



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3745

Introduced 2/14/2020, by Sen. Cristina Castro

#### SYNOPSIS AS INTRODUCED:

35 ILCS 31/5  
35 ILCS 31/10  
35 ILCS 31/20  
35 ILCS 31/25  
35 ILCS 5/228

Amends the Historic Preservation Tax Credit Act. Provides that the aggregate amount of the credit may not exceed \$3,000,000. Provides that credits may be awarded upon completion of the project and approval of a complete application (currently, review of the project). Provides that the taxpayer is not eligible to receive credits under that Act and as qualified River Edge Redevelopment Zone property for the same qualified expenditures or qualified rehabilitation plan. Makes various technical corrections concerning allocation of credits. Amends the Illinois Income Tax Act with respect to the Historic Preservation Tax Credit to include provisions concerning limited liability companies. Effective immediately.

LRB101 17818 HLH 67249 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 Historic Preservation Tax Credit Act is  
5 amended by changing Sections 5, 10, 20, and 25 as follows:

6 (35 ILCS 31/5)

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

9 "Director" means the Director of Natural Resources or his  
10 or her designee.

11 "Division" means the State Historic Preservation Office  
12 within the Department of Natural Resources.

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

17 "Placed in service" means the date when the property is  
18 placed in a condition or state of readiness and availability  
19 for a specifically assigned function as defined under Section  
20 47 of the federal Internal Revenue Code and federal Treasury  
21 Regulation Sections 1.46 and 1.48.

22 "Qualified expenditures" means all the costs and expenses  
23 defined as qualified rehabilitation expenditures under Section

1 47 of the federal Internal Revenue Code that were incurred in  
2 connection with a qualified rehabilitation plan ~~historic~~  
3 ~~structure~~.

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

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

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

17 "Recapture event" means any of the following events  
18 occurring during the recapture period:

19 (1) failure to place in service the rehabilitated  
20 portions of the qualified historic structure, or failure to  
21 maintain the rehabilitated portions of the qualified  
22 historic structure in service after they are placed in  
23 service; provided that a recapture event under this  
24 paragraph (1) shall not include a removal from service for  
25 a reasonable period of time to conduct maintenance and  
26 repairs that are reasonably necessary to protect the health

1 and safety of the public or to protect the structural  
2 integrity of the qualified historic structure or a  
3 neighboring structure;

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

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

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

16 A recapture event occurring in one taxable year shall be  
17 deemed continuing to subsequent taxable years unless and until  
18 corrected.

19 The following dispositions of a qualified historic  
20 structure shall not be deemed to be a recapture event for  
21 purposes of this Section:

22 (1) a transfer by reason of death;

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

24 (3) a sale by and leaseback to an entity that, when the  
25 rehabilitated portions of the qualified historic structure  
26 are placed in service, will be a lessee of the qualified

1 historic structure, but only for so long as the entity  
2 continues to be a lessee; and

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

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

13 ~~"Substantial rehabilitation" means that the qualified~~  
14 ~~rehabilitation expenditures during the 24-month period~~  
15 ~~selected by the taxpayer at the time and in the manner~~  
16 ~~prescribed by rule and ending with or within the taxable year~~  
17 ~~exceed the greater of (i) the adjusted basis of the building~~  
18 ~~and its structural components or (ii) \$5,000. The adjusted~~  
19 ~~basis of the building and its structural components shall be~~  
20 ~~determined as of the beginning of the first day of such~~  
21 ~~24-month period or as of the beginning of the first day of the~~  
22 ~~holding period of the building, whichever is later. For~~  
23 ~~purposes of determining the adjusted basis, the determination~~  
24 ~~of the beginning of the holding period shall be made without~~  
25 ~~regard to any reconstruction by the taxpayer in connection with~~  
26 ~~the rehabilitation. In the case of any phased rehabilitation,~~

1 ~~with phases set forth in architectural plans and specifications~~  
2 ~~completed before the rehabilitation begins, this definition~~  
3 ~~shall be applied by substituting "60-month period" for~~  
4 ~~"24-month period" wherever that term occurs in the definition.~~

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

6 (35 ILCS 31/10)

7 Sec. 10. Allowable credit.

8 (a) To the extent authorized by this Act, for taxable years  
9 beginning on or after January 1, 2019 and ending on or before  
10 December 31, 2023, there shall be allowed a tax credit to the  
11 qualified taxpayer against the tax imposed by subsections (a)  
12 and (b) of Section 201 of the Illinois Income Tax Act in an  
13 aggregate amount equal to 25% of qualified expenditures, but  
14 not to exceed \$3,000,000, incurred ~~by a qualified taxpayer~~  
15 undertaking a qualified rehabilitation plan ~~of a qualified~~  
16 ~~historic structure~~, provided that the total amount of such  
17 expenditures must (i) equal \$5,000 or more or (ii) exceed the  
18 adjusted basis of the qualified historic structure on the first  
19 day the qualified rehabilitation plan commenced. If the  
20 qualified rehabilitation plan spans multiple years, the  
21 aggregate credit for the entire project shall be allowed in the  
22 last taxable year.

23 (b) To obtain a tax credit certificate pursuant to this  
24 Section, the qualified taxpayer must apply with the Division.  
25 The Division shall determine the amount of eligible

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

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

1 issue a single certificate in the amount of the eligible  
2 credits equal to 25% of the qualified expenditures incurred  
3 during the eligible taxable years, not to exceed the lesser of  
4 the allocated amount or \$3,000,000 per single qualified  
5 rehabilitation plan. Prior to the issuance of the tax credit  
6 certificate, the qualified taxpayer must provide to the  
7 Division verification that the rehabilitated structure is a  
8 qualified historic structure. At the time the certificate is  
9 issued, an issuance fee up to the maximum amount of 2% of the  
10 amount of the credits issued by the certificate may be  
11 collected from the qualified taxpayer applicant to administer  
12 the Act. If collected, this issuance fee shall be directed to  
13 the Division Historic Property Administrative Fund or other  
14 such fund as appropriate for use of the Division in the  
15 administration of the Historic Preservation Tax Credit  
16 Program. The taxpayer must attach the certificate or legal  
17 documentation of her or his proportional share of the  
18 certificate to the tax return on which the credits are to be  
19 claimed. The tax credit under this Section may not reduce the  
20 taxpayer's liability to less than zero. If the amount of the  
21 credit exceeds the tax liability for the year, the excess  
22 credit may be carried forward and applied to the tax liability  
23 of the 10 taxable years following the first excess credit year.  
24 The taxpayer is not eligible to receive credits under this  
25 Section and under Section 221 of the Illinois Income Tax Act  
26 for the same qualified expenditures or qualified



1 rehabilitation plan.

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

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

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

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

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

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

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

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

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

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

22 (Source: P.A. 100-629, eff. 1-1-19; 101-81, eff. 7-12-19.)

23 (35 ILCS 31/20)

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

25 (a) In every calendar year that this program is in effect,

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

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

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

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

24 (4) the qualified rehabilitation plan includes in the  
25 development partnership a Community Development Entity or  
26 a low-profit (B Corporation) or not-for-profit

1 organization, as defined by Section 501(c)(3) of the  
2 Internal Revenue Code; or

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

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

1 queue based on the date and time the application is received.  
2 Applicants whose applications qualify but do not receive an  
3 allocation until such time as the application period total  
4 allowable amount is reached. Applicants must reapply to be  
5 considered in subsequent for each application periods period.

6 (c) ~~Subject On or before December 31, 2019, and on or~~  
7 ~~before December 31 of each odd numbered year thereafter through~~  
8 ~~2023, subject to appropriation and prior to equal disbursement~~  
9 to the Division, moneys in the Historic Property Administrative  
10 Fund shall be used, on a biennial basis, beginning at the end  
11 of the second first fiscal year after the effective date of  
12 this amendatory Act of the 101st General Assembly, to hire a  
13 qualified third party to prepare a biennial report to assess  
14 the overall impact effectiveness of this Act from the qualified  
15 rehabilitation plans projects under this Act completed in that  
16 year and in previous years. Baseline data of the metrics in the  
17 report shall be collected at the initiation of a qualified  
18 rehabilitation plan project. The overall economic impact shall  
19 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 application is rescinded. Any such rescinded allocation shall  
21 be added to the aggregate amount of credits available for  
22 allocation for the year in which the forfeiture occurred.

23 The amount of the qualified expenditures identified in the  
24 qualified taxpayer's ~~Applicant's~~ certification of completion  
25 and reflected on the Historic Preservation Tax Credit  
26 certificate issued by the Director is subject to inspection,



1 examination, and audit by the Department of Revenue.

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

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

18 (35 ILCS 31/25)

19 Sec. 25. Powers. The Division may ~~shall~~ adopt rules for the  
20 administration of this Act. The Division may enter into an  
21 intergovernmental agreement with the Department of Commerce  
22 and Economic Opportunity, the Department of Revenue, or both,  
23 for the administration of this Act. Such intergovernmental  
24 agreement may allow for the distribution of all or a portion of  
25 the issuance fee imposed under Section 10 to the Department of

1 Commerce and Economic Opportunity or the Department of Revenue,  
2 as applicable.

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

4 Section 10. The Illinois Income Tax Act is amended by  
5 changing Section 228 as follows:

6 (35 ILCS 5/228)

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

1 taxpayer's income tax liability for the year in which the  
2 qualified rehabilitation plan was placed in service, the excess  
3 amount may be carried forward as provided in the Historic  
4 Preservation Tax Credit Act.

5 (Source: P.A. 100-629, eff. 1-1-19; 101-81, eff. 7-12-19.)

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.