

House Bill 308 (AS PASSED HOUSE AND SENATE)

By: Representatives Stephens of the 164th, Peake of the 141st, and Harbin of the 122nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, computation, rate, and exemptions from state income taxes, so as
3 to revise the tax credit for the rehabilitation of historic structures; to provide for procedures,
4 conditions, and limitations; to provide for a sunset date; to provide for related matters; to
5 repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
9 imposition, computation, rate, and exemptions from state income taxes, is amended by
10 revising Code Section 48-7-29.8, relating to a tax credit for the rehabilitation of historic
11 structures, as follows:

12 "48-7-29.8.

13 (a) As used in this Code section, the term:

14 (1) 'Certified rehabilitation' means repairs or alterations to a certified structure which are
15 certified by the Department of Natural Resources as meeting the United States Secretary
16 of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation
17 as provided by the Department of Natural Resources.

18 (2) 'Certified structure' means a historic building or structure that is located within a
19 national historic district, individually listed on the National Register of Historic Places,
20 individually listed in the Georgia Register of Historic Places, or is certified by the
21 Department of Natural Resources as contributing to the historic significance of a Georgia
22 Register Historic District.

23 (3) 'Historic home' means a certified structure which, or any portion of which is or will,
24 within a reasonable period, be owned and used as the principal residence of the person
25 claiming the tax credit allowed under this Code section. Historic home shall include any
26 structure or group of structures that constitute a multifamily or multipurpose structure,

27 including a cooperative or condominium. If only a portion of a building is used as such
 28 person's principal residence, only those qualified rehabilitation expenditures that are
 29 properly allocable to such portion shall be deemed to be made to a historic home.

30 (4) 'Qualified rehabilitation expenditure' means any qualified rehabilitation expenditure
 31 as defined by Section 47(c)(2) of the Internal Revenue Code of 1986 and any amount
 32 properly chargeable to a capital account expended in the substantial rehabilitation of a
 33 structure that by the end of the taxable year in which the certified rehabilitation is
 34 completed is a certified structure. This term does not include the cost of acquisition of
 35 the certified structure, the cost attributable to enlargement or additions to an existing
 36 building, site preparation, or personal property.

37 (5) 'Substantial rehabilitation' means rehabilitation of a certified structure for which the
 38 qualified rehabilitation expenditures, at least 5 percent of which must be allocable to the
 39 exterior during the 24 month period selected by the taxpayer ending with or within the
 40 taxable year, exceed:

41 (A) For a historic home, the lesser of \$25,000.00 or 50 percent of the adjusted basis of
 42 the property as defined in subparagraph (a)(1)(B) of Code Section 48-5-7.2; or, in the
 43 case of a historic home located in a target area \$5,000.00; or

44 (B) For any other certified structure, the greater of \$5,000.00 or the adjusted basis of
 45 the property.

46 (6) 'Target area' means a qualified census tract under Section 42 of the Internal Revenue
 47 Code of 1986, found in the United States Department of Housing and Urban
 48 Development document number N-94-3821; FR-3796-N-01.

49 (b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter for the
 50 taxable year in which the certified rehabilitation is completed:

51 (1) In the case of a historic home, equal to 25 percent of qualified rehabilitation
 52 expenditures, except that, in the case of a historic home located within a target area, an
 53 additional credit equal to 5 percent of qualified rehabilitation expenditures shall be
 54 allowed; and

55 (2) In the case of any other certified structure, equal to 25 percent of qualified
 56 rehabilitation expenditures.

57 Qualified rehabilitation expenditures may only be counted once in determining the amount
 58 of the tax credit available, and more than one entity may not claim a credit for the same
 59 qualified rehabilitation expenditures.

60 (c)(1) In no event shall credits for a historic home exceed \$100,000.00 in any 120 month
 61 period.

62 ~~(2) In no event shall credits for a certified structure exceed \$300,000.00 in any 120~~
 63 ~~month period~~ The maximum credit for any other individual certified structure shall be \$5

64 million for any taxable year, except in the case that the project creates 200 or more
 65 full-time, permanent jobs or \$5 million in annual payroll within two years of the placed
 66 in service date, in which case the project is eligible for credits up to \$10 million for an
 67 individual certified structure. In no event shall more than one application for any
 68 individual certified structure under this paragraph be approved in any 120 month period.

69 (3) In no event shall credits issued under this Code section for projects earning more than
 70 \$300,000.00 in credits exceed in the aggregate \$25 million per calendar year.

71 (d)(1) A taxpayer seeking to claim a tax credit under paragraph (2) of subsection (b) of
 72 this Code section shall submit an application to the commissioner for preapproval of such
 73 tax credit. Such application shall include a precertification from the Department of
 74 Natural Resources certifying that the improvements to the certified structure are to be
 75 consistent with the Department of Natural Resources Standards for Rehabilitation. The
 76 Department shall have the authority to require electronic submission of such application
 77 in the manner specified by the department. The commissioner shall preapprove the tax
 78 credits within 30 days based on the order in which properly completed applications were
 79 submitted. In the event that two or more applications were submitted on the same day
 80 and the amount of funds available will not be sufficient to fully fund the tax credits
 81 requested, the commissioner shall prorate the available funds between or among the
 82 applicants. For applications on projects over the annual \$25 million limitation, those
 83 applications shall be given priority the following year.

84 (2) In order to be eligible to receive the credit authorized under subsection (b) of this
 85 Code section, a taxpayer must attach to the taxpayer's state tax return a copy of the
 86 completed certification of the Department of Natural Resources verifying that the
 87 improvements to the certified structure are consistent with the Department of Natural
 88 Resources Standards for Rehabilitation.

89 (e)(1) If the credit allowed under paragraph (1) of subsection (b) of this Code section in
 90 any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable
 91 year, the taxpayer may apply the excess as a credit for succeeding years until the earlier
 92 of:

93 (A) The full amount of the excess is used; or

94 (B) The expiration of the tenth taxable year after the taxable year in which the certified
 95 rehabilitation has been completed.

96 (2) Any tax credits with respect to credits earned by a taxpayer under paragraph (2) of
 97 subsection (b) of this Code section and previously claimed but not used by such taxpayer
 98 against its income tax may be transferred or sold in whole or in part by such taxpayer to
 99 another Georgia taxpayer, subject to the following conditions:

100 (A) A taxpayer who makes qualified rehabilitation expenditures may sell or assign all
 101 or part of the tax credit that may be claimed for such costs and expenses to one or more
 102 entities, but no further sale or assignment of any credit previously sold or assigned
 103 pursuant to this subparagraph shall be allowed. All such transfers shall be subject to the
 104 maximum total limits provided by subsection (c) of this Code section;

105 (B) A taxpayer who sells or assigns a credit under this Code section and the entity to
 106 which the credit is sold or assigned shall jointly submit written notice of the sale or
 107 assignment to the department not later than 30 days after the date of the sale or
 108 assignment. The notice must include:

109 (i) The date of the sale or assignment;

110 (ii) The amount of the credit sold or assigned;

111 (iii) The names and federal tax identification numbers of the entity that sold or
 112 assigned the credit or part of the credit and the entity to which the credit or part of the
 113 credit was sold or assigned; and

114 (iv) The amount of the credit owned by the selling or assigning entity before the sale
 115 or assignment and the amount the selling or assigning entity retained, if any, after the
 116 sale or assignment;

117 (C) The sale or assignment of a credit in accordance with this Code section does not
 118 extend the period for which a credit may be carried forward and does not increase the
 119 total amount of the credit that may be claimed. After an entity claims a credit for
 120 eligible costs and expenses, another entity may not use the same costs and expenses as
 121 the basis for claiming a credit; and

122 (D) Notwithstanding the requirements of this subsection, a credit earned or purchased
 123 by, or assigned to, a partnership, limited liability company, Subchapter 'S' corporation,
 124 or other pass-through entity may be allocated to the partners, members, or shareholders
 125 of that entity and claimed under this Code section in accordance with the provisions of
 126 any agreement among the partners, members, or shareholders of that entity and without
 127 regard to the ownership interest of the partners, members, or shareholders in the
 128 rehabilitated certified structure, provided that the entity or person that claims the credit
 129 must be subject to Georgia tax.

130 (E) Only a taxpayer who earned a credit, and no subsequent good faith transferee, shall
 131 be responsible in the event of a recapture, reduction, disallowance, or other failure
 132 related to such credit.

133 ~~(2)~~(3) No such credit shall be allowed the taxpayer against prior years' tax liability.

134 (f) In the case of any rehabilitation which may reasonably be expected to be completed in
 135 phases set forth in architectural plans and specifications completed before the rehabilitation

136 begins, a 60 month period may be substituted for the 24 month period provided for in
137 paragraph (5) of subsection (a) of this Code section.

138 (g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event
139 a tax credit under this Code section has been claimed and allowed the taxpayer, upon the
140 sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the
141 remaining unused amount of such credit to the purchaser of such certified structure. If
142 a historic home for which a certified rehabilitation has been completed by a nonprofit
143 corporation is sold or transferred, the full amount of the credit to which the nonprofit
144 corporation would be entitled if taxable shall be transferred to the purchaser or transferee
145 at the time of sale or transfer.

146 (2) Such purchaser shall be subject to the limitations of subsection (e) of this Code
147 section. Such purchaser shall file with such purchaser's tax return a copy of the approval
148 of the rehabilitation by the Department of Natural Resources as provided in subsection
149 (d) and a copy of the form evidencing the transfer of the tax credit.

150 (3) Such purchaser shall be entitled to rely in good faith on the information contained in
151 and used in connection with obtaining the approval of the credit including, without
152 limitation, the amount of qualified rehabilitation expenditures.

153 (h)(1) If an owner other than a nonprofit corporation sells a historic home within three
154 years of receiving the credit, the seller shall recapture the credit to the Department of
155 Revenue as follows:

156 (A) If the property is sold within one year of receiving the credit, the recapture amount
157 will equal the lesser of the credit or the net profit of the sale;

158 (B) If the property is sold within two years of receiving the credit, the recapture
159 amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

160 (C) If the property is sold within three years of receiving the credit, the recapture
161 amount will equal the lesser of one-third of the credit or the net profit of the sale.

162 (2) The recapture provisions of this subsection shall not apply to a sale resulting from the
163 death of the owner.

164 (i)(1) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection
165 (b) of this Code section and leases such certified structure, the department shall aggregate
166 all total sales tax receipts from the certified structure.

167 (2) Any taxpayer claiming credits under paragraph (2) of subsection (b) of this Code
168 section shall report to the department the average full-time employees employed at the
169 certified structure. A full-time employee for the purposes of this Code section shall mean
170 a person who works a job that requires 30 or more hours per week. Such reports must be
171 submitted to the department for five calendar years following the year in which the credit
172 is claimed by the taxpayer.

173 (3) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection
 174 (b) of this Code section and leases such certified structure, the department shall aggregate
 175 all total full-time employees at the certified structure.

176 (j) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, the department shall
 177 furnish a report to the chairperson of House Committee on Ways and Means and the
 178 chairperson of the Senate Finance Committee by June 30 of each year. Such report shall
 179 contain the total sales tax collected in the prior calendar year and the average number of
 180 full-time employees at the certified structure and the total value of credits claimed for each
 181 taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section.

182 ~~(i)~~(k) The tax credit allowed under paragraph (1) of subsection (b) of this Code section,
 183 and any recaptured tax credit, shall be allocated among some or all of the partners,
 184 members, or shareholders of the entity owning the project in any manner agreed to by such
 185 persons, whether or not such persons are allocated or allowed any portion of any other tax
 186 credit with respect to the project.

187 ~~(j)~~(l) The Department of Natural Resources and the Department of Revenue shall prescribe
 188 such regulations as may be appropriate to carry out the purposes of this Code section.

189 ~~(k)~~(m) The Department of Natural Resources shall report, on an annual basis, on the
 190 overall economic activity, usage, and impact to the state from the rehabilitation of eligible
 191 properties for which credits provided by this Code section have been allowed."

192 **SECTION 2.**

193 The amendments enacted in this Act shall take effect on January 1, 2016, and shall be
 194 applicable to certified rehabilitations completed on or after January 1, 2017, and shall stand
 195 repealed on December 31, 2021, unless otherwise modified by the General Assembly. In the
 196 event the amendments provided for in this Act are repealed, the provisions of Code Section
 197 48-7-29.8 as they existed prior to this Act shall remain in full force and effect.

198 **SECTION 3.**

199 All laws and parts of laws in conflict with this Act are repealed.