



Sub. H.B. 149

126th General Assembly
(As Passed by the General Assembly)

Reps. Calvert, Raga, J. McGregor, C. Evans, Latta, Aslanides, Hartnett, Chandler, Oelslager, Gibbs, Seitz, Gilb, Collier, Schaffer, Kilbane, Hagan, Barrett, Blessing, Buehrer, Cassell, Combs, Core, DeBose, DeGeeter, Dolan, D. Evans, Faber, Fende, Flowers, Garrison, Healy, Hughes, Law, Martin, Mason, R. McGregor, T. Patton, Peterson, Reidelbach, Reinhard, Sayre, Schlichter, Schneider, Seaver, Setzer, G. Smith, J. Stewart, Trakas, Wagoner, Widener, Wolpert, Woodard, Yates, Yuko

Sens. Amstutz, Austria, Cates, Clancy, Coughlin, Fingerhut, Gardner, Grendell, Harris, Kearney, D. Miller, Mumper, Niehaus, Padgett, Roberts, Schuring, Stivers, Zurz, Hagan, Prentiss, Wilson, Fedor

Effective date: *

ACT SUMMARY

- Authorizes a property owner to claim a refundable tax credit against the dealer in intangibles tax, corporation franchise tax, or income tax for rehabilitating a historic building, equal to 25% of the dollar amount indicated on a rehabilitation tax credit certificate.
- Limits the number of certificates that may be approved to 100 from July 1, 2007, through June 30, 2008, and 100 from July 1, 2008, through June 30, 2009, for a total of 200.
- Requires that the State Historic Preservation Officer accept applications for, and the Director of Development and Tax Commissioner adopt rules that establish the procedures for applying for, the tax credit certificates.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Requires that the Director and Commissioner jointly file an annual report with the General Assembly about the rehabilitation tax credit program in years 2007 through 2010.
- Exempts from sales and use taxes equipment and supplies used to clean processing equipment that is part of a continuous manufacturing operation to produce dairy products for sale.

CONTENT AND OPERATION

Eligibility for tax credit for rehabilitating historic buildings

Historic buildings

(R.C. 149.311(A))

The act creates a tax credit for rehabilitating "historic buildings." A "historic building" is a building, including its structural components, that is located in Ohio and that is either (1) individually listed on the National Register of Historic Places under the federal National Historic Preservation Act, located in a "registered historic district," and certified by the State Historic Preservation Officer as being of historic significance to the district or (2) individually listed as a historic landmark designated by a local government certified under federal law (see **COMMENT 1**). A "registered historic district" is a historic district listed in the National Register of Historic Places under federal law, a historic district designated by a local government certified under federal law, or a local historic district certified under federal regulations by the Secretary of the Interior as substantially meeting National Register criteria. The act defines "rehabilitation" as the process of repairing or altering a historic building or buildings, making possible an efficient use while preserving those portions and features of the building and its site and environment that are significant to its historic, architectural, and cultural values.

Obtaining a rehabilitation tax credit certificate

(R.C. 149.311(A) to (D))

Under the act, an owner who holds a fee simple interest in a historic building may be eligible for a tax credit for "qualified rehabilitation expenditures" paid or incurred after the act's effective date for rehabilitation of the building. "Qualified rehabilitation expenditures" are those paid or incurred during the "rehabilitation period," and before and after that period as determined under federal rehabilitation tax credit law, by an owner of a historic building to

rehabilitate the building. "Qualified rehabilitation expenditures" include architectural or engineering fees paid or incurred in connection with the rehabilitation, and expenses incurred in the preparation of nomination forms for listing on the National Register of Historic Places.¹ However, "qualified rehabilitation expenditures" exclude the cost of acquiring, expanding, or enlarging a historic building; expenditures attributable to work done to facilities related to the building, such as parking lots, sidewalks, and landscaping; and new building construction costs.

To obtain the tax credit, the owner first must file an application with the State Historic Preservation Officer for a rehabilitation tax credit certificate. The act requires that the form and manner of filing applications for a certificate be prescribed by rule of the Director of Development. An application must be filed on or after July 1, 2007, but before July 1, 2009, and the Officer must accept applications in the order in which they are filed. Within seven days after an application is filed, the Officer must forward it to the Director, who reviews the application and determines whether all of the following criteria are met:

(1) That the building that is the subject of the application is a historic building and the applicant is the owner of the building;

(2) That the rehabilitation will satisfy standards prescribed by the United States Secretary of the Interior under the National Historic Preservation Act and federal regulations that establish standards for rehabilitation (see **COMMENT 2**);

(3) That receiving a rehabilitation tax credit certificate is a major factor in the applicant's decision to rehabilitate the historic building or to increase the level of investment in that rehabilitation.

An applicant must demonstrate to the satisfaction of the Officer and the Director that the rehabilitation will satisfy the federal standards described in (2), above, before the applicant begins physical rehabilitation.

If the Director determines that the three criteria described above are met, the Director, in conjunction with the Tax Commissioner, must conduct a cost and

¹ *Rehabilitation must be completed within a "rehabilitation period." While the owner is permitted to determine the length of the rehabilitation period, the act places limitations on its duration. The maximum duration of the rehabilitation period depends upon the manner in which the rehabilitation was intended to be completed. If the initial plan for a rehabilitation is that it be completed in stages, then the rehabilitation period cannot exceed 60 months. If, on the other hand, the initial plan for a rehabilitation is that it be completed in some manner other than in stages, then the rehabilitation period cannot exceed 24 months. (R.C. 149.311(A)(7).)*

benefit analysis to determine whether rehabilitation of the building will result in a net revenue gain in state and local taxes once the building is used. The Director may not approve an application and issue a tax credit certificate to an applicant unless the cost and benefit analysis suggests that there will be a net revenue gain in state and local taxes once the building is used. A certificate cannot be issued before rehabilitation of the building is completed.

The act divides the two-year period during which owners may apply for a tax credit certificate into two 12-month periods called "application periods." During each application period, the Director may approve no more than 100 applications for a tax credit certificate. Applications expire at the end of each application period.

Administration of rehabilitation tax credit certificates

(R.C. 149.311(B) and (E))

Rehabilitation tax credit certificates and the application process for issuing them will be administered jointly by the Director of Development and the Tax Commissioner. Before July 1, 2007, the Director, after consulting with the Commissioner and in accordance with the Administrative Procedure Act, must adopt rules that establish all of the following:²

(1) Forms and procedures by which applicants may apply for rehabilitation tax credit certificates;

(2) Criteria for reviewing, evaluating, and approving applications for certificates within the 100-application per application period limitation, criteria for assuring that the certificates issued encompass a mixture of high and low qualified rehabilitation expenditures, and criteria for issuing certificates to increase the level of investment in rehabilitating historic buildings;

(3) Eligibility requirements for obtaining a certificate;

(4) The form of rehabilitation tax credit certificates;

(5) Reporting requirements and monitoring procedures;

(6) Any other rules that are necessary to implement and administer the rehabilitation tax credit certificate law.

² *The Administrative Procedure Act requires public notice of, and a public hearing on, proposed rules. It also requires legislative review of proposed rules.*

Issuance of a certificate represents a finding by the Director only of the matters described in the three application criteria listed above; issuance of a certificate does not represent a verification or certification by the Director of the amount of qualified rehabilitation expenditures for which a tax credit may be claimed. The amount of qualified rehabilitation expenditures is subject to inspection and examination by the Tax Commissioner or the Commissioner's employees under existing law that authorizes the Commissioner to inspect the books of a taxpayer, and any other applicable provision of law.

Upon issuing a certificate, the Director is required to certify to the Tax Commissioner, in the form and manner requested by the Commissioner, the name of the applicant, the amount of qualified rehabilitation expenditures shown on the certificate, and any other information required by administrative rules adopted by the Director.

Tax credit for rehabilitating historic buildings

(R.C. 149.311(E), 5725.151, 5733.01, 5733.47, 5733.98, 5747.76, and 5747.98)

The act allows a person to whom a rehabilitation tax credit certificate is issued to claim a refundable credit against the dealer in intangibles tax, the corporation franchise tax, or the income tax.

The credit equals 25% of the dollar amount indicated on the certificate. The credit must be claimed in the calendar year specified in the certificate in the case of the dealers in intangibles tax; the tax year specified in the certificate in the case of the corporation franchise tax; and the taxable year specified in the certificate in the case of the income tax. The credit that is taken against corporation franchise tax or income tax liability must be claimed in the order prescribed by existing law for this and other tax credits.

For purposes of making tax payments under the corporation franchise tax and the income tax, taxes equal to the amount of the refundable credit are considered to be paid to the state on the first day of the tax year, in the case of the corporation franchise tax, or taxable year, in the case of the income tax.

A taxpayer claiming a credit must retain the rehabilitation tax credit certificate for four years following the end of the year in which the credit was claimed. During that four-year period, the taxpayer must make the certificate available for inspection by the Tax Commissioner, upon the Commissioner's request.

If a taxpayer no longer pays the corporation franchise tax because the taxpayer is being phased-out of that tax and is paying the commercial activity tax,

the taxpayer may nonetheless file a corporation franchise tax annual report and claim the refundable credit authorized by the act. But this provision does not allow a taxpayer to claim the credit against its corporation franchise tax liability more than once.

Effect of tax credit on dealers in intangibles tax revenues distributed to local governments

(R.C. 5725.151(C) and 5725.24(C))

Under continuing law, five-eighths of the tax revenues from the dealers in intangibles tax are disbursed to counties wherein capital is employed by a dealer, and the remainder is credited to the General Revenue Fund. Revenues disbursed to counties is then further distributed by the County Budget Commission to political subdivisions located in those counties in accordance with procedures and formulas established under continuing law. The act provides that reductions in the amount of taxes collected on account of tax credits allowed for rehabilitating historic buildings must be applied to reduce the amount credited to the General Revenue Fund and cannot be applied to reduce the amount to be disbursed to local governments.

Reports

(R.C. 149.311(F))

On or before December 1, 2007, 2008, and 2009, the Director of Development and Tax Commissioner jointly must submit to the President of the Senate and the Speaker of the House of Representatives a report on the rehabilitation tax credit certificate program. The report must present an overview of the program and include information on the number of rehabilitation tax credit certificates issued during an application period, an update on the status of each historic building for which an application was approved, the dollar amount of the aggregate tax credits granted, and any other information the Director and Commissioner consider relevant to the topics addressed in the report.

On or before December 1, 2010, the Director and Commissioner jointly must submit to the President of the Senate and the Speaker of the House of Representatives a comprehensive report that includes all of the information described above and a detailed analysis of the effectiveness of issuing tax credits for rehabilitating historic buildings. The report is required to be prepared with the assistance of an economic research organization jointly chosen by the Director and Commissioner.

Sales and use tax exemption for property used in a manufacturing operation that produces dairy products

(R.C. 5739.011 and 5739.02(B)(42)(g) (not in act); Section 3)

Continuing law provides that sales where the purchaser uses the "thing transferred" primarily in a manufacturing operation to produce tangible personal property for sale are exempt from sales and use taxes, unless the thing transferred is machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility. The act provides that on the first day of the first month following the effective date of the act, equipment and supplies used to clean processing equipment that is part of a continuous manufacturing operation to produce milk, ice cream, yogurt, cheese, and similar dairy products for human consumption are "things transferred" and thus are exempt from sales and use taxes when used primarily in a manufacturing operation to produce tangible personal property for sale.

COMMENT

1. Under the federal National Historic Preservation Act, 16 U.S.C. 470-470w-6, the Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. Properties meeting certain criteria are designated "National Historic Landmarks" and are included on the National Register. The Secretary of the Interior approves State Historic Preservation Programs according to criteria established by the Secretary, one requirement of which is that the Governor of a state must designate a State Historic Preservation Officer to administer the state program. State programs are eligible for matching grants administered by the Secretary, and for direct grants for the preservation of properties included on the National Register.

Any state program approved by the Secretary of the Interior must provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of the National Historic Preservation Act and, in addition, must provide for the transfer of a portion of the grants received by a state to those local governments.

2. The Code of Federal Regulations, 36 C.F.R. 67.7, lists federal standards for rehabilitation projects. These standards are extensive, and are intended to assist the long-term preservation of a property's significance through preservation of historic materials and features. The standards encompass the exterior and interior of historic buildings, related landscape features, and the building's site and

environment. In general, the standards prohibit changes to the building that do not maintain the historic character of the property, and require that the distinctive features of the property be preserved.

HISTORY

ACTION	DATE
Introduced	03-24-05
Reported, H. Ways & Means	03-28-06
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Reported, S. Ways & Means & Economic Development	12-12-06
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