

House Bill 59 (COMMITTEE SUBSTITUTE)

By: Representatives Stephens of the 164th, Powell of the 171st, Williams of the 119th, and Buckner of the 137th

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, rate, and computation and exemptions from state income taxes, so
3 as to revise procedures, conditions, and limitations relating to tax credits for the rehabilitation
4 of historic structures; to authorize promulgation of regulations; to provide for preapproval
5 of additional tax credits for current recipients of tax credits; to provide for related matters;
6 to provide for effective dates; to provide for applicability; to provide for an automatic repeal
7 and for reenactment of prior provisions; to repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

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

14 "48-7-29.8.

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

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

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

25 (3) 'Historic home' means a certified structure which, or any portion of which is or will,
26 within a reasonable period, be owned and used as the principal residence of the person

27 claiming the tax credit allowed under this Code section. Historic home shall include any
 28 structure or group of structures that constitute a multifamily or multipurpose structure,
 29 including a cooperative or condominium. If only a portion of a building is used as such
 30 person's principal residence, only those qualified rehabilitation expenditures that are
 31 properly allocable to such portion shall be deemed to be made to a historic home.

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

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

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

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

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

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

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

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

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

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

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

70 (3) In no event shall credits issued under this Code section for projects earning more than
 71 ~~\$300,000.00~~ \$500,000.00 in credits exceed in the aggregate ~~\$25 million~~ \$50 million per
 72 calendar year. If in any calendar year the aggregate amount available is not fully applied,
 73 allocated, and used, the balance of unused aggregate amount shall increase the aggregate
 74 maximum of the subsequent calendar year by such balance.

75 (d)(1) An applicant ~~A taxpayer~~ seeking to claim a tax credit under paragraph (2) of
 76 subsection (b) of this Code section shall submit an application to the ~~commissioner~~
 77 Department of Community Affairs for preapproval of such tax credit. An applicant shall,
 78 at the time of application, either own the real property for which said tax credit is to be
 79 claimed, or be a party to a written purchase contract, written option contract, written
 80 lease-purchase contract, or written lease having a term of more than 40 years. Such
 81 application shall include a precertification from the Department of Natural Resources
 82 certifying that the improvements to the certified structure are to be consistent with the
 83 Department of Natural Resources Standards for Rehabilitation. The Department of
 84 Community Affairs shall have the authority to require electronic submission of such
 85 application in the manner specified by the ~~department~~ Department of Community Affairs.
 86 The ~~commissioner~~ Department of Community Affairs shall preapprove the tax credits
 87 within 30 days based on the order in which properly completed applications were
 88 submitted. In the event that two or more applications were submitted on the same day
 89 and the amount of funds available will not be sufficient to fully fund the tax credits
 90 requested, the ~~commissioner~~ Department of Community Affairs shall prorate the
 91 available funds between or among the applicants. For applications on projects over the
 92 ~~annual \$25 million limitation~~ \$50 million limitation together with any applicable rollover
 93 as authorized under paragraph (3) of subsection (c) of this Code section, those
 94 applications shall be given priority the following year. The Department of Community
 95 Affairs shall within five business days of preapproval of any application transmit to the
 96 department a copy of the complete file for such preapproval. The department and the
 97 Department of Community Affairs shall, and are hereby authorized to, share information
 98 that is necessary to efficiently administer and enforce the provisions of this Code section.
 99 Any information shared for these purposes shall be considered confidential and privileged
 100 information, and furnishing information as permitted by this Code section shall not be

101 deemed to change the confidential character of the information furnished. Any person
 102 who divulges any confidential information obtained under this Code section shall be
 103 subject to the same civil and criminal penalties as provided for divulgence of confidential
 104 information by members of the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

155 (2.1) If the credit allowed under paragraph (2) of subsection (b) of this Code section in
 156 any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable
 157 year, the taxpayer may apply the excess as a credit for succeeding years until the earlier
 158 of:

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

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

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

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

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

173 corporation would be entitled if taxable shall be transferred to the purchaser or transferee
174 at the time of sale or transfer.

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

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

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

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

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

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

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

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

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

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

205 (j) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, the department shall
206 furnish a report to the chairperson of the House Committee on Ways and Means and the
207 chairperson of the Senate Finance Committee by June 30 of each year. Such report shall
208 contain the total sales tax collected in the prior calendar year and the average number of

209 full-time employees at the certified structure and the total value of credits claimed for each
 210 taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section
 211 (k) The tax credit allowed under paragraph (1) of subsection (b) of this Code section, and
 212 any recaptured tax credit, shall be allocated among some or all of the partners, members,
 213 or shareholders of the entity ~~owning the project~~ claiming the credit in any manner agreed
 214 to by such persons, whether or not such persons are allocated or allowed any portion of any
 215 other tax credit with respect to the project.

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

219 **SECTION 2.**

220 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
 221 income tax imposition, rate, and computation and exemptions, is amended by repealing Code
 222 Section 48-7-29.8, relating to tax credits for the rehabilitation of historic structures, and
 223 enacting a new Code Section 48-7-29.8 to read as follows:

224 "48-7-29.8.

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

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

230 (2) 'Certified structure' means a historic building or structure that is individually listed
 231 in the Georgia Register of Historic Places or is certified by the Department of Natural
 232 Resources as contributing to the historic significance of a Georgia Register Historic
 233 District.

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

241 (4) 'Qualified rehabilitation expenditure' means any amount properly chargeable to a
 242 capital account expended in the substantial rehabilitation of a structure that by the end of
 243 the taxable year in which the certified rehabilitation is completed is a certified structure.
 244 This term does not include the cost of acquisition of the certified structure, the cost

245 attributable to enlargement or additions to an existing building, site preparation, or
 246 personal property.

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

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

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

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

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

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

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

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

269 (2) In no event shall credits for a certified structure exceed \$300,000.00 in any 120
 270 month period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

313 (i) The tax credit allowed under this Code section, and any recaptured tax credit, shall be
 314 allocated among some or all of the partners, members, or shareholders of the entity owning
 315 the project in any manner agreed to by such persons, whether or not such persons are
 316 allocated or allowed any portion of any other tax credit with respect to the project.

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

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

322 **SECTION 3.**

323 (a) Section 1 of this Act shall be applicable to certified rehabilitations completed on or after
324 July 1, 2017.

325 (b) An Act to amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia
326 Annotated, relating to the imposition, rate, and computation and exemptions from state
327 income taxes, approved May 12, 2015 (Ga. L. 2015, p. 1340) is amended by repealing and
328 reserving Section 2 of said Act.

329 (c) Section 2 of this Act shall become effective on January 1, 2028.

330 **SECTION 4.**

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