

ALLOW FOR NEW HISTORIC PRESERVATION TAX CREDITS

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Senate Bill 469 (S-1) as passed by the Senate
Sponsor: Sen. Wayne Schmidt
House Committee: Tax Policy
Senate Committee: Finance
Complete to 5-15-18

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

Senate Bill 469 would amend the Income Tax Act to restart the availability of the Historic Preservation Income Tax Credit. These credits were discontinued in 2011 (see **Brief Background**, below).

The bill would add nearly identical sections to Part 1 (Individual Income Tax) and Part 2 (Corporate Income Tax) of the Act. Generally speaking, the tax credit would be available in an amount equal to 25% of a qualified taxpayer's expenditures on the rehabilitation of a historic resource, less any amount of a credit received for the same qualified expenses under the federal rehabilitation credit. The bill would not restart provisions of the tax credit that provided for enhanced and special consideration credits under the Michigan Business Tax.

DETAILED SUMMARY:

Overview and Amount of Credit

Under the bill, a *qualified taxpayer* with a *rehabilitation plan* certified after December 31, 2017 could claim an income tax credit for the *qualified expenditures* for the rehabilitation of a *historic resource* in the year in which the certification of completed rehabilitation is issued. Only the expenditures that are paid or incurred during the time prescribed for the federal historic tax credit under section 47(A)(2) of the Internal Revenue Code and any related Treasury regulations would be considered qualified expenditures.

[Section 47(A)(2) describes the ratable share of the federal rehabilitation credit for any tax year, which is an amount equal to 20% of the qualified rehabilitation expenditures, allocated ratably to each year during a 5-year period after the qualified rehabilitated building is placed in service.]

The credit would be in an amount equal to 25% of the qualified expenditures that are eligible for the credit under section 47(A)(2) of the Internal Revenue Code, or 25% of the qualified expenditures that *would* qualify under that section except that the expenditures are made to a historic resource that is not eligible for that credit. The 25% credit would be subject to both the following:

- A taxpayer with qualified expenditures that are eligible for the federal credit cannot claim the state credit unless the taxpayer has claimed and received the federal credit.
- The credit is reduced by the amount of a credit received for the same qualified expenditures under the federal tax credit.

A **qualified taxpayer** would be a person (individual, partnership, corporation, association, governmental entity, or other legal entity) that is assigned a tax credit [for purposes of Part 1 of the Act] or either owns the resource to be rehabilitated or has a long-term lease agreement (at least 27.5 years for a residential resource or 31.5 years for a nonresidential resource) with the owner, and that has qualified expenditures of at least 10% of the state equalized value (SEV) of the property. If the resource to be renovated is a portion of a historic or nonhistoric resource, only that portion would be used for this calculation; the local assessor would determine the SEV of that portion. If the assessor did not determine SEV for that portion, qualified expenditures would have to be at least 5% of the appraised value, as determined by an appraiser. This final threshold would also be used if the historic resource did not have an SEV.

Rehabilitation plan would mean a plan for the rehabilitation of a historic resource that meets the federal Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitation of historic buildings in the Code of Federal Regulations.

Qualified expenditures would mean capital expenditures that qualify (or would qualify except that the property and/or credit was transferred under certain circumstances) for a rehabilitation credit under section 47(A)(2) of the Internal Revenue Code that were paid. Or, if the taxpayer were not eligible for the credit under section 47(A)(2), this would include the qualified expenditures that *would* qualify under that section except that the expenditures are made to a historic resource that is not eligible for the credit under that section. Qualified expenditures would not include capital expenditures for nonhistoric additions to a historic resource except those required by state or federal regulations that relate to preservation, safety, or accessibility.

Historic resource would mean a publicly or privately owned historic building, structure, site, object, feature, or open space located within a Historic District designated by the National Register of Historic Places, the State Register of Historic Sites, or a local unit acting under the Local Historic Districts Act; or that is individually listed on the State Register of Historic Sites or National Register of Historic Places and includes all of the following:

- An owner-occupied personal residence or a historic resource located within the property boundaries of that historic residence.
- An income-producing commercial, industrial, or residential resource or a historic resource located within the property boundaries of that resource.
- A resource owned by a governmental body, nonprofit, or tax-exempt entity that is used primarily by a taxpayer lessee in a trade or business unrelated to the governmental body, nonprofit, or tax-exempt entity and that is subject to the income tax.
- A resource that is occupied or utilized by a governmental body, nonprofit, or tax-exempt entity pursuant to a long-term lease or lease with option to buy agreement.
- Any other resource that could benefit from rehabilitation.

Application for Credit

To receive the credit, the taxpayer would have to apply to and receive certification from the Michigan State Housing Development Authority (MSHDA) that the historic significance, rehabilitation plan, and completed rehabilitation meet criteria for qualified expenditures (see below) and either of the following:

1. All of the following criteria:
 - a. The historic resource contributes to the significance of the historic district in which it is located.
 - b. Both the rehabilitation plan and completed rehabilitation of the historic resource meet the Secretary of the Interior's standards for rehabilitation and guidelines in the Code of Federal Regulations.
 - c. All rehabilitation work has been done to or within the walls, boundaries, or structures of the historic resource or to historic resources located within the property boundaries of the resource.
2. The taxpayer has received certification from the National Park Service that the historic resource's significance, the rehabilitation plan, and the completed rehabilitation qualify for the federal rehabilitation credit.

If a taxpayer is eligible for the federal rehabilitation credit, the taxpayer would have to file for certification with MSHDA to qualify for the federal credit. If the taxpayer had previously filed for federal certification with MSHDA, no additional filing for the state credit would be required.

MSHDA could inspect a historic resource at any time during the rehabilitation process and could revoke certification of completed rehabilitation if the rehabilitation was not undertaken as represented in the plan or if unapproved alterations to the completed rehabilitation were made during the 5 years after the tax year in which the credit was claimed. MSHDA would have to notify the Michigan Department of Treasury of a revocation.

MSHDA could impose a fee to cover the administrative costs of implementing the tax credit program and promulgate rules as well.

Criteria for Qualified Expenditures

Qualified expenditures could be used to calculate the credit if the historic resource meets certain criteria.

First, the historic resource would have to be one of the following during the tax year in which the credit is claimed:

- Individually listed on the National Register of Historic Places or State Register of Historic Sites.
- A contributing resource located within a national historic district listed on the National Register or State Register.
- A contributing resource located within a historic district by a local unit through an ordinance adopted under the Local Historic Districts Act.

Second, the historic resource would have to meet one of the following during the tax year in which the credit is claimed:

- Be located in a designated historic district in a local unit of government with an ordinance under the Local Historic Districts Act.
- Be located in an unincorporated local unit of government.
- Be located in an incorporated local unit of government that does not have an ordinance and has a population of less than 5,000.

- Be located in an incorporated local unit of government that does not have an ordinance, and is located within the boundaries of an association created under 1889 PA 39 [summer resort and assembly associations].
- Be subject to a historic preservation easement.

Revocation of Credit or Sale of Historic Resource

If a credit were revoked by MSHDA or the historic resource were sold or disposed of less than 5 years after being placed in service, a specific percentage of the credit amount previously claimed would be added back to the tax liability of the taxpayer that received the certificate of completed rehabilitation (and not the assignee). The percentages would be as follows:

Credit revoked [...] after resource placed in service	Percentage of credit added back
Less than 1 year	100%
Between 1 and 2 years	80%
Between 2 and 3 years	60%
Between 3 and 4 years	40%
Between 4 and 5 years	20%

If the revocation was 5 years or more after the placement in service, an addback would not be required.

Transfer or Assignment of Credit

Under the bill, in Part 1 of the Act, a qualified taxpayer could elect to forgo claiming the credit and transfer the credit along with the ownership of the property to a new owner. The new owner would be treated as the qualified taxpayer having incurred the rehabilitation costs and would be subject to the recapture provisions if the new owner sold or disposed of the property within 5 years after the new owner acquired the property. The placed in service date would be the date the new owner acquired the property.

Under the bill, in Part 2 of the Act, a taxpayer could assign all or a portion of the credit. A credit assignment would be irrevocable and made in the tax year in which the certificate of completed rehabilitation is issued. A qualified taxpayer could claim a portion and assign the rest; in this case, the taxpayer must claim the portion it claims in the tax year the certificate is issued. An assignee could subsequently assign the credit or any portion to 1 or more assignees; this could be done in the year the certificate is issued. The assignment or subsequent reassignment would be made on a form prescribed by the Michigan Department of Treasury. The department would review and issue a completed assignment or reassignment certificate. A credit assigned could be claimed against the assignee’s tax under Part 1 or Part 2. The assignment certificate would be attached to the annual tax return for the tax year in which the assignment or reassignment is made and the taxpayer first claims the credit, which must be the same tax year.

Also under the bill and in Part 2, a qualified taxpayer would not be subject to the recapture provisions if the taxpayer enters into a written agreement with MSHDA that allows for the transfer or sale of the historic resource and provides the following:

- Reasonable assurance that after the transfer the property will remain a historic resource during the 5-year period after being placed in service.

- A method that the department can recover an amount from the taxpayer equal to the appropriate percentage of credit added back per the recapture schedule.
- An encumbrance on the title to the historic resource being sold or transferred, stating that the property must remain a historic resource throughout the 5-year period after being placed in service.
- 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 required.

Credit Carryforward and Refund

If the credit and any unused carryforward allowed exceed the taxpayer's tax liability for the tax year, the portion exceeding the liability for the tax year would not be refunded, but could be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. If the credit amount were less than \$250,000, the taxpayer could instead elect to forgo the carryover period and receive a refund of the amount of the credit that exceeds the taxpayer's tax liability. The amount of the refund would be 90% of the credit that exceeds the tax liability. This election would have to be made in the year that a certificate of completed rehabilitation is issued and would be irrevocable.

Under Part 2 of the Act, the taxpayer could use the carryforward to offset any amount added back by a revocation of the credit.

Tax Return

The qualified taxpayer would have to attach all of the filing to the taxpayer's annual income tax return:

- Certification of completed rehabilitation
- Certification of historic significance related to the historic resource and the qualified expenditures used to claim a credit
- A completed assignment form if the qualified taxpayer is an assignee of a credit or has assigned a credit.

The total amount of credits claimed under the program for a rehabilitation project could not exceed 25% of the total qualified expenditures eligible for the credit.

MSHDA Report

MSHDA would have to report all the following annually to the legislature, for the immediately preceding fiscal year:

- The fee schedule used and the total amount of fees collected.
- A description of each rehabilitation project certified.
- The location of each new and ongoing rehabilitation project.

Proposed MCL 206.266a and 206.675

BRIEF BACKGROUND:

Public Acts 38 and 39 of 2011 amended the Income Tax Act and Michigan Business Tax Act, respectively, to make changes to the state's taxation of individual and business income. Among other things, the acts eliminated the awarding of new Historic Preservation Tax Credits, but

retained existing credits for the duration of the agreement.¹ These credits were awarded under the Michigan Business Tax and Single Business Tax.

FISCAL IMPACT:

According to the Department of Treasury, the bill would reduce state revenues by between \$1.0 and \$3.1 million annually. While distributional impact cannot be ascertained due to the lack of information regarding individual or corporate income tax claims, it is expected that the vast majority of the revenue loss will affect the General Fund.

Changes adopted in the Tax Cuts and Jobs Act of 2017 affected the federal historic preservation tax credit in ways that would diminish the state tax credit proposed under the bill. Prior to the federal tax changes, an individual could claim a federal tax credit equal to 20% of qualified expenditures once the project was complete. The Tax Cuts and Jobs Act now would require an individual to parcel out the benefit over 5 years, in equal installments. The state tax credit proposed under the bill uses the federal credit and federally defined qualified expenditures in determining the state benefit; therefore, the federal change affects the value of the Michigan tax credit.

The bill would authorize a Michigan taxpayer to claim a one-time credit equal to 25% of the qualified expenditures in the year in which the certification of completed rehabilitation of the historic resource is issued, less any federal credit claimed. Therefore, a Michigan taxpayer could only claim a credit in the first year. Coupled with federal law, which now requires the federal credit/qualified expenditures to be parceled out over 5 years, the value of the Michigan tax credit would only be calculated using one-fifth of the total qualified expenditures.

For example, assume a project with qualified expenditures totaling \$1.0 million. The federal tax code requires qualified expenditures to be spread over 5 years, or \$200,000 annually. In the first year, the federal tax benefit would equal 20% of qualified expenditures, or \$40,000. The state tax credit would equal 25% of qualified expenditures, or \$50,000, less any federal benefit claimed (\$40,000 in this example), for a total state tax credit of \$10,000. The remaining qualified expenditures would not be eligible for a state tax credit because the state tax credit can only be received in the year in which the certification of completed rehabilitation is issued.

The bill would increase costs for MSHDA related to administering the program, certifying tax credits, and potentially inspecting properties to ensure compliance with rehabilitation plans. However, the bill would authorize MSHDA to assess a fee for these costs.

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

¹ For the Michigan State Housing Development Authority's overview of the Historic Preservation Tax Credit program, see: http://www.michigan.gov/mshda/0,4641,7-141-54317_19320_62001---,00.html