ACT 2013 - 241

HB140

146539-3

By Representatives Gaston, Buskey, DeMarco, Harper, Scott, McClurkin, Wood, Tuggle, McCutcheon, Long, Sessions, Bridges, Carns, Merrill, Farley, Treadaway, Drake, Williams (J), Fincher, Clouse, Love, McAdory, Payne, Roberts, Baughn, Rich, Hill, Sanderford, Henry, Collins, Johnson (K), Nordgren, Warren, Jackson, Beech, Moore (M), Boyd, Newton (D), Hubbard (M), McMillan, Ison, Davis, Ball, Hammon, Poole, Wallace, Wren, Coleman-Evans, McClammy, Chesteen and Lee

RFD: Ways and Means Education

First Read: 05-FEB-13

MAY 9 2013
RECEIVED
GOVERNOR'S OFFICE

1

2 ENROLLED, An Act,

3 To provide a tax credit against the tax liability of
4 the taxpayer for the rehabilitation, preservation, and
5 development of historic structures.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. This act shall apply to qualified
8 structures throughout the State of Alabama.

9 Section 2. As used in this act, the following terms
10 shall have the following meanings:

11 (1) CERTIFIED HISTORIC STRUCTURE. A property located
12 in Alabama which is certified by the Alabama Historical
13 Commission as being individually listed in the National
14 Register of Historic Places, eligible for listing in the
15 National Register of Historic Places, or certified by the
16 commission as contributing to the historic significance of a
17 Registered Historic District.

18 (2) CERTIFIED REHABILITATION. Repairs or alterations
19 to a certified historic structure that is certified by the
20 commission as meeting the U.S. Secretary of the Interior's
21 Standards for Rehabilitation, or to non-historic structures
22 built before 1936 which are certified by the commission as
23 meeting the requirements contained in Section 47(c)(1)(a) and
24 (b) of the Internal Revenue Code, as amended, or to a

certified historic residential structure as defined in subdivision (4).

(3) COMMISSION. The Alabama Historical Commission and or its successor.

(4) CERTIFIED HISTORIC RESIDENTIAL STRUCTURE. A certified historic structure as defined in subdivision (1). ~~, or a non-historic structure built prior to 1936 which is or will be owned and used as a single family, owner occupied residential property and which is contained within a single family residential structure, either free standing or supported by party walls, but not to include individual units within a multi-residential structure such as a condominium or cooperative.~~

(5) DEPARTMENT. The Alabama Department of Revenue or its successor.

(6) OWNER. Any taxpayer filing a State of Alabama tax return or any entity that is exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code, as amended, that: a. owns title to a qualified structure ., ~~or b. owns prospective title to a qualified structure in the form of a purchase agreement or option to purchase,~~ or ~~c.~~ b. owns a leasehold interest in a qualified structure for a term of not less than 39 years.

(7) QUALIFIED REHABILITATION EXPENDITURES. Any expenditure as defined under Section 47(c)(2)(A) of the

Internal Revenue Code, as amended, and the related regulations thereunder, and other reasonable expenses and costs expended in the rehabilitation of a qualified structure. For certified historic residential structures, this term shall mean expenses incurred by the taxpayer in the certified rehabilitation of a certified historic residential structure, including preservation and rehabilitation work done to the exterior of a certified historic residential structure, repair and stabilization of historic structural systems, restoration of historic plaster, energy efficiency measures except insulation in frame walls, repairs or rehabilitation of heating, air conditioning, or ventilation systems, repairs or rehabilitation of electrical or plumbing systems exclusive of new electrical appliances and electrical or plumbing fixtures, and architectural, engineering, and land surveying fees. Qualified rehabilitation expenditures do not include the cost of acquisition of the qualified structure, the personal labor by the owner, or any cost associated with the rehabilitation of an outbuilding of the qualified structure, unless the outbuilding is certified by the commission to contribute to the historical significance of the qualified structure.

(8) QUALIFIED STRUCTURE. Certified historic structures and non-historic structures built before 1936 which are certified by the commission as meeting the requirements contained in Section 47(c)(1)(a) and (b) of the Internal

1 Revenue Code, as amended, and to certified historic
2 residential structures as defined herein.
3 (9) REGISTERED HISTORIC DISTRICT. Any district
4 listed in the National Register of Historic Places and any
5 district which is either of the following:
6 a. Designated under Alabama or local law certified
7 by the U.S. Secretary of the Interior as containing criteria
8 which substantially achieves the purpose of preserving and
9 rehabilitating buildings of historic significance to the
10 district.
11 b. Certified by the U.S. Secretary of the Interior
12 as meeting substantially all of the requirements for the
13 listing of districts in the National Register of Historic
14 Places.
15 (10) REHABILITATION PLAN. Construction plans and
16 specifications for the proposed rehabilitation of a qualified
17 structure in sufficient detail to enable the commission to
18 evaluate compliance with the standards developed under this
19 act.
20 (11) SUBSTANTIAL REHABILITATION. Rehabilitation of
21 a qualified structure for which the qualified rehabilitation
22 expenditures exceed 50 percent of the owner's original
23 purchase price of the qualified structure or twenty-five
24 thousand dollars ($25,000), whichever is greater.

1 Section 3. (a) The commission shall develop
2 standards for the approval of the substantial rehabilitation
3 of qualified structures for which a tax credit is sought. The
4 standards shall take into account whether the substantial
5 rehabilitation of a qualified structure is consistent with the
6 historic character of the structure or of the Registered
7 Historic District in which the property is located.
8 (b) Prior to beginning any substantial
9 rehabilitation work on a qualified structure, the owner shall
10 submit an application and rehabilitation plan to the
11 commission and an estimate of the qualified rehabilitation
12 expenditures under the rehabilitation plan; provided, however,
13 that the owner, at its own risk, may incur qualified
14 rehabilitation expenditures no earlier than six months prior
15 to the submission of the application and rehabilitation plan
16 that are limited to architectural, engineering, and land
17 surveying fees and related soft costs and any costs related to
18 the protection of the qualified structure from deterioration.
19 Owners may submit an application and rehabilitation plan, and
20 may commence rehabilitation, before the property is listed in
21 the National Register of Historic Places; provided, however,
22 that owners, at their own risk, may incur qualified
23 rehabilitation expenditures which are limited to architectural
24 engineering and land surveying fees and related soft costs and
25 emergency costs and expenses necessary for the protection of

1 the qualified structure from deterioration and which are
2 incurred no earlier than six months prior to the submission of
3 the application and rehabilitation plan to the commission.
4 (c) The commission shall review the application and
5 rehabilitation plan to determine that the information
6 contained therein is complete. If the commission determines
7 that the application and rehabilitation plan are complete, the
8 commission shall reserve for the benefit of the owner an
9 allocation for a tax credit as provided in Section 4 and the
10 commission shall notify the owner in writing of the amount of
11 the reservation. The reservation of tax credits does not
12 entitle the owner to an issuance of tax credits until the
13 owner complies with all other requirements of this act for the
14 issuance of the tax credits. The reservation of tax credits
15 shall be made by the commission in the order in which
16 completed applications and rehabilitation plans are received
17 by the commission, and the reservation of tax credits shall be
18 issued by the commission within a reasonable time, not to
19 exceed 90 days from the filing of a completed application and
20 rehabilitation plan. Applications received by the commission
21 on the same day shall go through a lottery process to
22 determine the order in which the applications will be reviewed
23 by the commission. Only the property for which a property
24 address, legal description or other specific location is
25 provided in the application shall be reviewed. The owner shall

1 not be permitted to request the review of another property for
2 approval in the place of the property contained in the
3 application. The owner may add or remove partners, members, or
4 shareholders as part of its ownership structure, so long as at
5 least 50 percent of the ownership remains the same. If the
6 ownership of the qualified structure is changed due to a
7 foreclosure, deed in lieu of a foreclosure, or a transfer in
8 bankruptcy or receivership, the foregoing provisions
9 restricting a change in ownership structure are not
10 applicable, provided that the successor owner of the qualified
11 structure furnishes sufficient documentation to the commission
12 as evidence of the foreclosure, deed in lieu of foreclosure or
13 bankruptcy or receivership. Any application disapproved by the
14 commission shall be removed from the review process, and the
15 commission shall notify the owner in writing of the decision
16 to remove the application. Disapproved applications shall lose
17 their priority in the review process. A disapproved
18 application may be resubmitted, but shall be deemed to be a
19 new submission for purposes of the priority procedures
20 described in this section and may be charged a new application
21 fee. In the event that the commission grants reservations for
22 tax credits equal to the total amount available for
23 reservations during the fiscal year, all owners with
24 applications then awaiting approval or thereafter submitted
25 for approval shall be notified by the commission that no

1 additional approvals shall be granted during that fiscal year
2 and shall be notified of the priority given to the owner's
3 application then awaiting approval. The applications shall
4 remain in priority status for two (2) years from the date of
5 the original application and shall be considered for
6 reservations of tax credits in the priority order established
7 in this section in the event that additional credits become
8 available due to the rescission of approvals or when a new
9 fiscal year's allocation of tax credits becomes available.
10 Owners receiving a reservation of tax credits shall
11 commence rehabilitation, if rehabilitation has not previously
12 begun, within 18 months of the date of issuance of the written
13 notice from the commission to the owner granting the
14 reservation of tax credits. "Commencement of rehabilitation"
15 shall mean that, as of the date in which actual physical work
16 contemplated by the rehabilitation plan submitted with the
17 application has begun, the owner has incurred no less than 20
18 percent of the estimated costs of rehabilitation provided in
19 the application. Owners receiving a reservation of tax credits
20 shall submit evidence of compliance with the provisions of
21 this subsection. If the commission determines that an owner
22 has failed to comply with the requirements provided under this
23 section, the reservation of tax credits for the owner may be
24 rescinded and, if so, the amount of tax credits shall then be
25 included in the total amount of available tax credits provided

for in subsection (c) of Section 4, from which reservations may be granted. Any owner whose reservation of tax credits shall be rescinded shall be notified of the rescission from the commission and, upon receipt of the notice, may submit a new application but may be charged a new application fee.

(d) Following the completion of a substantial rehabilitation of a qualified structure, the owner shall notify the commission that the substantial rehabilitation has been completed and shall certify the qualified rehabilitation expenditures incurred with respect to the rehabilitation plan. In addition, the owner shall provide the commission with: (i) a cost and expense certification, prepared by a licensed certified public accountant that is not an affiliate of the owner, certifying the total qualified rehabilitation expenditures and the total amount of tax credits <u>against any state tax due that is specified in this act</u> for which the owner is eligible under Section 4 and, if the qualified rehabilitation expenditures exceed ~~five~~ <u>two</u> hundred thousand dollars ~~($500,000)~~ <u>($200,000)</u>, the cost and expense certification must be audited by the licensed certified public accountant; and (ii) an appraisal of the qualified structure prepared by an independent MAI designated and licensed real estate appraiser. The commission shall review the documentation of the rehabilitation and verify its compliance with the rehabilitation plan. Within 90 days after receipt of

the foregoing documentation from the owner, the commission shall issue a tax credit certificate in an amount equivalent to the lesser of: (i) the amount of the tax credit reservation issued for the project under the provisions of subsection (c), or (ii) 25 percent of the actual qualified rehabilitation expenditures for certified historic structures and 10 percent of the actual qualified rehabilitation expenditures for qualified pre-1936 non-historic structures. In the event the amount of qualified rehabilitation expenditures incurred by the owner would result in the issuance of an amount of tax credits in excess of the amount of tax credits reserved for the owner under subsection (c) of section 3, the owner may apply to the commission for issuance of tax credits in an amount equal to the excess. Applications for issuance of tax credits in excess of the amount of tax credits reserved for the owner shall be made on a form prescribed by the commission and shall represent a separate certificate that shall be issued, subject to all provisions regarding priority provided in this section.

(e) In order to obtain a credit against any state tax due that is specified in this act, a taxpayer shall file the tax credit certificate with the taxpayer's Alabama state income tax return.

(f) The Department shall grant a tax credit <u>against any state tax due that is specified in this act</u> to a taxpayer

holding the tax credit certificate issued under subsection (d) against any tax due under Chapters ~~14A, 14B, 16, 18, and 21~~ 16 and 18 of Title 40, ~~and Chapters 3 and 4 Chapter 4A of Title 27,~~ Code of Alabama 1975, in the amount stated on the tax credit certificate. The Department shall have the right to audit and to reassess any credit improperly obtained by the owner, in accordance with the Taxpayers' Bill of Rights and the Uniform Revenue Procedures contained in Chapter 2A of Title 40, Code of Alabama 1975; provided, however that only the owner initially awarded the tax credit certificate, and not any subsequent transferee of the tax credit certificate, shall be liable for any credit improperly obtained by the owner.

(g) For processing the taxpayer's application for a tax credit, the commission may impose reasonable application fees of up to one percent of the qualified rehabilitation expenses but not to exceed ten thousand dollars ($10,000).

(h) The commission shall, in consultation with the department, report to the Legislature in the third year following passage of this act, and annually thereafter, on the overall economic activity, usage, and impact to the state from the substantial rehabilitation of qualified structures for which tax credits have been allowed.

Section 4. (a) The ~~tax~~ state portion of any taxes credit against the tax imposed by Chapters ~~14A, 14B, 16, 18~~

1 ~~and 21~~ 16 and 18 of Title 40, ~~and Chapters 3 and 4 Chapter 4A~~
2 ~~of Title 27,~~ Code of Alabama 1975, for the taxable year in
3 which the certified rehabilitation is placed in service, shall
4 be equal to 25 percent of the qualified rehabilitation
5 expenditures for certified historic structures, and shall be
6 10 percent of the qualified rehabilitation expenditures for
7 qualified pre-1936 non-historic structures. No tax credit
8 claimed for any certified rehabilitation may exceed five
9 million dollars ($5,000,000) for all allowable property types
10 except a certified historic residential structure, and fifty
11 thousand dollars ($50,000) for a certified historic
12 residential structure.
13 (b) The entire tax credit may be claimed by the
14 taxpayer in the taxable year in which the certified
15 rehabilitation is placed in service. Where the taxes owed by
16 the taxpayer are less than the tax credit, the taxpayer shall
17 not be entitled to claim a refund for the difference, but any
18 unused portion of the credit may be carried forward for up to
19 10 additional tax years.
20 (c) The aggregate amount of all tax credits in any
21 tax year that may be reserved by the commission upon
22 certification of rehabilitation plans under subsection (c) of
23 Section 3 shall not exceed ~~thirty million dollars~~
24 ~~($30,000,000)~~ twenty million dollars ($20,000,000) plus any
25 amount of previous reservations of tax credits that were

rescinded under subsection (c) of Section 3 during the tax year. However, if all of the allowable tax credit amount for any tax year is not requested and reserved, any unreserved tax credits may be utilized by the commission in awarding tax credits in subsequent years.

(d) Tax credits granted to a partnership, a limited liability company taxed as a partnership or multiple owners of a property shall be passed through to the partners, members or owners (including any not-for-profit entity that is a partner, member or owner) respectively pro rata or pursuant to an executed agreement among the partners, members or owners documenting an alternate distribution method.

(e) ~~All or any portion of the tax credits under this act shall be freely transferable and assignable, subject to any notice and verification requirements to be determined by the commission or the Department, or both. Any transferee of the tax credits may use the amount of tax credits transferred to offset against any tax due under Chapters 14A, 14B, 16, 18 and 21 of Title 40, and Chapters 3 and 4 Chapter 4A of Title 27, Code of Alabama 1975, or the transferee may freely transfer and assign all or any portion of the tax credits to any other person or entity, including an entity that is exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code, as amended, and the other person or entity may freely transfer and assign all or any portion of~~

~~the tax credits to any other person or entity. The tax credits may be transferred or assigned until the time that the credit is claimed on a State of Alabama tax return by any taxpayer.~~

Section 5. (a) Recapture of any of the credit, and any required adjustments to basis due to recapture, shall be governed by Section 50 of the Internal Revenue Code; provided, however, that only the owner initially awarded the tax credit certificate, and not any subsequent transferee of the tax credit certificate, shall be liable for any amount of the credit recaptured.

(b) In the taxable year the certified rehabilitation is placed in service for any structure for which a tax credit has been issued, the commission shall provide notice of the certified rehabilitation and a copy of the appraisal provided by the owner to the taxing authority responsible for the assessment of ad valorem taxes. Upon notification, the taxing authority responsible for the assessment of ad valorem taxes shall complete a new assessment for the structure to be used in the assessment of ad valorem taxes for the tax year in which the certified rehabilitation was placed in service.

Section 6. Owners or their duly authorized representatives may appeal any <u>state</u> official decision, including all preliminary or final reservations, approvals and denials, made by the commission or the Department with regard to an application and rehabilitation plan submitted under

Section 3, in accordance with the Alabama Administrative Procedures Act contained in Chapter 22 of Title 41, Code of Alabama 1975. Appeals shall constitute an administrative review of the decision appealed from and shall not be conducted as an adjudicative proceeding. Appeals shall be submitted within thirty days of receipt by the owner or the owner's duly authorized representative of the decision that is the subject of the appeal.

Section 7. The tax credits authorized by this act for the substantial rehabilitation of qualified structures shall not be available to owners of qualified structures that submit an application and rehabilitation plan three years following the effective date of this act. No action or inaction on the part of the Legislature shall reduce or suspend the tax credits authorized by this act in any past or future calendar year with respect to a qualified structure if the owner thereof submits an application and rehabilitation plan with the commission and the commission reserves an allocation for a tax credit on or prior to three years following the effective date of this act, even if the qualified structure is placed into service after three years following the effective date of this act, and shall not affect the owner of a qualified structure if the commission has reserved an allocation for a tax credit on or prior to three years following the effective date of this act.

1 Section 8. The commission shall promulgate by
2 September 1, 2013 any and all rules and regulations necessary
3 to implement the provisions of this act. Applications for the
4 reservation of tax credits shall be accepted beginning October
5 1, 2013, but no tax credit may be credited prior to the
6 taxpayer's return for the taxable year 2014.
7 Section 9. The provisions of this act are severable.
8 If any part of this act is declared invalid or
9 unconstitutional, that declaration shall not affect the part
10 which remains.
11 Section 10. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.

Speaker of the House of Representatives

Kay Ivey

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 04-APR-13, as amended.

Jeff Woodard
Clerk

Senate	02-MAY-13	Amended and Passed
House	09-MAY-13	Concurred in Senate Amendment

APPROVED May 15, 2013

TIME 3:05 p.m.

Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2013-241
Bill Num...: H-140

Recv'd 05/15/13 03:23pmSLF

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HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 140

YEAS 98 NAYS 0

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. _____ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees _____

SENATE ACTION

DATE: [illegible] 20__

RD 1 RFD

This Bill was referred to the Standing Committee of the Senate on FJTE

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) 3 w/sub ____ by a vote of

yeas 9 nays 1 abstain 0

this 17 day of [illegible] 2013

[signature], Chairperson

DATE: [illegible] 20__

RF FAV AMD(3) RD 2 CAL

DATE: 20__

RE-REFERRED ☐ RE-COMMITTED ☐

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 140

YEAS 26 NAYS 1 [illegible]

PATRICK HARRIS, Secretary

FURTHER SENATE ACTION (OVER)