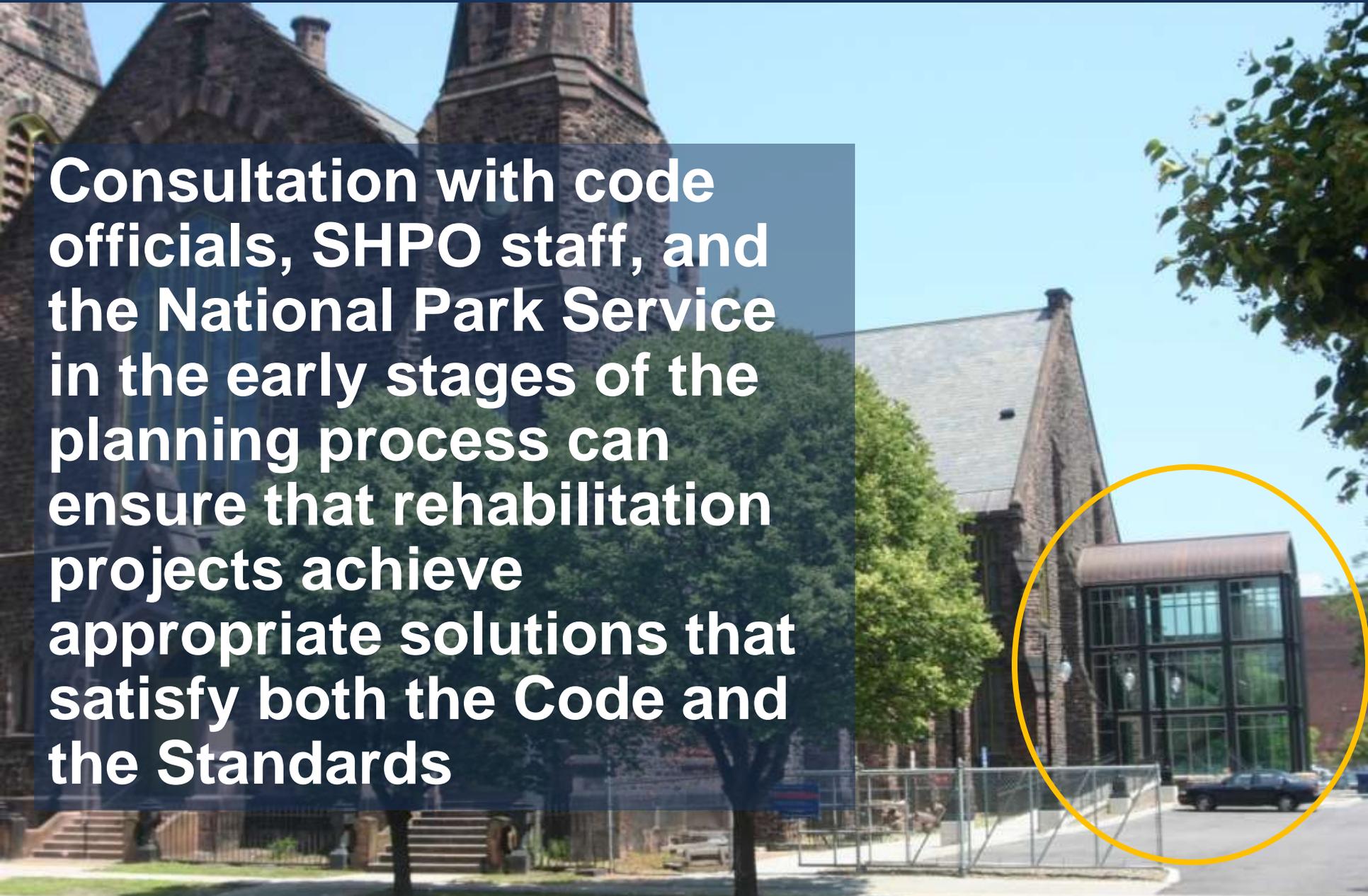
# PRESERVATION & ENERGY EFFICIENCY

As long as a proposed measure does not diminish the historic character of a building or endanger historic materials, then it will meet the Standards

**Historic buildings were designed and built “green”**  
PASSIVE SOLAR • DAYLIGHTING • NATURAL VENTILATION

# CODES & REGULATORY REQUIREMENTS

**Consultation with code officials, SHPO staff, and the National Park Service in the early stages of the planning process can ensure that rehabilitation projects achieve appropriate solutions that satisfy both the Code and the Standards**

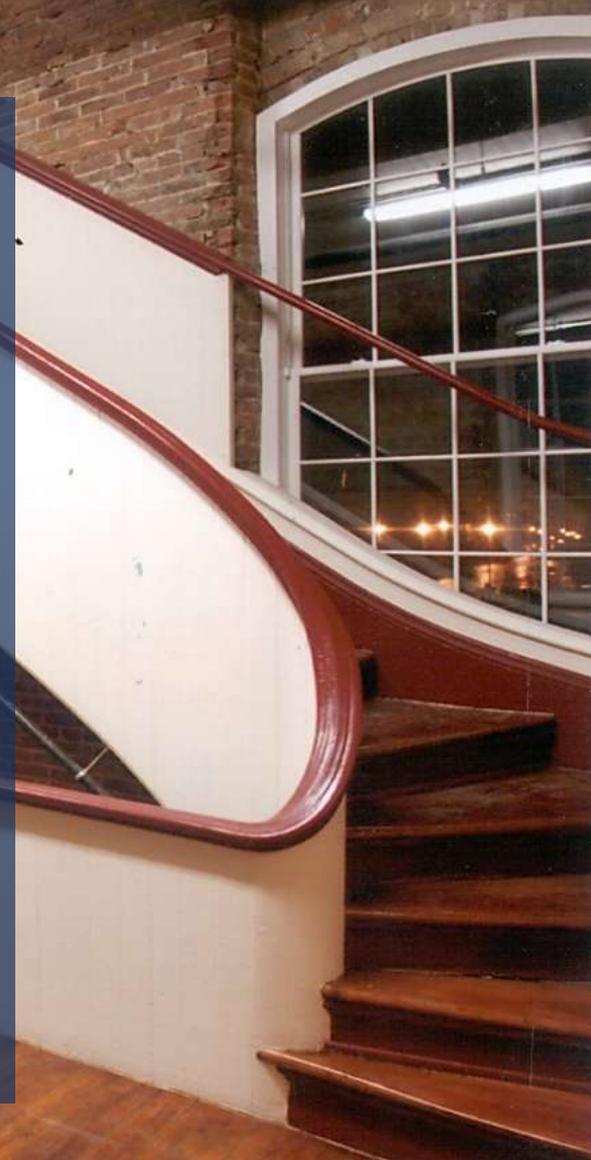


# MORE KEYS TO A SUCCESSFUL PROJECT

- Identify the character-defining elements of the building to your architect and/or contractor
- Complete work as approved or submit project amendments for any changes
- Keep the Standards in mind whenever changes are made after Part 2 approval and refer to the Illustrated Guidelines or Interpreting the Standards Bulletins for guidance
- For large or complicated projects, hire an experienced team – architect, preservation consultant, accountant, attorney, banker – and ensure good team communication

# **PART 3 -REQUEST FOR CERTIFICATION OF COMPLETED WORK**

- **Owner submits completed Part 3 form along with photographs of completed work**
- **The project must be completed at this point; for example, interior spaces must be ready for use**
- **Final approval issued by the National Park Service for certified historic properties where completed work meets the Standards for Rehabilitation**



# POTENTIAL PITFALLS

- **Proceeding with work before Part 2 is approved**
- **Not notifying SHPO of project changes**
- **Assuming local review/approval equals certification of rehabilitation for the federal/state preservation tax credits**

# LEADING CAUSES OF DENIALS

- **Insufficient pre-rehabilitation photographic documentation**
- **Completing work that does not meet the Standards before contacting the SHPO or beginning the application process**
- **Proposed use is too intense for building and site**
- **Substantial interior demolition; proposed removals not supported by conditions or floor plan**



# ONLINE TECHNICAL RESOURCES

## National Park Service

National Park Service  
U.S. Department of the Interior



## Historic Preservation Tax Incentives

Technical Preservation Services

### HISTORIC PRESERVATION CERTIFICATION

Federal historic preservation tax incentives are available for a qualified project that the Secretary certifies as a certified rehabilitation of a certified historic structure. The tax incentives include a 20% increase in the amount of the historic preservation tax credit and estate tax deductions for charitable contributions of interests in a historic property development. The tax incentives for historic preservation property are also available.

To qualify for the tax incentives, a project must be an appropriate part or parts of the building. For more information, see the Application. Detailed instructions for applying for NPS approval of applications are available only in writing by duly authorized personnel of the National Park Service. The NPS certification



### Introduction

Historic office building corridors are often rich in distinctive features and materials. Glass door panels with gold leaf lettering, glass transoms and sidelights, woodwork and wainscoting all provide a physical connection to the way business was conducted in the late 19th century. Moreover, they display a level of detail, and quality of material and craftsmanship that are rare in new construction. Some of the same characteristics that make historic corridors significant and unique, however, may present a challenge to their sensitive rehabilitation.

A primary difficulty lies in bringing historic features and materials "up to code." Because successive building regulations are rarely applied retroactively, a historic structure may be decades – or even a century – out of step with current life safety standards. When such a

building undergoes a major rehabilitation or change in occupancy classification, the owner is usually required to bring the structure into compliance with modern codes written primarily for new construction. Among other provisions, current building codes often require that assemblies and materials provide a specified level of fire resistance. Historic doors, transoms and sidelights are common corridor features that are unlikely to meet such resistance ratings (see figure 1).

Building code enforcement has traditionally favored replacing existing materials and assemblies with new construction of known fire rating. In recent years, however, regulatory and technical solutions have better reconciled historic features with life safety and building code requirements. Rehabilitation provi-

## PRESERVATION Tech Notes



### HISTORIC INTERIOR SPACES NUMBER 3

#### Preserving Historic Corridor Doors and Glazing in High-Rise Buildings

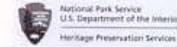
Chad Randl  
Technical Preservation Services  
National Park Service

**When rehabilitating larger buildings, significant corridors should be preserved where possible. Code required changes should be made in such a manner as to preserve important features and finishes.**

## 46 PRESERVATION BRIEFS

### The Preservation and Reuse of Historic Gas Stations

Chad Randl



Unless your tank is empty, gasoline stations rarely attract attention. Yet, for the past hundred years gas stations have occupied prime locations on main streets and suburban corners, on small town roads, and along early highways. They are one of America's most common commercial building types and are emblematic of the twentieth century. Surviving historic stations are physical reminders of the transportation revolution and the influence of increased mobility on the landscape. They are a reflection of car culture, pop culture, corporate standardization, and an era of customer service that today seems quaint.

Many of these now historic gas stations are deteriorating or abandoned (Fig. 1). Changing land use patterns have concentrated new development along commercial strips beyond the downtown and neighborhood locations where many historic stations survive. Interstates have

routed traffic away from once-thriving gas stations on what are now secondary roads. Small buildings and small lots, unresolved environmental issues, and a relentless push for standardization are all challenges to the continuing use of historic gas station properties.

Across the United States, however, gas stations are slowly being rediscovered for their historic significance. They have even been included on statewide endangered property lists. Once spurned as out of place incursions or eyesores, historic stations are increasingly appreciated for their contribution to the character of a neighborhood, and the way they are easily adapted for new uses. This *Preservation Brief* provides guidance on assessing the significance of historic gas stations and encourages their preservation by providing information on the maintenance and repair of existing structures. This Brief also describes appropriate rehabilitation treatments, including conversion for new functions when the historic use is no longer feasible.

The unique features and characteristics that define historic gas stations can be respected and preserved through sensitive maintenance, repair, and rehabilitation. Such work minimizes unnecessary alterations and ensures that the building continues to contribute to the character and vitality of its community.

### Historical Background

For early motorists, refueling was rarely convenient and often dangerous. At bulk depots on the edge of town, gasoline was transferred from large storage tanks to smaller glass or metal dispensers and then poured by hand. With the increasing availability of the motor car and the 1905 invention of the gas pump,



Figure 1. Abandoned historic gas stations have in the past been viewed as a hindrance to the redevelopment of a neighborhood or community. Yet sensitive rehabilitations can ensure that the historic character of these buildings is preserved while providing for an economic reuse. This 1930s station in Milwaukee, WI, was later rehabilitated for use as a coffee shop. Photo: Robert Olin, Sherman Park.

# NEW YORK STATE COMMERCIAL REHABILITATION TAX CREDIT PROGRAM ELIGIBILITY

- Project qualifies for the federal credit
- Property is located in eligible census tract
- Applicant is required to pay state fees
- State credit applies to rehabilitation costs up to \$5 million (no cap on federal credit)



# NYS 20% HOMEOWNER TAX CREDIT

- You must own and live in the house
- Total project cost must exceed \$5,000
- At least 5% of the project's expenditures must be for the exterior of the home
- Work needs to be approved by the Division for Historic Preservation before you begin
- Property must be located in an eligible census tract
- Credit refundable for eligible incomes

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Law Practice Concentrating in Affordable Housing and Community Development Law

# HISTORIC TAX CREDITS

Presented by:  
Timmon M. Favaro  
Steven J. Weiss

The New York Statewide Preservation Conference  
Geneva, New York  
April 17, 2015

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# I. The Basics of Federal Historic Rehab Tax Credits

- a. 20% Historic Rehabilitation Tax Credit
  - i. Internal Revenue Code Section 47 / NY Tax Law 606(oo)
    - a. Eligibility for NYS Credit generally made by reference to eligibility for Federal Credit (with a few exceptions).
  - ii. 20% tax credit for rehabilitations of historic buildings
  - iii. Dollar-for-dollar reduction of federal income tax liability
    - a. Passive activity loss rules can limit use of credit if taxpayer is not a widely held C-Corp.
  - iv. Calculated as a percentage of the eligible qualified rehabilitation expenses (QRE's)
  - v. Applies to buildings:
    - a. listed in the National Register of Historic Places
    - b. eligible for listing on the National Register or
    - c. located in a National Register historic district

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# I. The Basics of Federal Historic Rehab Tax Credits

- a. 20% Historic Rehabilitation Tax Credit (cont.)
  
- vi. Unused credit can be carried back one year and forward for 20 years.
  - a. State Credit is refundable for projects PIS after 2015
- vii. IRS has authority to determine tax policy and monitor compliance.
- viii. National Park Service (NPS), a division of the U.S. Department of the Interior certifies the rehabilitation.
- ix. Each state's Historic Preservation office (part of NY Parks Department) reviews /recommends to NPS.
- x. May apply for the historic rehabilitation tax credit before or during a rehabilitation project.

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# I. The Basics of Federal Historic Rehab Tax Credits

- a. 20% Historic Rehabilitation Tax Credit
- xi. Two other tests to qualify for historic rehabilitation tax credits:
  - 1. “Income Producing”
    - a. must be income-producing property - office, retail, industrial, hotel and/or rental residential housing (i.e., a depreciable building).
    - b. Owner-occupied residences are not depreciable, and do not qualify for federal rehabilitation tax credits.
    - c. Residential rental use is considered to be income-producing.

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# I. The Basics of Federal Historic Rehab Tax Credits

## a. 20% Historic Rehabilitation Tax Credit

xi. Two other tests to qualify for historic rehabilitation tax credits: (cont.)

## 2. Substantial Rehabilitation

- a. rehabilitation must be “substantial” to qualify for any tax credits.
- b. a building is substantially rehabilitated if QRE’s during a 24-month period (or 60-month, if phased project is specified prior to the start of rehabilitation) selected by the taxpayer exceed the greater of
  - i. \$5,000 or
  - ii. the adjusted basis of the building and its structural components, determined as of the beginning of the first day of the 24-month period (or 60-month) or the holding period of the building, whichever is later.

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# I. The Basics of Federal Historic Rehab Tax Credits

- a. 20% Historic Rehabilitation Tax Credit
- xi. Two other tests to qualify for historic rehabilitation tax credits:
  - 2. Substantial Rehabilitation (cont.)
    - c. The adjusted basis is defined as the purchase price, minus the cost of the land minus any depreciation already claimed plus previously incurred rehabilitation costs.
    - d. No tax credits can be taken until the substantial rehabilitation test is satisfied.

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# I. The Basics of Federal Historic Rehab Tax Credits

## Historic Tax Credit Substantial Rehabilitation Test

### Project Cost Assumptions

Acquisition Cost	\$500,000 (\$100,000 allocated for land)
QREs	\$2,500,000
non-QRE	<u>\$500,000</u>
Total	\$3,500,000

### Adjusted Basis of Building Calculation

Purchase Price - Land Cost – Depreciation + Incurred Rehab Costs = Adjusted Basis in Building  
\$500,000 (Acq. Cost) - \$100,000 (Land Cost) - \$0 (Depreciation) + \$0 (I.R.C.) = \$400,000 (Adj. Basis)

### Substantial Rehabilitation Test

QREs = \$2,500,000

QREs Greater Than Adj. Basis = **Pass**

Adj. Basis = \$400,000

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# I. The Basics of Federal Historic Rehab Tax Credits

- a. 20% Historic Rehabilitation Tax Credit (cont.)
- xii. Qualified Rehabilitation Expenditures (QRE's)
  - 1. The rehabilitation tax credit is 20% of the qualified rehabilitation expenditures incurred before and during, and after, the taxable year in which the property is placed in service.
  - 2. Rehabilitation expenditures must be “capital” in nature and “depreciable” as real property to qualify for a rehabilitation tax credit.
  - 3. This includes almost all hard and soft construction costs.

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# I. The Basics of Federal Historic Rehab Tax Credits

## a. 20% Historic Rehabilitation Tax Credit

### xii. Qualified Rehabilitation Expenditures (QRE's) (cont.)

4. Architect's fees, engineering fees, legal fees, consulting fees, reasonable developer fees, construction management costs and construction period interest and taxes and any other fees paid that would normally be charged to a capital account are allowable as part of the qualified rehabilitation expenditures.
5. Building and land acquisition costs are not considered qualified rehabilitation expenses.
6. The cost of new construction beyond the "shell" of the existing building, such as expenditures attributable to landscaping, parking lots, site work and building enlargements, are not considered qualified rehabilitation expenses.
7. The costs of personal property and furnishings are typically not considered qualified rehabilitation expenses.

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# I. The Basics of Federal Historic Rehab Tax Credits

- a. 20% Historic Rehabilitation Tax Credit (cont.)

## xiii. Recapture

Historic rehabilitation tax credits claimed may be subject to prorated recapture by the IRS if within five years of completion of the rehabilitation:

- a. if a rehab property is disposed of or foreclosed,
- b. if a rehab property is destroyed by casualty
- c. if ownership is transferred
- d. if the facade is changed or
- e. If the property loses its status as income-producing

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# I. The Basics of Federal Historic Rehab Tax Credits

## b. 10% Rehabilitation Tax Credit

- i. Internal Revenue Code Section 47 also offers a 10% tax credit
- ii. for rehabilitations of non-historic, non-residential income producing pre-1936 buildings
  - 1. building must NOT be listed in the National Register
  - 2. building must NOT be located in a Registered Historic District (or if so, has been determined to be a “non-contributing structure”)
  - 3. Building was placed in service before 1936 and has not been moved since
  - 4. Properties must be income-producing (i.e., a depreciable building)
  - 5. Building is used for non residential rental purposes

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# I. The Basics of Federal Historic Rehab Tax Credits

- b. 10% Rehabilitation Tax Credit (cont.)
  - iii. calculated as a percentage of qualified rehabilitation expenses.
  - iv. requires only a single IRS tax form submission without any other federal or state involvement.
  - v. Must satisfy the substantial rehabilitation test.
  - vi. Must satisfy the following internal and external wall retention tests:
    - 1. 50% or more of the existing external walls are retained in place as external walls,
    - 2. 75% or more of the existing external walls are retained in place as internal or external walls, and
    - 3. 75% or more of the existing internal structural framework is retained in place.

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## II. NYS Commercial Historic Tax Credit

- a. Allows state credit equal to 100% of federal credit value (equivalent to 20% of qualified rehabilitation costs) up to a maximum of \$5,000,000 in credit with respect to a qualified historic structure.
- b. For Projects PIS in 2014 or earlier, unused credit may be carried forward indefinitely.
- c. For Projects PIS in 2015 and after, unused credit will be refunded.

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## II. NYS Commercial Historic Tax Credit

- d. Rehabilitation must be located in a census tract with a median family income of at or below 100% of the statewide median income **or** a targeted area residence in whole or in part within the meaning of IRC 143(j).
- e. Does **NOT** make the credit transferable within business partnerships.
- f. Sunsets December 31, 2019.

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# III. Syndication And Developer Issues

- a. *Historic Boardwalk Hall, LLC v. Commissioner, 3d. Cir., August 2012*  
*Safe Harbor – Revenue Procedure 2014-12*
- b. Issues with Small Projects:
  - (i) no economies of scale;
  - (ii) investor interest;
  - (iii) lower equity raise
  - (iv) passive activity loss rules;
- c. Development Team:
  - (i) Architect;
  - (ii) consultant;
  - (iii) accountant;
  - (iv) lawyer.

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# III. Syndication And Developer Issues (cont.)

- d. Guarantees to investor will be required
- e. Not-for-profit issues (seek counsel)
- f. Hidden reducers of equity raise such as preferred return and exit costs.
- g. Establish a “short form” set of projected development budget and operating budget.

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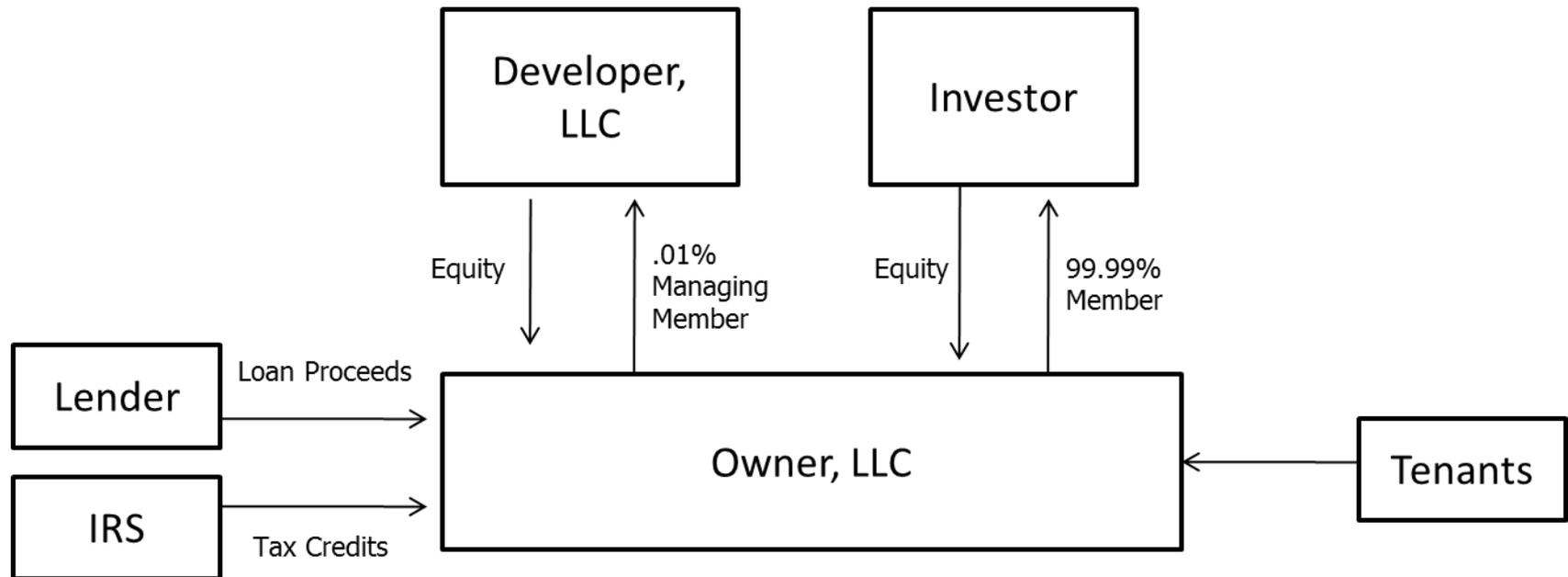
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# III. Syndication And Developer Issues (cont.)

## h. Simple Syndication Structure



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# III. Syndication And Developer Issues (cont.)

## i. Equity Raise

<b>Historic Tax Credit Basic Example of Equity Raise</b>	
<u>Project Cost Assumptions</u>	
Acquisition Cost	\$500,000 (\$100,000 allocated for land)
QREs	\$2,500,000
non-QRE	\$500,000
Total	\$3,500,000
<u>Price Per Credit Assumptions</u>	
Federal Credit =	\$0.90
State Credit =	\$0.50
<u>Credit Calculation</u>	
QREs x Credit Rate = Allowable Historic Tax Credit	
\$2,500,000 (QRE) x 20% (Credit Rate) = \$500,000 (Allowable Credit)	
<u>Equity Yield</u>	
Allowable Credit x Price Per Credit = Equity Raise	
\$500,000 x \$0.90 =	\$450,000 Federal Credit Yield
\$500,000 x \$0.50 =	\$250,000 State Credit Yield
Total Equity Raise	\$700,000

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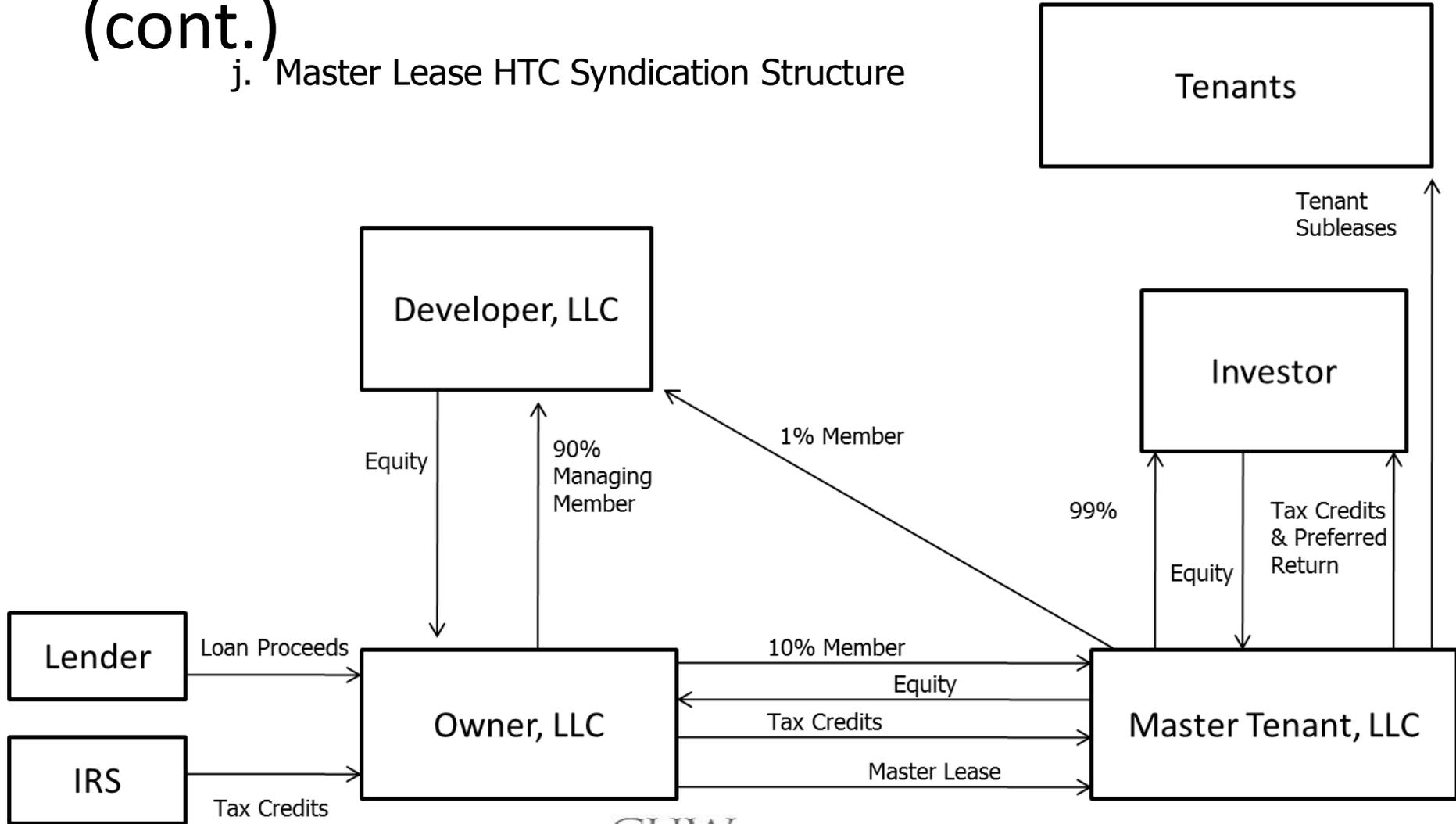
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# III. Syndication And Developer Issues

(cont.)

j. Master Lease HTC Syndication Structure



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This concludes The American Institute of Architects  
Continuing Education Systems Course

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AIA Rochester

Linda Hewitt 585.232.7650



# CHW

## Cannon Heyman & Weiss, LLP

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Law Practice Concentrating in Affordable Housing and Community Development Law

Presented by:

Timmon M. Favaro

[tfavaro@chwattys.com](mailto:tfavaro@chwattys.com)

(716) 856-1700 ext. 314

Steven J. Weiss

[sweiss@chwattys.com](mailto:sweiss@chwattys.com)

(716) 856-1700 ext. 308