

Legislative Analysis



HISTORIC REHABILITATION TAX CREDITS; HIGH COMMUNITY IMPACT CREDITS

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House Bill 6495

Sponsor: Rep. Richard Hammel

House Bill 6496

Sponsor: Rep. Steve Tobocman

Committee: New Economy and Quality of Life

Complete to 11-11-08

A SUMMARY OF HOUSE BILLS 6495 AND 6496 AS INTRODUCED 9-24-08

The bills would revise the tax credits for historic rehabilitation that may currently be applied against the Michigan Business Tax and the State Income Tax. They would go into effect January 1, 2009. A more detailed description of each bill follows.

House Bill 6495

House Bill 6495 would amend the Michigan Business Tax Act (MCL 208.1435) to revise the historic rehabilitation tax credit in the following ways.

Qualified Expenditures/IRS Regulations. Currently under the law, a qualified taxpayer with a rehabilitation plan can credit against the Michigan Business Tax the amount of qualified expenditures for the rehabilitation of an historic resource, provided that the certification of completion is issued not more than five years after the rehab plan is certified by the Michigan Historical Center. The bill would eliminate this provision, and specify instead that the only qualified expenditures would be those that are paid or incurred during the time period prescribed for the credit under Section 47(a)(2) of the federal Internal Revenue Code, and any related Treasury regulations.

Eligibility Criteria. The current law specifies the location criteria under which an historic resource can be claimed as a qualified expenditure, including among other things its location in a designated historic district. House Bill 6495 would retain these provisions, and add *the historic resource is subject to a historic preservation easement.*

Reassignment of Credit. The bill specifies that for projects for which a certificate of completed rehabilitation is issued after December 31, 2008, a taxpayer may assign all or any portion of the credit allowed. The credit assignment would be irrevocable, and be made in the tax year in which the certificate was issued. The taxpayer could claim a portion of a credit and assign the remaining amount. If the qualified taxpayer both claimed and assigned portions of the credit, the taxpayer would claim the portion it claimed in the tax year in which the certificate was issued. Further, the credit could also be assigned, *or reassigned* (as long as it was done on an approved form), and claimed

against the assignees' Michigan Business Tax, or the State Income Tax (by attaching a copy of the assignment certificate to the annual tax return). Currently the credit cannot be reassigned.

Refunds Instead of Carryovers. The bill also specifies that after December 31, 2008, for projects less than \$250,000, a taxpayer may elect to forgo the carryover period, and receive a refund of the amount of the credit that exceeded the qualified taxpayer's tax liability. The amount of the refund would be equal to 90 percent of the amount of the credit that exceeded the liability. This could only be done in the year that a certificate of completion was issued, and it would be irrevocable. Currently under the law, a refund is not allowed.

Revocation/Tax Liability Add-Backs. The bill revises the revocation provisions of the law, for tax years beginning after January 1, 2009. Currently, if a certificate is revoked, the remaining portion of the credit is added back to the tax liability of the taxpayer. For example if the revocation was less than one year after the year in which the credit was claimed, then 100 percent; if between one and two years, then 80 percent; if between two and three years, then 60 percent; if between three and four years, then 40 percent; if between four and five years, then 20 percent; and if the revocation occurred five or more years after the credit was claimed, then no liability is added back. House Bill 6495 would retain this schedule of added tax liability in the event of revocation, but do so subject to Section 47(b)(1) of the Internal Revenue Code and related Treasury regulations. The bill also specifies that this schedule of added tax liability would not apply if the qualified taxpayer entered into a written agreement with the State Historic Preservation Office that would allow for the transfer or sale of the historic resource, and if the taxpayer provided the following:

- reasonable assurance that after the transfer the property would remain an historic resource;
- a method that the department could recover an amount from the taxpayer equal to the appropriate percentage of credit added back (as described above);
- an encumbrance on the title to the historic resource being sold or transferred, stating that the property must remain an historic resource throughout the five-year period after being placed in service; and
- a provision for the payment by the taxpayer of all legal and professional fees associated with the drafting, review, and recording of the written agreement.

Additional Credits. House Bill 6494 creates a new section of the law to allow additional tax credits, after January 1, 2009, for taxpayers who have a "pre-approval letter." [The bill defines the term "pre-approval letter" to mean a letter issued by the director of the Department of History, Arts, and Libraries or a designee that indicates the date that the completed Part 2 application was received and the amount of the credit allocated to the project based on the estimated rehabilitation cost included in the application.] Under this section, a taxpayer can claim an additional credit equal to a percentage established in the pre-approval letter, for the rehabilitation of an historic resource, or the actual amount of the taxpayer's (qualified) expenditures incurred during the rehabilitation of the resource,

whichever was less. However, the bill specifies that the total amount of all additional credits under this program cannot exceed \$8 million in the tax year ending on December 31, 2009; \$9 million in 2010; \$10 million in 2011; \$11 million in 2012; and \$12 million in 2013.

The bill also specifies that at least 25 percent of the allotted amount for additional credits must be allocated to rehabilitation plans that have \$1 million or less in qualified expenditures.

On October 1 of each calendar year, if the total of all credits approved is less than the minimum allotted amount, then the Department of History, Arts, and Libraries may use the remainder to approve applications for additional credits already submitted in that calendar year. To be eligible for the additional credits, the taxpayer would have to apply to and receive a pre-approval letter and comply with the following:

- for rehabilitation plans that have \$1 million or less in qualified expenditures, upon application, the department director is authorized to determine between 10-15 percent of expenditures for which a credit may be claimed;
- for rehabilitation plans that have more than \$1 million in qualified expenditures, upon application, the department director, subject to the approval of the president of the Michigan Strategic Fund (or his or her designee) is authorized to approve up to 15 percent of expenditures for which a credit may be claimed.

The bill requires that an application be approved or denied within 15 business days after the director of the department has determined the percentage amount of the credit, and submitted it to the Strategic Fund.

High Community Impact Historic Rehabilitation. House Bill 6495 would allow the director of HAL, subject to the approval of the president of the Strategic Fund and the state treasurer, to approve one additional credit during 2009, of up to 15 percent, and two additional credits of up to 15 percent during 2010, 2011, 2012, and 2013. These rehabilitation plans would have to be "high community impact" plans having a significantly greater historic, social, and economic impact than others. To be eligible for these credits, a taxpayer would have to apply and receive a pre-approval letter from the director of HAL. The bill requires that an application be approved or denied within 15 business days after the director of the department has determined the percentage amount of the credit, and submitted it to the Strategic Fund and the state treasurer. The bill also requires the director to consider all of the following criteria:

- the importance of the historic resource to the community;
- if the rehabilitation for the historic resource will act as a catalyst for additional rehabilitation or revitalization of the community;
- the potential that the rehabilitation of the historic resource will have for creating or preserving jobs and employment;
- other social benefits the rehabilitation will bring;
- the amount of local community and financial support for the rehabilitation;

- the taxpayer's financial need for the additional credit;
- whether the taxpayer is eligible for the credit allowed under Section 47(a)(2) of the federal Internal Revenue Code; and
- any other criteria that the department director, and Strategic Fund president, and the state treasurer consider appropriate.

The maximum amount of credit that a taxpayer could claim under the High Community Impact Historic Rehabilitation program during a tax year would be \$3 million. If the amount approved was greater, then that portion that exceeded the cap would be carried forward to offset tax liability in subsequent tax years.

Under the bill, the department director could (a) make amendments to the pre-approval letter, which could include revising the amount of qualified expenditures for which the taxpayer could claim additional credit; and (b) with 45-days written notice, revoke the pre-approval letter if not enough progress were made toward completion of the rehabilitation plan. If any credits were revoked, they would be added to the annual cap. Likewise, any difference in the credits awarded and the credits claimed would be added to the annual cap.

House Bill 6496

House Bill 6496 would amend the Income Tax Act of 1967 (MCL 206.266) to make similar revisions as in the MBT Act to the historic rehabilitation tax credit, allowing them to be issued in compliance with Section 47(a)(2) of the Internal Revenue Act and related Treasury regulations.

Eligibility Criteria. The current law specifies the location criteria under which an historic resource can be claimed as a qualified expenditure, including among other things its location in a designated historic district. House Bill 6496 would retain these provisions, and add *the historic resource is subject to a historic preservation easement.*

Refunds Instead of Carryovers. The bill also specifies that after December 31, 2008, for projects less than \$250,000, a taxpayer may elect to forgo the carryover period, and receive a refund of the amount of the credit that exceeded the qualified taxpayer's tax liability. The amount of the refund would be equal to 90 percent of the amount of the credit that exceeded the liability. This could only be done in the year that a certificate of completion was issued, and it would be irrevocable. Currently under the law, a refund is not allowed.

Revocation/Tax Liability Add-Backs. The bill revises the revocation provisions of the law, for tax years beginning after January 1, 2009. Currently, if a certificate is revoked, the remaining portion of the credit is added back to the tax liability of the taxpayer. For example if the revocation was less than one year after the year in which the credit was claimed, then 100 percent; if between one and two years, then 80 percent; if between two and three years, then 60 percent; if between three and four years, then 40 percent; if between four and five years, then 20 percent; and if the revocation occurred five or more

years after the credit was claimed, then no liability is added back. House Bill 6496 would retain this schedule of added tax liability in the event of revocation, but do so subject to Section 47(b)(1) of the Internal Revenue Code and related Treasury regulations. The bill also specifies that this schedule of added tax liability would not apply, if the qualified taxpayer entered into a written agreement with the State Historic Preservation Office that would allow for the transfer or sale of the historic resource, and if the taxpayer provided the following:

- reasonable assurance that after the transfer the property would remain an historic resource;
- a method that the department could recover an amount from the taxpayer equal to the appropriate percentage of credit added back (as described above);
- an encumbrance on the title to the historic resource being sold or transferred, stating that the property must remain an historic resource throughout the five-year period after being placed in service; and
- a provision for the payment by the taxpayer of all legal and professional fees associated with the drafting, review, and recording of the written agreement.

House Bill 6496 further specifies that if, after December 31, 2008, a taxpayer who received a certificate of completed rehabilitation sold the historic resource for which the credit was claimed in less than five years, and that certificate was then revoked less than five years after the historic resource was placed in service (as defined in Section 47(b)(1) of the Internal Revenue Code and related Treasury regulations) because of unapproved alterations made by the purchaser, then the appropriate percentage of the credit previously claimed would be added to the tax liability of the purchaser in the year of the revocation.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.