



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB3026

Introduced 2/15/2019, by Rep. Jehan Gordon-Booth

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/228  
35 ILCS 31/5  
35 ILCS 31/10  
35 ILCS 31/20

Amends the Historic Preservation Tax Credit Act. Provides that the aggregate amount of credits awarded under the Act to a particular taxpayer may not exceed \$3,000,000. Provides that the total amount of expenditures must equal at least \$5,000 and (currently, "or") exceed the adjusted basis of the structure. Provides that the taxpayer may not receive a credit under the Act and a River Edge redevelopment credit for the same qualified expenditures or rehabilitation plan. Makes changes concerning the allocation of credits. Makes various technical changes. Amends the Illinois Income Tax Act. Makes changes to the historic preservation credit to include limited liability companies. Effective immediately.

LRB101 10296 HLH 55401 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Illinois Income Tax Act is amended by  
5 renumbering and changing Section 228, as added by Public Act  
6 100-629, as follows:

7 (35 ILCS 5/228)

8 Sec. 228 ~~227~~. Historic preservation credit. For tax years  
9 beginning on or after January 1, 2019 and ending on or before  
10 December 31, 2023, a taxpayer who qualifies for a credit under  
11 the Historic Preservation Tax Credit Act is entitled to a  
12 credit against the taxes imposed under subsections (a) and (b)  
13 of Section 201 of this Act as provided in that Act. If the  
14 taxpayer is a partnership, ~~or~~ Subchapter S corporation, or a  
15 limited liability company, the credit shall be allowed to the  
16 partners or shareholders in accordance with the determination  
17 of income and distributive share of income under Sections 702  
18 and 704 and Subchapter S of the Internal Revenue Code, provided  
19 that credits granted to a partnership, a limited liability  
20 company taxed as a partnership, or other multiple owners of  
21 property shall be passed through to the partners, members, or  
22 owners respectively on a pro rata basis or pursuant to an  
23 executed agreement among the partners, members, or owners

1 documenting any alternate distribution method. If the amount of  
2 any tax credit awarded under this Section exceeds the qualified  
3 taxpayer's income tax liability for the year in which the  
4 qualified rehabilitation plan was placed in service, the excess  
5 amount may be carried forward as provided in the Historic  
6 Preservation Tax Credit Act.

7 (Source: P.A. 100-629, eff. 1-1-19; revised 10-9-18.)

8 Section 10. The Historic Preservation Tax Credit Act is  
9 amended by changing Sections 5, 10, and 20 as follows:

10 (35 ILCS 31/5)

11 Sec. 5. Definitions. As used in this Act, unless the  
12 context clearly indicates otherwise:

13 "Director" means the Director of Natural Resources or his  
14 or her designee.

15 "Division" means the State Historic Preservation Office  
16 within the Department of Natural Resources.

17 ~~"Phased rehabilitation" means a project that is completed~~  
18 ~~in phases, as defined under Section 47 of the federal Internal~~  
19 ~~Revenue Code and pursuant to National Park Service regulations~~  
20 ~~at 36 C.F.R. 67.~~

21 "Placed in service" means the date when the property is  
22 placed in a condition or state of readiness and availability  
23 for a specifically assigned function as defined under Section  
24 47 of the federal Internal Revenue Code and federal Treasury

1 Regulation Sections 1.46 and 1.48.

2 "Qualified expenditures" means all the costs and expenses  
3 defined as qualified rehabilitation expenditures under Section  
4 47 of the federal Internal Revenue Code that were incurred in  
5 connection with a qualified rehabilitation plan ~~historic~~  
6 ~~structure~~.

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

11 "Qualified rehabilitation plan" means a project that is  
12 approved by the Department of Natural Resources and the  
13 National Park Service as being consistent with the United  
14 States Secretary of the Interior's Standards for  
15 Rehabilitation.

16 "Qualified taxpayer" means the owner of the ~~qualified~~  
17 ~~historic~~ structure or any other person or entity who may  
18 qualify for the federal rehabilitation credit allowed by  
19 Section 47 of the federal Internal Revenue Code.

20 "Recapture event" means any of the following events  
21 occurring during the recapture period:

22 (1) failure to place in service the rehabilitated  
23 portions of the qualified historic structure, or failure to  
24 maintain the rehabilitated portions of the qualified  
25 historic structure in service after they are placed in  
26 service; provided that a recapture event under this

1 paragraph (1) shall not include a removal from service for  
2 a reasonable period of time to conduct maintenance and  
3 repairs that are reasonably necessary to protect the health  
4 and safety of the public or to protect the structural  
5 integrity of the qualified historic structure or a  
6 neighboring structure;

7 (2) demolition or other alteration of the qualified  
8 historic structure in a manner that is inconsistent with  
9 the qualified rehabilitation plan or the Secretary of the  
10 Interior's Standards for Rehabilitation;

11 (3) disposition of the rehabilitated qualified  
12 historic structure in whole or a proportional disposition  
13 of a partnership interest therein, except as otherwise  
14 permitted by this Section; or

15 (4) use of the qualified historic structure in a manner  
16 that is inconsistent with the qualified rehabilitation  
17 plan or that is otherwise inconsistent with the provisions  
18 and intent of this Section.

19 A recapture event occurring in one taxable year shall be  
20 deemed continuing to subsequent taxable years unless and until  
21 corrected.

22 The following dispositions of a qualified historic  
23 structure shall not be deemed to be a recapture event for  
24 purposes of this Section:

25 (1) a transfer by reason of death;

26 (2) a transfer between spouses incident to divorce;

1           (3) a sale by and leaseback to an entity that, when the  
2           rehabilitated portions of the qualified historic structure  
3           are placed in service, will be a lessee of the qualified  
4           historic structure, but only for so long as the entity  
5           continues to be a lessee; and

6           (4) a mere change in the form of conducting the trade  
7           or business by the owner (or, if applicable, the lessee) of  
8           the qualified historic structure, so long as the property  
9           interest in such qualified historic structure is retained  
10          in such trade or business and the owner or lessee retains a  
11          substantial interest in such trade or business.

12          "Recapture period" means the 5-year period beginning on the  
13          date that the qualified historic structure or rehabilitated  
14          portions of the qualified historic structure are placed in  
15          service.

16          ~~"Substantial rehabilitation" means that the qualified~~  
17          ~~rehabilitation expenditures during the 24 month period~~  
18          ~~selected by the taxpayer at the time and in the manner~~  
19          ~~prescribed by rule and ending with or within the taxable year~~  
20          ~~exceed the greater of (i) the adjusted basis of the building~~  
21          ~~and its structural components or (ii) \$5,000. The adjusted~~  
22          ~~basis of the building and its structural components shall be~~  
23          ~~determined as of the beginning of the first day of such~~  
24          ~~24-month period or as of the beginning of the first day of the~~  
25          ~~holding period of the building, whichever is later. For~~  
26          ~~purposes of determining the adjusted basis, the determination~~

1 ~~of the beginning of the holding period shall be made without~~  
2 ~~regard to any reconstruction by the taxpayer in connection with~~  
3 ~~the rehabilitation. In the case of any phased rehabilitation,~~  
4 ~~with phases set forth in architectural plans and specifications~~  
5 ~~completed before the rehabilitation begins, this definition~~  
6 ~~shall be applied by substituting "60 month period" for~~  
7 ~~"24 month period" wherever that term occurs in the definition.~~

8 (Source: P.A. 100-629, eff. 1-1-19.)

9 (35 ILCS 31/10)

10 Sec. 10. Allowable credit.

11 (a) To the extent authorized by this Act, for taxable years  
12 beginning on or after January 1, 2019 and ending on or before  
13 December 31, 2023, there shall be allowed a tax credit to the  
14 qualified taxpayer against the tax imposed by subsections (a)  
15 and (b) of Section 201 of the Illinois Income Tax Act in an  
16 aggregate amount equal to the lesser of (i) 25% of qualified  
17 expenditures incurred in ~~by a qualified taxpayer~~ undertaking a  
18 qualified rehabilitation plan or (ii) \$3,000,000 ~~of a qualified~~  
19 ~~historic structure~~, provided that the total amount of such  
20 expenditures must (i) equal \$5,000 or more and ~~or~~ (ii) exceed  
21 the adjusted basis of the ~~qualified historic~~ structure on the  
22 first day the qualified rehabilitation plan commenced. If the  
23 qualified rehabilitation plan spans multiple years, the  
24 aggregate credit for the entire project shall be allowed in the  
25 last taxable year.

1           (b) To obtain a tax credit certificate pursuant to this  
2 Section, the qualified taxpayer must apply with the Division.  
3 The Division shall determine the amount of eligible  
4 rehabilitation expenditures within 45 days after receipt of a  
5 complete application. The taxpayer must provide to the Division  
6 a third-party cost certification conducted by a certified  
7 public accountant verifying (i) the qualified and  
8 non-qualified rehabilitation expenses and (ii) that the  
9 qualified expenditures exceed the adjusted basis of the  
10 ~~qualified historic~~ structure on the first day the qualified  
11 rehabilitation plan commenced. The accountant shall provide  
12 appropriate review and testing of invoices. The Division is  
13 authorized, but not required, to accept this third-party cost  
14 certification to determine the amount of qualified  
15 expenditures. The Division and the National Park Service shall  
16 determine whether the rehabilitation is consistent with the  
17 Standards of the Secretary of the United States Department of  
18 the Interior.

19           (c) If the amount of any tax credit awarded under this Act  
20 exceeds the qualified taxpayer's income tax liability for the  
21 year in which the qualified rehabilitation plan was placed in  
22 service, the excess amount may be carried forward for deduction  
23 from the taxpayer's income tax liability in the next succeeding  
24 year or years until the total amount of the credit has been  
25 used, except that a credit may not be carried forward for  
26 deduction after the tenth taxable year after the taxable year



1 in which the qualified rehabilitation plan was placed in  
2 service. Upon completion ~~and review~~ of the project and approval  
3 of the complete application, the Division shall issue a single  
4 certificate in the amount of the eligible credits equal to 25%  
5 of the qualified expenditures incurred during the eligible  
6 taxable years, not to exceed the lesser of the allocated amount  
7 or \$3,000,000 per single qualified rehabilitation plan. Prior  
8 to the issuance of the tax credit certificate, the qualified  
9 taxpayer must provide to the Division verification that the  
10 rehabilitated structure is a qualified historic structure. At  
11 the time the certificate is issued, an issuance fee up to the  
12 maximum amount of 2% of the amount of the credits issued by the  
13 certificate may be collected from the qualified taxpayer  
14 ~~applicant~~ to administer the Act. If collected, this issuance  
15 fee shall be directed to the Division Historic Property  
16 Administrative Fund or other such fund as appropriate for use  
17 of the Division in the administration of the Historic  
18 Preservation Tax Credit Program. The taxpayer must attach the  
19 certificate or legal documentation of her or his proportional  
20 share of the certificate to the tax return on which the credits  
21 are to be claimed. The tax credit under this Section may not  
22 reduce the taxpayer's liability to less than zero. If the  
23 amount of the credit exceeds the tax liability for the year,  
24 the excess credit may be carried forward and applied to the tax  
25 liability of the 10 taxable years following the first excess  
26 credit year. The taxpayer may not receive credits under this

1 Section and Section 221 of the Illinois Income Tax Act for the  
2 same qualified expenditures or qualified rehabilitation plan.

3 (d) If the taxpayer is (i) a corporation having an election  
4 in effect under Subchapter S of the federal Internal Revenue  
5 Code, (ii) a partnership, or (iii) a limited liability company,  
6 the credit provided under this Act may be claimed by the  
7 shareholders of the corporation, the partners of the  
8 partnership, or the members of the limited liability company in  
9 the same manner as those shareholders, partners, or members  
10 account for their proportionate shares of the income or losses  
11 of the corporation, partnership, or limited liability company,  
12 or as provided in the bylaws or other executed agreement of the  
13 corporation, partnership, or limited liability company.  
14 Credits granted to a partnership, a limited liability company  
15 taxed as a partnership, or other multiple owners of property  
16 shall be passed through to the partners, members, or owners  
17 respectively on a pro rata basis or pursuant to an executed  
18 agreement among the partners, members, or owners documenting  
19 any alternate distribution method.

20 (e) If a recapture event occurs during the recapture period  
21 with respect to a qualified historic structure, then for any  
22 taxable year in which the credits are allowed as specified in  
23 this Act, the tax under the applicable Section of this Act  
24 shall be increased by applying the recapture percentage set  
25 forth below to the tax decrease resulting from the allocation  
26 ~~application~~ of credits allowed under this Act to the taxable

1 year in question.

2 For the purposes of this subsection, the recapture  
3 percentage shall be determined as follows:

4 (1) if the recapture event occurs within the first year  
5 after commencement of the recapture period, then the  
6 recapture percentage is 100%;

7 (2) if the recapture event occurs within the second  
8 year after commencement of the recapture period, then the  
9 recapture percentage is 80%;

10 (3) if the recapture event occurs within the third year  
11 after commencement of the recapture period, then the  
12 recapture percentage is 60%;

13 (4) if the recapture event occurs within the fourth  
14 year after commencement of the recapture period, then the  
15 recapture percentage is 40%; and

16 (5) if the recapture event occurs within the fifth year  
17 after commencement of the recapture period, then the  
18 recapture percentage is 20%.

19 In the case of any recapture event, the carryforwards under  
20 this Act shall be adjusted by reason of such event.

21 (f) ~~(d)~~ The Division may adopt rules to implement this  
22 Section in addition to the rules expressly authorized herein.

23 (Source: P.A. 100-629, eff. 1-1-19; revised 10-1-18.)

24 (35 ILCS 31/20)

25 Sec. 20. Limitations, reporting, and monitoring.

1           (a) In every calendar year that this program is in effect,  
2 the Division is authorized to allocate \$15,000,000 worth of tax  
3 credits in addition to any unallocated, returned, or rescinded  
4 allocations from previous years, pursuant to qualified  
5 rehabilitation plans. ~~The Division shall award not more than an~~  
6 ~~aggregate of \$15,000,000 in total annual tax credits pursuant~~  
7 ~~to qualified rehabilitation plans for qualified historic~~  
8 ~~structures.~~ The Division shall allocate and award not more than  
9 \$3,000,000 in tax credits with regard to a single qualified  
10 rehabilitation plan. In allocating ~~awarding~~ tax credits under  
11 this Act, the Division must prioritize applications ~~projects~~  
12 that meet one or more of the following:

13           (1) the ~~qualified historic~~ structure is located in a  
14 county that borders a State with a historic  
15 income-producing property rehabilitation credit;

16           (2) the ~~qualified historic~~ structure was previously  
17 owned by a federal, state, or local governmental entity for  
18 no less than 6 months;

19           (3) the ~~qualified historic~~ structure is located in a  
20 census tract that has a median family income at or below  
21 the State median family income; data from the most recent  
22 5-year estimate from the American Community Survey (ACS),  
23 published by the U.S. Census Bureau, shall be used to  
24 determine eligibility;

25           (4) the qualified rehabilitation plan includes in the  
26 development partnership a Community Development Entity or

1 a low-profit (B Corporation) or not-for-profit  
2 organization, as defined by Section 501(c)(3) of the  
3 Internal Revenue Code; or

4 (5) the qualified historic structure is located in an  
5 area declared under an Emergency Declaration or Major  
6 Disaster Declaration under the federal Robert T. Stafford  
7 Disaster Relief and Emergency Assistance Act. The  
8 declaration must be no older than 3 years old at the time  
9 of application.

10 (b) The annual aggregate authorization ~~program~~ allocation  
11 of \$15,000,000 set forth in subsection (a) shall be allocated  
12 by the Division, in such proportion as determined by the  
13 Director ~~Department, on a per calendar basis~~ twice in each year  
14 that the program is in effect, provided that: ~~(i)~~ the amount  
15 initially allocated by the Division for the first ~~any one~~  
16 calendar year application period shall not exceed 65% of the  
17 total ~~allowable~~ amount available for allocation. Any  
18 unallocated and ~~(ii) any portion of the allocated allowable~~  
19 amount remaining ~~unused~~ as of the end of ~~any of~~ the second  
20 ~~calendar~~ application period of a given calendar year shall be  
21 rolled over ~~into~~ and added to the total authorized ~~allocated~~  
22 amount for the next available calendar year. The qualified  
23 rehabilitation plan must meet a readiness test, as defined ~~in~~  
24 ~~the rules created~~ by the Division, in order for the application  
25 ~~Applicant~~ to qualify. In any given application period,  
26 applications ~~Applicants~~ that qualify under this Act and are

1 prioritized as set forth in subsection (a) will be placed in a  
2 queue based on the date and time the application is received  
3 ~~until such time as the application period total allowable~~  
4 ~~amount is reached.~~ Applications that qualify but do not receive  
5 an allocation ~~Applicants~~ must reapply to be considered in  
6 subsequent ~~for each~~ application periods ~~period~~.

7 (c) ~~Subject~~ ~~On or before December 31, 2019, and on or~~  
8 ~~before December 31 of each odd numbered year thereafter through~~  
9 ~~2023, subject to appropriation and prior to equal disbursement~~  
10 to the Division, moneys in the Historic Property Administrative  
11 Fund shall be used, on a biennial basis beginning at the end of  
12 the second ~~first~~ fiscal year after the effective date of this  
13 Act, to hire a qualified third party to prepare a biennial  
14 report to assess the overall impact ~~effectiveness~~ of this Act  
15 from the qualified rehabilitation plans ~~projects~~ under this Act  
16 completed in that year and in previous years. Baseline data of  
17 the metrics in the report shall be collected at the initiation  
18 of a qualified rehabilitation plan ~~project~~. The overall  
19 economic impact shall include at least:

20 (1) the number of applications, project locations, and  
21 proposed use of qualified historic structures;

22 (2) the amount of credits awarded and the number and  
23 location of projects receiving credit allocations;

24 (3) the status of ongoing projects and projected  
25 qualifying expenditures for ongoing projects;

26 (4) for completed projects, the total amount of

1           qualifying rehabilitation expenditures and non-qualifying  
2           expenditures, the number of housing units created and the  
3           number of housing units that qualify as affordable, and the  
4           total square footage rehabilitated and developed;

5           (5) direct, indirect, and induced economic impacts;

6           (6) temporary, permanent, and construction jobs  
7           created; and

8           (7) sales, income, and property tax generation before  
9           construction, during construction, and after completion.

10          The report to the General Assembly shall be filed with the  
11          Clerk of the House of Representatives and the Secretary of the  
12          Senate in electronic form only, in the manner that the Clerk  
13          and the Secretary shall direct.

14          (d) Any time prior to issuance of a tax credit certificate,  
15          the Director of the Division, the State Historic Preservation  
16          Officer, or staff of the Division may, upon reasonable notice  
17          ~~to the project owner~~ of not less than 3 business days, conduct  
18          a site visit to the project to inspect and evaluate the  
19          project.

20          (e) Any time prior to the issuance of a tax credit  
21          certificate ~~and for a period of 4 years following the effective~~  
22          ~~date of a project tax credit certificate~~, the Director may,  
23          upon reasonable notice of not less than 30 calendar days,  
24          request a status report from the Applicant consisting of  
25          information and updates relevant to the status of the project.  
26          Status reports shall not be requested more than twice yearly.

1 (f) In order to demonstrate sufficient evidence of  
2 reviewable progress within 12 months after the date the  
3 Applicant received notification of allocation approval from  
4 the Division, the Director may require the Applicant to ~~shall~~  
5 provide all of the following:

6 (1) a viable financial plan which demonstrates by way  
7 of an executed agreement that all financing has been  
8 secured for the project; such financing shall include, but  
9 not be limited to, equity investment as demonstrated by  
10 letters of commitment from the owner of the property,  
11 investment partners, and equity investors;

12 (2) (blank); ~~final construction drawings or approved~~  
13 ~~building permits that demonstrate the complete~~  
14 ~~rehabilitation of the full scope of the application;~~ and

15 (3) all historic approvals, including all federal and  
16 State rehabilitation documents required by the Division.

17 The Director shall review the submitted evidence and may  
18 request additional documentation from the Applicant if  
19 necessary. The Applicant will have 30 calendar days to provide  
20 the information requested, otherwise the allocation approval  
21 may be rescinded at the discretion of the Director.

22 (g) In order to demonstrate sufficient evidence of  
23 reviewable progress within 24 ~~18~~ months after the date the  
24 application received notification of approval from the  
25 Division, the Director may require the Applicant is required to  
26 provide detailed evidence that the Applicant has secured and



1 closed on financing for the complete scope of rehabilitation  
2 for the project. To demonstrate evidence that the Applicant has  
3 secured and closed on financing, the Applicant will need to  
4 provide signed and processed loan agreements, bank financing  
5 documents or other legal and contractual evidence to  
6 demonstrate that adequate financing is available to complete  
7 the project. The Director shall review the submitted evidence  
8 and may request additional documentation from the Applicant if  
9 necessary. The Applicant will have 30 calendar days to provide  
10 the information requested, otherwise the allocation approval  
11 may be rescinded at the discretion of the Director.

12 If the Applicant fails to document reviewable progress  
13 within 24 ~~18~~ months of approval, the Director may notify the  
14 Applicant that the allocation application is rescinded.  
15 However, should financing and construction be imminent, the  
16 Director may elect to grant the Applicant no more than 5 months  
17 to close on financing and commence construction. If the  
18 Applicant fails to meet these conditions in the required  
19 timeframe, the Director shall notify the Applicant that the  
20 allocation application is rescinded. Any such rescinded  
21 allocation shall be added to the aggregate amount of credits  
22 available for allocation for the year in which the forfeiture  
23 occurred.

24 The amount of the qualified expenditures identified in the  
25 qualified taxpayer's ~~Applicant's~~ certification of completion  
26 and reflected on the Historic Preservation Tax Credit

1 certificate issued by the Director is subject to inspection,  
2 examination, and audit by the Department of Revenue.

3 The qualified taxpayer ~~Applicant~~ shall establish and  
4 maintain for a period of 4 years following the effective date  
5 on a project tax credit certificate such records as required by  
6 the Director. Such records include, but are not limited to,  
7 records documenting project expenditures and compliance with  
8 the U.S. Secretary of the Interior's Standards. The qualified  
9 taxpayer ~~Applicant~~ shall make such records available for review  
10 and verification by the Director, the State Historic  
11 Preservation Officer, the Department of Revenue, or  
12 appropriate staff, as well as other appropriate State agencies.  
13 In the event the Director determines an Applicant has submitted  
14 a status ~~an annual~~ report containing erroneous information or  
15 data not supported by records established and maintained under  
16 this Act, the Director may, after providing notice, require the  
17 Applicant to resubmit corrected reports.

18 (Source: P.A. 100-629, eff. 1-1-19.)

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law.