

SB2217



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB2217

Introduced 1/13/2016, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/224 new
215 ILCS 5/409.1 new

Creates the Illinois Rehabilitation and Revitalization Tax Credit Act. Creates a credit against taxes imposed under the Illinois Income Tax Act and the Illinois Insurance Code in an aggregate amount equal to 20% of 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 or the adjusted basis of the property. Contains provisions concerning the transfer of credits. Sets forth the maximum annual amount of credits that may be approved by the Department. Amends the Illinois Income Tax Act and the Illinois Insurance Code to make conforming changes. Effective January 1, 2017.

LRB099 15855 HLH 40165 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT 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 1. Short title. This Act may be cited as the
5 Illinois Rehabilitation and Revitalization Tax Credit Act.

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

8 (a) "Agency" means the Historic Preservation Agency.

9 (b) "Department" means the Department of Commerce and
10 Economic Opportunity.

11 (c) "Qualified expenditures" means all the costs and
12 expenses defined as qualified rehabilitation expenditures
13 under Section 47 of the federal Internal Revenue Code.
14 Applicants may incur qualified expenditures, at their own risk,
15 from the earlier of (i) the commencement of construction or
16 (ii) one year prior to receipt of preliminary approval of an
17 application pursuant to Section 40.

18 (d) "Qualified structure" means any building located in
19 Illinois that is defined as a certified historic structure
20 under Section 47(c)(3) of the federal Internal Revenue Code.

21 (e) "Qualified rehabilitation plan" means a proposed
22 rehabilitation design that is approved by the Agency and
23 certified by the National Park Service as being consistent with

1 the Secretary of the Interior's Standards for Rehabilitation,
2 as adopted by the United States Secretary of the Interior.

3 (f) "Qualified rehabilitation project" means a completed
4 rehabilitation project that is approved by the Agency and
5 certified by the National Park Service as being consistent with
6 the Secretary of the Interior's Standards for Rehabilitation,
7 as adopted by the United States Secretary of the Interior.

8 (g) "Qualified taxpayer" means any owner of the qualified
9 structure or any other person who may qualify for the federal
10 rehabilitation credit allowed by Section 47 of the federal
11 Internal Revenue Code. If the taxpayer is (i) a corporation
12 having an election in effect under Subchapter S of the federal
13 Internal Revenue Code, (ii) a partnership, or (iii) a limited
14 liability company, the credit provided by this subsection may
15 be claimed by the shareholders of the corporation, the partners
16 of the partnership, or the members of the limited liability
17 company in the same manner as those shareholders, partners, or
18 members account for their proportionate shares of the income or
19 losses of the corporation, partnership, or limited liability
20 company, or as provided in the bylaws or other executed
21 agreement of the corporation, partnership, or limited
22 liability company. 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,
25 members, or owners respectively on a pro rata basis or pursuant
26 to an executed agreement among the partners, members, or owners

1 documenting any alternate distribution method. Nothing in this
2 Act is intended to prohibit a non-profit entity with a Section
3 501(c)(3) designation under the federal Internal Revenue Code
4 from serving as a shareholder, partner, member or other owner
5 of a qualified taxpayer.

6 Section 10. Functional obsolescence test. When the credits
7 requested with respect to a qualified rehabilitation plan are
8 \$1,000,000 or more, the Department must confirm that the
9 property satisfies at least 2 of the following factors:

10 (1) Dilapidation. Dilapidation means that the primary
11 structural components of buildings or improvements on the
12 property are in an advanced state of disrepair or neglect
13 of necessary repairs such that a documented building
14 condition analysis determines that major repair is
15 required or the defects are so serious and so extensive
16 that the buildings must be removed.

17 (2) Obsolescence. Obsolescence means that the property
18 has fallen or is in the process of falling into disuse,
19 that structures on the property have become ill suited for
20 the original use, or both.

21 (3) Deterioration. Deterioration means: that buildings
22 located on the property contain defects including, but not
23 limited to, major defects in the secondary building
24 components such as doors, windows, porches, gutters and
25 downspouts, and fascia; that surface improvements,

1 roadways, alleys, curbs, gutters, sidewalks, off-street
2 parking, and surface storage areas evidence deterioration,
3 including, but not limited to, surface cracking,
4 crumbling, potholes, depressions, loose paving material,
5 or weeds protruding through paved surfaces; or that any
6 combination of these problems exists.

7 (4) Presence of structures below minimum code
8 standards. The property contains structures that do not
9 meet the standards of zoning, subdivision, building, fire,
10 and other governmental codes applicable to property, but
11 not including housing and property maintenance codes.

12 (5) Illegal use of individual structures. The use of
13 structures in violation of applicable federal, State, or
14 local laws, exclusive of those applicable to the presence
15 of structures below minimum code standards.

16 (6) Excessive vacancies. Buildings on the property are
17 unoccupied or underused and represent an adverse influence
18 on the area because of the frequency, extent, or duration
19 of the vacancies.

20 (7) Inadequate ventilation, natural light, or sanitary
21 facilities. Inadequate ventilation means the absence of
22 ventilation for air circulation in spaces or rooms that
23 lack windows or require the removal of dust, odor, gas,
24 smoke, or other noxious airborne materials. Inadequate
25 natural light means the absence of skylights or windows for
26 interior spaces or rooms or improper window sizes or

1 amounts as determined by room area to window area ratios.
2 Inadequate sanitary facilities refers to the absence or
3 inadequacy of garbage storage and enclosure, bathroom
4 facilities, hot water and kitchens, or structural
5 inadequacies preventing ingress and egress to and from all
6 rooms and units within a building.

7 (8) Inadequate utilities. Inadequate utilities are
8 underground and overhead utilities such as storm sewers and
9 storm drainage, sanitary sewers, water lines, and gas,
10 telephone, and electrical services that are: (1) of
11 insufficient capacity to serve the uses in the
12 redevelopment project area; (2) deteriorated, antiquated,
13 obsolete, or in disrepair; or (3) lacking within the
14 redevelopment project area.

15 Section 15. Allowable credit. There shall be allowed a tax
16 credit against (i) the tax imposed by subsections (a) and (b)
17 of Section 201 of the Illinois Income Tax Act and (ii) the
18 taxes imposed under Sections 409, 413, 444, and 444.1 of the
19 Illinois Insurance Code in an aggregate amount equal to 20% of
20 qualified expenditures incurred by a qualified taxpayer
21 pursuant to a qualified rehabilitation plan on a qualified
22 structure, provided that the total amount of such qualified
23 expenditures exceeds the greater of \$5,000 or the adjusted
24 basis of the property. A tax credit may be earned under this
25 Act during the period beginning January 1, 2017 and ending

1 December 31, 2021. While a tax credit may be earned before July
2 1, 2018, no tax credit shall be actually issued by the
3 Department before July 1, 2018. While a tax credit must be
4 earned on or before December 31, 2021, a credit shall be
5 allowed after December 31, 2021 in accordance with the terms of
6 this Act. If the amount of any tax credit awarded under this
7 Act exceeds the taxpayer's tax liability for the year in which
8 the qualified rehabilitation project was placed in service, the
9 excess amount may be carried forward for deduction from the
10 taxpayer's tax liability in the next succeeding year or years
11 or may be carried back for deduction from the taxpayer's tax
12 liability for the immediately preceding year until the total
13 amount of the credit has been used, except that a credit may
14 not be carried forward for deduction after the fifth taxable
15 year after the taxable year in which the qualified
16 rehabilitation project was placed in service or carried back
17 for deduction more than one year before the taxable year in
18 which the qualified rehabilitation project was placed in
19 service.

20 Section 20. Economic needs test. When the credits requested
21 with respect to a qualified rehabilitation plan will be
22 \$1,000,000 or more, the Department shall evaluate whether,
23 without public intervention, the economic development project
24 would not otherwise benefit from private sector investment. The
25 Department shall have the power to adopt rules for such

1 evaluation purpose.

2 Section 25. Transfer of credits. Any qualified taxpayer,
3 referred to in this Section as the assignor, may allocate,
4 sell, assign, convey, or otherwise transfer tax credits allowed
5 and earned under this Act, to any individual or entity,
6 including without limitation, a non-profit entity with a
7 Section 501(c)(3) designation under the federal Internal
8 Revenue Code. The individual or entity acquiring the credits,
9 referred to in this Section as the assignee, may use the amount
10 of the acquired credits to offset up to 100% of its tax
11 liability, if any, for either the taxable year in which the
12 qualified rehabilitation project was first placed into service
13 or the taxable year in which the credits were acquired, or any
14 years in between. Unused credit amounts may be carried forward
15 for up to 5 years and carried back for up to one year, except
16 that all credits must be claimed within 5 years after the tax
17 year in which the qualified rehabilitation project was first
18 placed into service. The assignor shall enter into a written
19 agreement with the assignee establishing the terms and
20 conditions of the agreement and shall perfect the transfer by
21 notifying the Department in writing within 30 calendar days
22 after the effective date of the transfer and shall provide any
23 information as may be required by the Department to administer
24 and carry out the provisions of this Section. The Department
25 shall develop a system to track the transfer of credits and to

1 certify the ownership of credits, and the Department may adopt
2 rules to permit verification of the ownership of credits but
3 shall not adopt any rules which unduly restrict or hinder the
4 transfer of credits. The assignee also may sell, assign,
5 convey, or otherwise transfer the credits, and the credits may
6 be transferred more than once. The credits may be bifurcated to
7 be transferred to more than one assignee. If credits that have
8 been transferred are subsequently reduced, adjusted, or
9 cancelled, in whole or in part, by the Department, the
10 Department of Revenue, or any other applicable government
11 agency, only the original qualified taxpayer that was awarded
12 the credits, and not any subsequent assignee of the credits,
13 shall be held liable to repay any amount of such reduction,
14 adjustment, or cancellation of the credits. The credits are not
15 subject to recapture.

16 Section 30. Maximum limits. The credits awarded for each
17 qualified rehabilitation project shall be limited to a maximum
18 of \$3,000,000. A qualified rehabilitation project shall not
19 receive credits pursuant to this Act if the qualified
20 rehabilitation project has received credits pursuant to the
21 River Edge Redevelopment Zone Act.

22 Section 35. Maximum annual cap. The total amount of credits
23 approved by the Department under this Act may not exceed: (1)
24 \$10,000,000 in Fiscal Year 2017; (2) \$20,000,000 in Fiscal Year

1 2018; (3) \$30,000,000 in Fiscal Year 2019; (4) \$40,000,000 for
2 Fiscal Year 2020; and (5) \$50,000,000 for Fiscal Year 2021. If
3 the total amount of credits awarded in any of those fiscal
4 years is less than the maximum amount available for that fiscal
5 year, then the maximum amount available for the next fiscal
6 year shall be increased by the difference between the maximum
7 amount and the total amount awarded.

8 Section 40. Application Process.

9 (a) To obtain the credits allowed under this Act, the
10 applicant shall submit an application for tax credits to the
11 Department. The Department shall prioritize each application
12 for review and approval in the order of the date on which the
13 application was postmarked, with the oldest postmarked date
14 receiving priority. Applications postmarked on the same day
15 shall go through a lottery process to determine the order in
16 which applications shall be received for approval. The
17 application shall be in such form as the Department and the
18 Agency shall reasonably require, and the application shall
19 include sufficient information to permit the Agency to approve,
20 approve with conditions, or reject the structure,
21 rehabilitation plan, or rehabilitation project. The Department
22 may charge an application fee of up to \$1,000 per application
23 per project. All application fees will be deposited into the
24 Department's Administrative Fund, with the fee to be equally
25 divided between the Department and the Agency.

1 (b) To ensure that an applicant has sufficient ownership of
2 the qualified structure, each application shall include all of
3 the following:

4 (1) Proof of ownership or site control. Proof of
5 ownership shall include evidence that the applicant is the
6 fee simple owner of the qualified structure, such as a
7 warranty deed or a closing statement. Proof of site control
8 may be evidenced by a leasehold interest or an option to
9 acquire such an interest. If the applicant is in the
10 process of acquiring fee simple ownership, proof of site
11 control shall include an executed sales contract or an
12 executed option to purchase the qualified structure.

13 (2) The estimated qualified expenditures, the
14 anticipated total costs of the project, the adjusted basis
15 of the property, as shown by proof of actual acquisition
16 costs, the anticipated total labor costs, the estimated
17 project start date, and the estimated project completion
18 date.

19 (3) Proof that the property is a qualified structure as
20 defined in this Act or evidence that the necessary
21 documentation has been prepared for the property to become
22 a qualified structure, but a final determination of such
23 qualification shall not be a prerequisite for approval of
24 the preliminary application or the incurrence of qualified
25 expenditures.

26 (4) Any other information which the Department and the

1 Agency may reasonably require.

2 (c) If the Agency approves the applicant's rehabilitation
3 plan for a qualified structure as meeting the Secretary of
4 Interior's Standards for Rehabilitation and if the application
5 is otherwise complete, the plan shall be forwarded to the
6 National Park Service for review. If the National Park Service
7 certifies the rehabilitation plan, the plan shall be considered
8 qualified for this Act. The Department shall notify the
9 applicant in writing of the preliminary approval for an amount
10 of credits equal to the amount provided under this Section as
11 may be limited elsewhere in this Act. Such preliminary approval
12 requires full compliance thereafter with all other
13 requirements of law as a condition to any claim for such
14 credits. If the Agency or the National Park Service deems the
15 applicant's rehabilitation plan to not be qualified, or if the
16 application is not complete, the applicant shall be notified in
17 writing of the rejection of the application. Any rejected
18 application shall be removed from the review process. Rejected
19 applications shall lose priority in the review process. A
20 rejected application may be resubmitted, but shall be deemed to
21 be a new application for purposes of the priority procedures
22 described in this Section.

23 (d) Following approval of an application, the identity of
24 the applicant contained in such application shall not be
25 modified, except that:

26 (1) the applicant may add partners, members, or

1 shareholders as part of the ownership structure, so long as
2 the primary owner remains the same; however, prior to the
3 commencement of renovation and the expenditure of at least
4 10% of the proposed rehabilitation budget, removal of the
5 principal for failure to perform duties and the appointment
6 of a new principal thereafter shall not constitute a change
7 of the principal; and

8 (2) the identity of the applicant may be changed if the
9 ownership of the project is changed due to a foreclosure,
10 deed in lieu of a foreclosure, or voluntary conveyance, or
11 a transfer in bankruptcy.

12 (e) In the event that the Department grants approval for
13 credits in any fiscal year equal to the maximum amount
14 available under this Act, all applicants with applications then
15 awaiting approval or thereafter submitted for approval shall be
16 notified by the Department that no additional credits shall be
17 approved during such fiscal year and shall be notified of the
18 priority given to such applicant's application then awaiting
19 approval. Those applications shall be kept on file by the
20 Department and shall be considered for approval for credits in
21 the order established in this Act in the event that additional
22 credits become available due to the rescission of preliminary
23 approvals or when a new fiscal year's allocation of credits
24 becomes available for approval.

25 (f) All applicants with applications receiving preliminary
26 approval on or after the effective date of this Act shall

1 commence rehabilitation within 2 years of the date of issue of
2 the letter from the Department granting preliminary approval
3 for credits. Commencement of rehabilitation means that, as of
4 the date in which actual physical work has begun, the applicant
5 has incurred no less than 10% of the estimated costs of
6 rehabilitation provided in the application. The applicant may
7 commence and incur qualified expenditures, at its own risk,
8 before the property becomes a qualified structure. If the
9 rehabilitation receives final approval under this Section,
10 including the necessary verification of the total costs and
11 expenses of rehabilitation, the applicant shall receive tax
12 credits for all qualified expenditures incurred within the time
13 periods allowed in this Act. If the Department determines that
14 an applicant has failed to comply with the requirements
15 provided under this Section, the preliminary approval for the
16 amount of credits for such applicant shall be rescinded and
17 such amount of credits shall then be included in the total
18 amount of credits from which preliminary approvals for other
19 projects may be granted. Any applicant whose preliminary
20 approval shall be rescinded shall be notified of such from the
21 Department and, upon receipt of such notice, may submit a new
22 application for the project but such application shall be
23 deemed to be a new application for purposes of the priority
24 procedures described in this Section.

25 (g) If the Agency approves the completed rehabilitation
26 project as meeting the Secretary of Interior's Standards for

1 Rehabilitation, the completed rehabilitation project shall be
2 forwarded to the National Park Service for review. If the
3 National Park Service certifies the completed rehabilitation
4 project, the project shall be considered qualified for this
5 Act. For qualified rehabilitation projects, the applicant
6 shall submit a cost certification, and when the credits
7 requested with respect to a qualified rehabilitation project
8 are \$250,000 or more, the Department shall require an outside
9 audit of the cost certification. The Department shall determine
10 the amount of qualified expenditures and the amount of credits
11 to be issued to the applicant. The issuance of certificates of
12 credits to applicants shall be performed by the Department. The
13 Department shall coordinate with the Illinois Department of
14 Revenue to determine if the applicant has any outstanding
15 Illinois tax obligations that can be satisfied by the credits
16 to be issued. The Department shall inform the applicant of
17 final approval and of final credit amount by letter. An
18 issuance fee of up to 2% of the amount of the credits issued by
19 the tax credit certificate may be collected from the applicant
20 and remitted to the Department, to be deposited into the
21 Historic Property Administrative Fund, with the fee to be
22 divided equally between the Department and the Agency, for the
23 purpose of administering the Act. When the Department has
24 received the issuance fee from the applicant and deposited it
25 into the Historic Property Administrative Fund, the Department
26 shall issue the tax credit certificates to the applicant. The

1 taxpayer must attach the tax credit certificate to the tax
2 return on which the credits are to be claimed.

3 (h) In the event the amount of qualified expenditures
4 actually incurred by an applicant are more than those estimated
5 in its application, the applicant can submit a new application
6 for such excess amount of qualified expenditures on a form
7 prescribed by the Department, but that application shall be
8 deemed to be a new application for purposes of the priority
9 procedures described in this Act with respect to such excess
10 amount of qualified expenditures. Such applications shall be
11 automatically approved, subject only to availability of tax
12 credits and all provisions regarding priority provided in this
13 Act.

14 Section 45. Biennial report; powers of the Department and
15 Agency. The Department shall determine, on a biennial basis
16 beginning at the end of the second fiscal year after the date
17 this Act takes effect, the overall economic impact to the State
18 from the qualified rehabilitation projects. The overall
19 economic impact shall include the number of jobs created. The
20 Department and the Agency are granted and have all the powers
21 necessary or convenient to carry out the provisions of this
22 Act, including, but not limited to, the power to promulgate
23 rules for the administration of this Act and the power to
24 establish application forms and other agreements.

1 Section 50. Appeals process. Decisions of the National Park
2 Service on whether a structure, rehabilitation plan or
3 rehabilitation project meets the Secretary of the Interior's
4 Standards for Rehabilitation shall be considered final and
5 shall determine whether a structure, rehabilitation plan or
6 rehabilitation project is considered qualified for the
7 purposes of this Act. The applicant may appeal the decision of
8 the National Park Service in the manner described in 36 C.F.R.
9 67 - Historic Preservation Certifications Pursuant to Sec.
10 48(g) and Sec. 170(h) of the Internal Revenue Code of 1986, as
11 amended. The applicant may appeal any official decision other
12 than the qualification of the structure, rehabilitation plan,
13 or rehabilitation project to the Department with regard to an
14 application submitted under this Act to an independent,
15 third-party appeals officer to be identified by the Department
16 and the Agency.

17 Appeals must be submitted to the designated appeals officer
18 in writing within 30 days of receipt by the applicant of the
19 decision which is the subject of the appeal, and shall include
20 all information the applicant wishes the appeals officer to
21 consider in deciding the appeal.

22 Upon receipt of an appeal, the appeals officer shall notify
23 the Department and the Agency that an appeal is pending,
24 identify the decision being appealed and forward a copy of the
25 information submitted by the applicant. The Department or the
26 Agency, or both, may submit a written response to the appeal.

1 The applicant shall be entitled to one meeting with the
2 appeals officer to discuss the appeal, but the appeals officer
3 may schedule additional meetings at their discretion. The
4 Department and the Agency shall be permitted to appear at all
5 meetings.

6 The appeals officer shall consider the record of the
7 decision in question, any further written submissions by the
8 applicant, the Department, or the Agency, and other available
9 information and shall deliver a written decision to all parties
10 as promptly as circumstances permit.

11 Appeals under this Section constitute an administrative
12 review of the decision appealed from and are not conducted as
13 an adjudicative proceeding.

14 Section 80. The Illinois Income Tax Act is amended by
15 adding Section 224 as follows:

16 (35 ILCS 5/224 new)

17 Sec. 224. Rehabilitation and revitalization credit. For
18 tax years commencing on or after January 1, 2017, a taxpayer
19 who qualifies for a credit under the Illinois Rehabilitation
20 and Revitalization Tax Credit Act is entitled to a credit
21 against the taxes imposed under subsections (a) and (b) of
22 Section 201 of this Act. If the taxpayer is a partnership or
23 Subchapter S corporation, the credit shall be allowed to the
24 partners or shareholders in accordance with the determination

1 of income and distributive share of income under Sections 702
2 and 704 and Subchapter S of the Internal Revenue Code or the
3 credit shall be allowed to the partners or shareholders
4 pursuant to an executed agreement among the partners or
5 shareholders documenting any alternate distribution method.
6 This Section is exempt from the provisions of Section 250 of
7 this Act.

8 Section 85. The Illinois Insurance Code is amended by
9 adding Section 409.1 as follows:

10 (215 ILCS 5/409.1 new)

11 Sec. 409.1. Rehabilitation and revitalization credit. For
12 taxes payable after January 1, 2017, credits may be granted
13 against the taxes imposed under Section 409, 413, 444, and
14 444.1 of this Act as provided in the Illinois Rehabilitation
15 and Revitalization Tax Credit Act.

16 Section 99. Effective date. This Act takes effect January
17 1, 2017.