



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3186

Introduced 2/19/2021, 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.

LRB102 13314 HLH 18658 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

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 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 in accordance with the determination
16 of income and distributive share of income under Sections 702
17 and 704 and Subchapter S of the Internal Revenue Code,
18 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
22 pursuant to an executed agreement among the partners, members,
23 or owners documenting any alternate distribution method. If

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

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

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

9 (35 ILCS 31/5)

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

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

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

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

20 "Placed in service" means the date when the property is
21 placed in a condition or state of readiness and availability
22 for a specifically assigned function as defined under Section
23 47 of the federal Internal Revenue Code and federal Treasury
24 Regulation Sections 1.46 and 1.48.

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

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

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

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

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

- 21 (1) failure to place in service the rehabilitated
22 portions of the qualified historic structure, or failure
23 to maintain the rehabilitated portions of the qualified
24 historic structure in service after they are placed in
25 service; provided that a recapture event under this
26 paragraph (1) shall not include a removal from service for

1 a reasonable period of time to conduct maintenance and
2 repairs that are reasonably necessary to protect the
3 health and safety of the public or to protect the
4 structural integrity of the qualified historic structure
5 or a neighboring structure;

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

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

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

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

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

24 (1) a transfer by reason of death;

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

26 (3) a sale by and leaseback to an entity that, when the

1 rehabilitated portions of the qualified historic structure
2 are placed in service, will be a lessee of the qualified
3 historic structure, but only for so long as the entity
4 continues to be a lessee; and

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

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

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

1 ~~regard to any reconstruction by the taxpayer in connection~~
2 ~~with the rehabilitation. In the case of any phased~~
3 ~~rehabilitation, with phases set forth in architectural plans~~
4 ~~and specifications completed before the rehabilitation begins,~~
5 ~~this definition shall be applied by substituting "60 month~~
6 ~~period" for "24 month period" wherever that term occurs in the~~
7 ~~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
12 years beginning on or after January 1, 2019 and ending on or
13 before December 31, 2023, there shall be allowed a tax credit
14 to the qualified taxpayer against the tax imposed by
15 subsections (a) and (b) of Section 201 of the Illinois Income
16 Tax Act in an aggregate amount equal to the lesser of (i) 25%
17 of qualified expenditures incurred in by a qualified taxpayer
18 undertaking a qualified rehabilitation plan or (ii) \$3,000,000
19 ~~of a qualified historic structure~~, provided that the total
20 amount of such expenditures must (i) equal \$5,000 or more and
21 ~~or~~ (ii) exceed the adjusted basis of the ~~qualified historic~~
22 structure on the first day the qualified rehabilitation plan
23 commenced. If the qualified rehabilitation plan spans multiple
24 years, the aggregate credit for the entire project shall be
25 allowed in the 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
6 Division a third-party cost certification conducted by a
7 certified 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
23 deduction from the taxpayer's income tax liability in the next
24 succeeding year or years until the total amount of the credit
25 has been used, except that a credit may not be carried forward
26 for deduction after the tenth taxable year after the taxable

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

1 year. The taxpayer may not receive credits under this Section
2 and Section 221 of the Illinois Income Tax Act for the same
3 qualified expenditures or qualified rehabilitation plan.

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

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

1 the allocation ~~application~~ of credits allowed under this Act
2 to the taxable year in question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (4) the qualified rehabilitation plan includes in the

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

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

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

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

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

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

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

1 (3) the status of ongoing projects and projected
2 qualifying expenditures for ongoing projects;

3 (4) for completed projects, the total amount of
4 qualifying rehabilitation expenditures and non-qualifying
5 expenditures, the number of housing units created and the
6 number of housing units that qualify as affordable, and
7 the total square footage rehabilitated and developed;

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

9 (6) temporary, permanent, and construction jobs
10 created; and

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

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

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

23 (e) Any time prior to the issuance of a tax credit
24 certificate ~~and for a period of 4 years following the~~
25 ~~effective date of a project tax credit certificate,~~ the
26 Director may, upon reasonable notice of not less than 30

1 calendar days, request a status report from the Applicant
2 consisting of information and updates relevant to the status
3 of the project. Status reports shall not be requested more
4 than twice yearly.

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

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

16 (2) (blank); ~~final construction drawings or approved~~
17 ~~building permits that demonstrate the complete~~
18 ~~rehabilitation of the full scope of the application;~~ and

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

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

26 (g) In order to demonstrate sufficient evidence of

1 reviewable progress within 24 ~~18~~ months after the date the
2 application received notification of approval from the
3 Division, the Director may require the Applicant ~~is required~~
4 to provide detailed evidence that the Applicant has secured
5 and closed on financing for the complete scope of
6 rehabilitation for the project. To demonstrate evidence that
7 the Applicant has secured and closed on financing, the
8 Applicant will need to provide signed and processed loan
9 agreements, bank financing documents or other legal and
10 contractual evidence to demonstrate that adequate financing is
11 available to complete the project. The Director shall review
12 the submitted evidence and may request additional
13 documentation from the Applicant if necessary. The Applicant
14 will have 30 calendar days to provide the information
15 requested, otherwise the allocation approval may be rescinded
16 at the discretion of the Director.

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

1 available for allocation for the year in which the forfeiture
2 occurred.

3 The amount of the qualified expenditures identified in the
4 qualified taxpayer's ~~Applicant's~~ certification of completion
5 and reflected on the Historic Preservation Tax Credit
6 certificate issued by the Director is subject to inspection,
7 examination, and audit by the Department of Revenue.

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

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

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.