

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2607 Session of
2006

INTRODUCED BY BUNT, S. MILLER, HERSHEY, ARGALL, BAKER, BUXTON,
CALTAGIRONE, CAPPELLI, CRAHALLA, CREIGHTON, DENLINGER,
FABRIZIO, GEIST, GOOD, GRUCELA, HESS, KOTIK, LEACH,
McILHATTAN, MUNDY, PETRI, PHILLIPS, PISTELLA, PYLE, RAYMOND,
READSHAW, RUBLEY, SAINATO, SCHRODER, SEMMEL, B. SMITH,
R. STEVENSON, WATSON, YUDICHAK, E. Z. TAYLOR, BEYER, MARSICO,
HUTCHINSON, PAYNE, McILHINNEY AND PALLONE, APRIL 24, 2006

REFERRED TO COMMITTEE ON FINANCE, APRIL 24, 2006

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," providing for tax incentives for historic
11 preservation.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

ARTICLE XVIII-C

INCENTIVES FOR HISTORIC PRESERVATION

19 Section 1801-C. Short title.

20 This article shall be known and may be cited as the Historic

1 Preservation Tax Incentive Act.

2 Section 1802-C. Definitions.

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

6 "Certified rehabilitation." The rehabilitation of a historic
7 commercial site which has been certified by the Pennsylvania
8 Historical and Museum Commission as complying with 36 CFR 67.7
9 (relating to standards for rehabilitation).

10 "Commission." The Pennsylvania Historical and Museum
11 Commission.

12 "Cost of rehabilitation or restoration." Includes:

13 (1) Costs attributed to the rehabilitation or
14 restoration of a historic homesite, including historic
15 decorative elements; upgrading of the structural, mechanical,
16 electrical and plumbing systems to applicable code;
17 architectural fees; and alterations associated with the
18 conversion of the building to residential use. The term shall
19 not include costs attributable to the acquisition of real
20 property; the enlargement of an existing building;
21 landscaping, driveways and other site features; outbuildings
22 or garages that do not possess income-producing capability;
23 and personal labor performed by the owner.

24 (2) Costs attributed to the rehabilitation or
25 restoration of a historic farmsite, including historic
26 decorative elements; upgrading of the structural, mechanical,
27 electrical and plumbing systems; architectural fees and
28 alterations associated with the renovation of the building to
29 agricultural use. The term shall not include costs
30 attributable to the acquisition of real property, the

enlargement of an existing building, landscaping, driveways and other site features, outbuildings or garages that do not possess income-producing capability and personal labor performed by the owner.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Historic commercial site." A building that complies with all of the following:

(1) The building is located within this Commonwealth and is a certified historic structure as defined in section 47(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(3)).

(2) The building has income-producing capability.

(3) The owner or purchaser of the building has entered into a covenant with the Pennsylvania Historical and Museum Commission providing that:

(i) rehabilitation or restoration work, with a total cost of rehabilitation or restoration valued in excess of \$10,000, will be completed to the satisfaction of the Pennsylvania Historical and Museum Commission in accordance with 36 CFR 67.7 (relating to standards for rehabilitation) within five years of the date the covenant was entered into with the Pennsylvania Historical and Museum Commission; and

(ii) neither the owner nor a successor in interest will make a material alteration, as determined by the Pennsylvania Historical and Museum Commission, to the work under subparagraph (i) for at least ten consecutive years, including the date the covenant was entered into with the Pennsylvania Historical and Museum Commission.

1 "Historic farmsite." A property that is located within this
2 Commonwealth and that is used for agricultural production and
3 includes a building or structure that meets the following
4 criteria:

5 (1) The building structure is utilized to store farm
6 implements, hay, feed, grain or any other agricultural or
7 horticultural products or to house poultry, livestock or
8 other farm animals and a milk house. The term includes any
9 structure used directly and customarily associated with
10 agricultural use.

11 (2) The building or structure:

12 (i) meets the eligibility requirements to be listed
13 on the National Register of Historic Places or has been
14 designated by the Federal or State government as a
15 historic property;

16 (ii) is located in an area designated by the Federal
17 or State government as a historic district;

18 (iii) is located in an area designated as a historic
19 district under section 2 of the act of June 13, 1961
20 (P.L.282, No.167), entitled "An act authorizing counties,
21 cities, boroughs, incorporated towns and townships to
22 create historic districts within their geographic
23 boundaries; providing for the appointment of Boards of
24 Historical Architectural Review; empowering governing
25 bodies of political subdivisions to protect the
26 distinctive historical character of these districts and
27 to regulate the erection, reconstruction, alteration,
28 restoration, demolition or razing of buildings within the
29 historic districts"; or

30 (iv) is at least fifty years of age.

1 (3) The owner or purchaser of property, building or
2 structure has entered into a covenant with the Pennsylvania
3 Historical and Museum Commission providing that:

4 (i) Rehabilitation or restoration work, with a total
5 cost of rehabilitation or restoration valued in excess of
6 \$1,000, will be completed to the satisfaction of the
7 commission in accordance with the 36 CFR 67.7 (relating
8 to standards for rehabilitation) within five years of the
9 date the covenant was entered into with the commission.

10 (ii) The property is not subdivided in a manner
11 which would separate a building or structure from the
12 remainder of the of the property.

13 (iii) The addition of a building or structure to the
14 property which meets the provisions of paragraph (1) is
15 not prohibited.

16 (iv) Generates a minimum of \$1,000 of farm income.

17 (v) The building or structure will be occupied by
18 the owner or, for good cause consented to by the
19 Pennsylvania Historical and Museum Commission, a
20 successor in interest for at least five consecutive
21 years, including the date the covenant was entered into
22 with the Pennsylvania Historical and Museum Commission.

23 "Historic homesite." A building that complies with all of
24 the following:

25 (1) The building is divided into no more than four
26 units, one of which is used as the owner's principal
27 residence. The requirements of this paragraph shall be
28 satisfied if the purchaser of the building has entered into a
29 covenant with the Pennsylvania Historical and Museum
30 Commission to divide the building into no more than four

1 units, one of which will be used as the purchaser's principal
2 residence beginning no later than four months after the date
3 of the transfer of title to the real property.

4 (2) The building:

5 (i) has been designated by the Federal or State
6 government as a historic property;

7 (ii) is located in an area designated by the Federal
8 or State government as a historic district;

9 (iii) is located in an area designated as a historic
10 district under section 2 of the act of June 13, 1961
11 (P.L.282, No.167), entitled "An act authorizing counties,
12 cities, boroughs, incorporated towns and townships to
13 create historic districts within their geographic
14 boundaries; providing for the appointment of Boards of
15 Historical Architectural Review; empowering governing
16 bodies of political subdivisions to protect the
17 distinctive historical character of these districts and
18 to regulate the erection, reconstruction, alteration,
19 restoration, demolition or razing of buildings within the
20 historic districts";

21 (iv) has been designated as a historic property or
22 is located in an area designated as a historic district
23 pursuant to section 14-2007 of the Philadelphia City
24 Code; or

25 (v) has been designated as a historic property or is
26 located in an area designated as a historic district
27 pursuant to section 1101.03 of the Pittsburgh City Code.

28 (3) The owner or purchaser of the building has entered
29 into a covenant with the Pennsylvania Historical and Museum
30 Commission providing that:

1 (i) Rehabilitation or restoration work, with a total
2 cost of rehabilitation or restoration valued in excess of
3 \$1,000, will be completed to the satisfaction of the
4 Pennsylvania Historical and Museum Commission in
5 accordance with 36 CFR 67.7 (relating to standards for
6 rehabilitation) within five years of the date the
7 covenant was entered into with the Pennsylvania
8 Historical and Museum Commission.

9 (ii) The building:

10 (A) has been or will be occupied as the
11 principal residence of the owner or, for good cause
12 consented to by the Pennsylvania Historical and
13 Museum Commission, of a successor in interest for at
14 least five consecutive years, including the date the
15 covenant was entered into with the Pennsylvania
16 Historical and Museum Commission; or

17 (B) will be occupied as the principal residence
18 of the purchaser, or, for good cause consented to by
19 the Pennsylvania Historical and Museum Commission, of
20 a successor in interest for at least five consecutive
21 years, beginning no later than four months after the
22 date of transfer of title to the real property.

23 "Qualified rehabilitation expenditure." As defined in
24 section 47(c)(2) of the Internal Revenue Code of 1986 (Public
25 Law 99-514, 26 U.S.C. § 47(c)(2)).

26 "Substantial rehabilitation." As defined in section
27 47(c)(1)(C) of the Internal Revenue Code of 1986 (Public Law 99-
28 514, 26 U.S.C. § 47(c)(1)(C)).

29 Section 1803-C. Tax incentives for historic homesites or
30 historic farmsites.

1 (a) Exemption from sales and use tax.--The tax imposed by
2 section 202 shall not be imposed upon the sale at retail or use
3 of tangible personal property as defined in section 201 or
4 services which are costs of rehabilitation or restoration of a
5 historic homesite or historic farmsite. The purchaser shall
6 furnish to the vendor a certificate substantially in the form as
7 the commission, in conjunction with the department, shall
8 prescribe stating that the sale is exempt from tax pursuant to
9 this subsection.

10 (b) Exemption from personal income tax for net gain from
11 sale of historic homesite or historic farmsite.--The term "net
12 gains or income" for purposes of Article III shall not include
13 the net gain on the sale of a historic homesite or historic
14 farmsite. No later than the date of transfer of title to the
15 real property, the purchaser shall provide a copy of the
16 covenant with the commission to the seller.

17 (c) Historic rehabilitation tax credit.--

18 (1) An individual shall be allowed a credit against the
19 tax otherwise due under Article III for the rehabilitation or
20 restoration of a historic homesite or historic farmsite upon
21 certification by the commission that rehabilitation or
22 restoration work, with a total cost of rehabilitation or
23 restoration valued in excess of \$1,000 for a historic
24 homesite or historic farmsite, has been completed to the
25 satisfaction of the commission in accordance with 36 CFR 67.7
26 (relating to standards for rehabilitation).

27 (2) The tax credit authorized under this section shall
28 be 40% of the amount expended by the individual during the
29 taxable year on tangible personal property or services that
30 qualify for a sales and use tax exclusion under section

1 204(64) as certified by the commission.

2 (3) If the taxpayer cannot use the entire amount of the
3 tax credit for the taxable year in which the expenditures are
4 first certified, then the excess may be carried over to
5 succeeding taxable years. Each time the tax credit is carried
6 over to a succeeding taxable year, it shall be reduced by the
7 amount that was used as a tax credit during the immediately
8 preceding taxable year. The tax credit may be carried over
9 and applied to succeeding taxable years for no more than five
10 taxable years following the first taxable year for which the
11 taxpayer was entitled to claim the tax credit.

12 (4) (i) The total amount of tax credits authorized by
13 the department under this section shall not exceed
14 \$20,000,000 in any fiscal year. Of that amount, a minimum
15 of \$5,000,000 shall be allocated exclusively for tax
16 credits for historic farmsites. However, if the total
17 amount allocated to either group of applicants is not
18 approved in any fiscal year, the unused portion shall
19 become available for use by the other group of qualifying
20 taxpayers.

21 (ii) If the total amount of the historic homesite
22 and historic farmsite tax credits applied for by all
23 taxpayers exceeds the amount allocated for those credits,
24 then the tax credit to be received by each applicant
25 shall be the product of the allocated amount multiplied
26 by the quotient of the tax credit applied for by the
27 applicant divided by the total of all historic homesite
28 and historic farmsite tax credits applied for by all
29 applicants, the algebraic equivalent of which is:

30 Taxpayer's historic homesite and historic

1 farmsite tax credit = amount allocated for those
2 credits X (historic homesite and historic
3 farmsite tax credit applied for by the
4 applicant/total of all historic homesite and
5 historic farmsite tax credits applied for by all
6 applicants).

7 (iii) If the total amount of the historic homesite
8 and historic farmsite tax credits applied for by all
9 historic farm sites exceeds the amount allocated for
10 those credits, then the historic homesite and historic
11 farmsite tax credit to be received by each historic
12 farmsite applicant shall be the product of the allocated
13 amount multiplied by the quotient of the historic
14 homesite and historic farmsite tax credit applied for by
15 the historic farmsite applicant divided by the total of
16 all historic homesite and historic farmsite credits
17 applied for by all historic farmsite applicants, the
18 algebraic equivalent of Which is:

19 Taxpayer's historic homesite and historic
20 farmsite tax credit = amount allocated for those
21 credits X (historic homesite and historic
22 farmsite tax credit applied for by historic
23 farmsite applicants/total of all historic
24 homesite and historic farmsite tax credits
25 applied for by all historic farmsite applicants).

26 Section 1804-C. Breach of historic homesite or historic
27 farmsite covenant.

28 (a) Notice from commission to department.--The commission
29 shall notify the department when an individual who has entered
30 into a covenant to rehabilitate or restore a historic homesite

1 or historic farmsite pursuant to this article breaches the terms
2 of the covenant.

3 (b) Penalty.--Upon notification by the commission that the
4 individual has breached the terms of the covenant, the
5 department shall levy a penalty against that individual equal to
6 100% of all the tax benefits granted under section 1803-C with
7 respect to the historic homesite or historic farmsite to which
8 the covenant applied.

9 (c) Abatement of penalty.--The penalty provided by
10 subsection (b) or any portion thereof may be abated if the
11 failure to abide by the terms of the covenant is justified by
12 reason of change in employment, health or, to the extent
13 provided in regulation, unforeseen circumstances. The department
14 and commission shall jointly promulgate regulations to implement
15 this subsection.

16 Section 1805-C. Tax credits for historic commercial sites.

17 (a) Authorization.--The department may award the owner of a
18 historic commercial site a credit against the tax imposed by
19 Articles III, IV, VI, VII, IX and XI.

20 (b) Amount.--The amount of tax credit under subsection (a)
21 shall be 40% of the qualified rehabilitation expenditures made
22 in connection with the certified rehabilitation of a historic
23 commercial site. If the person claiming the credit cannot use
24 the entire amount of the credit for the taxable year in which
25 the historic commercial site is placed in service, then the
26 excess may be carried over to each succeeding taxable year for
27 up to 15 taxable years.

28 (c) Procedure.--

29 (1) A person seeking a tax credit under this section
30 must do all of the following:

1 (i) Obtain documentation from the commission that
2 the site is a certified rehabilitation.

3 (ii) Enter into the appropriate covenant in
4 accordance with the definition of "historic commercial
5 site" under section 1802-C.

6 (iii) Apply to the department for a tax credit under
7 this section.

8 (2) The department may reserve a tax credit under this
9 section in an amount based upon the amount of estimated
10 qualified rehabilitation expenditures stated in the
11 application, subject to the availability of total tax
12 credits, as follows:

13 (i) Not more than \$40,000,000 in total tax credits
14 under this section may be awarded in a fiscal year.

15 (ii) If the amount of tax credits available in any
16 fiscal year exceeds the amount of tax credits reserved by
17 the department in such year, the excess shall carry over
18 to the next succeeding fiscal year and be available in
19 addition to the \$40,000,000 available in that year.

20 (iii) Not more than \$40,000,000 in tax credits shall
21 be awarded in connection with a single application for a
22 tax credit under this section.

23 (iv) Not more than 40% of the total dollar amount of
24 tax credits allowed in any year shall be awarded for
25 sites located in any one political subdivision.

26 (3) In determining whether to reserve a tax credit under
27 this section, the department shall weigh the following
28 factors:

29 (i) The extent to which such award will contribute
30 to the revitalization of deteriorated commercial

districts in smaller communities, aging suburbs and large urban areas.

(ii) The historic, cultural or architectural importance of the site proposed to be rehabilitated.

(iii) The extent to which such award satisfies the geographic allocation strategy under section 1806-C(b)(4).

(iv) The extent to which such award extends the benefits of this article to both small and large historic commercial sites.

(4) Within 30 days of receipt of a completed application, the department shall deny or grant the application. Failure to act within this time period shall be deemed a reservation of a tax credit. The time period may be extended by mutual agreement of the department and the applicant.

(5) Denial of a tax credit is subject to appeal under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(6) A person for whom a tax credit has been reserved may claim the tax credit for the taxable year in which the site is placed in service. If actual qualified rehabilitation expenditures exceed the amount of estimated expenditures on which the tax credit reserved is based, the tax credit shall be based on the amount of estimated expenditures. If estimated expenditures exceed actual expenditures, the tax credit shall be based on actual expenditures.

(7) Tax credits under this section allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of property shall be passed

1 through to the persons designated as partners, members or
2 owners respectively pro rata or pursuant to an executed
3 agreement among such persons documenting an alternate
4 distribution method, without regard to the sharing of other
5 tax or economic attributes of such entity. If a person
6 entitled to tax credits has not claimed the tax credits, the
7 person may assign, transfer or convey the unclaimed tax
8 credits, in whole or in part, by sale or otherwise, to one or
9 more individuals or entities. The assignee or assignees may
10 use the tax credits against any taxes against which the
11 assignor would have been entitled to use the tax credit and
12 may carry forward any unused tax credits over to each next
13 succeeding taxable year for up to 15 years commencing with
14 the taxable year in which the credit was allowed. Each
15 assignee must perfect the transfer by notifying the
16 department and the Department of Revenue in writing within 30
17 calendar days following the effective date of the transfer
18 and must provide such information as required by the
19 department and the Department of Revenue to administer and
20 carry out the provisions of this section.

21 (8) Neither tax credits authorized under this section
22 nor the proceeds of the sale, assignment or transfer of the
23 tax credits shall constitute income taxable under Article
24 III.

25 (d) Penalty.--The Department of Revenue may impose an
26 administrative penalty on a person that breaches a covenant
27 under paragraph (3) of the definition of "historic commercial
28 site" in section 1802-C. The penalty shall be equal to the
29 recapture percentage of the awarded tax credit. The recapture
30 percentage shall be calculated under section 50(a)(1) of the

Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 50(a)(1)).

Section 1806-C. Administrative duties.

(a) Duties of commission.--The commission shall have the following powers and duties relating to historic commercial sites, historic homesites and historic farmsites under this article:

(1) Enter into covenants in accordance with the definitions of "historic commercial site," "historic homesite" and "historic farmsite" under section 1802-C.

(2) Notify the Department of Revenue of a breach of a covenant under paragraph (1).

(3) Make recommendations to the department of potential sites for rehabilitation.

(4) Cooperate with the department and the Department of Revenue in the implementation of section 1805-C.

(5) Promulgate regulations to determine whether a lessee is an owner.

(b) Duties of department.--The department shall have the following powers and duties relating to historic commercial sites under this article:

(1) Award tax credits under section 1805-C, including adoption of a geographic allocation strategy to insure equitable distributions of tax credits throughout this Commonwealth.

(2) Coordinate activities of the commission and the Department of Revenue in the implementation of section 1805-C.

(3) Compile and maintain a list of potential sites for rehabilitation in cooperation with the commission, political

1 subdivisions, citizens groups and individuals.

2 (4) Promulgate regulations to administer section 1805-C,
3 which regulations include all of the following:

4 (i) A fee schedule for applications for tax credits
5 to defray the cost of processing applications.

6 (ii) Recapture and reallocation of tax credits
7 reserved but not claimed.

8 Section 1807-C. Review.

9 By November 30, 2008, the commission, the department and the
10 Department of Revenue shall file with the Secretary of the
11 Senate and the Chief Clerk of the House of Representatives a
12 report of the program under this article for fiscal years July
13 1, 2006, through June 30, 2008.

14 Section 1808-C. Recording.

15 Receipt of any historic farmsite tax incentive under this
16 article shall be recorded by the recorder of deeds of the county
17 where a historic farmsite is located.

18 Section 1809-C. Application.

19 This article shall apply to historic homesite or historic
20 farmsite covenants with the commission entered into after June
21 30, 2006.

22 Section 1810-C. Severability.

23 The provisions of this article are severable. If any
24 provision of this article or its application to any person or
25 circumstance is held invalid, the invalidity shall not affect
26 other provisions or applications of this article which can be
27 given effect without the invalid provision or application.

28 Section 1811-C. Expiration.

29 (a) General rule.--Except as set forth in section 1805-C(b),
30 this article shall expire June 30, 2014.

1 (b) Exception.--Tax credits under section 1805-C(b) may be
2 carried over to taxable years ending before July 1, 2029.
3 Section 2. This act shall take effect in 60 days.