

1 HB509
2 160411-3
3 By Representative DeMarco
4 RFD: Ways and Means Education
5 First Read: 18-FEB-14

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 3, 4, and 5 of Act 2013-241, 2013
9 Regular Session, now appearing as Sections 40-9F-3, 40-9F-4,
10 and 40-9F-5, Code of Alabama 1975, to clarify that tax credits
11 are awarded on a calendar year basis; to remove all
12 restrictions on the ability to change the ownership of the
13 applicant; and to allow the tax credit to be transferred.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 3, 4, and 5 of Act 2013-241,
16 2013 Regular Session, now appearing as Sections 40-9F-3,
17 40-9F-4, and 40-9F-5, Code of Alabama 1975, are amended to
18 read as follows:

19 "§40-9F-3.

20 "(a) The commission shall develop standards for the
21 approval of the substantial rehabilitation of qualified
22 structures for which a tax credit is sought. The standards
23 shall take into account whether the substantial rehabilitation
24 of a qualified structure is consistent with the historic
25 character of the structure or of the Registered Historic
26 District in which the property is located.

1 "(b) Prior to beginning any substantial
2 rehabilitation work on a qualified structure, the owner shall
3 submit an application and rehabilitation plan to the
4 commission and an estimate of the qualified rehabilitation
5 expenditures under the rehabilitation plan; provided, however,
6 that the owner, at its own risk, may incur qualified
7 rehabilitation expenditures no earlier than six months prior
8 to the submission of the application and rehabilitation plan
9 that are limited to architectural, engineering, and land
10 surveying fees and related soft costs and any costs related to
11 the protection of the qualified structure from deterioration.
12 ~~Owners may submit an application and rehabilitation plan, and~~
13 ~~may commence rehabilitation, before the property is listed in~~
14 ~~the National Register of Historic Places; provided, however,~~
15 ~~that owners, at their own risk, may incur qualified~~
16 ~~rehabilitation expenditures which are limited to architectural~~
17 ~~engineering and land surveying fees and related soft costs and~~
18 ~~emergency costs and expenses necessary for the protection of~~
19 ~~the qualified structure from deterioration and which are~~
20 ~~incurred no earlier than six months prior to the submission of~~
21 ~~the application and rehabilitation plan to the commission.~~

22 "(c) The commission shall review the application and
23 rehabilitation plan to determine that the information
24 contained therein is complete. If the commission determines
25 that the application and rehabilitation plan are complete, the
26 commission shall reserve for the benefit of the owner an
27 allocation for a tax credit as provided in Section 40-9F-4 and

1 the commission shall notify the owner in writing of the amount
2 of the reservation. The reservation of tax credits does not
3 entitle the owner to an issuance of tax credits until the
4 owner complies with all other requirements of this chapter for
5 the issuance of the tax credits. The reservation of tax
6 credits shall be made by the commission in the order in which
7 completed applications and rehabilitation plans are received
8 by the commission, and the reservation of tax credits shall be
9 issued by the commission within a reasonable time, not to
10 exceed 90 days from the filing of a completed application and
11 rehabilitation plan. Applications received by the commission
12 on the same day shall go through a lottery process to
13 determine the order in which the applications will be reviewed
14 by the commission. Only the property for which a property
15 address, legal description or other specific location is
16 provided in the application shall be reviewed. Ownership of an
17 entity that is the owner of property contained in the
18 application shall not be a factor in the commission's review
19 of the application and no subsequent change in the ownership
20 structure of such entity shall result in the loss or
21 rescission of a reservation of tax credits. The owner shall
22 not be permitted to request the review of another property for
23 approval in the place of the property contained in the
24 application. ~~The owner may add or remove partners, members, or~~
25 ~~shareholders as part of its ownership structure, so long as at~~
26 ~~least 50 percent of the ownership remains the same. If the~~
27 ~~ownership of the qualified structure is changed due to a~~

1 ~~foreclosure, deed in lieu of a foreclosure, or a transfer in~~
2 ~~bankruptcy or receivership, the foregoing provisions~~
3 ~~restricting a change in ownership structure are not~~
4 ~~applicable, provided that the successor owner of the qualified~~
5 ~~structure furnishes sufficient documentation to the commission~~
6 ~~as evidence of the foreclosure, deed in lieu of foreclosure or~~
7 ~~bankruptcy or receivership.~~ Any application disapproved by the
8 commission shall be removed from the review process, and the
9 commission shall notify the owner in writing of the decision
10 to remove the application. Disapproved applications shall lose
11 their priority in the review process. A disapproved
12 application may be resubmitted, but shall be deemed to be a
13 new submission for purposes of the priority procedures
14 described in this section and may be charged a new application
15 fee. In the event that the commission grants reservations for
16 tax credits equal to the total amount available for
17 reservations during the ~~fiscal~~ tax year, all owners with
18 applications then awaiting approval or thereafter submitted
19 for approval shall be notified by the commission that no
20 additional approvals shall be granted during that ~~fiscal~~ tax
21 year and shall be notified of the priority number given to the
22 owner's application then awaiting approval. The applications
23 shall remain in priority status for two years from the date of
24 the original application and shall be considered for
25 reservations of tax credits in the priority order established
26 in this section in the event that additional credits become

1 available due to the rescission of approvals or when a new
2 ~~fiscal~~ tax year's allocation of tax credits becomes available.

3 "Owners receiving a reservation of tax credits shall
4 commence rehabilitation, if rehabilitation has not previously
5 begun, within 18 months of the date of issuance of the written
6 notice from the commission to the owner granting the
7 reservation of tax credits. "Commencement of rehabilitation"
8 shall mean that, as of the date in which actual physical work
9 contemplated by the rehabilitation plan submitted with the
10 application has begun, the owner has incurred no less than 20
11 percent of the estimated costs of rehabilitation provided in
12 the application. Owners receiving a reservation of tax credits
13 shall submit evidence of compliance with the provisions of
14 this subsection. If the commission determines that an owner
15 has failed to comply with the requirements provided under this
16 section, the reservation of tax credits for the owner may be
17 rescinded and, if so, the amount of tax credits shall then be
18 included in the total amount of available tax credits provided
19 for in subsection (c) of Section 40-9F-4, from which
20 reservations may be granted. Any owner whose reservation of
21 tax credits shall be rescinded shall be notified of the
22 rescission from the commission and, upon receipt of the
23 notice, may submit a new application but may be charged a new
24 application fee.

25 "(d) Following the completion of a substantial
26 rehabilitation of a qualified structure, the owner shall
27 notify the commission that the substantial rehabilitation has

1 been completed and shall certify the qualified rehabilitation
2 expenditures incurred with respect to the rehabilitation plan.
3 In addition, the owner shall provide the commission with: (i)
4 a cost and expense certification, prepared by a licensed
5 certified public accountant that is not an affiliate of the
6 owner, certifying the total qualified rehabilitation
7 expenditures and the total amount of tax credits against any
8 state tax due that is specified in this chapter for which the
9 owner is eligible under Section 40-9F-4 and, if the qualified
10 rehabilitation expenditures exceed two hundred thousand
11 dollars (\$200,000), the cost and expense certification must be
12 audited by the licensed certified public accountant; and (ii)
13 an appraisal of the qualified structure prepared by an
14 independent MAI designated and licensed real estate appraiser.
15 The commission shall review the documentation of the
16 rehabilitation and verify its compliance with the
17 rehabilitation plan. Within 90 days after receipt of the
18 foregoing documentation from the owner, the commission shall
19 issue a tax credit certificate in an amount equivalent to the
20 lesser of: (i) the amount of the tax credit reservation issued
21 for the project under the provisions of subsection (c), or
22 (ii) 25 percent of the actual qualified rehabilitation
23 expenditures for certified historic structures and 10 percent
24 of the actual qualified rehabilitation expenditures for
25 qualified pre-1936 non-historic structures. In the event the
26 amount of qualified rehabilitation expenditures incurred by
27 the owner would result in the issuance of an amount of tax

1 credits in excess of the amount of tax credits reserved for
2 the owner under subsection (c), the owner may apply to the
3 commission for issuance of tax credits in an amount equal to
4 the excess. Applications for issuance of tax credits in excess
5 of the amount of tax credits reserved for the owner shall be
6 made on a form prescribed by the commission and shall
7 represent a separate certificate that shall be issued, subject
8 to all provisions regarding priority provided in this section.

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

13 "(f) The department shall grant a tax credit against
14 any state tax due that is specified in this chapter to a
15 taxpayer holding the tax credit certificate issued under
16 subsection (d) or, in the case of a transferee, issued by the
17 department pursuant to Section 40-9F-4(e) against any tax due
18 under Chapters 16 and 18 in the amount stated on the tax
19 credit certificate. The department shall have the right to
20 audit and to reassess any credit improperly obtained by the
21 owner, in accordance with the Taxpayers' Bill of Rights and
22 the Uniform Revenue Procedures contained in Chapter 2A;
23 provided, however that only the owner initially awarded the
24 tax credit certificate, and not any subsequent transferee of
25 the tax credit certificate or person to whom tax credits have
26 been passed through pursuant to Section 40-9F-4(d), shall be
27 liable for any credit improperly obtained by the owner.

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

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

11 "§40-9F-4.

12 "(a) The state portion of any ~~taxes~~ tax credit
13 against the tax imposed by Chapters 16 and 18, for the taxable
14 year in which the certified rehabilitation is placed in
15 service, shall be equal to 25 percent of the qualified
16 rehabilitation expenditures for certified historic structures,
17 and shall be 10 percent of the qualified rehabilitation
18 expenditures for qualified pre-1936 non-historic structures.
19 No tax credit claimed for any certified rehabilitation may
20 exceed five million dollars (\$5,000,000) for all allowable
21 property types except a certified historic residential
22 structure, and fifty thousand dollars (\$50,000) for a
23 certified historic residential structure.

24 "(b) The entire tax credit may be claimed by the
25 taxpayer in the taxable year in which the certified
26 rehabilitation is placed in service. Where the taxes owed by
27 the taxpayer are less than the tax credit, the taxpayer shall

1 not be entitled to claim a refund for the difference, but any
2 unused portion of the credit may be carried forward for up to
3 10 additional tax years.

4 "(c) ~~The~~ For the calendar years 2013, 2014, and
5 2015, the aggregate amount of all tax credits ~~in any tax year~~
6 that may be reserved in any one of such years by the
7 commission upon certification of rehabilitation plans under
8 subsection (c) of Section 40-9F-3 shall not exceed twenty
9 million dollars (\$20,000,000) plus any amount of previous
10 reservations of tax credits that were rescinded under
11 subsection (c) of Section 40-9F-3 during the tax year.
12 However, if all of the allowable tax credit amount for any tax
13 year is not requested and reserved, any unreserved tax credits
14 may be utilized by the commission in awarding tax credits in
15 subsequent years; provided, however, that in no event shall a
16 total of more than sixty million dollars (\$60,000,000) be
17 reserved by the commission during the period of May 15, 2013,
18 through May 16, 2016. For purposes of this chapter, "tax year"
19 shall mean the calendar year.

20 "(d) Tax credits granted to a partnership, a limited
21 liability company ~~taxed as a partnership~~ or multiple owners of
22 a property shall be passed through to the partners, members,
23 or owners (including any not-for-profit entity that is a
24 partner, member, or owner) respectively pro rata or pursuant
25 to an executed agreement among the partners, members, or
26 owners documenting an alternate distribution method without
27 regard to their sharing of other tax or economic attributes of

1 the entity. The tax credit certificate shall contain a section
2 to be completed by the owner that provides the percentage or
3 amount of credit that will be allocated to each partner,
4 member, or owner, and such completed certificate may be
5 provided to the department to transfer all or any portion of
6 the tax credits passed through to the partner, member, or
7 owner in accordance with subsection (e).

8 "(e) All or any portion of the tax credits under
9 this act shall be freely transferable and assignable, subject
10 to any notice and verification requirements to be determined
11 by the department, without the requirement of transferring any
12 ownership interest in the qualified structure or any interest
13 in the entity which owns the qualified structure. Any
14 transferee of the tax credits may use the amount of tax
15 credits transferred to offset any state tax due under Chapters
16 16 and 18 of Title 40 or the transferee may freely transfer
17 and assign all or any portion of the tax credits to any other
18 person or entity, including an entity that is exempt from
19 federal income taxation pursuant to Section 501(c) of the
20 Internal Revenue Code, as amended, and the other person or
21 entity may freely transfer and assign all or any portion of
22 the tax credits to any other person or entity. The tax credits
23 may be transferred, passed through, or assigned until the time
24 that the credit is claimed on a State of Alabama tax return by
25 any taxpayer. The department shall promulgate a form transfer
26 statement to be filed by the transferor with the department
27 prior to the purported transfer of any credit issued under

1 this chapter. The transfer statement form shall include the
2 name and federal taxpayer identification number of the
3 transferor and each transferee listed therein along with the
4 amount of the tax credit to be transferred to each transferee
5 listed on the form. The transfer statement form shall also
6 contain such other information as the department may from time
7 to time reasonably require. For each transfer, the transferor
8 shall file (1) a completed transfer statement form; (2) a copy
9 of the tax credit certificate issued by the commission or the
10 department, as applicable, documenting the amount of tax
11 credits which the transferor intends to transfer; (3) a copy
12 of the proposed written transfer agreement; and (4) a transfer
13 fee payable to the department in the amount of one thousand
14 dollars (\$1,000) per transferee listed on the transfer
15 statement form, not to exceed the sum of ten thousand dollars
16 (\$10,000). The transferor shall file with the department a
17 fully executed copy of the written transfer agreement with
18 each transferee within 30 days after the completed transfer.
19 Filing of the written transfer agreement with the department
20 shall perfect such transfer with respect to such transferee.
21 Within 30 days after the department's receipt of the fully
22 executed written transfer agreement, the department shall
23 issue a tax credit certificate to each transferee listed in
24 such agreement in the amount of the tax credit so transferred.
25 Such certificate shall be used by the transferee in claiming
26 the tax credit pursuant to Section 40-9F-3(e) and (f). The
27 department may promulgate such additional rules as are

1 necessary to permit verification of the ownership of the tax
2 credits but shall not promulgate any rules which unduly
3 restrict or hinder the transfer of the tax credits.

4 "§40-9F-5.

5 "(a) Recapture of any of the credit, and any
6 required adjustments to basis due to recapture, shall be
7 governed by Section 50 of the Internal Revenue Code; provided,
8 however, that only the owner initially awarded the tax credit
9 certificate, and not any subsequent transferee of the tax
10 credit certificate or person to whom tax credits have been
11 passed through pursuant to Section 40-9F-4(d), shall be liable
12 for any amount of the credit recaptured.

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

24 Section 2. The provisions of this act are severable.
25 If any part of this act is declared invalid or
26 unconstitutional, that declaration shall not affect the part
27 which remains.

1 Section 3. Except for the amendments made by this
2 act to Section 40-9F-4(e), Code of Alabama 1975, that shall
3 only apply to tax periods beginning on or after January 1,
4 2014, this act is only a clarification of existing law and
5 shall therefore be effective retroactively to May 15, 2013,
6 the effective date of Act 2013-241, 2013 Regular Session,
7 subject to its passage and approval by the Governor, or its
8 otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
Education..... 18-FEB-14

Read for the second time and placed
on the calendar..... 13-MAR-14

Read for the third time and passed
as amended..... 19-MAR-14

Yeas 100, Nays 0, Abstains 0

Jeff Woodard
Clerk