

HOUSE BILL No. 4934

August 28, 2013, Introduced by Rep. Heise and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 266 (MCL 206.266), as amended by 2011 PA 38.

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 and before January 1, 2012 may
3 credit against the tax imposed by this part the amount determined
4 pursuant to subsection (2) for the qualified expenditures for the
5 rehabilitation of a historic resource pursuant to the
6 rehabilitation plan in the year in which the certification of
7 completed rehabilitation of the historic resource is issued. Only
8 those expenditures that are paid or incurred during the time
9 periods prescribed for the credit under section 47(a)(2) of the
10 internal revenue code and any related treasury regulations shall be

1 considered qualified expenditures.

2 (2) The credit allowed under this section shall be 25% of the
3 qualified expenditures that are eligible, or would have been
4 eligible except that the taxpayer elected to transfer the credit
5 under subsection (12), for the credit under section 47(a)(2) of the
6 internal revenue code if the taxpayer is eligible for the credit
7 under section 47(a)(2) of the internal revenue code or, if the
8 taxpayer is not eligible for the credit under section 47(a)(2) of
9 the internal revenue code, 25% of the qualified expenditures that
10 would qualify under section 47(a)(2) of the internal revenue code
11 except that the expenditures are made to a historic resource that
12 is not eligible for the credit under section 47(a)(2) of the
13 internal revenue code, subject to both of the following:

14 (a) A taxpayer with qualified expenditures that are eligible
15 for the credit under section 47(a)(2) of the internal revenue code
16 may not claim a credit under this section for those qualified
17 expenditures unless the taxpayer has claimed and received a credit
18 for those qualified expenditures under section 47(a)(2) of the
19 internal revenue code or the taxpayer has elected to transfer the
20 credit under subsection (12).

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

24 (3) To be eligible for the credit under this section, the
25 taxpayer shall apply to and receive from the Michigan state housing
26 development authority that the historic significance, the
27 rehabilitation plan, and the completed rehabilitation of the

1 historic resource meet the criteria under subsection (6) and either
2 of the following:

3 (a) All of the following criteria:

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

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

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

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

19 (4) If a qualified taxpayer is eligible for the credit allowed
20 under section 47(a)(2) of the internal revenue code, the qualified
21 taxpayer shall file for certification with the authority to qualify
22 for the credit allowed under section 47(a)(2) of the internal
23 revenue code. If the qualified taxpayer has previously filed for
24 certification with the authority to qualify for the credit allowed
25 under section 47(a)(2) of the internal revenue code, additional
26 filing for the credit allowed under this section is not required.

27 (5) The authority may inspect a historic resource at any time

1 during the rehabilitation process and may revoke certification of
2 completed rehabilitation if the rehabilitation was not undertaken
3 as represented in the rehabilitation plan or if unapproved
4 alterations to the completed rehabilitation are made during the 5
5 years after the tax year in which the credit was claimed. The
6 authority shall promptly notify the department of a revocation.

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

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

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

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

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

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

26 (i) The historic resource is located in a designated historic
27 district in a local unit of government with an existing ordinance

1 under the local historic districts act, 1970 PA 169, MCL 399.201 to
2 399.215.

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

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

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

14 (v) The historic resource is subject to a historic
15 preservation easement.

16 (7) A credit amount assigned under section 39c(7) of former
17 1975 PA 228 or section 435 of the Michigan business tax act, 2007
18 PA 36, MCL 208.1435, may be claimed against the partner's,
19 member's, or shareholder's tax liability under this part as
20 provided in section 39c(7) of former 1975 PA 228 or section 435 of
21 the Michigan business tax act, 2007 PA 36, MCL 208.1435.

22 (8) ~~IF~~ **EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBSECTION, IF**
23 the credit allowed under this section for the tax year and any
24 unused carryforward of the credit allowed by this section exceed
25 the taxpayer's tax liability for the tax year, that portion that
26 exceeds the tax liability for the tax year shall not be refunded
27 but may be carried forward to offset tax liability in subsequent

1 tax years for 10 years or until used up, whichever occurs first.
2 For projects for which a certificate of completed rehabilitation is
3 issued for a tax year beginning after December 31, 2008 and for
4 which the credit amount allowed is less than \$250,000.00, a
5 qualified taxpayer may elect to forgo the carryover period and
6 receive a refund of the amount of the credit that exceeds the
7 qualified taxpayer's tax liability. The amount of the refund shall
8 be equal to 90% of the amount of the credit that exceeds the
9 qualified taxpayer's tax liability. An election under this
10 subsection shall be made in the year that a certificate of
11 completed rehabilitation is issued and ~~shall be~~ IS irrevocable. **FOR**
12 **PROJECTS FOR WHICH A CERTIFICATE OF COMPLETED REHABILITATION WAS**
13 **ISSUED FOR A TAX YEAR BEGINNING AFTER DECEMBER 31, 2005 AND BEFORE**
14 **JANUARY 1, 2007 AND FOR WHICH THE AMOUNT OF UNUSED CARRYFORWARD OF**
15 **THE CREDIT ALLOWED FOR THAT PROJECT AS OF DECEMBER 31, 2012 IS LESS**
16 **THAN \$80,000.00, A QUALIFIED TAXPAYER MAY ELECT FOR THE 2013 TAX**
17 **YEAR TO FORGO THE REMAINDER OF THE CARRYOVER PERIOD AND RECEIVE A**
18 **REFUND OF THE AMOUNT OF THE CARRYOVER THAT EXCEEDS THE QUALIFIED**
19 **TAXPAYER'S TAX LIABILITY FOR THE 2013 TAX YEAR. THE AMOUNT OF THE**
20 **REFUND SHALL BE EQUAL TO 90% OF THE AMOUNT OF THE CARRYOVER THAT**
21 **EXCEEDS THE QUALIFIED TAXPAYER'S TAX LIABILITY FOR THE 2013 TAX**
22 **YEAR, AND THE ELECTION IS IRREVOCABLE.**

23 (9) For tax years beginning before January 1, 2009, if a
24 taxpayer sells a historic resource for which a credit under this
25 section was claimed less than 5 years after the year in which the
26 credit was claimed, the following percentage of the credit amount
27 previously claimed relative to that historic resource shall be

1 added back to the tax liability of the taxpayer in the year of the
2 sale:

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

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

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

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

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

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

16 (10) For tax years beginning before January 1, 2009, if a
17 certification of completed rehabilitation is revoked under
18 subsection (5) less than 5 years after the year in which a credit
19 was claimed, the following percentage of the credit amount
20 previously claimed relative to that historic resource shall be
21 added back to the tax liability of the taxpayer in the year of the
22 revocation:

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

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

27 (c) If the revocation is at least 2 years but less than 3

1 years after the year in which the credit was claimed, 60%.

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

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

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

9 (11) For tax years beginning after December 31, 2008, if a
10 certificate of completed rehabilitation is revoked under subsection
11 (5) or if the historic resource is sold or disposed of less than 5
12 years after being placed in service as defined in section 47(b)(1)
13 of the internal revenue code and related treasury regulations, the
14 following percentage of the credit amount previously claimed
15 relative to that historic resource shall be added back to the tax
16 liability of the qualified taxpayer that received the certificate
17 of completed rehabilitation and not the assignee in the year of the
18 revocation:

19 (a) If the revocation is less than 1 year after the historic
20 resource is placed in service, 100%.

21 (b) If the revocation is at least 1 year but less than 2 years
22 after the historic resource is placed in service, 80%.

23 (c) If the revocation is at least 2 years but less than 3
24 years after the historic resource is placed in service, 60%.

25 (d) If the revocation is at least 3 years but less than 4
26 years after the historic resource is placed in service, 40%.

27 (e) If the revocation is at least 4 years but less than 5

1 years after the historic resource is placed in service, 20%.

2 (f) If the revocation is at least 5 years or more after the
3 historic resource is placed in service, an addback to the qualified
4 taxpayer tax liability shall not be required.

5 (12) A qualified taxpayer who receives a certificate of
6 completed rehabilitation after December 31, 2008 may elect to forgo
7 claiming the credit and transfer the credit along with the
8 ownership of the property for which the credit may be claimed to a
9 new owner. The new owner shall be treated as the qualified taxpayer
10 having incurred the rehabilitation costs and shall be subject to
11 the recapture provisions under subsection (11) if the new owner
12 sells or disposes of the property within 5 years after the new
13 owner acquired the property. For purposes of this subsection and
14 subsection (11), the placed in service date for a new owner is the
15 date the new owner acquired the property for which the credit is
16 claimed.

17 (13) The authority may impose a fee to cover the
18 administrative cost of implementing the program under this section.

19 (14) The qualified taxpayer shall attach all of the following
20 to the qualified taxpayer's annual return under this part:

21 (a) Certification of completed rehabilitation.

22 (b) Certification of historic significance related to the
23 historic resource and the qualified expenditures used to claim a
24 credit under this section.

25 (c) A completed assignment form if the qualified taxpayer is
26 an assignee under section 39c of former 1975 PA 228 or section 435
27 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, of any

1 portion of a credit allowed under that section.

2 (15) The authority may promulgate rules to implement this
3 section pursuant to the administrative procedures act of 1969, 1969
4 PA 306, MCL 24.201 to 24.328.

5 (16) The total of the credits claimed under this section and
6 section 39c of former 1975 PA 228 or section 435 of the Michigan
7 business tax act, 2007 PA 36, MCL 208.1435, for a rehabilitation
8 project shall not exceed 25% of the total qualified expenditures
9 eligible for the credit under this section for that rehabilitation
10 project.

11 (17) The authority shall report all of the following to the
12 legislature annually for the immediately preceding state fiscal
13 year:

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

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

17 (c) The location of each new and ongoing rehabilitation
18 project.

19 (18) As used in this section:

20 (a) "Contributing resource" means a historic resource that
21 contributes to the significance of the historic district in which
22 it is located.

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

27 (c) "Historic resource" means a publicly or privately owned

1 historic building, structure, site, object, feature, or open space
2 located within a historic district designated by the national
3 register of historic places, the state register of historic sites,
4 or a local unit acting under the local historic districts act, 1970
5 PA 169, MCL 399.201 to 399.215; or that is individually listed on
6 the state register of historic sites or national register of
7 historic places and includes all of the following:

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

10 (ii) An income-producing commercial, industrial, or residential
11 resource or a historic resource located within the property
12 boundaries of that resource.

13 (iii) A resource owned by a governmental body, nonprofit
14 organization, or tax-exempt entity that is used primarily by a
15 taxpayer lessee in a trade or business unrelated to the
16 governmental body, nonprofit organization, or tax-exempt entity and
17 that is subject to tax under this part.

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

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

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

23 (e) "Long-term lease" means a lease term of at least 27.5
24 years for a residential resource or at least 31.5 years for a
25 nonresidential resource.

26 (f) "Michigan state housing development authority" or
27 "authority" means the public body corporate and politic created by

1 section 21 of the state housing development authority act of 1966,
2 1966 PA 346, MCL 125.1421.

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

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

8 (i) "Qualified expenditures" means capital expenditures that
9 qualify, or would qualify except that the taxpayer elected to
10 transfer the credit under subsection (12), for a rehabilitation
11 credit under section 47(a)(2) of the internal revenue code if the
12 taxpayer is eligible for the credit under section 47(a)(2) of the
13 internal revenue code or, if the taxpayer is not eligible for the
14 credit under section 47(a)(2) of the internal revenue code, the
15 qualified expenditures that would qualify under section 47(a)(2) of
16 the internal revenue code except that the expenditures are made to
17 a historic resource that is not eligible for the credit under
18 section 47(a)(2) of the internal revenue code, that were paid.
19 Qualified expenditures do not include capital expenditures for
20 nonhistoric additions to a historic resource except an addition
21 that is required by state or federal regulations that relate to
22 historic preservation, safety, or accessibility.

23 (j) "Qualified taxpayer" means a person that is an assignee
24 under section 39c of former 1975 PA 228 or section 435 of the
25 Michigan business tax act, 2007 PA 36, MCL 208.1435, or either owns
26 the resource to be rehabilitated or has a long-term lease agreement
27 with the owner of the historic resource and that has qualified

1 expenditures for the rehabilitation of the historic resource equal
2 to or greater than 10% of the state equalized valuation of the
3 property. If the historic resource to be rehabilitated is a portion
4 of a historic or nonhistoric resource, the state equalized
5 valuation of only that portion of the property shall be used for
6 purposes of this subdivision. If the assessor for the local tax
7 collecting unit in which the historic resource is located
8 determines the state equalized valuation of that portion, that
9 assessor's determination shall be used for purposes of this
10 subdivision. If the assessor does not determine that state
11 equalized valuation of that portion, qualified expenditures, for
12 purposes of this subdivision, shall be equal to or greater than 5%
13 of the appraised value as determined by a certified appraiser. If
14 the historic resource to be rehabilitated does not have a state
15 equalized valuation, qualified expenditures for purposes of this
16 subdivision shall be equal to or greater than 5% of the appraised
17 value of the resource as determined by a certified appraiser.

18 (k) "Rehabilitation plan" means a plan for the rehabilitation
19 of a historic resource that meets the federal secretary of the
20 interior's standards for rehabilitation and guidelines for
21 rehabilitation of historic buildings under 36 CFR part 67.