

1 SB257
2 156389-2
3 By Senator Irons
4 RFD: Finance and Taxation Education
5 First Read: 21-JAN-14

2
3
4
5
6
7
8 SYNOPSIS: Existing law provides a tax credit against
9 the tax liability of the taxpayer for the
10 rehabilitation, preservation, and development of
11 historic structures.

12 This bill would provide for the transfer of
13 the tax credit against the tax liability of the
14 taxpayer for the rehabilitation, preservation, and
15 development of historic structures and would delete
16 the expiration date.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 To amend Sections 2, 3, 4, and 5 of Act 2013-241,
23 2013 Regular Session, now appearing as Sections 40-9F-2,
24 40-9F-3, and 40-9F-5, Code of Alabama 1975, to provide for the
25 transfer of tax credit against the tax liability of the
26 taxpayer for the rehabilitation, preservation, and development
27 of historic structures; and to repeal Section 7 of Act

1 2013-241, 2013 Regular Session, now appearing as Section
2 40-9F-7, Code of Alabama 1975, to delete the expiration date.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 2, 3, 4, 5, and 7 of Act
5 2013-241, 2013 Regular Session, now appearing as Sections
6 40-9F-2, 40-9F-3, and 40-9F-5, Code of Alabama 1975, are
7 amended to read as follows:

8 "§40-9F-2.

9 "As used in this chapter, the following terms shall
10 have the following meanings:

11 "(1) CERTIFIED HISTORIC STRUCTURE. A property
12 located in Alabama which is certified by the Alabama
13 Historical Commission as being individually listed in the
14 National Register of Historic Places, eligible for listing in
15 the 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
19 alterations to a certified historic structure that is
20 certified by the commission as meeting the U.S. Secretary of
21 the Interior's Standards for Rehabilitation, or to
22 non-historic structures built before 1936 which are certified
23 by the commission as meeting the requirements contained in
24 Section 47(c)(1)(a) and (b) of the Internal Revenue Code, as
25 amended, or to a certified historic residential structure as
26 defined in subdivision (4).

1 "(3) CERTIFIED HISTORIC RESIDENTIAL STRUCTURE. A
2 certified historic structure as defined in subdivision (1).

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

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

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

15 "(7) QUALIFIED REHABILITATION EXPENDITURES. Any
16 expenditure as defined under Section 47(c)(2)(A) of the
17 Internal Revenue Code, as amended, and the related regulations
18 thereunder, and other reasonable expenses and costs expended
19 in the rehabilitation of a qualified structure. For certified
20 historic residential structures, this term shall mean expenses
21 incurred by the taxpayer in the certified rehabilitation of a
22 certified historic residential structure, including
23 preservation and rehabilitation work done to the exterior of a
24 certified historic residential structure, repair and
25 stabilization of historic structural systems, restoration of
26 historic plaster, energy efficiency measures except insulation
27 in frame walls, repairs or rehabilitation of heating, air

1 conditioning, or ventilation systems, repairs or
2 rehabilitation of electrical or plumbing systems exclusive of
3 new electrical appliances and electrical or plumbing fixtures,
4 and architectural, engineering, and land surveying fees.
5 Qualified rehabilitation expenditures do not include the cost
6 of acquisition of the qualified structure, the personal labor
7 by the owner, or any cost associated with the rehabilitation
8 of an outbuilding of the qualified structure, unless the
9 outbuilding is certified by the commission to contribute to
10 the historical significance of the qualified structure.

11 "(8) QUALIFIED STRUCTURE. Certified historic
12 structures and non-historic structures built before 1936 which
13 are certified by the commission as meeting the requirements
14 contained in Section 47(c)(1)(a) and (b) of the Internal
15 Revenue Code, as amended, and to certified historic
16 residential structures as defined herein.

17 "(9) REGISTERED HISTORIC DISTRICT. Any district
18 listed in the National Register of Historic Places and any
19 district which is either of the following:

20 "a. Designated under Alabama or local law certified
21 by the U.S. Secretary of the Interior as containing criteria
22 which substantially achieves the purpose of preserving and
23 rehabilitating buildings of historic significance to the
24 district.

25 "b. Certified by the U.S. Secretary of the Interior
26 as meeting substantially all of the requirements for the

1 listing of districts in the National Register of Historic
2 Places.

3 "(10) REHABILITATION PLAN. Construction plans and
4 specifications for the proposed rehabilitation of a qualified
5 structure in sufficient detail to enable the commission to
6 evaluate compliance with the standards developed under this
7 chapter.

8 "(11) SUBSTANTIAL REHABILITATION. Rehabilitation of
9 a qualified structure for which the qualified rehabilitation
10 expenditures exceed 50 percent of the owner's original
11 purchase price of the qualified structure or twenty-five
12 thousand dollars (\$25,000), whichever is greater.

13 "§40-9F-3.

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

21 "(b) Prior to beginning any substantial
22 rehabilitation work on a qualified structure, the owner shall
23 submit an application and rehabilitation plan to the
24 commission and an estimate of the qualified rehabilitation
25 expenditures under the rehabilitation plan; provided, however,
26 that the owner, at its own risk, may incur qualified
27 rehabilitation expenditures no earlier than six months prior

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

15 "(c) The commission shall review the application and
16 rehabilitation plan to determine that the information
17 contained therein is complete. If the commission determines
18 that the application and rehabilitation plan are complete, the
19 commission shall reserve for the benefit of the owner an
20 allocation for a tax credit as provided in Section 40-9F-4 and
21 the commission shall notify the owner in writing of the amount
22 of the reservation. The reservation of tax credits does not
23 entitle the owner to an issuance of tax credits until the
24 owner complies with all other requirements of this chapter for
25 the issuance of the tax credits. The reservation of tax
26 credits shall be made by the commission in the order in which
27 completed applications and rehabilitation plans are received

1 by the commission, and the reservation of tax credits shall be
2 issued by the commission within a reasonable time, not to
3 exceed 90 days from the filing of a completed application and
4 rehabilitation plan. Applications received by the commission
5 on the same day shall go through a lottery process to
6 determine the order in which the applications will be reviewed
7 by the commission. Only the property for which a property
8 address, legal description or other specific location is
9 provided in the application shall be reviewed. The owner shall
10 not be permitted to request the review of another property for
11 approval in the place of the property contained in the
12 application. The owner may add or remove partners, members, or
13 shareholders as part of its ownership structure, so long as at
14 least 50 percent of the ownership remains the same; provided,
15 however, that changes in excess of 50 percent of the ownership
16 may be allowed when the managing partner, member, or
17 shareholder remains an owner and the ownership change is for
18 the purpose of admitting another partner, member, or
19 shareholder as a tax credit equity owner. If the ownership of
20 the qualified structure is changed due to a foreclosure, deed
21 in lieu of a foreclosure, or a transfer in bankruptcy or
22 receivership, the foregoing provisions restricting a change in
23 ownership structure are not applicable, provided that the
24 successor owner of the qualified structure furnishes
25 sufficient documentation to the commission as evidence of the
26 foreclosure, deed in lieu of foreclosure or bankruptcy or
27 receivership. Any application disapproved by the commission

1 shall be removed from the review process, and the commission
2 shall notify the owner in writing of the decision to remove
3 the application. Disapproved applications shall lose their
4 priority in the review process. A disapproved application may
5 be resubmitted, but shall be deemed to be a new submission for
6 purposes of the priority procedures described in this section
7 and may be charged a new application fee. In the event that
8 the commission grants reservations for tax credits equal to
9 the total amount available for reservations during the fiscal
10 year, all owners with applications then awaiting approval or
11 thereafter submitted for approval shall be notified by the
12 commission that no additional approvals shall be granted
13 during that fiscal year and shall be notified of the priority
14 number given to the owner's application then awaiting
15 approval. The applications shall remain in priority status for
16 two years from the date of the original application and shall
17 be considered for reservations of tax credits in the priority
18 order established in this section in the event that additional
19 credits become available due to the rescission of approvals or
20 when a new fiscal year's allocation of tax credits becomes
21 available.

22 "Owners receiving a reservation of tax credits shall
23 commence rehabilitation, if rehabilitation has not previously
24 begun, within 18 months of the date of issuance of the written
25 notice from the commission to the owner granting the
26 reservation of tax credits. "Commencement of rehabilitation"
27 shall mean that, ~~as of the date in which actual physical work~~

1 ~~contemplated by the rehabilitation plan submitted with the~~
2 ~~application has begun,~~ the owner has incurred no less than 20
3 percent of the estimated costs of rehabilitation provided in
4 the application. Owners receiving a reservation of tax credits
5 shall submit evidence of compliance with the provisions of
6 this subsection. If the commission determines that an owner
7 has failed to comply with the requirements provided under this
8 section, the reservation of tax credits for the owner may be
9 rescinded and, if so, the amount of tax credits shall then be
10 included in the total amount of available tax credits provided
11 for in subsection (c) of Section 40-9F-4, from which
12 reservations may be granted. Any owner whose reservation of
13 tax credits shall be rescinded shall be notified of the
14 rescission from the commission and, upon receipt of the
15 notice, may submit a new application but may be charged a new
16 application fee.

17 "(d) Following the completion of a substantial
18 rehabilitation of a qualified structure, the owner shall
19 notify the commission that the substantial rehabilitation has
20 been completed and shall certify the qualified rehabilitation
21 expenditures incurred with respect to the rehabilitation plan.
22 In addition, the owner shall provide the commission with: (i)
23 a cost and expense certification, prepared by a licensed
24 certified public accountant that is not an affiliate of the
25 owner, certifying the total qualified rehabilitation
26 expenditures and the total amount of tax credits against any
27 state tax due that is specified in this chapter for which the

1 owner is eligible under Section 40-9F-4 and, if the qualified
2 rehabilitation expenditures exceed two hundred thousand
3 dollars (\$200,000), the cost and expense certification must be
4 audited by the licensed certified public accountant; and (ii)
5 an appraisal of the qualified structure prepared by an
6 independent MAI designated and licensed real estate appraiser.
7 The commission shall review the documentation of the
8 rehabilitation and verify its compliance with the
9 rehabilitation plan. Within 90 days after receipt of the
10 foregoing documentation from the owner, the commission shall
11 issue a tax credit certificate in an amount equivalent to the
12 lesser of: (i) the amount of the tax credit reservation issued
13 for the project under the provisions of subsection (c), or
14 (ii) 25 percent of the actual qualified rehabilitation
15 expenditures for certified historic structures and 10 percent
16 of the actual qualified rehabilitation expenditures for
17 qualified pre-1936 non-historic structures. In the event the
18 amount of qualified rehabilitation expenditures incurred by
19 the owner would result in the issuance of an amount of tax
20 credits in excess of the amount of tax credits reserved for
21 the owner under subsection (c), the owner may apply to the
22 commission for issuance of tax credits in an amount equal to
23 the excess. Applications for issuance of tax credits in excess
24 of the amount of tax credits reserved for the owner shall be
25 made on a form prescribed by the commission, ~~and shall~~
26 ~~represent~~ such applications shall be automatically approved
27 and issued via a separate certificate ~~that shall be issued,~~

1 subject ~~to all~~ only to the availability of tax credits and the
2 provisions regarding priority provided in this section.

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

7 "(f) The department shall grant a tax credit against
8 any state tax due that is specified in this chapter to a
9 taxpayer holding the tax credit certificate issued under
10 subsection (d) against any tax due under Chapters ~~16 and 18~~
11 14A, 14B, 16, 18, and 21 of Title 40 and Chapters 3, 4, and 4A
12 of Title 27 in the amount stated on the tax credit
13 certificate. The department shall have the right to audit and
14 to reassess any credit improperly obtained by the owner, in
15 accordance with the Taxpayers' Bill of Rights and the Uniform
16 Revenue Procedures contained in Chapter 2A; provided, however
17 that only the owner initially awarded the tax credit
18 certificate, and not any subsequent transferee of the tax
19 credit certificate, shall be liable for any credit improperly
20 obtained by the owner.

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

25 "(h) The commission shall, in consultation with the
26 department, report to the Legislature in the third year
27 following passage of this chapter, and annually thereafter, on

1 the overall economic activity, usage, and impact to the state
2 from the substantial rehabilitation of qualified structures
3 for which tax credits have been allowed.

4 "§40-9F-4.

5 "(a) The state portion of any ~~taxes~~ tax credit
6 against the tax imposed by Chapters ~~16 and 18~~, 14A, 14B, 16,
7 18, and 21 of Title 40 and Chapters 3, 4, and 4A of Title 27
8 for the taxable year in which the certified rehabilitation is
9 placed in service, shall be equal to 25 percent of the
10 qualified rehabilitation expenditures for certified historic
11 structures, and shall be 10 percent of the qualified
12 rehabilitation expenditures for qualified pre-1936
13 non-historic structures. No tax credit claimed for any
14 certified rehabilitation may exceed five million dollars
15 (\$5,000,000) for all allowable property types except a
16 certified historic residential structure, and fifty thousand
17 dollars (\$50,000) for a certified historic residential
18 structure.

19 "(b) The entire tax credit may be claimed by the
20 taxpayer in the taxable year in which the certified
21 rehabilitation is placed in service. Where the taxes owed by
22 the taxpayer are less than the tax credit, the taxpayer shall
23 not be entitled to claim a refund for the difference, but any
24 unused portion of the credit may be carried forward for up to
25 10 additional tax years.

26 "(c) The aggregate amount of all tax credits in any
27 tax year that may be reserved by the commission upon

1 certification of rehabilitation plans under subsection (c) of
2 Section 40-9F-3 shall not exceed twenty million dollars
3 (\$20,000,000) plus any amount of previous reservations of tax
4 credits that were rescinded under subsection (c) of Section
5 40-9F-3 during the tax year. However, if all of the allowable
6 tax credit amount for any tax year is not requested and
7 reserved, any unreserved tax credits may be utilized by the
8 commission in awarding tax credits in subsequent years.

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

16 "(e) All or any portion of the tax credits under
17 this act shall be freely transferable and assignable, subject
18 to any notice and verification requirements to be determined
19 by the commission or the department, or both. Any transferee
20 of the tax credits may use the amount of tax credits
21 transferred to offset any tax due under Chapters 14A, 14B, 16,
22 18, and 21 of Title 40 and Chapters 3, 4, and 4A of Title 27
23 or the transferee may freely transfer and assign all or any
24 portion of the tax credits to any other person or entity,
25 including an entity that is exempt from federal income
26 taxation pursuant to Section 501(c) of the Internal Revenue
27 Code, as amended, and the other person or entity may freely

1 transfer and assign all or any portion of the tax credits to
2 any other person or entity. The tax credits may be transferred
3 or assigned until the time that the credit is claimed on a
4 State of Alabama tax return by any taxpayer. The transferor
5 and the transferee of the tax credits shall jointly file a
6 copy of the written transfer agreement with the commission
7 within 30 days after the transfer. Such filing of the written
8 transfer agreement with the commission shall perfect such
9 transfer. The commission shall develop a system to track the
10 transfers of tax credits and to certify the ownership of tax
11 credits, and the commission may promulgate rules to permit
12 verification of the ownership of the tax credits but shall not
13 promulgate any rules which unduly restrict or hinder the
14 transfer of the tax credits.

15 "§40-9F-5.

16 "(a) ~~Recapture~~ For projects that are subject to
17 Section 50 of the Internal Revenue Code, recapture of any of
18 the credit, and any required adjustments to basis due to
19 recapture, shall be governed by Section 50 of the Internal
20 Revenue Code; provided, however, that only the owner initially
21 awarded the tax credit certificate, and not any subsequent
22 transferee of the tax credit certificate, shall be liable for
23 any amount of the credit recaptured.

24 "(b) In the taxable year the certified
25 rehabilitation is placed in service for any structure for
26 which a tax credit has been issued, the commission shall
27 provide notice of the certified rehabilitation and a copy of

1 the appraisal provided by the owner to the taxing authority
2 responsible for the assessment of ad valorem taxes. Upon
3 notification, the taxing authority responsible for the
4 assessment of ad valorem taxes shall complete a new assessment
5 for the structure to be used in the assessment of ad valorem
6 taxes for the tax year in which the certified rehabilitation
7 was placed in service."

8 Section 2. Section 7 of Act 2013-241, 2013 Regular
9 Session, now appearing as Section 40-9F-7 of the Code of
10 Alabama 1975, is repealed.

11 Section 3. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.