

House Bill 308

By: Representatives Stephens of the 164th, Peake of the 141st, and Harbin of the 122nd

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, computation, rate, and exemptions from state income taxes, so as
3 to revise the tax credit for the rehabilitation of historic structures; to provide for procedures,
4 conditions, and limitations; to provide for a sunset date; to provide for related matters; to
5 repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 style="text-align:center">**SECTION 1.**

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

12 "48-7-29.8.

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

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

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

23 (3) 'Employment retention requirement' means the requirement that the monthly average
24 number of full-time employees employed as a result of the rehabilitation of the certified
25 structure must equal or exceed 90 percent of the employment target for at least 60 months
26 after the certified structure is placed in service.

27 (4) 'Employment target' means the verifiable creation and retention of at least 200
 28 full-time jobs as a result of the rehabilitation of a certified structure necessary to enable
 29 a taxpayer to be eligible to claim credits as set forth in paragraph (2) of subsection (c) of
 30 this Code section.

31 (5) 'Force majeure' means any:

32 (A) Explosions, implosions, fires, conflagrations, accidents, or contamination;

33 (B) Unusual and unforeseeable weather conditions such as floods, torrential rain, hail,
 34 tornadoes, hurricanes, lightning, or other natural calamities or acts of God;

35 (C) Acts of war whether or not declared, carnage, blockade, or embargo;

36 (D) Acts of public enemy, acts or threats of terrorism or threats from terrorists, riot,
 37 public disorder, or violent demonstrations;

38 (E) Strikes or other labor disturbances; or

39 (F) Expropriation, requisition, confiscation, impoundment, seizure, nationalization, or
 40 compulsory acquisition of the site or sites of a certified structure or any part thereof;

41 but such term shall not include any event or circumstance that could have been prevented,
 42 overcome, or remedied in whole or in part by the taxpayer through the exercise of
 43 reasonable diligence and due care, nor shall such term include the unavailability of funds.

44 (6) 'Full-time employee' means an individual holding a full-time employee job.

45 (7) 'Full-time employee job' and 'full-time job' mean employment of an individual which:

46 (A) Is located in this state at the certified structure or at another location in this state
 47 so long as the individual's job directly results from the rehabilitation of the certified
 48 structure;

49 (B) Involves a regular work week of 35 hours or more;

50 (C) Has no predetermined end date; and

51 (D) Pays at or above the average wage of the county with the lowest average wage in
 52 the state, as reported in the most recently available annual issue of the Georgia
 53 Employment and Wages Averages Report of the Department of Labor.

54 For purposes of this paragraph, leased employees will be considered employees of the
 55 company using their services, and such persons may be counted in determining the
 56 company's credits under this Code section if their employment otherwise meets the
 57 definition of full-time job contained in this paragraph. In addition, an individual's
 58 employment shall not be deemed to have a predetermined end date solely by virtue of a
 59 mandatory retirement age set forth in a company policy of general application. The
 60 employment of any individual in a bona fide executive, administrative, or professional
 61 capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of
 62 1938, as amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002,
 63 shall not be deemed to have a predetermined end date solely by virtue of the fact that

64 such employment is pursuant to a fixed-term contract, provided that such contract is for
 65 a term of not less than one year.

66 ~~(3)~~(8) 'Historic home' means a certified structure which, or any portion of which is or
 67 will, within a reasonable period, be owned and used as the principal residence of the
 68 person claiming the tax credit allowed under this Code section. Historic home shall
 69 include any structure or group of structures that constitute a multifamily or multipurpose
 70 structure, including a cooperative or condominium. If only a portion of a building is used
 71 as such person's principal residence, only those qualified rehabilitation expenditures that
 72 are properly allocable to such portion shall be deemed to be made to a historic home.

73 ~~(4)~~(9) 'Qualified rehabilitation expenditure' means any qualified rehabilitation
 74 expenditure as defined by Section 47(c)(2) of the Internal Revenue Code of 1986 and any
 75 amount properly chargeable to a capital account expended in the substantial rehabilitation
 76 of a structure that by the end of the taxable year in which the certified rehabilitation is
 77 completed is a certified structure. This term includes, but is not necessarily limited to,
 78 costs attributable to enlargement or additions to an existing building, as long as such
 79 enlargement or addition does not result in the building becoming ineligible for
 80 consideration as a certified structure, site preparation, site improvements, and related
 81 design and engineering costs. This term does not include the cost of acquisition of the
 82 certified structure, ~~the cost attributable to enlargement or additions to an existing~~
 83 ~~building, site preparation,~~ or personal property.

84 ~~(5)~~(10) 'Substantial rehabilitation' means rehabilitation of a certified structure for which
 85 the qualified rehabilitation expenditures, at least 5 percent of which must be allocable to
 86 the exterior during the 24 month period selected by the taxpayer ending with or within
 87 the taxable year, exceed:

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

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

93 ~~(6)~~(11) 'Target area' means a qualified census tract under Section 42 of the Internal
 94 Revenue Code of 1986, found in the United States Department of Housing and Urban
 95 Development document number N-94-3821; FR-3796-N-01.

96 (b)(1) In the case of a historic home, a taxpayer shall be allowed a tax credit against
 97 the tax imposed by this chapter for the taxable year in which the certified rehabilitation
 98 is completed: ~~(1) In the case of a historic home,~~ equal to 25 percent of qualified
 99 rehabilitation expenditures, except that, in the case of a historic home located within a

100 target area, an additional credit equal to 5 percent of qualified rehabilitation expenditures
 101 shall be allowed; ~~and,~~

102 (2) In the case of any other certified structure, a taxpayer shall be allowed a tax credit
 103 against the tax imposed by this chapter for the taxable year in which the certified
 104 rehabilitation is completed equal to 25 percent of qualified rehabilitation expenditures,
 105 subject to the limitations set forth in paragraphs (2) and (3) of subsection (c) of this Code
 106 section.

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

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

112 (2) In no event shall ~~credits for a certified structure exceed \$300,000.00 in any 120~~
 113 ~~month period~~ the aggregate amount of tax credits allowed under this Code section for
 114 certified structures exceed \$60 million for any single taxable year beginning on January
 115 1, 2017. When the aggregate \$60 million cap is reached, the tax credit for certified
 116 structures shall expire for such taxable years.

117 (3) The maximum credit for any individual certified structure shall be \$5 million for any
 118 taxable year, except in the case that the project meets or exceeds the employment target,
 119 in which case the project is eligible for credits up to \$25 million for an individual
 120 certified structure. Credits for any individual certified structure shall not exceed a total
 121 value of \$25 million in any case.

122 (4) The Department of Revenue shall allow the tax credits for certified structures on a
 123 first come, first served basis based on the date the credits are claimed.

124 (d) In order to be eligible to receive the credit authorized under subsection (b) of this Code
 125 section, a taxpayer must ~~attach:~~

126 (1) Place the rehabilitated certified structure in service on or after January 1, 2017;

127 (2) Have an ownership interest in the certified structure, or receive a transfer of all or a
 128 portion of the credit as set forth in paragraph (2) of subsection (g) of this Code section,
 129 in the year in which the structure is placed in service after the rehabilitation;

130 (3) Have incurred in excess of \$5,000.00 in total qualified rehabilitation expenditures;
 131 and either:

132 (A) Attach to the taxpayer's state tax return a copy of the certification of the
 133 Department of Natural Resources verifying that the improvements to the certified
 134 structure are consistent with the Department of Natural Resources Standards for
 135 Rehabilitation; or

136 (B) If the credit is transferred to another taxpayer according to paragraph (2) of
137 subsection (g) of this Code section, follow the procedure set forth therein; and

138 (4) For projects wherein the taxpayer elects to claim credits in excess of \$5 million for
139 rehabilitation of a certified structure, the taxpayer must also document in the following
140 manner that the employment target has been met:

141 (A) Attach to the taxpayer's state tax return one or more certificates of an authorized
142 officer or an owner or operator of an enterprise located at the certified structure stating
143 the number of full-time employees and annual salaries for such employees at the
144 certified structure as of 120 days from the date the rehabilitated certified structure is
145 placed in service in the year for which the credit is being claimed. The department shall
146 have the right to inspect other records, consistent with the privacy rights of its
147 employees, of the owner or operator of businesses located at the certified structure to
148 verify the accuracy of the certifications;

149 (B) In the event the department determines that the employment target has not been
150 met in any specific tax year, the taxpayer shall be subject to repayment of the amount
151 of credits claimed for that tax year, in which case, if the credit has been transferred to
152 another taxpayer according to paragraph (2) of subsection (g) of this Code section, the
153 taxpayer who first transferred the credits shall be held solely liable for such repayment
154 and fully indemnify any subsequent transferee;

155 (C) For projects requiring an employment target be met, not more than 60 days after
156 the close of the sixtieth month after the rehabilitated certified structure is placed in
157 service, the taxpayer claiming the credit for shall file a report, using such form and
158 providing such information as the commissioner may reasonably require, concerning
159 whether it has met the employment retention requirement. If the taxpayer has failed to
160 meet the employment retention requirement, the taxpayer will forfeit the right to all
161 credits provided by this Code section for such project. A taxpayer who forfeits such
162 right is liable for all past taxes imposed by this article and all past payments under Code
163 Section 48-7-103 that were forgone by the state as a result of the credits provided by
164 this Code section, plus interest at the rate established by Code Section 48-2-40
165 computed from the date such taxes or payments would have been due if the credits had
166 not been taken. No later than 90 days after notification by the commissioner that the
167 taxpayer has failed to meet the employment retention requirement, the taxpayer shall
168 file amended income tax and withholding tax returns for all affected periods that
169 recalculate those liabilities without regard to the forfeited credits and shall pay any
170 additional amounts shown on such returns, with interest as provided in this paragraph;

171 (D) A taxpayer who fails to meet the employment retention requirement because of
172 force majeure may petition the commissioner for relief from such requirement. Such

173 a petition must be made with and at the same time as the report required by subsection
174 (h) of this Code section. If the commissioner determines that force majeure materially
175 affected the taxpayer's ability to meet the employment retention requirement, but that
176 the portion of any year so affected was six months or less, the commissioner shall
177 calculate the taxpayer's monthly average number of full-time employees for purposes
178 of subsection (h) of this Code section by disregarding the affected months. If the
179 commissioner determines that the affected portion of any such year was more than six
180 months, the taxable year shall be disregarded in its entirety for purposes of the
181 employment retention requirement, and the calculation of the 60 month period after the
182 project was placed in service applicable to the rehabilitated certified structure shall be
183 extended for an additional year;

184 (E) If the rehabilitated certified structure resulting from a qualified project is
185 abandoned at any time within 60 months after it is placed in service, the taxpayer will
186 forfeit the right to all credits provided by this Code section for such project. A taxpayer
187 who forfeits such right is liable for all past taxes imposed by this article and all past
188 payments under Code Section 48-7-103 that were forgone by the state as a result of the
189 credits provided by this Code section, plus interest at the rate established by Code
190 Section 48-2-40 computed from the date such taxes or payments would have been due
191 if the credits had not been taken. For purposes of this subsection, a rehabilitated
192 certified structure shall be considered abandoned if there is, for any reason other than
193 force majeure, a complete cessation of operations resulting in employment for a period
194 of 12 consecutive months or more during the first 60 months after it is placed in service.
195 Not more than 60 days from the end of the sixtieth month after the project was placed
196 in service, the taxpayer shall file a report, using such form and providing such
197 information as the commissioner may require, concerning whether such an
198 abandonment occurred. No later than 90 days after notification by the commissioner
199 that an abandonment occurred, the taxpayer shall file amended income tax and
200 withholding tax returns for all affected periods that recalculate those liabilities without
201 regard to the forfeited credits and shall pay any additional amounts shown on such
202 returns, with interest as provided in this paragraph;

203 (F) Unless more time is allowed therefor by Code Section 48-7-82 or 48-2-49, the
204 commissioner may make any assessment attributable to the forfeiture of credits claimed
205 under this Code section for the periods covered by any amended returns filed by a
206 taxpayer pursuant to subparagraphs (E) and (G) of this paragraph within one year from
207 the date such returns are filed. If the taxpayer fails to file the reports or any amended
208 return required by subparagraphs (E) and (G) of this paragraph, the commissioner may

209 assess additional tax or other amounts attributable to the forfeiture of credits claimed
 210 under this Code section at any time; and

211 (G) If a taxpayer transfers all or a portion of the credit created by this Code section to
 212 another taxpayer according to paragraph (2) of subsection (g) of this Code section, the
 213 taxpayer who first transferred the credits shall be solely liable for any repayment of tax
 214 credit amounts and related penalties and interest under this Code section and shall fully
 215 indemnify any subsequent transferee.

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

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

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

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

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

227 (g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event
 228 a tax credit under this Code section has been claimed and allowed the taxpayer, upon the
 229 sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the
 230 remaining unused amount of such credit to the purchaser of such certified structure.

231 (2) Any tax credits with respect to a certified structure, other than a historic home, earned
 232 by a taxpayer and previously claimed but not used by such taxpayer may be transferred
 233 or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the
 234 following conditions:

235 (A) A taxpayer who makes qualified rehabilitation expenditures may sell or assign all
 236 or part of the tax credit that may be claimed for such costs and expenses to one or more
 237 entities, and any entity to which all or part of the credit is sold or assigned may sell or
 238 assign all or part of the tax credit to another entity. There is no limit on the total
 239 number of transactions for the sale or assignment of all or part of the total tax credit
 240 authorized under this subsection; provided, however, that collectively, all transfers are
 241 subject to the maximum total limits provided by subsection (b) of this Code section;

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

- 246 (i) The date of the sale or assignment;
- 247 (ii) The amount of the credit sold or assigned;
- 248 (iii) The names and federal tax identification numbers of the entity that sold or
 249 assigned the credit or part of the credit and the entity to which the credit or part of the
 250 credit was sold or assigned; and
- 251 (iv) The amount of the credit owned by the selling or assigning entity before the sale
 252 or assignment and the amount the selling or assigning entity retained, if any, after the
 253 sale or assignment;
- 254 (C) The sale or assignment of a credit in accordance with this Code section does not
 255 extend the period for which a credit may be carried forward and does not increase the
 256 total amount of the credit that may be claimed. After an entity claims a credit for
 257 eligible costs and expenses, another entity may not use the same costs and expenses as
 258 the basis for claiming a credit; and
- 259 (D) Notwithstanding the requirements of this subsection, a credit earned or purchased
 260 by, or assigned to, a partnership, limited liability company, Subchapter 'S' corporation,
 261 or other pass-through entity may be allocated to the partners, members, or shareholders
 262 of that entity and claimed under this Code section in accordance with the provisions of
 263 any agreement among the partners, members, or shareholders of that entity and without
 264 regard to the ownership interest of the partners, members, or shareholders in the
 265 rehabilitated certified structure, provided that:
- 266 (i) The entity or person that claims the credit must be subject to Georgia tax; and
- 267 (ii) The entity and the allocatee meet the requirements of subsection (i) of this Code
 268 section.
- 269 (3) If a historic home for which a certified rehabilitation has been completed by a
 270 nonprofit corporation is sold or transferred, the full amount of the credit to which the
 271 nonprofit corporation would be entitled if taxable shall be transferred to the purchaser or
 272 transferee at the time of sale or transfer.
- 273 ~~(2)~~(4) Such purchaser shall be subject to the limitations of subsection (e) of this Code
 274 section. Such purchaser shall file with such purchaser's tax return a copy of the approval
 275 of the rehabilitation by the Department of Natural Resources as provided in subsection
 276 (d) and a copy of the form evidencing the transfer of the tax credit.
- 277 ~~(3)~~(5) Such purchaser shall be entitled to rely in good faith on the information contained
 278 in and used in connection with obtaining the approval of the credit including, without
 279 limitation, the amount of qualified rehabilitation expenditures.
- 280 (h)(1) If an owner other than a nonprofit corporation sells a historic home within three
 281 years of receiving the credit, the seller shall ~~recapture~~ repay the amount of the credit to
 282 the Department of Revenue as follows:

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

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

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

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

293 (i) Subject to the provisions of paragraph (2) of subsection (g) of this Code section, the
 294 The tax credit allowed under this Code section, and any ~~recaptured~~ tax credit repayment
 295 liability, shall be allocated among some or all of the partners, members, or shareholders of
 296 the entity owning the project in any manner agreed to by such persons, whether or not such
 297 persons are allocated or allowed any portion of any other tax credit with respect to the
 298 project. Written notification of any allocation of the credit shall be submitted to the
 299 department within 30 days after the allocation of the credit and shall include the name and
 300 taxpayer identification number of the allocatee, the amount of the credit allocated, and any
 301 other information required by the department.

302 (j)(1) Where the amount of such credit or credits exceeds the taxpayer's liability for such
 303 taxes in a taxable year, the excess may be taken as a credit against such taxpayer's
 304 quarterly or monthly payment under Code Section 48-7-103. Each employee whose
 305 employer receives credit against such taxpayer's quarterly or monthly payment under
 306 Code Section 48-7-103 shall receive credit against his or her income tax liability under
 307 Code Section 48-7-20 for the corresponding taxable year for the full amount which would
 308 be credited against such liability prior to the application of the credit provided for in this
 309 subsection. Credits against quarterly or monthly payments under Code Section 48-7-103
 310 and credits against liability under Code Section 48-7-20 established by this subsection
 311 shall not constitute income to the taxpayer.

312 (2) If a taxpayer and its affiliates claim the credit authorized under Code Section
 313 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the taxpayer and its affiliates will
 314 only be allowed to claim the credit authorized under this Code section to the extent that
 315 the Georgia resident employees included in the credit calculation authorized under this
 316 Code section and taken by the taxpayer and its affiliates on such tax return under this
 317 Code section have been permanently excluded from the credit authorized under Code
 318 Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

319 ~~(j)~~(k) The Department of Natural Resources and the Department of Revenue shall
320 prescribe such regulations as may be appropriate to carry out the purposes of this Code
321 section.

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

325 (m) The provisions of this Code section regarding tax credits for certified structures shall
326 expire on December 31, 2021."

327 **SECTION 2.**

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