

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1150 Session of 2011

INTRODUCED BY SMUCKER, ERICKSON, ARGALL, RAFFERTY, COSTA, ALLOWAY, FONTANA, WASHINGTON, BOSCOLA, YUDICHAK, WAUGH, YAW, SCHWANK, FERLO, PICCOLA, BROWNE AND BLAKE, JUNE 26, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MARCH 26, 2012

AN ACT

1 Providing tax credits for the rehabilitation of historic  
2 structures.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Historic  
7 Preservation Incentive Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Commission." The Pennsylvania Historical and Museum  
13 Commission.

14 "COMPLETED PROJECT." THE COMPLETION OF THE RESTORATION OF A  
15 QUALIFIED HISTORIC STRUCTURE IN ACCORDANCE WITH A QUALIFIED  
16 REHABILITATION PLAN AND THE RECEIPT OF AN OCCUPANCY CERTIFICATE  
17 FOR THE STRUCTURE.



1 "Department." The Department of Revenue of the Commonwealth.  
2 "INTERNAL REVENUE CODE." THE INTERNAL REVENUE CODE OF 1986 ←  
3 (PUBLIC LAW 99-514, 26 U.S.C. § 1 ET SEQ.).

4 "Qualified expenditures." The costs and expenses incurred by  
5 a qualified taxpayer in the restoration of a qualified historic  
6 structure pursuant to a qualified rehabilitation plan and which  
7 are defined as qualified rehabilitation expenditures under  
8 section 47(c)(2) of the Internal Revenue Code of 1986 (Public  
9 Law 99-514, 26 U.S.C. § 47(c)(2)).

10 "Qualified historic structure." A commercial building  
11 LOCATED IN THIS COMMONWEALTH that qualifies as a certified ←  
12 historic structure under section 47(c)(3) of the Internal  
13 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(3)).

14 "Qualified rehabilitation plan." A ~~project~~ PLAN TO ←  
15 REHABILITATE A QUALIFIED HISTORIC STRUCTURE that is approved by  
16 the Pennsylvania Historical and Museum Commission as being  
17 consistent with the standards for rehabilitation and guidelines  
18 for rehabilitation of historic buildings as adopted by the  
19 United States Secretary of the Interior.

20 "Qualified tax liability." Tax liability imposed on a  
21 taxpayer under Article III, IV, VI, VII, VIII, IX, XI or XV of  
22 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
23 Code of 1971, excluding any tax withheld by an employer under  
24 Article III of the Tax Reform Code of 1971.

25 "Qualified taxpayer." Any natural person, corporation,  
26 business trust, limited liability company, partnership, limited  
27 liability partnership, association or any other form of legal  
28 business entity that:

29 (1) Is subject to a tax imposed under Article III, IV,  
30 VI, VII, VIII, IX, XI or XV of the act of March 4, 1971

1 (P.L.6, No.2), known as the Tax Reform Code of 1971,  
2 excluding any tax withheld by an employer under Article III  
3 of the Tax Reform Code of 1971.

4 (2) Owns a qualified historic structure.

5 Section 3. Tax credit certificates.

6 (a) Application.--

7 (1) A qualified taxpayer may apply to the Department of  
8 Community and Economic Development for a tax credit  
9 certificate under this section.

10 (2) The application shall be on the form required by the  
11 Department of Community and Economic Development AND SHALL ←  
12 INCLUDE A QUALIFIED REHABILITATION PLAN.

13 (3) The application shall be filed on or before February  
14 1 for qualified expenditures incurred in the prior calendar  
15 year OR TO BE INCURRED IN THE CURRENT YEAR. ←

16 (b) Review, recommendation and approval.--

17 (1) The Department of Community and Economic Development  
18 shall forward applications received under this section to the  
19 commission for review.

20 (2) The commission shall ~~determine the amount of the~~ ←  
21 ~~qualified expenditures incurred by the taxpayer in the prior~~  
22 ~~calendar year.~~

23 ~~(3) If the commission determines that the qualified~~  
24 ~~taxpayer has incurred qualified expenditures, the commission~~  
25 ~~may recommend approval of the application and shall notify~~  
26 ~~the Department of Community and Economic Development of its~~  
27 ~~recommendation within 30 days following receipt of the~~  
28 ~~completed application by the commission.~~

29 ~~(4) Upon receipt of the commission's recommendation for~~  
30 ~~approval, the Department of Community and Economic~~

1 ~~Development:~~

2 ~~(i) may approve the application; and~~

3 ~~(ii) by April 1, shall notify the applicant and the~~

4 ~~commission of its action.~~ REVIEW THE PROPOSED ←

5 REHABILITATION PLAN, VERIFY THAT THE BUILDING IS A

6 QUALIFIED HISTORIC STRUCTURE AND RECOMMEND APPROVAL OR

7 DISAPPROVAL TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC

8 DEVELOPMENT WITHIN 30 DAYS OF RECEIPT OF THE APPLICATION.

9 THE COMMISSION SHALL NOTIFY THE QUALIFIED TAXPAYER WITHIN

10 15 DAYS OF ITS DETERMINATION.

11 (3) THE COMMISSION SHALL NOTIFY THE DEPARTMENT OF

12 COMMUNITY AND ECONOMIC DEVELOPMENT OF VERIFICATION OF A

13 COMPLETED PROJECT AND NOTIFY THE DEPARTMENT OF COMMUNITY AND

14 ECONOMIC DEVELOPMENT OF THE AMOUNT OF QUALIFIED EXPENDITURES

15 INCURRED BY THE TAXPAYER IN THE PRIOR CALENDAR YEAR.

16 ~~(5)~~ (4) If the Department of Community and Economic ←

17 Development ~~approves~~ HAS APPROVED the application AND ←

18 RECEIVED NOTIFICATION OF A COMPLETED PROJECT, it shall issue

19 the qualified taxpayer a tax credit certificate by April 1. A

20 tax credit certificate issued under this section shall not

21 exceed 25% of qualified expenditures determined by the

22 commission to have been incurred by the qualified taxpayer in

23 the prior calendar year.

24 ~~(6)~~ (5) In granting tax credit certificates under this ←

25 act, the Department of Community and Economic Development:

26 (i) Shall not grant more than \$10,000,000 in tax

27 credit certificates in any fiscal year.

28 (ii) Shall not grant more than \$500,000 in tax

29 credit certificates to a single qualified taxpayer in any

30 fiscal year in which the approval of all recommendations

1 received from the commission would cause the limit in  
2 subparagraph (i) to be exceeded.

3 (iii) Shall take into account the geographical  
4 distribution of tax credit certificates when taking  
5 action to implement the limit in subparagraph (i).

6 (6) TAX CREDITS UNDER THIS ACT SHALL BE MADE AVAILABLE ←  
7 ON A FIRST-COME, FIRST-SERVED BASIS WITHIN THE LIMITATION  
8 ESTABLISHED UNDER SUBSECTION (B) (5).

9 Section 4. Claiming the credit.

10 ~~Upon~~ (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION ←  
11 (B), UPON presenting a tax credit certificate to the department,  
12 the qualified taxpayer may claim a tax credit against the  
13 qualified tax liability of the qualified taxpayer.

14 (B) PROHIBITION.--A QUALIFIED TAXPAYER SHALL NOT CLAIM A TAX ←  
15 CREDIT AGAINST A QUALIFIED TAX LIABILITY BEFORE JULY 1, 2013.

16 Section 5. Carryover, carryback and assignment of credit.

17 (a) General rule.--If a qualified taxpayer cannot use the  
18 entire amount of the tax credit for the taxable year in which  
19 the tax credit is first approved, then the excess may be carried  
20 over to succeeding taxable years and used as a credit against  
21 the qualified tax liability of the qualified taxpayer for those  
22 taxable years. Each time the tax credit is carried over to a  
23 succeeding taxable year, it shall be reduced by the amount that  
24 was used as a credit during the immediately preceding taxable  
25 year. The tax credit provided by this act may be carried over  
26 and applied to succeeding taxable years for not more than seven  
27 taxable years following the first taxable year for which the  
28 qualified taxpayer was entitled to claim the credit.

29 (b) Application.--A tax credit certificate received by the  
30 department in a taxable year first shall be applied against the

1 qualified taxpayer's qualified tax liability for the current  
2 taxable year as of the date on which the credit was issued  
3 before the tax credit can be applied against any qualified tax  
4 liability under subsection (a).

5 (c) No carryback or refund.--A qualified taxpayer may not  
6 carry back or obtain a refund of all or any portion of an unused  
7 tax credit granted to the qualified taxpayer under this act.

8 (d) Sale or assignment.--The following shall apply:

9 (1) A qualified taxpayer, upon application to and  
10 approval by the Department of Community and Economic  
11 Development, may sell or assign, in whole or in part, a tax  
12 credit granted to the qualified taxpayer under this act.

13 (2) Before an application is approved, the department  
14 must find that the applicant has filed all required State tax  
15 reports and returns for all applicable taxable years and paid  
16 any balance of State tax due as determined at settlement,  
17 assessment or determination by the department.

18 (3) Notwithstanding any other provision of law, the  
19 department shall settle, assess or determine the tax of an  
20 applicant under this subsection within 90 days of the filing  
21 of all required final returns or reports in accordance with  
22 section 806.1(a)(5) of the act of April 9, 1929 (P.L.343,  
23 No.176), known as The Fiscal Code.

24 (e) Purchasers and assignees.--The purchaser or assignee of  
25 all or a portion of a tax credit obtained under section 3 shall  
26 immediately claim the credit in the taxable year in which the  
27 purchase or assignment is made. The purchaser or assignee may  
28 not carry forward, carry back or obtain a refund of or sell or  
29 assign the tax credit. The purchaser or assignee shall notify  
30 the department of the seller or assignor of the tax credit in

1 compliance with procedures specified by the department.

2 Section 6. Pass-through entity.

3 (a) General rule.--If a pass-through entity has any unused  
4 tax credit under section 5, it may elect in writing, according  
5 to procedures established by the department, to transfer all or  
6 a portion of the credit to shareholders, members or partners in  
7 proportion to the share of the entity's distributive income to  
8 which the shareholder, member or partner is entitled.

9 (b) Limitation.--A pass-through entity and a shareholder,  
10 member or partner of a pass-through entity shall not claim the  
11 credit under subsection (a) for the same qualified expenditures.

12 (c) Application.--A shareholder, member or partner of a  
13 pass-through entity to whom a credit is transferred under  
14 subsection (a) shall immediately claim the credit in the taxable  
15 year in which the transfer is made. The shareholder, member or  
16 partner may not carry forward, carry back, obtain a refund of or  
17 sell or assign the credit.

18 Section 7. Administration.

19 The Department of Community and Economic Development, the  
20 commission and the department shall jointly develop written  
21 guidelines for the implementation of the provisions of this act.

22 Section 8. Report to General Assembly.

23 (a) General rule.--Not later than September 1 of each year  
24 after the first year in which tax credit certificates are issued  
25 by the Department of Community and Economic Development, the  
26 Secretary of Community and Economic Development and the  
27 Secretary of Revenue shall submit a report to the General  
28 Assembly summarizing the tax credit certificates awarded and the  
29 tax credits claimed under this act. The report shall be  
30 submitted to the chairman and minority chairman of the

1 Appropriations and Finance Committees of the Senate and the  
2 chairman and minority chairman of the Appropriations and Finance  
3 Committees of the House of Representatives. The report shall  
4 include all awards of tax credit certificates, claims for tax  
5 credits, sale or assignment of credits and tax credit  
6 utilization that have occurred since the conclusion of the  
7 period covered by the prior year's report through the June 30  
8 immediately preceding the date of the report. The report shall  
9 include:

10 (1) The name of each qualified taxpayer that has been  
11 awarded a tax credit certificate.

12 (2) The name of each qualified taxpayer that has claimed  
13 a credit and the amount of the credit claimed by the  
14 qualified taxpayer.

15 (3) The name of each qualified taxpayer that has  
16 received approval to sell or assign a credit and the amount  
17 of the credit sold or assigned by the qualified taxpayer.

18 (4) The name of each taxpayer who has acquired a credit  
19 by sale or assignment, the amount of the credit acquired by  
20 sale or assignment by the taxpayer, the amount of the credit  
21 acquired by sale or assignment that has been utilized by the  
22 taxpayer and the taxes and tax years against which the  
23 taxpayer utilized the credit.

24 (b) Public information.--Notwithstanding any law providing  
25 for the confidentiality of tax records, the information in the  
26 report shall be public information and all report information  
27 shall be posted on the department's publicly accessible Internet  
28 website.

29 SECTION 9. APPLICATION OF INTERNAL REVENUE CODE. 

30 THE PROVISIONS OF SECTION 47 OF THE INTERNAL REVENUE CODE AND

1 THE REGULATIONS PROMULGATED REGARDING THOSE PROVISIONS SHALL  
2 APPLY TO THE DEPARTMENT'S INTERPRETATION AND ADMINISTRATION OF  
3 THE CREDIT PROVIDED UNDER THIS ACT. REFERENCES TO THE INTERNAL  
4 REVENUE CODE SHALL MEAN THE SECTIONS OF THE INTERNAL REVENUE  
5 CODE AS EXISTING ON ANY DATE OF INTERPRETATION OF THIS ACT,  
6 EXCEPT IF THOSE SECTIONS OF THE INTERNAL REVENUE CODE REFERENCED  
7 IN THIS ACT ARE REPEALED OR TERMINATED, REFERENCES TO THE  
8 INTERNAL REVENUE CODE SHALL MEAN THOSE SECTIONS LAST HAVING FULL  
9 FORCE AND EFFECT. IF AFTER REPEAL OR TERMINATION THE INTERNAL  
10 REVENUE CODE SECTIONS ARE REVISED OR REENACTED, REFERENCES IN  
11 THIS ACT TO INTERNAL REVENUE CODE SECTIONS SHALL MEAN THOSE  
12 REVISED OR REENACTED SECTIONS.

13 SECTION 10. LIMITATION.

14 TAXPAYERS SHALL NOT BE ENTITLED TO USE HISTORIC PRESERVATION  
15 TAX CREDITS FOR MORE THAN SEVEN TAXABLE YEARS FOLLOWING THE  
16 EFFECTIVE DATE OF THIS SECTION.

17 Section ~~9~~ 11. Repeal. ←

18 (a) Declaration.--The General Assembly declares that the  
19 repeal under subsection (b) is necessary to effectuate the  
20 provisions of this act.

21 (b) Specific law repealed.--The provisions of 27 Pa.C.S. §  
22 6104(d.2) (2) are repealed.

23 Section ~~10~~ 20. Effective date. ←

24 This act shall take effect July 1, 2012, or immediately,  
25 whichever is later.