



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB1711

Introduced 2/26/2021, 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.

LRB102 11477 HLH 16811 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  
21 to 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

1 health and safety of the public or to protect the  
2 structural integrity of the qualified historic structure  
3 or a 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  
13 manner that is inconsistent with the qualified  
14 rehabilitation plan or that is otherwise inconsistent with  
15 the provisions 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)  
5 of the qualified historic structure, so long as the  
6 property interest in such qualified historic structure is  
7 retained in such trade or business and the owner or lessee  
8 retains a substantial interest in such trade or business.

9 "Recapture period" means the 5-year period beginning on  
10 the date that the qualified historic structure or  
11 rehabilitated portions of the qualified historic structure are  
12 placed in 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~~  
26 ~~with the rehabilitation. In the case of any phased~~

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

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

7 (35 ILCS 31/10)

8 Sec. 10. Allowable credit.

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

24 (b) To obtain a tax credit certificate pursuant to this  
25 Section, the qualified taxpayer must apply with the Division.

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

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

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



1 Act for the same qualified expenditures or qualified  
2 rehabilitation plan.

3 (d) If the taxpayer is (i) a corporation having an  
4 election in effect under Subchapter S of the federal Internal  
5 Revenue Code, (ii) a partnership, or (iii) a limited liability  
6 company, the credit provided under this Act may be claimed by  
7 the shareholders of the corporation, the partners of the  
8 partnership, or the members of the limited liability company  
9 in 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  
21 period with respect to a qualified historic structure, then  
22 for any taxable year in which the credits are allowed as  
23 specified in this Act, the tax under the applicable Section of  
24 this Act shall be increased by applying the recapture  
25 percentage set forth below to the tax decrease resulting from  
26 the application of credits allowed under this Act to the

1 taxable 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  
5 year 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  
11 year 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  
17 year after commencement of the recapture period, then the  
18 recapture percentage is 20%.

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

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

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

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 in 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~~  
6 ~~an aggregate of \$15,000,000 in total annual tax credits~~  
7 ~~pursuant to qualified rehabilitation plans for qualified~~  
8 ~~historic structures.~~ The Division shall not allocate or award  
9 ~~award not~~ more than \$3,000,000 in tax credits with regard to a  
10 single qualified rehabilitation plan. In allocating ~~awarding~~  
11 tax credits under this Act, the Division must prioritize  
12 applications ~~projects~~ 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  
18 for 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 at the time of  
9 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  
14 calendar year that the program is in effect, provided that:  
15 ~~(i)~~ the amount initially allocated by the Division for the  
16 first ~~any one~~ calendar application period shall not exceed 65%  
17 of the 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  
25 application ~~Applicant~~ to qualify. In any given application  
26 period, applications ~~Applicants~~ that qualify under this Act

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

8 (c) Subject ~~On or before December 31, 2019, and on or~~  
9 ~~before December 31 of each odd numbered year thereafter~~  
10 ~~through 2023, subject to appropriation and prior to equal~~  
11 ~~disbursement~~ to the Division, moneys in the Historic Property  
12 Administrative Fund shall be used, on a biennial basis,  
13 beginning at the end of the second ~~first~~ fiscal year after the  
14 effective date of this amendatory Act of the 102nd General  
15 Assembly, to hire a qualified third party to prepare a  
16 biennial report to assess the overall impact ~~effectiveness~~ of  
17 this Act from the qualified rehabilitation plans ~~projects~~  
18 under this Act completed in that year and in previous years.  
19 Baseline data of the metrics in the report shall be collected  
20 at the initiation of a qualified rehabilitation plan ~~project.~~  
21 The overall economic impact shall include at least:

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

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

26 (3) the status of ongoing projects and projected

1           qualifying expenditures for ongoing projects;

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

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

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

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

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

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

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

1 consisting of information and updates relevant to the status  
2 of the project. Status reports shall not be requested more  
3 than twice yearly.

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

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

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

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

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

25 (g) In order to demonstrate sufficient evidence of  
26 reviewable progress within 24 ~~18~~ months after the date the

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

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



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

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

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

22           (35 ILCS 31/25)

23           Sec. 25. Powers. The Division may ~~shall~~ adopt rules for  
24 the administration of this Act. The Division may enter into an  
25 intergovernmental agreement with the Department of Commerce

1 and Economic Opportunity, the Department of Revenue, or both,  
2 for the administration of this Act. Such intergovernmental  
3 agreement may allow for the distribution of all or a portion of  
4 the issuance fee imposed under Section 10 to the Department of  
5 Commerce and Economic Opportunity or the Department of  
6 Revenue, as applicable.

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

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

10 (35 ILCS 5/228)

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

1 members, or owners respectively on a pro rata basis or  
2 pursuant to an executed agreement among the partners, members,  
3 or owners documenting any alternate distribution method. If  
4 the amount of any tax credit awarded under this Section  
5 exceeds the qualified taxpayer's income tax liability for the  
6 year in which the qualified rehabilitation plan was placed in  
7 service, the excess amount may be carried forward as provided  
8 in the Historic Preservation Tax Credit Act.

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

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law.