House Bill 308

By: Representatives Peake of the 141st, Sims of the 123rd, Martin of the 49th, Ehrhart of the 36th, and Stephens of the 164th

A BILL TO BE ENTITLED
AN ACT

To amend Code Section 48-7-29.8 of the Official Code of Georgia Annotated, relating to tax credits for the rehabilitation of historic structures, so as to provide for a short title; to broaden the application of the tax credit to include insurance premium taxes; to provide for certain procedures, conditions, and limitations; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Prosperity Through Preservation Act."

SECTION 2.

Code Section 48-7-29.8 of the Official Code of Georgia Annotated, relating to tax credits for the rehabilitation of historic structures, is revised to read as follows:

"48-7-29.8.

(a) As used in this Code section, the term:

(1) 'Certified rehabilitation' means repairs or alterations to a certified structure which are certified by the Department of Natural Resources as meeting the United States Secretary of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation as provided by the Department of Natural Resources.

(2) 'Certified structure' means a historic building or structure that is individually listed in the Georgia Register of Historic Places or is certified by the Department of Natural Resources as contributing to the historic significance of a Georgia Register Historic District.

(3) 'Historic home' means a certified structure which, or any portion of which is or will, within a reasonable period, be owned and used as the principal residence of the person claiming the tax credit allowed under this Code section. Historic home shall include any

structure or group of structures that constitute a multifamily or multipurpose structure, including a cooperative or condominium. If only a portion of a building is used as such person's principal residence, only those qualified rehabilitation expenditures that are properly allocable to such portion shall be deemed to be made to a historic home.

(4) 'Qualified rehabilitation expenditure' means any amount properly chargeable to a capital account expended in the substantial rehabilitation of a structure that by the end of the taxable year in which the certified rehabilitation is completed is a certified structure. This term does not include the cost of acquisition of the certified structure, the cost attributable to enlargement or additions to an existing building, site preparation, or personal property.

(5) 'Substantial rehabilitation' means rehabilitation of a certified structure for which the qualified rehabilitation expenditures, at least 5 percent of which must be allocable to the exterior during the 24 month period selected by the ~~taxpayer~~ person ending with or within the taxable year, exceed:

(A) For a historic home, the lesser of $25,000.00 or 50 percent of the adjusted basis of the property as defined in subparagraph (a)(1)(B) of Code Section 48-5-7.2; or, in the case of a historic home located in a target area $5,000.00; or

(B) For any other certified structure, the greater of $5,000.00 or the adjusted basis of the property.

(6) 'Target area' means a qualified census tract under Section 42 of the Internal Revenue Code of 1986, found in the United States Department of Housing and Urban Development document number N-94-3821; FR-3796-N-01.

(b) A ~~taxpayer~~ person that incurs qualified rehabilitation expenditures shall ~~be allowed~~ earn a vested tax credit against the tax imposed by this chapter and for the tax imposed under Code Sections 33-5-31, 33-8-4, and 33-40-5 for the taxable year in which the certified rehabilitation is completed:

(1) In the case of a historic home, equal to 25 percent of qualified rehabilitation expenditures, except that, in the case of a historic home located within a target area, an additional credit equal to 5 percent of qualified rehabilitation expenditures shall be allowed; and

(2) In the case of any other certified structure, equal to 25 percent of the qualified rehabilitation expenditures.

(3) A taxpayer claiming a credit under this Code section is not required to pay any additional retaliatory tax levied under Code Section 33-3-26 as a result of claiming that credit.

(c)(1) In no event shall credits for a historic home exceed $100,000.00 in any 120 month period.

(2) For certified rehabilitations completed prior to July 1, 2013, in ~~In~~ no event shall credits for a certified structure exceed $300,000.00 in any 120 month period.

(3) For certified rehabilitations completed on or after July 1, 2013, in no event shall credits for a certified structure exceed $5,000,000.00 in any 120 month period.

(4) For plans for certified rehabilitations expected to have especially high economic, historic, and community impact, the Department of Natural Resources shall use special consideration criteria to approve two rehabilitation plans annually that would not be subject to the limitation in paragraph (3) of this subsection.

(d) For all certified structures, excluding historic homes, the entire credit is earned in the taxable year in which the property is completed but must be claimed and used in four equal installments beginning with the taxable year in which the property is completed.

(e) Partnerships, limited liability companies, and other flow-through entities may allocate the credit, or any installment thereof, among its partners, members, or shareholders in any manner agreed to by such partners, members, or shareholders, including, without limitation, an allocation of the entire credit, or any portion thereof, to any partner, member, or shareholder who was a partner, member, or shareholder at any time during the year in which the credit is allocated. The credit, or any portion thereof, may be assigned by the person originally earning the credit and any subsequent allocatee or assignee of such credit at any time prior to the expiration of the credit.

(f) Written notification of any allocation or assignment of the credit shall be submitted to the Department of Revenue within 30 days after the allocation or assignment of the credit, and shall include the name and taxpayer identification number of the allocatee or assignee, the amount of credit allocated or assigned, and any other information required by the Department of Revenue.

(g) In order to be eligible to ~~receive~~ use the credit authorized under subsection (b) of this Code section, a taxpayer must attach to ~~the taxpayer's~~ his or her state tax return a copy of the certification of the Department of Natural Resources verifying that the improvements to the certified structure are consistent with the Department of Natural Resources Standards for Rehabilitation and any notification required in subsection (f) of this Code section.

~~(e)~~(h)(1) If the credit, or any installment thereof, allowed under this Code section in any taxable year exceeds the total tax otherwise payable by the taxpayer ~~for that taxable year, the taxpayer may apply~~ claiming the credit, or any installment thereof, the excess may be applied as a credit for succeeding years until the earlier of:

(A) The full amount of the excess is used; or

(B) The expiration of the tenth taxable year after the taxable year in which the certified rehabilitation has been completed.

(2) No such credit shall be allowed the ~~taxpayer~~ person against prior years' tax liability.

~~(f)~~(i) In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, a 60 month period may be substituted for the 24 month period provided for in paragraph (5) of subsection (a) of this Code section.

~~(g)~~(j)(1) Except as otherwise provided in subsection (h) of this Code section, in the event a tax credit under this Code section has been claimed and allowed the ~~taxpayer~~ person, upon the sale or transfer of the certified structure, the ~~taxpayer~~ person shall be authorized to transfer the remaining unused amount of such credit to the purchaser of such certified structure. If a historic home for which a certified rehabilitation has been completed by a nonprofit corporation is sold or transferred, the full amount of the credit to which the nonprofit corporation would be entitled if taxable shall be transferred to the purchaser or transferee at the time of sale or transfer.

(2) Such purchaser shall be subject to the limitations of subsection ~~(e)~~(h) of this Code section. Such purchaser shall file with such purchaser's tax return a copy of the approval of the rehabilitation by the Department of Natural Resources as provided in subsection ~~(d)~~(g) and a copy of the form evidencing the transfer of the tax credit.

(3) Such purchaser shall be entitled to rely in good faith on the information contained in and used in connection with obtaining the approval of the credit including, without limitation, the amount of qualified rehabilitation expenditures.

~~(h)~~(k)(1) If ~~an owner~~ the person who originally earned the credits, other than a nonprofit corporation ~~sells~~ selling a historic home, sells the property within three years of ~~receiving~~ originally earning the ~~credit~~ credits, the ~~seller shall recapture the credit to the~~ Department of Revenue shall hold liable the person who originally earned the credits, and not any subsequent assignee or allocatee of the credits, to repay any amount of such disallowance, reduction, adjustment, or recapture of the tax credits as follows:

(A) If the property is sold within one year of receiving the credit, the recapture amount will equal the lesser of the credit or the net profit of the sale;

(B) If the property is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

(C) If the property is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit of the sale.

(2) The recapture provisions of this subsection shall not apply to a sale resulting from the death of the owner.

~~(i) The tax credit allowed under this Code section, and any recaptured tax credit, shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of any other tax credit with respect to the project.~~

(l) If the credits authorized by this Code section are subsequently disallowed, reduced, adjusted, or recaptured, in whole or in part, by the Department of Natural Resources, the Department of Revenue, or any other applicable government agency, only the person who originally earned the credit, and not any subsequent assignee or allocatee of the credits, shall be held liable to repay any amount of such disallowance, reduction, adjustment, or recapture of the tax credits.

~~(j)~~(m) The Department of Natural Resources and the Department of Revenue shall prescribe such regulations as may be appropriate to carry out the purposes of this Code section.

~~(k)~~(n) The Department of Natural Resources shall report, on an annual basis, on the overall economic activity, usage, and impact to the state from the rehabilitation of eligible properties for which credits provided by this Code section have been allowed.″

SECTION 3.

This Act shall become effective on July 1, 2013, and shall apply to all taxable years beginning on or after January 1, 2014.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.