U.S. Preservation Tax Incentives: An Overview with Case Studies

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1. INTRODUCTION

This report was prepared by Nancy Byrtus and Michael McClelland of E.R.A. Architects Inc. in January 2000 to provide a survey of tax incentives for historic buildings in the United States. At the time it was written there were few economic incentives available to encourage the retention of historic properties in the City of Toronto. Paul Bain of the Urban Planning and Development Services Department at the City of Toronto began a study to examine and make recommendations regarding incentives in September 1999. This report was written concurrently in order to provide concrete examples of the implementation of tax incentives in the United States. Funding was provided in part by Heritage Canada's 'Young Canada Works' program.

2. SUMMARY

The survey to follow illustrates that tax incentives are recognized as a significant method of encouraging the conservation of historic resources in the United States. The abundance of examples and great number of programs to be described in this report demonstrate a strong public commitment to heritage. Although few thorough analyses of U.S. incentive programs have been conducted, findings from the Washington State Study[1] and the case studies to follow indicate that, at minimum:

- Construction activities generated by restoration and rehabilitation projects create high economic returns.
- Rehabilitation projects contribute to a range of public goals in that they strengthen and revitalize neighbourhoods and communities.

[1] See Appendix 9.5 for the 'Findings of the Washington State Study', an excerpt from *Smart States, Better Communities: How State Governments Can Help Citizens Preserve Their Communities* by Constance Beaumont (Washington D.C.: National Trust for Historic Preservation, 1996).

3. U.S. TAXATION PROTECTS HISTORIC PROPERTIES

> "MYTH #17
> *Older buildings, if it makes sense financially, will be rehabilitated with or without the historic rehabilitation tax credits.*
>
> Annually the National Park Service surveys property owners who have completed historic rehabilitation tax credit projects in the preceding year. **Every year the responses are overwhelming that the projects would not have gone forward without the availability of the historic rehabilitation tax credits**. The point is that tax savings are an important component of the total return in nearly all real estate transactions and many other investments as well. The historic rehabilitation tax credits represent a crucial element in attracting private capital to historic preservation".
>
> (*The Economics of Rehabilitation*. Information Series No. 53. USA: National Trust for Historic Preservation 1991, p. 10)

U.S. tax incentive programs administered at the federal, state and municipal levels have successfully encouraged the preservation of historic sites for almost a quarter century. The survey of U.S legislation and the case studies to follow illustrate that taxation measures can be applied creatively. They can be tailored as selectively or as broadly as desired in order to target the aspects of our heritage that we value most. Introduction of a taxation program that capitalizes on the experience gained from twenty-four years of U.S. experimentation, would be an advantageous and cost effective means of ensuring that Canada's built history is not lost.

The following overview has categorized U.S. preservation law to show that multiple approaches to the protection of historic properties are possible. Some laws are broad enough to fit into two categories. In such case they have been repeated in each category that they apply to.

The definition of a 'historic property' under these laws varies from state to state. In many cases definitions refer to the age of a property, meaning that a property must be at least 35 years of age or older, for example, to be eligible for economic incentives. Commonly, a property qualifies for incentives if it is listed or designated on either the State or National Register (i.e. the National Register of Historic Places). For the purpose of this report use of the term 'historic property' will not be an age related term but a broad definition that includes buildings, structures, landscapes, monuments, landmarks, burial sites, works of art, archaeological sites or prehistoric earthworks, unless otherwise noted. 'Historic property' will also refer to commercial, residential, industrial and non-income producing sites and structures.

4. SURVEY OF U.S. PRESERVATION TAX INCENTIVES

4.1 Federal Income Tax Incentives

The Federal Historic Preservation Tax Incentives Program has administered two kinds of rehabilitation income tax credits in conjunction with the Internal Revenue Service and the State Historic Preservation Offices since 1976. The two types of credits are:

- A *20% income tax credit* for the rehabilitation of certified historic properties. For this credit, commercial, industrial, agricultural or rental residential historic buildings must be listed on the National Register of Historic Places to be eligible. Rehabilitation work must be conducted in accordance with the Secretary of the Interior's Standards for Rehabilitation.

- A *10% income tax credit* for the rehabilitation of non-historic, non-residential buildings built before 1936.

In 1998 alone, there were 1036 projects that benefited from these credits[2]. Case studies in section 5 illustrate the implementation of this program and its benefit to historic properties.

4.2 Rehabilitation Tax Credit Combined with Low-Income Housing Credits

At least two historic properties in the U.S. have combined the Federal Historic Rehabilitation Tax Credit with a Low-Income Housing Credit. The Pacific Hotel in Seattle, Washington and the Carnegie Place Apartments in Sioux City, Iowa combined these incentives to receive a 20% credit against building rehabilitation costs and an annual 9% low-income housing tax credit for a period of 10 years. (See Appendices 9.1 and 9.2 for an illustration of the use of these credits).

[2] Heritage Preservation Services/ Technical Preservation Services. *Federal Tax Incentives for Rehabilitating Historic Buildings. Annual Report for Fiscal Year 1998.* Washington D.C.: U.S. Department of the Interior, National Park Service and the National Center for Cultural Resources Stewardship and Partnerships, February 1999.

4.3 State Income Tax Incentives

Typically, state programs that administer income tax incentives supplement the credits received from the Federal Historic Rehabilitation Tax Credit program or provide incentives for historic properties that are listed at the state or municipal level but not the federal level. (See section 5 for case studies that demonstrate the use of these programs).

There are at least twelve states that have created income tax incentives for historic properties; their legislation can be divided into four different categories:

- *Income tax rehabilitation credits for residential or non-income producing historic properties*
  (Enacted in Connecticut, Colorado, Maryland, Michigan, Missouri, New Mexico, North Carolina, Ohio, Rhode Island, Utah, Virginia, West Virginia and Wisconsin)

- *Income tax rehabilitation credits for commercial, rental or income-producing historic properties*
  (Enacted in Colorado, Indiana, Maine, Maryland, Michigan, Missouri, New Mexico, North Carolina, Ohio, Virginia, West Virginia and Wisconsin)

- *Income tax deductions for historic lands*
  (Enacted in California)

- *Income tax credits for corporations that give a donation to aid the preservation of historic properties within enterprise zones*
  (Enacted in California and Florida)

4.4 Property Tax Incentives

In at least twenty-six states it is predominantly the municipal level of government that administers property tax incentives for historic properties. Legislation in these states defines a 'municipality' in various ways. In Maryland for example, legislation specifically refers to the city of Baltimore. Other states have chosen a broad definition to include cities, counties, villages and towns. The descriptions of 'municipal' legislation to follow adhere to the latter, broad definition unless otherwise noted. There are at least fourteen categories of legislation for property tax incentives:

- *Reduced property tax assessment values or property tax relief for historic properties*
  (Passed for municipalities in Alaska, Connecticut, District of Columbia, Maine, Mississippi, Nevada, North Carolina, Oklahoma, Oregon and Texas. Enacted in Arizona for residential properties. Enacted in Alabama for commercial property.)

- *Property tax relief or credits for 'qualified' rehabilitation*
  Passed by Newark, Kent and Dover Counties in Delaware and by the town of Gloucester in Rhode Island. Passed for municipalities in California, Florida, Georgia, Iowa, Louisiana, Maryland, Massachusetts, New York, South Carolina, South Dakota, Virginia and Washington. Enacted in Kentucky and New Jersey for residential properties. (See section 5 for case study illustrations).

- *Property tax exemptions or lower assessment levels for non-income producing historic properties (including residential properties) or historic properties that are owned or used by nonprofit or government organizations*
  (Passed for municipalities in Arizona, Florida, Illinois, Kentucky, Maryland, Massachusetts, Montana, New Jersey, Ohio, Texas, Virgin Islands and the counties of Hawaii, Maui, Kauai and Honolulu in the state of Hawaii)

- *Preferential tax assessment or property tax relief for properties that neighbour a historic site if they are subject to special conditions and regulations due to their proximity to the historic site*
  (Passed for municipalities in Georgia and New York)

- *Property tax assessment of historic properties at actual values rather than they're 'highest' or 'best' use.*
  (Enacted in the District of Columbia)

Property Tax Relief for Properties under Easement

- *Property tax relief for historic properties under easement*
  (Passed for municipalities in New York. Option available for use by tax assessor in Nebraska, Tennessee and Virginia.)

- *Property tax relief or credits for rehabilitation improvements to historic properties under easement or restrictive covenant*

(Passed for municipalities in California, Florida and Maryland)

The Property Tax Subclass

- *Property tax subclass for historic properties*
  (Passed for municipalities in North Carolina and for historic properties in Wake County, Illinois. See case study example in section 5.)

- *State property tax subclass for non-income producing historic properties*
  (Enacted in Arizona)

Property Tax Incentives and Historic Districts

- *Property tax relief for rehabilitation to historic properties in community reinvestment areas or historic districts*
  (Enacted in Alabama. Passed for the municipality of Gloucester in Rhode Island and for municipalities in the states of Maryland, Massachusetts, Ohio and Wisconsin)

- *Property tax credits for construction of architecturally compatible new structures in a historic district.*
  (Passed for the municipality of Baltimore in Maryland)

Property Tax Incentives for Historic Lands

- *Property tax relief for historic lands or for portions of land allocated to an historic site*
  (Passed for municipalities in Hawaii, Maine and Ohio)

- *Property tax relief for historic lands under easement*
  (Enacted in Texas. Passed for municipalities in Maryland and Pennsylvania)

- *Property tax relief for historic lands owned by a qualified organization*
  (Passed for municipalities in the state of Maryland and New York)

4.5 Sales Tax Exemptions

At least five states passed legislation to promote sales tax incentives for historic properties that are specifically owned by nonprofit organizations. Similar to the incentives for 'qualified' organizations (see section 4.6 'Incentives for Qualified Organizations'), this legislation aids historical societies, museums and designated properties that are open to the public.

There are two main categories of sales tax legislation:

- *State sales tax exemptions whereby historic properties owned by nonprofit organizations are exempt from collecting sales tax on admission fees*
  (Enacted in Kentucky, New Jersey, New York and Texas)

- *State sales tax exemptions whereby nonprofit organizations are exempt from paying sales tax for materials used to rehabilitate or operate eligible property.*
  (Enacted in Kentucky and Texas)

4.6 Incentives for ‘Qualified’ Organizations

At least ten states passed legislation in aid of ‘qualified’ organizations that are stewards or owners of historic properties. This legislation is tailored to provide incentives for historical societies, nonprofit organizations, government agencies, educational organizations and/or archaeological societies. There are seven main categories of legislation:

Property Tax Incentives

- *Municipal property tax exemptions for qualified organizations*
  (Passed for municipalities in Florida)

- *Permission for qualified organizations to acquire properties with easements and to receive municipal and state property tax exemptions*
  (Enacted in Virginia)

- *State property tax credits, deductions or exemptions for qualified organizations*
  (Enacted in Maryland, New Jersey, New York, Ohio, Texas, the Virgin Islands and Wisconsin)

- *Total exemption from state and local property taxes*
  (Enacted in Kentucky)

Income Tax Incentives

- *State income tax deductions for qualified organizations*
  (Enacted in California)

Sales Tax Incentives

- *Elimination of sales tax charged on admission tickets to historic properties that are owned or operated by a qualified organization*
  (Enacted in Kentucky, New Jersey, New York and Texas)

- *State sales tax exemptions whereby nonprofit organizations are exempt from paying sales tax for materials used to rehabilitate or operate eligible property.*
  (Enacted in Kentucky and Texas)

4.7 Tax Incentives for Landscapes

Protective legislation for historic landscapes has been passed in at least eight states.

Within these states, historic landscapes are either described as a part of an historic property or defined categorically according to use, such as land with scenic, natural, historic, archaeological or public benefit.

There are three main categories of legislation:

- *Municipal property tax credits or relief*
  (Passed for municipalities in Maine, Maryland and Pennsylvania)

- *State property tax exemptions, adjustments, assessment reductions or relief*
  (Enacted in California, Hawaii, Maryland, New Jersey, New York and Texas)

- *State income tax deductions*
  (Enacted in California)

4.8 Incentives for Burial Places

At least two states have legislation specifically aimed to provide incentives for the protection of gravesites: West Virginia and Wisconsin. The legislation in these states exempts owners from paying property tax on the portion of land occupied by a place of burial. In addition, property owners in West Virginia can establish easements for unmarked graves.

4.9 Incentives for Archaeology

At least three states have legislated incentives for archaeological sites. Their incentives are as follows:

- *Ohio*
  Prehistoric earthworks are exempted from property taxation if they are purchased by a nonprofit organization and dedicated as a public archaeological reserve.

- *Texas*
  1. Local governing bodies can exempt property tax from part or all of the assessed value of a designated archaeological site.
  2. Landowners can receive a reduced property tax assessment if use of their land is restricted to archaeological excavation or development.

- *Wisconsin*
  Listed or designated archaeological sites are exempted from property taxation if they are subject to easements held by the State Historical Society or other approved entities.

4.10 Incentives for Historic Properties under Easement

This legislation enables owners of historic properties to enter into a voluntary agreement or 'easement' to maintain and preserve their property for the life of the agreement. Most agreements make specific restrictions on property use and regulate alterations or changes according to the Secretary of the Interior's Standards for Rehabilitation. All three levels of government can enter into an easement with property owners. In the U.S. however, easements are most common at the federal and municipal levels.
(Note: Easements are also commonly referred to as 'restrictive covenants', 'historic property contracts' or 'property agreements').

- *Federal Historic Preservation Easements and Federal Income Tax Deductions*
  At this level, easements are granted to historic property owners whose land is accessible to the public in exchange for a federal income tax deduction. Contracts are made through 'qualified' organizations, such as a community land trust or governmental unit, if they agree to protect a property in perpetuity, (i.e. they bind the present owner as well as all future owners).

- *State Historic Property Easements and Property Tax Reductions*
  Easements at the state level of government enable municipalities to enter into an agreement with the owner of an historic property whereby the restrictions imposed on the property are accompanied by a reduced property value taxation assessment or complete property tax exemption. The length of agreement varies from five, ten and twenty years in some states to 'perpetual' agreements in others.
  (Passed for municipalities in California, District of Columbia, Florida, Maryland, Pennsylvania, Texas, Virginia, West Virginia and Wisconsin)

4.11 Incentives for the Protection of Specific Types of Historic Property

Several states have created tax incentives that are targeted for the protection of specific types of historic property. There are at least four examples of this type of legislation:

- *Property Tax Exemptions for Historic Air Craft*
  (Enacted in California)

- *Property Tax Relief for Historic Industrial Mills*
  (Passed for municipalities in Rhode Island)

- *Property Tax Exemptions for Historic Stone Walls*
  (Passed for municipalities in Rhode Island)

- *Property Tax Incentives for Historic Motels and Hotels*
  (Passed for municipalities in Virginia)
  Note – Preservation of historic hotels and motels is a current focus of the Federal Historic Preservation Tax Incentives Program[3].

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[3] Heritage Preservation Services/ Technical Preservation Services. *Federal Tax Incentives for Rehabilitating Historic Buildings; Annual Report for Fiscal Year 1998*. Washington D.C.: U.S. Department of the Interior, National Park Service, February 1998.

4.12 Business Incentives

In addition to the federal income tax credits available for commercial, industrial, agricultural or rental properties, businesses are encouraged to own, use and rehabilitate historic properties through the following types of state legislation:

- *Franchise Tax Credits*
  In Maryland financial institutions and public service companies can claim state franchise tax credits for undertaking a certified historic property rehabilitation.

- *Business Tax Credits*
  In Rhode Island businesses that own and have offices in a historic industrial mill can claim a:
  - Credit for the interest earned and paid on loans made for eligible business expenses, or for the costs incurred in the rehabilitation of the mill.
  - Business tax credit against the salaries paid to employees that work in the historic industrial mill.

- *Community Contribution Tax Incentives*
  In Florida corporations receive tax credits for donations to approved historic preservation projects.

- *Annual Excise Tax*
  In Washington public corporations are exempt from paying an annual excise tax for individually listed historic properties or properties that are part of a historic districts.