SB0606

LRB10007064HLH17118b

100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0606

Introduced 1/24/2017, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/224 new
215 ILCS 5/409.1 new

Creates the Illinois Rehabilitation and Revitalization Tax Credit Act. Creates a credit against taxes imposed under the Illinois Income Tax Act and the Illinois Insurance Code in an aggregate amount equal to 20% of qualified expenditures incurred by a qualified taxpayer pursuant to a qualified rehabilitation plan on a qualified structure, provided that the total amount of such qualified expenditures exceeds the greater of $5,000 or the adjusted basis of the property. Contains provisions concerning the transfer of credits. Sets forth the maximum annual amount of credits that may be approved by the Department of Commerce and Economic Opportunity. Amends the Illinois Income Tax Act and the Illinois Insurance Code to make conforming changes. Effective January 1, 2018.

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FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning revenue.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Illinois Rehabilitation and Revitalization Tax Credit Act.

Section 5. Definitions. As used in this Section, unless the context clearly indicates otherwise:

"Agency" means the Historic Preservation Agency.

"Department" means the Department of Commerce and Economic Opportunity.

"Qualified expenditures" means all the costs and expenses defined as qualified rehabilitation expenditures under Section 47 of the federal Internal Revenue Code. Applicants may incur qualified expenditures, at their own risk, from the earlier of (i) the commencement of construction or (ii) one year prior to receipt of preliminary approval of an application pursuant to Section 40.

"Qualified structure" means any building located in Illinois that is defined as a certified historic structure under Section 47(c)(3) of the federal Internal Revenue Code.

"Qualified rehabilitation plan" means a proposed rehabilitation design that is approved by the Agency and certified by the National Park Service as being consistent with

the Secretary of the Interior's Standards for Rehabilitation, as adopted by the United States Secretary of the Interior.

"Qualified rehabilitation project" means a completed rehabilitation project that is approved by the Agency and certified by the National Park Service as being consistent with the Secretary of the Interior's Standards for Rehabilitation, as adopted by the United States Secretary of the Interior.

"Qualified taxpayer" means any owner of the qualified structure or any other person who may qualify for the federal rehabilitation credit allowed by Section 47 of the federal Internal Revenue Code. If the taxpayer is (i) a corporation having an election in effect under Subchapter S of the federal Internal Revenue Code, (ii) a partnership, or (iii) a limited liability company, the credit provided by this subsection may be claimed by the shareholders of the corporation, the partners of the partnership, or the members of the limited liability company in the same manner as those shareholders, partners, or members account for their proportionate shares of the income or losses of the corporation, partnership, or limited liability company, or as provided in the bylaws or other executed agreement of the corporation, partnership, or limited liability company. Credits granted to a partnership, a limited liability company taxed as a partnership, or other multiple owners of property shall be passed through to the partners, members, or owners respectively on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners

documenting any alternate distribution method. Nothing in this Act is intended to prohibit a non-profit entity with a Section 501(c)(3) designation under the federal Internal Revenue Code from serving as a shareholder, partner, member or other owner of a qualified taxpayer.

Section 10. Functional obsolescence test. When the credits requested with respect to a qualified rehabilitation plan are $1,000,000 or more, the Department must confirm that the property satisfies at least 2 of the following factors:

(1) Dilapidation. Dilapidation means that the primary structural components of buildings or improvements on the property are in an advanced state of disrepair or neglect of necessary repairs such that a documented building condition analysis determines that major repair is required or the defects are so serious and so extensive that the buildings must be removed.

(2) Obsolescence. Obsolescence means that the property has fallen or is in the process of falling into disuse, that structures on the property have become ill suited for the original use, or both.

(3) Deterioration. Deterioration means: that buildings located on the property contain defects including, but not limited to, major defects in the secondary building components such as doors, windows, porches, gutters and downspouts, and fascia; that surface improvements,

roadways, alleys, curbs, gutters, sidewalks, off-street parking, and surface storage areas evidence deterioration, including, but not limited to, surface cracking, crumbling, potholes, depressions, loose paving material, or weeds protruding through paved surfaces; or that any combination of these problems exists.

(4) Presence of structures below minimum code standards. The property contains structures that do not meet the standards of zoning, subdivision, building, fire, and other governmental codes applicable to property, but not including housing and property maintenance codes.

(5) Illegal use of individual structures. The use of structures in violation of applicable federal, State, or local laws, exclusive of those applicable to the presence of structures below minimum code standards.

(6) Excessive vacancies. Buildings on the property are unoccupied or underused and represent an adverse influence on the area because of the frequency, extent, or duration of the vacancies.

(7) Inadequate ventilation, natural light, or sanitary facilities. Inadequate ventilation means the absence of ventilation for air circulation in spaces or rooms that lack windows or require the removal of dust, odor, gas, smoke, or other noxious airborne materials. Inadequate natural light means the absence of skylights or windows for interior spaces or rooms or improper window sizes or

amounts as determined by room area to window area ratios. Inadequate sanitary facilities refers to the absence or inadequacy of garbage storage and enclosure, bathroom facilities, hot water and kitchens, or structural inadequacies preventing ingress and egress to and from all rooms and units within a building.

(8) Inadequate utilities. Inadequate utilities are underground and overhead utilities such as storm sewers and storm drainage, sanitary sewers, water lines, and gas, telephone, and electrical services that are: (1) of insufficient capacity to serve the uses in the redevelopment project area; (2) deteriorated, antiquated, obsolete, or in disrepair; or (3) lacking within the redevelopment project area.

Section 15. Allowable credit. There shall be allowed a tax credit against (i) the tax imposed by subsections (a) and (b) of Section 201 of the Illinois Income Tax Act and (ii) the taxes imposed under Sections 409, 413, 444, and 444.1 of the Illinois Insurance Code in an aggregate amount equal to 20% of qualified expenditures incurred by a qualified taxpayer pursuant to a qualified rehabilitation plan on a qualified structure, provided that the total amount of such qualified expenditures exceeds the greater of $5,000 or the adjusted basis of the property. A tax credit may be earned under this Act during the period beginning January 1, 2018 and ending

December 31, 2022. While a tax credit may be earned before July 1, 2019, no tax credit shall be actually issued by the Department before July 1, 2019. While a tax credit must be earned on or before December 31, 2022, a credit shall be allowed after December 31, 2022 in accordance with the terms of this Act. If the amount of any tax credit awarded under this Act exceeds the taxpayer's tax liability for the year in which the qualified rehabilitation project was placed in service, the excess amount may be carried forward for deduction from the taxpayer's tax liability in the next succeeding year or years or may be carried back for deduction from the taxpayer's tax liability for the immediately preceding year until the total amount of the credit has been used, except that a credit may not be carried forward for deduction after the fifth taxable year after the taxable year in which the qualified rehabilitation project was placed in service or carried back for deduction more than one year before the taxable year in which the qualified rehabilitation project was placed in service.

Section 20. Economic needs test. When the credits requested with respect to a qualified rehabilitation plan will be $1,000,000 or more, the Department shall evaluate whether, without public intervention, the economic development project would not otherwise benefit from private sector investment. The Department shall have the power to adopt rules for such

evaluation purpose.

Section 25. Transfer of credits. Any qualified taxpayer, referred to in this Section as the assignor, may allocate, sell, assign, convey, or otherwise transfer tax credits allowed and earned under this Act to any individual or entity, including, without limitation, a non-profit entity with a Section 501(c)(3) designation under the federal Internal Revenue Code. The individual or entity acquiring the credits, referred to in this Section as the assignee, may use the amount of the acquired credits to offset up to 100% of its tax liability, if any, for either the taxable year in which the qualified rehabilitation project was first placed into service or the taxable year in which the credits were acquired, or any years in between. Unused credit amounts may be carried forward for up to 5 years and carried back for up to one year, except that all credits must be claimed within 5 years after the tax year in which the qualified rehabilitation project was first placed into service. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect the transfer by notifying the Department in writing within 30 calendar days after the effective date of the transfer and shall provide any information as may be required by the Department to administer and carry out the provisions of this Section. The Department shall develop a system to track the transfer of credits and to

certify the ownership of credits, and the Department may adopt rules to permit verification of the ownership of credits but shall not adopt any rules which unduly restrict or hinder the transfer of credits. The assignee also may sell, assign, convey, or otherwise transfer the credits, and the credits may be transferred more than once. The credits may be bifurcated to be transferred to more than one assignee. If credits that have been transferred are subsequently reduced, adjusted, or cancelled, in whole or in part, by the Department, the Department of Revenue, or any other applicable government agency, only the original qualified taxpayer that was awarded the credits, and not any subsequent assignee of the credits, shall be held liable to repay any amount of such reduction, adjustment, or cancellation of the credits. The credits are not subject to recapture.

Section 30. Maximum limits. The credits awarded for each qualified rehabilitation project shall be limited to a maximum of $3,000,000. A qualified rehabilitation project shall not receive credits pursuant to this Act if the qualified rehabilitation project has received credits pursuant to the River Edge Redevelopment Zone Act.

Section 35. Maximum annual cap. The total amount of credits approved by the Department under this Act may not exceed: (1) $10,000,000 in Fiscal Year 2018; (2) $20,000,000 in Fiscal Year

2019; (3) $30,000,000 in Fiscal Year 2020; (4) $40,000,000 for Fiscal Year 2021; and (5) $50,000,000 for Fiscal Year 2022. If the total amount of credits awarded in any of those fiscal years is less than the maximum amount available for that fiscal year, then the maximum amount available for the next fiscal year shall be increased by the difference between the maximum amount and the total amount awarded.

Section 40. Application Process.

(a) To obtain the credits allowed under this Act, the applicant shall submit an application for tax credits to the Department. The Department shall prioritize each application for review and approval in the order of the date on which the application was postmarked, with the oldest postmarked date receiving priority. Applications postmarked on the same day shall go through a lottery process to determine the order in which applications shall be received for approval. The application shall be in such form as the Department and the Agency shall reasonably require, and the application shall include sufficient information to permit the Agency to approve, approve with conditions, or reject the structure, rehabilitation plan, or rehabilitation project. The Department may charge an application fee of up to $1,000 per application per project. All application fees will be deposited into the Department's Administrative Fund, with the fee to be equally divided between the Department and the Agency.

(b) To ensure that an applicant has sufficient ownership of the qualified structure, each application shall include all of the following:

(1) Proof of ownership or site control. Proof of ownership shall include evidence that the applicant is the fee simple owner of the qualified structure, such as a warranty deed or a closing statement. Proof of site control may be evidenced by a leasehold interest or an option to acquire such an interest. If the applicant is in the process of acquiring fee simple ownership, proof of site control shall include an executed sales contract or an executed option to purchase the qualified structure.

(2) The estimated qualified expenditures, the anticipated total costs of the project, the adjusted basis of the property, as shown by proof of actual acquisition costs, the anticipated total labor costs, the estimated project start date, and the estimated project completion date.

(3) Proof that the property is a qualified structure as defined in this Act or evidence that the necessary documentation has been prepared for the property to become a qualified structure, but a final determination of such qualification shall not be a prerequisite for approval of the preliminary application or the incurrence of qualified expenditures.

(4) Any other information which the Department and the

Agency may reasonably require.

(c) If the Agency approves the applicant's rehabilitation plan for a qualified structure as meeting the Secretary of Interior's Standards for Rehabilitation and if the application is otherwise complete, the plan shall be forwarded to the National Park Service for review. If the National Park Service certifies the rehabilitation plan, the plan shall be considered qualified for this Act. The Department shall notify the applicant in writing of the preliminary approval for an amount of credits equal to the amount provided under this Section as may be limited elsewhere in this Act. Such preliminary approval requires full compliance thereafter with all other requirements of law as a condition to any claim for such credits. If the Agency or the National Park Service deems the applicant's rehabilitation plan to not be qualified, or if the application is not complete, the applicant shall be notified in writing of the rejection of the application. Any rejected application shall be removed from the review process. Rejected applications shall lose priority in the review process. A rejected application may be resubmitted, but shall be deemed to be a new application for purposes of the priority procedures described in this Section.

(d) Following approval of an application, the identity of the applicant contained in such application shall not be modified, except that:

(1) the applicant may add partners, members, or

shareholders as part of the ownership structure, so long as the primary owner remains the same; however, prior to the commencement of renovation and the expenditure of at least 10% of the proposed rehabilitation budget, removal of the principal for failure to perform duties and the appointment of a new principal thereafter shall not constitute a change of the principal; and

(2) the identity of the applicant may be changed if the ownership of the project is changed due to a foreclosure, deed in lieu of a foreclosure, or voluntary conveyance, or a transfer in bankruptcy.

(e) In the event that the Department grants approval for credits in any fiscal year equal to the maximum amount available under this Act, all applicants with applications then awaiting approval or thereafter submitted for approval shall be notified by the Department that no additional credits shall be approved during such fiscal year and shall be notified of the priority given to such applicant's application then awaiting approval. Those applications shall be kept on file by the Department and shall be considered for approval for credits in the order established in this Act in the event that additional credits become available due to the rescission of preliminary approvals or when a new fiscal year's allocation of credits becomes available for approval.

(f) All applicants with applications receiving preliminary approval on or after the effective date of this Act shall

commence rehabilitation within 2 years of the date of issue of the letter from the Department granting preliminary approval for credits. Commencement of rehabilitation means that, as of the date in which actual physical work has begun, the applicant has incurred no less than 10% of the estimated costs of rehabilitation provided in the application. The applicant may commence and incur qualified expenditures, at its own risk, before the property becomes a qualified structure. If the rehabilitation receives final approval under this Section, including the necessary verification of the total costs and expenses of rehabilitation, the applicant shall receive tax credits for all qualified expenditures incurred within the time periods allowed in this Act. If the Department determines that an applicant has failed to comply with the requirements provided under this Section, the preliminary approval for the amount of credits for such applicant shall be rescinded and such amount of credits shall then be included in the total amount of credits from which preliminary approvals for other projects may be granted. Any applicant whose preliminary approval shall be rescinded shall be notified of such from the Department and, upon receipt of such notice, may submit a new application for the project but such application shall be deemed to be a new application for purposes of the priority procedures described in this Section.

(g) If the Agency approves the completed rehabilitation project as meeting the Secretary of Interior's Standards for

Rehabilitation, the completed rehabilitation project shall be forwarded to the National Park Service for review. If the National Park Service certifies the completed rehabilitation project, the project shall be considered qualified for this Act. For qualified rehabilitation projects, the applicant shall submit a cost certification, and when the credits requested with respect to a qualified rehabilitation project are $250,000 or more, the Department shall require an outside audit of the cost certification. The Department shall determine the amount of qualified expenditures and the amount of credits to be issued to the applicant. The issuance of certificates of credits to applicants shall be performed by the Department. The Department shall coordinate with the Illinois Department of Revenue to determine if the applicant has any outstanding Illinois tax obligations that can be satisfied by the credits to be issued. The Department shall inform the applicant of final approval and of final credit amount by letter. An issuance fee of up to 2% of the amount of the credits issued by the tax credit certificate may be collected from the applicant and remitted to the Department, to be deposited into the Historic Property Administrative Fund, with the fee to be divided equally between the Department and the Agency, for the purpose of administering the Act. When the Department has received the issuance fee from the applicant and deposited it into the Historic Property Administrative Fund, the Department shall issue the tax credit certificates to the applicant. The

taxpayer must attach the tax credit certificate to the tax return on which the credits are to be claimed.

(h) In the event the amount of qualified expenditures actually incurred by an applicant is more than the estimated amount of qualified expenditures in its application, the applicant can submit a new application for such excess amount of qualified expenditures on a form prescribed by the Department, but that application shall be deemed to be a new application for purposes of the priority procedures described in this Act with respect to such excess amount of qualified expenditures. Such applications shall be automatically approved, subject only to availability of tax credits and all provisions regarding priority provided in this Act.

Section 45. Biennial report; powers of the Department and Agency. The Department shall determine, on a biennial basis beginning at the end of the second fiscal year after the date this Act takes effect, the overall economic impact to the State from the qualified rehabilitation projects. The overall economic impact shall include the number of jobs created. The Department and the Agency are granted and have all the powers necessary or convenient to carry out the provisions of this Act, including, but not limited to, the power to promulgate rules for the administration of this Act and the power to establish application forms and other agreements.

Section 50. Appeals process. Decisions of the National Park Service on whether a structure, rehabilitation plan or rehabilitation project meets the Secretary of the Interior's Standards for Rehabilitation shall be considered final and shall determine whether a structure, rehabilitation plan or rehabilitation project is considered qualified for the purposes of this Act. The applicant may appeal the decision of the National Park Service in the manner described in 36 C.F.R. 67 - Historic Preservation Certifications Pursuant to Sec. 48(g) and Sec. 170(h) of the Internal Revenue Code of 1986, as amended. The applicant may appeal any official decision other than the qualification of the structure, rehabilitation plan, or rehabilitation project to the Department with regard to an application submitted under this Act to an independent, third-party appeals officer to be identified by the Department and the Agency.

Appeals must be submitted to the designated appeals officer in writing within 30 days of receipt by the applicant of the decision which is the subject of the appeal, and shall include all information the applicant wishes the appeals officer to consider in deciding the appeal.

Upon receipt of an appeal, the appeals officer shall notify the Department and the Agency that an appeal is pending, identify the decision being appealed and forward a copy of the information submitted by the applicant. The Department or the Agency, or both, may submit a written response to the appeal.

The applicant shall be entitled to one meeting with the appeals officer to discuss the appeal, but the appeals officer may schedule additional meetings at their discretion. The Department and the Agency shall be permitted to appear at all meetings.

The appeals officer shall consider the record of the decision in question, any further written submissions by the applicant, the Department, or the Agency, and other available information and shall deliver a written decision to all parties as promptly as circumstances permit.

Appeals under this Section constitute an administrative review of the decision appealed from and are not conducted as an adjudicative proceeding.

Section 80. The Illinois Income Tax Act is amended by adding Section 224 as follows:

(35 ILCS 5/224 new)

Sec. 224. Rehabilitation and revitalization credit. For tax years commencing on or after January 1, 2018, a taxpayer who qualifies for a credit under the Illinois Rehabilitation and Revitalization Tax Credit Act is entitled to a credit against the taxes imposed under subsections (a) and (b) of Section 201 of this Act. If the taxpayer is a partnership or Subchapter S corporation, the credit shall be allowed to the partners or shareholders in accordance with the determination

of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code or the credit shall be allowed to the partners or shareholders pursuant to an executed agreement among the partners or shareholders documenting any alternate distribution method. This Section is exempt from the provisions of Section 250 of this Act.

Section 85. The Illinois Insurance Code is amended by adding Section 409.1 as follows:

(215 ILCS 5/409.1 new)

Sec. 409.1. Rehabilitation and revitalization credit. For taxes payable after January 1, 2018, credits may be granted against the taxes imposed under Section 409, 413, 444, and 444.1 of this Act as provided in the Illinois Rehabilitation and Revitalization Tax Credit Act.

Section 99. Effective date. This Act takes effect January 1, 2018.