

HOUSE BILL No. 6496

September 24, 2008, Introduced by Reps. Tobocman, Hammel, Alma Smith, Gonzales, Byrnes, Brown, Johnson, Palsrok, Huizenga and Dean and referred to the Committee on New Economy and Quality of Life.

A bill to amend 1967 PA 281, entitled "Income tax act of 1967," by amending section 266 (MCL 206.266), as amended by 2007 PA 94.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 266. (1) A qualified taxpayer with a rehabilitation plan
2 certified after December 31, 1998 may credit against the tax
3 imposed by this act the amount determined pursuant to subsection
4 (2) for the qualified expenditures for the rehabilitation of a
5 historic resource pursuant to the rehabilitation plan in the year
6 in which the certification of completed rehabilitation of the
7 historic resource is issued. ~~provided that the certification of~~
8 ~~completed rehabilitation was issued not more than 5 years after the~~
9 ~~rehabilitation plan was certified by the Michigan historical~~
10 ~~center.~~ **ONLY THOSE EXPENDITURES THAT ARE PAID TO INCURRED DURING**

1 THE TIME PERIODS PRESCRIBED FOR THE CREDIT UNDER SECTION 47(A)(2)
2 OF THE INTERNAL REVENUE CODE AND ANY RELATED TREASURY REGULATIONS
3 SHALL BE CONSIDERED QUALIFIED EXPENDITURES.

4 (2) The credit allowed under this section shall be 25% of the
5 qualified expenditures that are eligible, **OR WOULD HAVE BEEN**
6 **ELIGIBLE EXCEPT THAT THE TAXPAYER ENTERED INTO AN AGREEMENT UNDER**
7 **SUBSECTION (12)**, for the credit under section 47(a)(2) of the
8 internal revenue code if the taxpayer is eligible for the credit
9 under section 47(a)(2) of the internal revenue code or, if the
10 taxpayer is not eligible for the credit under section 47(a)(2) of
11 the internal revenue code, 25% of the qualified expenditures that
12 would qualify under section 47(a)(2) of the internal revenue code
13 except that the expenditures are made to a historic resource that
14 is not eligible for the credit under section 47(a)(2) of the
15 internal revenue code, subject to both of the following:

16 (a) A taxpayer with qualified expenditures that are eligible
17 for the credit under section 47(a)(2) of the internal revenue code
18 may not claim a credit under this section for those qualified
19 expenditures unless the taxpayer has claimed and received a credit
20 for those qualified expenditures under section 47(a)(2) of the
21 internal revenue code **OR THE TAXPAYER HAS ENTERED INTO AN AGREEMENT**
22 **UNDER SUBSECTION (12)**.

23 (b) A credit under this section shall be reduced by the amount
24 of a credit received by the taxpayer for the same qualified
25 expenditures under section 47(a)(2) of the internal revenue code.

26 (3) To be eligible for the credit under this section, the
27 taxpayer shall apply to and receive from the Michigan historical

1 center certification that the historic significance, the
2 rehabilitation plan, and the completed rehabilitation of the
3 historic resource meet the criteria under subsection (6) and either
4 of the following:

5 (a) All of the following criteria:

6 (i) The historic resource contributes to the significance of
7 the historic district in which it is located.

8 (ii) Both the rehabilitation plan and completed rehabilitation
9 of the historic resource meet the federal secretary of the
10 interior's standards for rehabilitation and guidelines for
11 rehabilitating historic buildings, 36 CFR part 67.

12 (iii) All rehabilitation work has been done to or within the
13 walls, boundaries, or structures of the historic resource or to
14 historic resources located within the property boundaries of the
15 resource.

16 (b) The taxpayer has received certification from the national
17 park service that the historic resource's significance, the
18 rehabilitation plan, and the completed rehabilitation qualify for
19 the credit allowed under section 47(a)(2) of the internal revenue
20 code.

21 (4) If a qualified taxpayer is eligible for the credit allowed
22 under section 47(a)(2) of the internal revenue code, the qualified
23 taxpayer shall file for certification with the center to qualify
24 for the credit allowed under section 47(a)(2) of the internal
25 revenue code. If the qualified taxpayer has previously filed for
26 certification with the center to qualify for the credit allowed
27 under section 47(a)(2) of the internal revenue code, additional

1 filing for the credit allowed under this section is not required.

2 (5) The center may inspect a historic resource at any time
3 during the rehabilitation process and may revoke certification of
4 completed rehabilitation if the rehabilitation was not undertaken
5 as represented in the rehabilitation plan or if unapproved
6 alterations to the completed rehabilitation are made during the 5
7 years after the tax year in which the credit was claimed. The
8 center shall promptly notify the department of a revocation.

9 (6) Qualified expenditures for the rehabilitation of a
10 historic resource may be used to calculate the credit under this
11 section if the historic resource meets 1 of the criteria listed in
12 subdivision (a) and 1 of the criteria listed in subdivision (b):

13 (a) The resource is 1 of the following during the tax year in
14 which a credit under this section is claimed for those qualified
15 expenditures:

16 (i) Individually listed on the national register of historic
17 places or state register of historic sites.

18 (ii) A contributing resource located within a historic district
19 listed on the national register of historic places or the state
20 register of historic sites.

21 (iii) A contributing resource located within a historic district
22 designated by a local unit pursuant to an ordinance adopted under
23 the local historic districts act, 1970 PA 169, MCL 399.201 to
24 399.215.

25 (b) The resource meets 1 of the following criteria during the
26 tax year in which a credit under this section is claimed for those
27 qualified expenditures:

1 (i) The historic resource is located in a designated historic
2 district in a local unit of government with an existing ordinance
3 under the local historic districts act, 1970 PA 169, MCL 399.201 to
4 399.215.

5 (ii) The historic resource is located in an incorporated local
6 unit of government that does not have an ordinance under the local
7 historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and
8 has a population of less than 5,000.

9 (iii) The historic resource is located in an unincorporated
10 local unit of government.

11 (iv) The historic resource is located in an incorporated local
12 unit of government that does not have an ordinance under the local
13 historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and is
14 located within the boundaries of an association that has been
15 chartered under 1889 PA 39, MCL 455.51 to 455.72.

16 (v) **THE HISTORIC RESOURCE IS SUBJECT TO A HISTORIC**
17 **PRESERVATION EASEMENT.**

18 (7) A credit amount assigned under section 39c(7) of ~~the~~
19 ~~single business tax act, FORMER 1975 PA 228, MCL 208.39e,~~ or
20 section 435 of the Michigan business tax act, 2007 PA 36, MCL
21 208.1435, may be claimed against the partner's, member's, or
22 shareholder's tax liability under this act as provided in section
23 39c(7) of ~~the single business tax act, FORMER 1975 PA 228, MCL~~
24 ~~208.39e,~~ or section 435 of the Michigan business tax act, 2007 PA
25 36, MCL 208.1435.

26 (8) If the credit allowed under this section for the tax year
27 and any unused carryforward of the credit allowed by this section

1 exceed the taxpayer's tax liability for the tax year, that portion
2 that exceeds the tax liability for the tax year shall not be
3 refunded but may be carried forward to offset tax liability in
4 subsequent tax years for 10 years or until used up, whichever
5 occurs first. **FOR PROJECTS FOR WHICH A CERTIFICATE OF COMPLETED
6 REHABILITATION IS ISSUED AFTER DECEMBER 31, 2008 AND FOR WHICH THE
7 CREDIT AMOUNT ALLOWED IS LESS THAN \$250,000.00, A QUALIFIED
8 TAXPAYER MAY ELECT TO FORGO THE CARRYOVER PERIOD AND RECEIVE A
9 REFUND OF THE AMOUNT OF THE CREDIT THAT EXCEEDS THE QUALIFIED
10 TAXPAYER'S TAX LIABILITY. THE AMOUNT OF THE REFUND SHALL BE EQUAL
11 TO 90% OF THE AMOUNT OF THE CREDIT THAT EXCEEDS THE QUALIFIED
12 TAXPAYER'S TAX LIABILITY. AN ELECTION UNDER THIS SUBSECTION SHALL
13 BE MADE IN THE YEAR THAT A CERTIFICATE OF COMPLETED REHABILITATION
14 IS ISSUED AND SHALL BE IRREVOCABLE.**

15 (9) ~~If the~~ **FOR TAX YEARS BEGINNING BEFORE JANUARY 1, 2009, IF**
16 **A** taxpayer sells a historic resource for which a credit under this
17 section was claimed less than 5 years after the year in which the
18 credit was claimed, the following percentage of the credit amount
19 previously claimed relative to that historic resource shall be
20 added back to the tax liability of the taxpayer in the year of the
21 sale:

22 (a) If the sale is less than 1 year after the year in which
23 the credit was claimed, 100%.

24 (b) If the sale is at least 1 year but less than 2 years after
25 the year in which the credit was claimed, 80%.

26 (c) If the sale is at least 2 years but less than 3 years
27 after the year in which the credit was claimed, 60%.

1 (d) If the sale is at least 3 years but less than 4 years
2 after the year in which the credit was claimed, 40%.

3 (e) If the sale is at least 4 years but less than 5 years
4 after the year in which the credit was claimed, 20%.

5 (f) If the sale is 5 years or more after the year in which the
6 credit was claimed, an addback to the taxpayer's tax liability
7 shall not be made.

8 (10) ~~If~~ **FOR TAX YEARS BEGINNING BEFORE JANUARY 1, 2009, IF** a
9 certification of completed rehabilitation is revoked under
10 subsection (5) less than 5 years after the year in which a credit
11 was claimed, the following percentage of the credit amount
12 previously claimed relative to that historic resource shall be
13 added back to the tax liability of the taxpayer in the year of the
14 revocation:

15 (a) If the revocation is less than 1 year after the year in
16 which the credit was claimed, 100%.

17 (b) If the revocation is at least 1 year but less than 2 years
18 after the year in which the credit was claimed, 80%.

19 (c) If the revocation is at least 2 years but less than 3
20 years after the year in which the credit was claimed, 60%.

21 (d) If the revocation is at least 3 years but less than 4
22 years after the year in which the credit was claimed, 40%.

23 (e) If the revocation is at least 4 years but less than 5
24 years after the year in which the credit was claimed, 20%.

25 (f) If the revocation is 5 years or more after the year in
26 which the credit was claimed, an addback to the taxpayer's tax
27 liability shall not be made.

1 (11) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTIONS (12) AND
2 (13), FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2008, IF A
3 CERTIFICATE OF COMPLETED REHABILITATION IS REVOKED UNDER SUBSECTION
4 (10) OR IS SOLD OR DISPOSED OF LESS THAN 5 YEARS AFTER THE HISTORIC
5 RESOURCE IS PLACED IN SERVICE AS DEFINED IN SECTION 47(B)(1) OF THE
6 INTERNAL REVENUE CODE AND RELATED TREASURY REGULATIONS, THE
7 FOLLOWING PERCENTAGE OF THE CREDIT AMOUNT PREVIOUSLY CLAIMED
8 RELATIVE TO THAT HISTORIC RESOURCE SHALL BE ADDED BACK TO THE TAX
9 LIABILITY OF THE QUALIFIED TAXPAYER THAT RECEIVED THE CERTIFICATE
10 OF COMPLETED REHABILITATION AND NOT THE ASSIGNEE IN THE YEAR OF THE
11 REVOCATION:

12 (A) IF THE REVOCATION IS LESS THAN 1 YEAR AFTER THE HISTORIC
13 RESOURCE IS PLACED IN SERVICE, 100%.

14 (B) IF THE REVOCATION IS AT LEAST 1 YEAR BUT LESS THAN 2 YEARS
15 AFTER THE HISTORIC RESOURCE IS PLACED IN SERVICE, 80%.

16 (C) IF THE REVOCATION IS AT LEAST 2 YEARS BUT LESS THAN 3
17 YEARS AFTER THE HISTORIC RESOURCE IS PLACED IN SERVICE, 60%.

18 (D) IF THE REVOCATION IS AT LEAST 3 YEARS BUT LESS THAN 4
19 YEARS AFTER THE HISTORIC RESOURCE IS PLACED IN SERVICE, 40%.

20 (E) IF THE REVOCATION IS AT LEAST 4 YEARS BUT LESS THAN 5
21 YEARS AFTER THE HISTORIC RESOURCE IS PLACED IN SERVICE, 20%.

22 (F) IF THE REVOCATION IS AT LEAST 5 YEARS OR MORE AFTER THE
23 HISTORIC RESOURCE IS PLACED IN SERVICE, AN ADD BACK TO THE
24 QUALIFIED TAXPAYER TAX LIABILITY SHALL NOT BE REQUIRED.

25 (12) SUBSECTION (11) SHALL NOT APPLY IF THE QUALIFIED TAXPAYER
26 ENTERS INTO A WRITTEN AGREEMENT WITH THE STATE HISTORIC
27 PRESERVATION OFFICE THAT WILL ALLOW FOR THE TRANSFER OR SALE OF THE

1 HISTORIC RESOURCE AND PROVIDES THE FOLLOWING:

2 (A) REASONABLE ASSURANCE THAT SUBSEQUENT TO THE TRANSFER THE
3 PROPERTY WILL REMAIN A HISTORIC RESOURCE DURING THE 5-YEAR PERIOD
4 AFTER THE HISTORIC RESOURCE IS PLACED IN SERVICE.

5 (B) A METHOD THAT THE DEPARTMENT CAN RECOVER AN AMOUNT FROM
6 THE TAXPAYER EQUAL TO THE APPROPRIATE PERCENTAGE OF CREDIT ADDED
7 BACK AS DESCRIBED UNDER SUBSECTION (11).

8 (C) AN ENCUMBRANCE ON THE TITLE TO THE HISTORIC RESOURCE BEING
9 SOLD OR TRANSFERRED, STATING THAT THE PROPERTY MUST REMAIN A
10 HISTORIC RESOURCE THROUGHOUT THE 5-YEAR PERIOD AFTER THE HISTORIC
11 RESOURCE IS PLACED IN SERVICE.

12 (D) A PROVISION FOR THE PAYMENT BY THE TAXPAYER OF ALL LEGAL
13 AND PROFESSIONAL FEES ASSOCIATED WITH THE DRAFTING, REVIEW, AND
14 RECORDING OF THE WRITTEN AGREEMENT REQUIRED UNDER THIS SUBSECTION.

15 (13) FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2008, IF THE
16 QUALIFIED TAXPAYER THAT RECEIVED THE CERTIFICATE OF COMPLETED
17 REHABILITATION SELLS THE HISTORIC RESOURCE FOR WHICH THE CREDIT WAS
18 CLAIMED UNDER THIS SECTION LESS THAN 5 YEARS AFTER THE YEAR IN
19 WHICH THE CREDIT WAS CLAIMED AND THAT CERTIFICATE OF COMPLETED
20 REHABILITATION IS REVOKED LESS THAN 5 YEARS AFTER THE HISTORIC
21 RESOURCE WAS PLACED IN SERVICE AS DEFINED IN SECTION 47(B)(1) OF
22 THE INTERNAL REVENUE CODE AND RELATED TREASURY REGULATIONS AS A
23 RESULT OF UNAPPROVED ALTERATIONS MADE BY THE PURCHASER OF THE
24 HISTORIC RESOURCE, THEN THE APPROPRIATE PERCENTAGE AS DESCRIBED
25 UNDER SUBSECTION (11) OF THE CREDIT AMOUNT PREVIOUSLY CLAIMED
26 RELATIVE TO THAT HISTORIC RESOURCE SHALL BE ADDED TO THE TAX
27 LIABILITY OF THE PURCHASER IN THE YEAR OF THE REVOCATION.

1 (14) ~~(11)~~—The department of history, arts, and libraries
2 through the Michigan historical center may impose a fee to cover
3 the administrative cost of implementing the program under this
4 section.

5 (15) ~~(12)~~—The qualified taxpayer shall attach all of the
6 following to the qualified taxpayer's annual return under this act:

7 (a) Certification of completed rehabilitation.

8 (b) Certification of historic significance related to the
9 historic resource and the qualified expenditures used to claim a
10 credit under this section.

11 (c) A completed assignment form if the qualified taxpayer is
12 an assignee under section 39c of ~~the single business tax act,~~
13 **FORMER** 1975 PA 228 , ~~MCL 208.39e,~~ or section 435 of the Michigan
14 business tax act, 2007 PA 36, MCL 208.1435, of any portion of a
15 credit allowed under that section.

16 (16) ~~(13)~~—The department of history, arts, and libraries shall
17 promulgate rules to implement this section pursuant to the
18 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
19 24.328.

20 (17) ~~(14)~~—The total of the credits claimed under this section
21 and section 39c of ~~the single business tax act,~~ **FORMER** 1975 PA 228
22 , ~~MCL 208.39e,~~ or section 435 of the Michigan business tax act,
23 2007 PA 36, MCL 208.1435, for a rehabilitation project shall not
24 exceed 25% of the total qualified expenditures eligible for the
25 credit under this section for that rehabilitation project.

26 (18) ~~(15)~~—The department of history, arts, and libraries
27 through the Michigan historical center shall report all of the

1 following to the legislature annually for the immediately preceding
2 state fiscal year:

3 (a) The fee schedule used by the center and the total amount
4 of fees collected.

5 (b) A description of each rehabilitation project certified.

6 (c) The location of each new and ongoing rehabilitation
7 project.

8 (19) ~~(16)~~—As used in this section:

9 (a) "Contributing resource" means a historic resource that
10 contributes to the significance of the historic district in which
11 it is located.

12 (b) "Historic district" means an area, or group of areas not
13 necessarily having contiguous boundaries, that contains 1 resource
14 or a group of resources that are related by history, architecture,
15 archaeology, engineering, or culture.

16 (c) "Historic resource" means a publicly or privately owned
17 historic building, structure, site, object, feature, or open space
18 located within a historic district designated by the national
19 register of historic places, the state register of historic sites,
20 or a local unit acting under the local historic districts act, 1970
21 PA 169, MCL 399.201 to 399.215; or that is individually listed on
22 the state register of historic sites or national register of
23 historic places and includes all of the following:

24 (i) An owner-occupied personal residence or a historic resource
25 located within the property boundaries of that personal residence.

26 (ii) An income-producing commercial, industrial, or residential
27 resource or a historic resource located within the property

1 boundaries of that resource.

2 (iii) A resource owned by a governmental body, nonprofit
3 organization, or tax-exempt entity that is used primarily by a
4 taxpayer lessee in a trade or business unrelated to the
5 governmental body, nonprofit organization, or tax-exempt entity and
6 that is subject to tax under this act.

7 (iv) A resource that is occupied or utilized by a governmental
8 body, nonprofit organization, or tax-exempt entity pursuant to a
9 long-term lease or lease with option to buy agreement.

10 (v) Any other resource that could benefit from rehabilitation.

11 (d) "Local unit" means a county, city, village, or township.

12 (e) "Long-term lease" means a lease term of at least 27.5
13 years for a residential resource or at least 31.5 years for a
14 nonresidential resource.

15 (f) "Michigan historical center" or "center" means the state
16 historic preservation office of the Michigan historical center of
17 the department of history, arts, and libraries or its successor
18 agency.

19 (g) "Open space" means undeveloped land, a naturally
20 landscaped area, or a formal or man-made landscaped area that
21 provides a connective link or a buffer between other resources.

22 (h) "Person" means an individual, partnership, corporation,
23 association, governmental entity, or other legal entity.

24 (i) "Qualified expenditures" means capital expenditures that
25 qualify, **OR WOULD QUALIFY EXCEPT THAT THE TAXPAYER ENTERED INTO AN**
26 **AGREEMENT UNDER SUBSECTION (12)**, for a rehabilitation credit under
27 section 47(a)(2) of the internal revenue code if the taxpayer is

1 eligible for the credit under section 47(a)(2) of the internal
2 revenue code or, if the taxpayer is not eligible for the credit
3 under section 47(a)(2) of the internal revenue code, the qualified
4 expenditures that would qualify under section 47(a)(2) of the
5 internal revenue code except that the expenditures are made to a
6 historic resource that is not eligible for the credit under section
7 47(a)(2) of the internal revenue code, that were paid. ~~not more~~
8 ~~than 5 years after the certification of the rehabilitation plan~~
9 ~~that included those expenditures was approved by the center, and~~
10 ~~that were paid after December 31, 1998 for the rehabilitation of a~~
11 ~~historic resource.~~ Qualified expenditures do not include capital
12 expenditures for nonhistoric additions to a historic resource
13 except an addition that is required by state or federal regulations
14 that relate to historic preservation, safety, or accessibility.

15 (j) "Qualified taxpayer" means a person that ~~is an assignee~~
16 ~~under section 39c of the single business tax act, 1975 PA 228, MCL~~
17 ~~208.39c, or section 435 of the Michigan business tax act, 2007 PA~~
18 ~~36, MCL 208.1435, or~~ either owns the resource to be rehabilitated
19 or has a long-term lease agreement with the owner of the historic
20 resource and that has qualified expenditures for the rehabilitation
21 of the historic resource equal to or greater than 10% of the state
22 equalized valuation of the property. If the historic resource to be
23 rehabilitated is a portion of a historic or nonhistoric resource,
24 the state equalized valuation of only that portion of the property
25 shall be used for purposes of this subdivision. If the assessor for
26 the local tax collecting unit in which the historic resource is
27 located determines the state equalized valuation of that portion,

1 that assessor's determination shall be used for purposes of this
2 subdivision. If the assessor does not determine that state
3 equalized valuation of that portion, qualified expenditures, for
4 purposes of this subdivision, shall be equal to or greater than 5%
5 of the appraised value as determined by a certified appraiser. If
6 the historic resource to be rehabilitated does not have a state
7 equalized valuation, qualified expenditures for purposes of this
8 subdivision shall be equal to or greater than 5% of the appraised
9 value of the resource as determined by a certified appraiser.

10 (k) "Rehabilitation plan" means a plan for the rehabilitation
11 of a historic resource that meets the federal secretary of the
12 interior's standards for rehabilitation and guidelines for
13 rehabilitation of historic buildings under 36 CFR part 67.

14 Enacting section 1. This amendatory act takes effect January
15 1, 2009.