House Bill 451

By: Representatives Gaines of the 117th, Hatchett of the 150th, Taylor of the 173rd, Corbett of the 174th, Rhodes of the 120th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation and exemptions from state income taxes, so as to revise procedures, conditions, and limitations relating to tax credits for the rehabilitation of historic structures; to authorize promulgation of regulations; to provide for preapproval of additional tax credits for current recipients of tax credits; to provide for sharing and confidentiality of certain preapproval information; to provide for the submission of applications to the Department of Community Affairs; to revise provisions relating to assignment of corporate income tax credits; to provide for related matters; to provide for applicability; to provide for automatic repeal; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"48-7-29.8.

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

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

(2) 'Certified structure' means a historic building or structure that is located within a national historic district, individually listed on the National Register of Historic Places, individually listed in the Georgia Register of Historic Places, or is certified by the

Department of Natural Resources as contributing to the historic significance of a Georgia Register Historic District.

(3) 'Historic home' means a certified structure which, or any portion of which is or will, within a reasonable period, be owned and used as the principal residence of the person claiming the tax credit allowed under this Code section. Historic home shall include any structure or group of structures that constitute a multifamily or multipurpose structure, including a cooperative or condominium. If only a portion of a building is used as such person's principal residence, only those qualified rehabilitation expenditures that are properly allocable to such portion shall be deemed to be made to a historic home.

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

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

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

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

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

(b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter ~~for the taxable year in which~~ at such time as the certified rehabilitation is completed:

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

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

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

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

(2) The maximum credit for any other individual certified structure shall be ~~$5~~ $7.5 million for any taxable year, except in the case that the project creates 200 or more full-time, permanent jobs, or $5 million in annual payroll within two years of the placed in service date, in which case the project is eligible for credits up to ~~$10~~ $15 million for an individual certified structure. In no event shall more than one application for any individual certified structure under this paragraph be approved in any 120 month period.

(3) In no event shall credits issued under this Code section for projects earning more than ~~$300,000.00~~ $500,000.00 in credits exceed in the aggregate ~~$25~~ $40 million per calendar year. If in any calendar year the aggregate amount available is not fully applied, allocated, and used, the balance of the unused aggregate amount shall increase the aggregate maximum of the subsequent calendar year by such balance.

(d)(1) An applicant ~~A taxpayer~~ seeking to claim a tax credit under paragraph (2) of subsection (b) of this Code section shall submit an application to the ~~commissioner~~ Department of Community Affairs for preapproval of such tax credit. An applicant shall, at the time of application, either own the real property for which said tax credit is to be claimed or be a party to a written purchase contract, written option contract, written lease-purchase contract, or written lease having a term of more than 40 years. Such application shall include a precertification from the Department of Natural Resources certifying that the improvements to the certified structure are to be consistent with the Department of Natural Resources Standards for Rehabilitation. The Department of Community Affairs shall have the authority to require electronic submission of such application in the manner specified by the ~~department~~ Department of Community Affairs. The ~~commissioner~~ Department of Community Affairs shall preapprove the tax credits within 30 days based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the ~~commissioner~~ Department of Community Affairs shall prorate the available funds between or among the applicants. For applications on projects over the annual ~~$25 million limitation~~ $40 million limitation together with any applicable rollover as authorized under paragraph (3) of subsection (c) of this Code section, those applications shall be given priority the following year. Within five business days of preapproval of any application, the Department of Community Affairs shall transmit to the department a copy of the complete file for such preapproval. The department and the Department of Community Affairs shall, and are hereby authorized to, share information that is necessary to efficiently administer and enforce the provisions of this Code section. Any information shared for this purpose shall be considered confidential and privileged information, and furnishing information as permitted by this Code section shall not be deemed to change the confidential character of the information furnished. Any person who divulges any confidential information obtained under this Code section shall be subject to the same civil and criminal penalties as provided for divulgence of confidential information by members of the department.

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

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

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

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

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

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

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

(i) The date of the sale or assignment;

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

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

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

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

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

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

<u>(2.1) If the credit allowed under paragraph (2) of subsection (b) of this Code section in any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable year, the taxpayer may apply the excess as a credit for succeeding years until the earlier of:</u>

<u>(A) The full amount of the excess is used; or</u>

<u>(B) The expiration of the tenth taxable year after the taxable year in which the certified rehabilitation has been completed.</u>

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

(f) In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, a 60 month period may be substituted for the 24 month period provided for in paragraph (5) of subsection (a) of this Code section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) The Department of Community Affairs, the Department of Natural Resources, and the Department of Revenue shall prescribe such regulations as may be appropriate to carry out the purposes of this Code section.

(m) ~~The Department of Natural Resources shall report, on an annual basis, on the overall economic activity, usage, and impact to the state from the rehabilitation of eligible properties for which credits provided by this Code section have been allowed.~~ This Code section shall stand repealed by operation of law on July 1, 2028.″

SECTION 2.

Said article is further amended by revising subsection (c) of Code Section 48-7-42, relating to affiliated entities and assignment of corporate income tax credits, as follows:

″(c) The recipient of a tax credit assigned under subsection (b) of this Code section shall attach a statement to its return identifying the assignor of the tax credit, in addition to providing any other information required to be provided by a claimant of the assigned tax credit. With the exception of the transferable credits in Code Sections 48-7-29.8~~,~~ and 48-7-29.12, ~~48-7-40.26, and 48-7-40.26A,~~ the recipient of a tax credit assigned under subsection (b) of this Code section shall also be eligible to take any credit against payments due under Code Section 48-7-103, subject to the same requirements as the assignor of such credit at the time of the assignment.″

SECTION 3.

Section 1 of this Act shall be applicable to certified rehabilitations completed on or after July 1, 2019.

SECTION 4.

Section 2 of this Act shall become effective on January 1, 2021. This Act shall otherwise become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval.

SECTION 5.

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