



S.B. 60

126th General Assembly
(As Introduced)

Sens. Schuring, Coughlin, Dann, Jacobson, Zurz, Gardner, Fedor, Fingerhut,
Brady, Clancy

BILL SUMMARY

- Requires that the State Historic Preservation Officer establish a procedure for applying for and reviewing applications for rehabilitation tax credit certificates.
- Authorizes a nonrefundable, transferable tax credit for rehabilitating historic buildings, equal to 25% of the dollar amount indicated on a rehabilitation tax credit certificate.
- Provides that the credit may be taken against the dealers in intangibles, public utility excise, corporation franchise, or income tax.

CONTENT AND OPERATION

Eligibility for tax credit for rehabilitating historic buildings

Historic buildings

(R.C. 149.311(A))

The bill 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 bill defines "rehabilitation" as the process of returning a building or buildings to a state of utility, through repair or alteration, 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) and (B); Section 3)

Under the bill, the owner who holds the fee simple interest in a historic building or a qualified lessee of the building may be eligible for the tax credit.¹ The owner or qualified lessee must first apply to the State Historic Preservation Officer for a rehabilitation tax credit certificate. The form and manner of filing applications for a certificate must be prescribed by the State Historic Preservation Officer or the Officer's designee. (Hereinafter, both are referred to as the "Officer.") Applications to the Officer for a rehabilitation tax credit certificate may be filed on or after the later of July 1, 2005, or the first day of the seventh month after the month in which the bill takes effect.

The Officer must accept and review the applications, and approve issuance of a rehabilitation tax credit certificate to an applicant if the Officer determines all of the following:

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

(2) That the rehabilitation satisfies 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 the expenditures to rehabilitate the building are "qualified rehabilitation expenditures" and are reported by the applicant to exceed either \$5,000, in the case of a historic building not intended to be held as income-producing property, or the greater of \$5,000 or the adjusted basis of the building as it would be determined under the Internal Revenue Code, in the case of a historic building intended to be held as income-producing property. "Qualified rehabilitation expenditures" are expenditures paid or incurred during the "rehabilitation period" by an owner or qualified lessee of a historic building to

¹ A "qualified lessee" is a person occupying or otherwise holding the historic building under a lease with a term ending not earlier than five years after completion of the rehabilitation for which a rehabilitation tax credit certificate may be issued under the bill, determined without regard to any renewal period of the lease.

rehabilitate the building, including 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, but excluding the cost of acquiring a building or expenditures to expand or enlarge a historic building.²

An applicant must demonstrate to the satisfaction of the Officer that the rehabilitation satisfies the federal standards described in (2), above, before the applicant begins physical rehabilitation work. A rehabilitation tax credit certificate for a historic building cannot be issued before rehabilitation of the building is completed.

Administration of rehabilitation tax credit certificates

(R.C. 149.311(C) and (D))

Rehabilitation tax credit certificates must be in a form to be devised by the Officer, with the advice of the Tax Commissioner, must identify the applicant and the building that is the subject of the application, must show the amount of the qualified rehabilitation expenditures the applicant claims to have paid or incurred, and must bear a unique registration number. Issuance of a certificate represents a finding by the Officer only of the matters described in (1) through (3), above; issuance of a certificate does not represent a verification or certification by the Officer 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 the issuance of a certificate, the Officer is required to certify to the 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, the registration number of the certificate, and any other information required by Commissioner.

The Officer may fix and collect a reasonable fee payable at the time an application for a rehabilitation tax credit certificate is filed. Proceeds from the fee

² *Rehabilitation must be completed within a "rehabilitation period," which is a period not to exceed 24 months if the rehabilitation initially was not planned to be in stages, or a period not to exceed 60 months if the rehabilitation initially was planned to be completed in stages. Time begins to run beginning with the month in which physical rehabilitation work commences.*

must be used exclusively to defray the expenses incurred by the Historic Preservation Office in administering the rehabilitation tax credit certificate law.

Assignment of tax credit certificates

(R.C. 149.311(A) and (E) and 5733.47(B))

The owner or qualified lessee to which a rehabilitation tax credit certificate is issued or any other "certificate owner" may assign the certificate or a "certificate share" to any other person, including to a mortgagee under a loan agreement secured by the building that is the subject of the certificate, for such consideration as is mutually agreeable.³ A "certificate share" is a portion that is less than 100% of the dollar amount of qualifying rehabilitation expenditures corresponding with a certificate. Each assignment must be evidenced by a written agreement indicating the identity of the assignor and assignee, the certificate's registration number, the dollar amount of qualified rehabilitation expenditures assigned, and any other information the Tax Commissioner may prescribe by rule. Upon assignment of a certificate or a certificate share, the assignee is required to register with the Commissioner as a certificate owner.

Under the bill, the Commissioner must compile and maintain a register of rehabilitation tax credit certificates and of certificate shares. The register must record, according to the registration number of each certificate issued, the name of the person to which the certificate is issued, the amount of qualified rehabilitation expenditures the person claims to have paid or incurred, the name of any assignee of the certificate or a certificate share registered with the Commissioner, and the amount of such expenditures assigned to any such assignee.

The bill provides that rehabilitation tax credit certificates and certificate shares, the assignment thereof, and any income or gain arising from assignment thereof are not subject to taxation by or within Ohio.

The tax credit for rehabilitating historic buildings

(R.C. 149.311(E), 5725.151, 5727.40, 5733.47, 5733.98, 5747.76, and 5747.98)

The bill allows a nonrefundable tax credit for any of the following that owns or owns a share of a rehabilitation tax credit certificate:

³ A "certificate owner" is either of the following persons registered with the Tax Commissioner as the owner of a rehabilitation tax credit certificate or certificate share: (1) the owner or qualified lessee of a historic building to which a rehabilitation tax credit certificate was issued and that has not assigned the certificate or all of the certificate shares to assignees, or (2) an assignee of a certificate or certificate share.

(1) A dealer in intangibles (for example, a stock broker, mortgage broker, securities dealer, finance company, or loan company), to be used against the dealers in intangibles tax;

(2) A public utility, to be used against the public utility excise tax;

(3) A corporation that is subject to the corporation franchise tax, to be used against that tax;

(4) A person that is subject to the income tax, or a pass-through entity that makes an election to be subject to the income tax rather than the corporation franchise tax, to be used against the income tax.

(For purposes of the analysis, these entities will be collectively referred to as "taxpayers.")

The credit equals 25% of the dollar amount of the rehabilitation tax credit certificate or certificate share owned by the taxpayer as indicated in the Tax Commissioner's register (see "Assignment of the certificate," above). If the amount of the credit exceeds the amount of tax otherwise due, the excess may be carried forward and applied to the tax due for a following year until the full amount of the credit has been applied. The credit may be claimed beginning on or after January 1, 2006 (under the corporation franchise tax, beginning with tax year 2006; under the income tax, for taxable years beginning on or after January 1, 2006). 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.

A tax credit may not be claimed by any person who is not a certificate owner. The amount of qualified rehabilitation expenditures for which a certificate owner may claim the tax credit cannot exceed the dollar amount of the certificate or certificate share owned by the certificate owner, as indicated in the Tax Commissioner's register and not assigned to an assignee.

A taxpayer claiming a credit must retain the certificate and, if the taxpayer is the assignee of a certificate or certificate share, the written assignment agreement, for four years following the end of the last year in which the credit, including any carried-forward amount, is applied. The taxpayer must make the certificate or assignment agreement available for inspection by the Tax Commissioner, upon the request of the Commissioner, during that period.

Treatment of credit for pass-through entity investors

(R.C. 5747.08)

Under continuing law, a pass-through entity investor for whom the pass-through entity elects to file a single return must calculate the income tax before business credits at the highest rate of income tax and is entitled to only its distributive share of the business credits. The bill provides that the credit for rehabilitating historic buildings is not a business credit if the historic building is not income-producing property.

Effect of tax credit on dealers in intangibles tax revenues distributed to counties

(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 deposited in the General Revenue Fund. The bill 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 credited to the undivided local government funds of the counties in which the dealers in intangibles taxes originate.

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 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

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