

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

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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-9F-3.

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

"(b) Prior to beginning any substantial rehabilitation work on a qualified structure, the owner shall submit an application and rehabilitation plan to the commission and an estimate of the qualified rehabilitation

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

18 "(c) The commission shall review the application and
19 rehabilitation plan to determine that the information
20 contained therein is complete. If the commission determines
21 that the application and rehabilitation plan are complete, the
22 commission shall reserve for the benefit of the owner an
23 allocation for a tax credit as provided in Section 40-9F-4 and
24 the commission shall notify the owner in writing of the amount
25 of the reservation. The reservation of tax credits does not

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

1 in this section in the event that additional credits become
2 available due to the rescission of approvals or when a new
3 ~~fiscal~~ tax year's allocation of tax credits becomes available.

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

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

1 expenditures for certified historic structures and 10 percent
2 of the actual qualified rehabilitation expenditures for
3 qualified pre-1936 non-historic structures. In the event the
4 amount of qualified rehabilitation expenditures incurred by
5 the owner would result in the issuance of an amount of tax
6 credits in excess of the amount of tax credits reserved for
7 the owner under subsection (c), the owner may apply to the
8 commission for issuance of tax credits in an amount equal to
9 the excess. Applications for issuance of tax credits in excess
10 of the amount of tax credits reserved for the owner shall be
11 made on a form prescribed by the commission and shall
12 represent a separate certificate that shall be issued, subject
13 to all provisions regarding priority provided in this section.

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

18 "(f) The department shall grant a tax credit against
19 any state tax due that is specified in this chapter to a
20 taxpayer holding the tax credit certificate issued under
21 subsection (d) or, in the case of a transferee, issued by the
22 department pursuant to Section 40-9F-4(e) against any tax due
23 under Chapters 16 and 18 in the amount stated on the tax
24 credit certificate. The department shall have the right to
25 audit and to reassess any credit improperly obtained by the

1 owner, in accordance with the Taxpayers' Bill of Rights and
2 the Uniform Revenue Procedures contained in Chapter 2A;
3 provided, however that only the owner initially awarded the
4 tax credit certificate, and not any subsequent transferee of
5 the tax credit certificate or person to whom tax credits have
6 been passed through pursuant to Section 40-9F-4(d), shall be
7 liable for any credit improperly obtained by the owner.

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

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

18 "§40-9F-4.

19 "(a) The state portion of any ~~taxes~~ tax credit
20 against the tax imposed by Chapters 16 and 18, for the taxable
21 year in which the certified rehabilitation is placed in
22 service, shall be equal to 25 percent of the qualified
23 rehabilitation expenditures for certified historic structures,
24 and shall be 10 percent of the qualified rehabilitation
25 expenditures for qualified pre-1936 non-historic structures.

1 No tax credit claimed for any certified rehabilitation may
2 exceed five million dollars (\$5,000,000) for all allowable
3 property types except a certified historic residential
4 structure, and fifty thousand dollars (\$50,000) for a
5 certified historic residential structure.

6 "(b) The entire tax credit may be claimed by the
7 taxpayer in the taxable year in which the certified
8 rehabilitation is placed in service. Where the taxes owed by
9 the taxpayer are less than the tax credit, the taxpayer shall
10 not be entitled to claim a refund for the difference, but any
11 unused portion of the credit may be carried forward for up to
12 10 additional tax years.

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

1 reserved by the commission during the period of May 15, 2013,
2 through May 16, 2016. For purposes of this chapter, "tax year"
3 shall mean the calendar year.

4 "(d) Tax credits granted to a partnership, a limited
5 liability company ~~taxed as a partnership~~ or multiple owners of
6 a property shall be passed through to the partners, members,
7 or owners (including any not-for-profit entity that is a
8 partner, member, or owner) respectively pro rata or pursuant
9 to an executed agreement among the partners, members, or
10 owners documenting an alternate distribution method without
11 regard to their sharing of other tax or economic attributes of
12 the entity. The tax credit certificate shall contain a section
13 to be completed by the owner that provides the percentage or
14 amount of credit that will be allocated to each partner,
15 member, or owner, and such completed certificate may be
16 provided to the department to transfer all or any portion of
17 the tax credits passed through to the partner, member, or
18 owner in accordance with subsection (e).

19 "(e) All or any portion of the tax credits under
20 this act shall be freely transferable and assignable, subject
21 to any notice and verification requirements to be determined
22 by the department, without the requirement of transferring any
23 ownership interest in the qualified structure or any interest
24 in the entity which owns the qualified structure. However,
25 once a credit is transferred, only the transferee may utilize

1 such credit and the credit cannot be transferred again. Any A
2 transferee of the tax credits may use the amount of tax
3 credits transferred to offset any state tax due under Chapters
4 16 and 18 of Title 40 or the transferee may freely transfer
5 and assign all or any portion of the tax credits to any other
6 person or entity, including an entity that is exempt from
7 federal income taxation pursuant to Section 501(c) of the
8 Internal Revenue Code, as amended, and the other person or
9 entity may freely transfer and assign all or any portion of
10 the tax credits to any other person or entity. The tax credits
11 may be transferred, passed through, or assigned until the time
12 that the credit is claimed on a State of Alabama tax return by
13 any taxpayer. The department shall promulgate a form transfer
14 statement to be filed by the transferor with the department
15 prior to the purported transfer of any credit issued under
16 this chapter. The transfer statement form shall include the
17 name and federal taxpayer identification number of the
18 transferor and each transferee listed therein along with the
19 amount of the tax credit to be transferred to each transferee
20 listed on the form. The transfer statement form shall also
21 contain such other information as the department may from time
22 to time reasonably require. For each transfer, the transferor
23 shall file (1) a completed transfer statement form; (2) a copy
24 of the tax credit certificate issued by the commission or the
25 department, as applicable, documenting the amount of tax

1 credits which the transferor intends to transfer; (3) a copy
2 of the proposed written transfer agreement; and (4) a transfer
3 fee payable to the department in the amount of one thousand
4 dollars (\$1,000) per transferee listed on the transfer
5 statement form, not to exceed the sum of ten thousand dollars
6 (\$10,000). The transferor shall file with the department a
7 fully executed copy of the written transfer agreement with
8 each transferee within 30 days after the completed transfer.
9 Filing of the written transfer agreement with the department
10 shall perfect such transfer with respect to such transferee.
11 Within 30 days after the department's receipt of the fully
12 executed written transfer agreement, the department shall
13 issue a tax credit certificate to each transferee listed in
14 such agreement in the amount of the tax credit so transferred.
15 Such certificate shall be used by the transferee in claiming
16 the tax credit pursuant to Section 40-9F-3(e) and (f). The
17 department may promulgate such additional rules as are
18 necessary to permit verification of the ownership of the tax
19 credits but shall not promulgate any rules which unduly
20 restrict or hinder the transfer of the tax credits.

21 "§40-9F-5.

22 "(a) Recapture of any of the credit shall apply
23 against the taxpayer who utilizes the credit, and any required
24 adjustments to basis due to recapture, shall be governed by
25 Section 50 of the Internal Revenue Code; provided, however,

1 ~~that only the owner initially awarded the tax credit~~
2 ~~certificate, and not any subsequent transferee of the tax~~
3 ~~credit certificate or person to whom tax credits have been~~
4 ~~passed through pursuant to Section 40-9F-4(d), shall be liable~~
5 ~~for any amount of the credit recaptured.~~

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

17 Section 2. The provisions of this act are severable.
18 If any part of this act is declared invalid or
19 unconstitutional, that declaration shall not affect the part
20 which remains.

21 Section 3. Except for the amendments made by this
22 act to Section 40-9F-4(e), Code of Alabama 1975, that shall
23 only apply to tax periods beginning on or after January 1,
24 2014, this act is only a clarification of existing law and
25 shall therefore be effective retroactively to May 15, 2013,

1 the effective date of Act 2013-241, 2013 Regular Session,
2 subject to its passage and approval by the Governor, or its
3 otherwise becoming law.

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Speaker of the House of Representatives

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 19-MAR-14, as amended.

Jeff Woodard
Clerk

Senate	<hr/>	03-APR-14	Amended and Passed
House	<hr/>	03-APR-14	Concurred in Sen- ate Amendment