



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

April 18, 2022

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Request for Certification of Nonprofit Entity for Supplement to the Federal Historic Rehabilitation Tax Credits -- Agenda Item I

### REQUEST

On June 28, 2022, the Joint Committee on Finance received a request under s. 238.17 (3)(b) from the Wisconsin Economic Development Corporation (WEDC) for approval of its certification of the Beta Building Association of Madison, Inc., (the "Association") to receive tax credits in the amount of \$288,000 under the state supplement to the federal historic rehabilitation tax credit (historic tax credit) program for renovations to the Beta Theta Pi fraternity chapter house in the City of Madison. State statutes prohibit WEDC from certifying nonprofit entities that are not defined under section 501(c)(3) of the Internal Revenue Code (IRC) as eligible to claim the credit unless WEDC submits a request to certify the entity to the Joint Committee on Finance under a 14-day passive review process.

The Committee informed WEDC, via letter to Secretary and Chief Executive Officer Hughes dated July 19, 2022, that an objection had been raised to the award and that a meeting would be scheduled.

### BACKGROUND

Federal law provides a 20% nonrefundable tax credit for qualified rehabilitation expenditures with respect to qualified rehabilitated buildings, as defined under the IRC. A qualified rehabilitated building must be a certified historic structure that is used in the production of income. A "certified historic structure" means a building that is: (a) listed in the National Register of Historic Places; (b) located in a registered historic district and certified as being of historic significance to the district; or (c) determined to be historic and will be listed in the National Register.

A state credit of 20% is a supplement to, and must be claimed at the same time as, the federal

credit. Qualified rehabilitation expenditures are eligible for the credit if the rehabilitated structure is located in Wisconsin and the cost of the qualified rehabilitation expenditure is at least \$50,000. The state credit of 20% along with the federal credit of 20% yields a total credit for qualified rehabilitation expenditures of 40%. The state and federal credit must be claimed ratably over five years (20% of the credit is claimed each year for five years).

The tax credit is administered by several public entities. Initial applications to establish eligibility for the program and for review of the renovation plans for preservation standards are sent to the State Historic Preservation Office (SHPO), which makes recommendations to the National Park Service, which ultimately decides whether to issue approval. If the project is approved, the owner is required to send an application to WEDC to enter into a contract for certification for tax credits. The claimant must provide WEDC with evidence that the rehabilitation was recommended by the State Historic Preservation Officer (Officer) for approval by the U.S. Secretary of the Interior prior to beginning the physical work of construction, or destruction in preparation for construction, and that the rehabilitation was approved by the Officer. The applicant must include evidence that the taxpayer had obtained written certification from the Officer regarding the historical significance of the property and the proposed preservation or rehabilitation plan and expenditures.

WEDC may certify a claimant if it determines that the claimant is conducting an eligible activity. WEDC conducts due diligence reviews (such as background checks) and does not weigh or otherwise review the historic value of the project. WEDC generally certifies persons to receive credits for a three-year period commencing on the initial date of certification and requires actual qualified rehabilitation expenditures be concluded within that three-year period. A project eligible for the credits may be approved for six years if the rehabilitation is substantial or occurring in phases. However, WEDC may extend the certification period at its discretion. WEDC is prohibited from certifying nonprofit entities that are not defined under section 501(c)(3) of the IRC as eligible to claim the credit unless WEDC submits a request to certify the entity to the Joint Committee on Finance under a 14-day passive review process.

Upon completion of the work, the owner will file documentation with the SHPO within the same calendar year the building is placed into service, which would make a recommendation to the National Park Service as to whether the work should be approved as conforming with the preservation standards. At this point the project is complete and the owner will claim the credit at the Department of Revenue (DOR) by submitting its tax filings.

In order to claim the historic tax credit at DOR, a claimant must include with their tax return a copy of the certification by WEDC, as well as a copy of the final certification of completed work. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. As an alternative to carrying forward unused credits, a claimant, including a nonprofit entity, can sell or otherwise transfer credit to another person.

In 2022, WEDC certified 17 applicants to receive up to \$25.2 million of credits (an average of \$1,485,100).

## **ANALYSIS**

According to the WEDC staff review, the Association sought tax credits in the amount of up to \$288,000 for qualified rehabilitation expenditures totaling \$1,144,000 to renovate and improve the chapter house of the University of Wisconsin-Madison chapter of the Beta Theta Pi fraternity. The Association intends to sell the credit (which could assist in the financing of the project).

WEDC and the SHPO approved the multi-phase project for certification, commencing as of July 29, 2021, and ending July 28, 2026. However, because the Association is a title holding organization exempt from federal taxation under IRC 501(c)(2), and not a nonprofit, tax-exempt organization under IRC 501(c)(3), state law requires WEDC to request approval of the certification from the Committee under a 14-day passive review process.

The chapter house, located at 622 Mendota Court in the City of Madison, is listed on the National Register of Historic Places as part of the Langdon Street historic district. The preservation project includes a first floor redesign, new terrace door openings, a redesigned penthouse, and reconstruction of the original portico on the lakeside veranda and west side stairs. Infrastructure improvements would include upgrades to bathrooms and the heating, ventilation, and air conditioning system, as well as building a new weight room and an attic apartment. WEDC indicates that the project could temporarily create 35 construction jobs.

## **ALTERNATIVES**

1. Approve WEDC's certification of the Beta Building Association of Madison, Inc., to receive tax credits in the amount of up to \$288,000 under the state supplement to the federal historic rehabilitation tax credit program for renovations to the Beta Theta Pi fraternity chapter house in the City of Madison. Assuming the project is completed and the credit is first claimed in tax year 2026, it is estimated that general fund tax revenues would be reduced by \$57,600 annually in 2026-27 through 2030-31.

2. Deny the request and do not approve certification of the Beta Building Association of Madison, Inc., for the state supplement to the federal historic rehabilitation tax credit program.

Prepared by: John D. Gentry