HOUSE AMENDED

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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

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 22, 2012

AN ACT

Providing tax credits for the rehabilitation of historic structures.

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

Section 1. Short title.

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

Section 2. Definitions.

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

"Commission." The Pennsylvania Historical and Museum Commission.

"Completed project." The completion of the restoration of a qualified historic structure in accordance with a qualified rehabilitation plan and the receipt of an occupancy certificate

for the structure.

"Department." The Department of Revenue of the Commonwealth.

"Internal Revenue Code." The Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

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

"Qualified historic structure." A commercial building located in this Commonwealth that qualifies as a certified historic structure under section 47(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(3)).

"Qualified rehabilitation plan." A plan to rehabilitate a qualified historic structure that is approved by the Pennsylvania Historical and Museum Commission as being consistent with the standards for rehabilitation and guidelines for rehabilitation of historic buildings as adopted by the United States Secretary of the Interior.

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

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

(1) Is subject to a tax imposed under Article III, IV,

VI, VII, VIII, IX, XI or XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, excluding any tax withheld by an employer under Article III of the Tax Reform Code of 1971.

(2) Owns a qualified historic structure.

"REGION." A COMMUNITY ACTION TEAM REGION AS ESTABLISHED BY THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT.

Section 3. Tax credit certificates.

(a) Application.--

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

(2) The application shall be on the form required by the Department of Community and Economic Development and shall include a qualified rehabilitation plan.

(3) The application shall be filed on or before February 1 for qualified expenditures incurred ~~in the prior calendar year or to be incurred in the current year~~ AND TO BE INCURRED IN CONNECTION WITH THE COMPLETED PROJECT.

(b) Review, recommendation and approval.--

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

(2) The commission shall review the proposed rehabilitation plan, verify that the building is a qualified historic structure and recommend approval or disapproval to the Department of Community and Economic Development within 30 days of receipt of the application. The commission shall notify the qualified taxpayer within 15 days of its determination.

(3) The commission shall notify the Department of Community and Economic Development of verification of a completed project and notify the Department of Community and Economic Development of the amount of qualified expenditures incurred by the taxpayer ~~in the prior calendar year~~ IN CONNECTION WITH THE COMPLETED PROJECT.

(4) If the Department of Community and Economic Development has approved the application and received notification of a completed project, it shall issue the qualified taxpayer a tax credit certificate by April 1. A tax credit certificate issued under this section shall not exceed 25% of qualified expenditures determined by the commission to have been incurred by the qualified taxpayer in the prior calendar year.

(5) In granting tax credit certificates under this act, the Department of Community and Economic Development:

(i) Shall not grant more than $10,000,000 in tax credit certificates in any fiscal year.

(ii) Shall not grant more than $500,000 in tax credit certificates to a single qualified taxpayer in any fiscal ~~year in which the approval of all recommendations received from the commission would cause the limit in subparagraph (i) to be exceeded.~~

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

(III) SHALL ASSURE THAT CREDITS ARE AWARDED IN AN EQUITABLE MANNER TO EACH REGION IN THIS COMMONWEALTH. HOWEVER, CREDITS ALLOCATED TO A REGION THAT ARE UNCLAIMED SHALL BE PROMPTLY REALLOCATED TO ELIGIBLE PROJECTS IN

OTHER REGIONS.

(6) Tax credits under this act shall be made available on a first-come, first-served basis within the limitation established under subsection (b)(5).

Section 4. Claiming the credit.

(a) General rule.--Except as provided in subsection (b), upon presenting a tax credit certificate to the department, the qualified taxpayer may claim a tax credit against the qualified tax liability of the qualified taxpayer.

(b) Prohibition.--A qualified taxpayer shall not claim a tax credit against a qualified tax liability before July 1, 2013.

Section 5. Carryover, carryback and assignment of credit.

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

(b) Application.--A tax credit certificate received by the department in a taxable year first shall be applied against the qualified taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was issued before the tax credit can be applied against any qualified tax liability under subsection (a).

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

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

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

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

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

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

Section 6. Pass-through entity.

(a) General rule.--If a pass-through entity has any unused tax credit under section 5, it may elect in writing, according

to procedures established by the department, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

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

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

Section 7. Administration.

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

Section 8. Report to General Assembly.

(a) General rule.--Not later than September 1 of each year after the first year in which tax credit certificates are issued by the Department of Community and Economic Development, the Secretary of Community and Economic Development and the Secretary of Revenue shall submit a report to the General Assembly summarizing the tax credit certificates awarded and the tax credits claimed under this act. The report shall be submitted to the chairman and minority chairman of the Appropriations and Finance Committees of the Senate and the chairman and minority chairman of the Appropriations and Finance Committees of the House of Representatives. The report shall include all awards of tax credit certificates, claims for tax

credits, sale or assignment of credits and tax credit utilization that have occurred since the conclusion of the period covered by the prior year's report through the June 30 immediately preceding the date of the report. The report shall include:

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

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

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

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

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

Section 9. Application of Internal Revenue Code.

The provisions of section 47 of the Internal Revenue Code and the regulations promulgated regarding those provisions shall apply to the department's interpretation and administration of the credit provided under this act. References to the Internal Revenue Code shall mean the sections of the Internal Revenue

Code as existing on any date of interpretation of this act, except if those sections of the Internal Revenue Code referenced in this act are repealed or terminated, references to the Internal Revenue Code shall mean those sections last having full force and effect. If after repeal or termination the Internal Revenue Code sections are revised or reenacted, references in this act to Internal Revenue Code sections shall mean those revised or reenacted sections.

Section 10. Limitation.

Taxpayers shall not be entitled to use historic preservation tax credits for more than seven taxable years following the effective date of this section.

Section ~~11~~ 29. Repeal.

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

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

Section ~~20~~ 30. Effective date.

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