Sen. Antonio Muñoz

Filed: 11/5/2013

AMENDMENT TO SENATE BILL 341

AMENDMENT NO. ______. Amend Senate Bill 341 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Illinois State Property Revitalization Tax Credit Act.

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

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

"Qualified expenditures" means all the costs and expenses associated with the rehabilitation of qualified structures as defined in this Act. Applicants may incur qualified expenditures, at their own risk, from the earlier of (i) the commencement of construction or (ii) one year prior to receipt of preliminary approval of an application pursuant to Section 30 of this Act.

"Qualified structures" means a facility or structure located in Illinois (i) that was owned by the State of Illinois at any time within the 2 years immediately preceding the effective date of this Act and (ii) at which more than 100 employees were employed within the 2 years immediately preceding the effective date of this Act.

"Qualified rehabilitation plan" means a proposed rehabilitation design that is approved by the Department.

"Qualified rehabilitation project" means a completed rehabilitation project that is approved by the Department.

"Qualified taxpayer" means any owner of the qualified structure. If the taxpayer is (i) a corporation having an election in effect under subchapter S of the federal Internal Revenue Code, (ii) a partnership, including a limited partnership or a limited liability partnership, or (iii) a limited liability company, the credit provided by this Act may be claimed by the shareholders of the corporation, the partners of the partnership, or the members of the limited liability company in the same manner as those shareholders, partners, or members account for their proportionate shares of the income or losses of the corporation, partnership, or limited liability company, or as provided in the bylaws or other executed agreement of the corporation, partnership, or limited liability company.

Credits granted to a partnership, including a limited partnership or a limited liability partnership, a limited liability company taxed as a partnership, or other multiple owners of property shall be passed through to the partners, members, or owners respectively on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting any alternate distribution method. Nothing in this Act is intended to prohibit a non-profit entity with a Section 501(c)(3) designation under the federal Internal Revenue Code from serving as a shareholder, partner, member or other owner of a qualified taxpayer.

Section 10. Allowable credit. There shall be allowed a tax credit against (i) the tax imposed by subsections (a) and (b) of Section 201 of the Illinois Income Tax Act and (ii) the taxes imposed under Sections 409, 413, 444, and 444.1 of the Illinois Insurance Code in an aggregate amount equal to 30% of the qualified expenditures incurred by a qualified taxpayer pursuant to a qualified rehabilitation plan on a qualified structure, provided that the total amount of such qualified expenditures exceeds the greater of $5,000 for each qualified structure or the adjusted basis of the property.

While a tax credit may be earned before July 1, 2014, no tax credit shall be issued by the Department before that date. If the amount of any tax credit awarded under this Act exceeds the taxpayer's tax liability for the year in which the qualified rehabilitation project was placed in service, the excess amount may be carried forward for deduction from the taxpayer's tax liability in the next succeeding year or years or may be carried back for deduction from the taxpayer's tax liability for the immediately preceding year until the total amount of the credit has been used, except that a credit may not be carried forward for deduction after the fifth taxable year after the taxable year in which the qualified rehabilitation project was placed in service or carried back for deduction more than one year before the taxable year in which the qualified rehabilitation project was placed in service.

Section 15. Economic needs test. When the total credits requested with respect to a qualified rehabilitation plan will be $1,000,000 or more, the Department shall evaluate whether, without public intervention, the economic development project would not otherwise benefit from private sector investment.

Section 20. Transfer of credits.

(a) Any qualified taxpayer may elect to transfer, in whole or in part, any unused credit amount granted under this Act as provided in subsection (b). An election to transfer any unused credit amount must be made no later than 5 years after the date the credit is awarded, after which period the credit expires and may not be used. The Department shall notify the Department of Revenue of the election and transfer.

(b) A qualified taxpayer is permitted a one-time transfer of unused credit amounts to no more than 4 transferees. Those transfers must occur in the same taxable year.

(c) The transferee is subject to the same rights and limitations as the accredited production company awarded the credit, except that the transferee may not sell or otherwise transfer the credit.

(d) The Department may adopt rules to administer this Section.

Section 25. Maximum limits. The credits awarded for each qualified rehabilitation project shall be limited to a maximum of $10,000,000. The aggregate amount of the tax credits that may be claimed under this Act for investments in qualified rehabilitation projects shall be limited to $40,000,000. A qualified rehabilitation project shall not receive credits pursuant to this Act if the qualified rehabilitation project has received credits pursuant to the River Edge Redevelopment Zone Act.

Section 30. Application process.

(a) To obtain the credits allowed under this Act, the applicant shall submit an application for tax credits to the Department. The application shall be in such form as the Department shall reasonably require, and the application shall include sufficient information to permit the Department to approve, approve with conditions, or reject the structure, rehabilitation plan, or rehabilitation project.

(b) The Department may charge a non-refundable application fee of up to 1% of the amount of credits requested, with a minimum fee of $1,000 per application per project. All application fees shall be deposited into the Department's Administrative Fund.

(c) All applicants with applications receiving preliminary approval on or after the effective date of this Act shall commence rehabilitation within 3 years of the date of issue of the letter from the Department granting preliminary approval for credits. Commencement of rehabilitation means that, as of the date on which actual physical work has begun, the applicant has incurred no less than 10% of the estimated costs of rehabilitation provided in the application. The applicant may commence and incur qualified expenditures at its own risk before the property becomes a qualified structure. If the rehabilitation receives final approval under this Section, including the necessary verification of the total costs and expenses of rehabilitation, the applicant shall receive tax credits for all qualified expenditures incurred within the time periods allowed in this Act.

(d) For qualified rehabilitation projects, the applicant shall submit a cost certification, and if the credits requested with respect to a qualified rehabilitation project are $250,000 or more, the Department shall require an independent audit of the cost certification at the applicant's expense. Those audits shall be conducted by a licensed Certified Public Accounting firm that participates in the peer review program of the American Institute of Certified Public Accountants.

(e) The Department shall determine the amount of qualified expenditures and the amount of credits to be issued to the applicant. The issuance of certificates of credits to applicants shall be performed by the Department. The Department shall coordinate with the Illinois Department of Revenue to determine if the applicant has any outstanding Illinois tax obligations that can be satisfied by the credits to be issued. The Department shall inform the applicant of final approval and of the final credit amount by letter. An issuance fee of up to 2% of the amount of the credits issued by the tax credit certificate may be collected from the applicant and remitted to the Department for the purpose of administering the Act. When the Department has received the issuance fee from the applicant and deposited it into the Department's Administrative Fund, the Department shall issue a tax credit certificate to the applicant. The taxpayer must attach the tax credit certificate to the tax return on which the credits are to be claimed.

Section 35. Biennial report; powers of the Department. The Department shall issue a report no later than the last day of the second fiscal year after the effective date of this Act on the overall economic impact to the State of the qualified rehabilitation projects. The Department is granted and has all the powers necessary or convenient to carry out the provisions of this Act. The Department has the power to promulgate rules for the administration of this Act, including the power to adopt emergency rules for a period of 12 months after the effective date of this Act for the purposes of establishing application forms and entering into agreements related to this Act.

Section 40. Appeals process. An applicant may appeal an adverse decision made by the Department, other than a decision related to the qualifications of the structure, rehabilitation plan, or rehabilitation project, by requesting a hearing under the terms of Article 10 of the Illinois Administrative Procedure Act. A petition for hearing must be postmarked no later than 30 days from the date of the adverse decision.

Section 70. The Illinois Income Tax Act is amended by adding Section 224 as follows:

(35 ILCS 5/224 new)

<u>Sec. 224. Rehabilitation and revitalization credit. For tax years commencing on or after January 1, 2014, a taxpayer who qualifies for a credit under the Illinois Rehabilitation and Revitalization Tax Credit Act is entitled to a credit against the taxes imposed under subsections (a) and (b) of Section 201 of this Act. If the taxpayer is a partnership or</u>

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

Section 75. The Illinois Insurance Code is amended by adding Section 409.2 as follows:

(215 ILCS 5/409.2 new)

Sec. 409.2. Rehabilitation and revitalization credit. For taxes payable after January 1, 2014, credits may be granted against the taxes imposed under Section 409, 413, 444, and 444.1 of this Act as provided in the Illinois Rehabilitation and Revitalization Tax Credit Act.

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