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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO TAXATION - HISTORIC STRUCTURES

Introduced By: Senators Miller, Goodwin, Ruggerio, Jabour, and Pichardo

Date Introduced: February 07, 2012

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 33.6

4 HISTORIC PRESERVATION TAX CREDITS 2011

5 **44-33.6-1. Declaration of Purpose. --** The general assembly finds and declares that
6 Rhode Island's historic structures continue to experience high vacancy rates and physical
7 deterioration, particularly in Rhode Island's central business districts. Without adding economic
8 incentive, these structures are not viable for the redevelopment and reuse by modern commercial,
9 residential or manufacturing enterprises and will continue their physical deterioration. The
10 redevelopment and reuse of these historic structures are of critical importance to the economic
11 measures and will assist in stimulating the reuse and redevelopment of historic structures and will
12 improve property values, foster civic beauty, create employment opportunities, enhance
13 commerce, and promote public education, pleasure, and welfare. Furthermore, during this
14 unprecedented economic climate, many in the building and construction trades, and related
15 service industries, have been severely impacted. The redevelopment and reuse of these historic
16 structures will serve as a vital catalyst in the recovery of these trades and services, in addition to
17 stimulating various other related economic benefits and business activities. The purpose of this
18 chapter is to create economic incentives for the purpose of stimulating the redevelopment and
19 reuse of Rhode Island's historic structures, as well as to generate the positive economic and

1 employment activities that will result from such redevelopment and reuse.

2 **44-33.6-2. Definitions.** – As used in this chapter:

3 (1) "Certified historic structure" means a property which is located in the State of Rhode
4 Island and is:

5 (i) Listed individually on the national register of historic places; or

6 (ii) Listed individually in the state register of historic places; or

7 (iii) Located in a registered historic district and certified by either the commission or
8 Secretary of the Interior as being of historic significance to the district.

9 (2) "Certified rehabilitation" means any rehabilitation of a certified historic structure
10 consistent with the historic character of such property or the district in which the property is
11 located as determined by the commission guidelines.

12 (3) "Commence substantial construction activities" shall mean that:

13 (i) Contracts for construction activities equal to no less than twenty percent (20%) of the
14 total project budget have been awarded to bona fide third-party contractors, subcontractors,
15 and/or materialmen (soft costs shall not qualify for the purposes of this requirement) with such
16 work having been authorized for commencement;

17 (ii) All permits and approvals required in connection with the construction activities
18 provided for in the contracts awarded pursuant to paragraph (i) have been obtained; and

19 (iii) Substantial construction activities have commenced at the subject property beyond
20 mere site preparation activities, staging and/or storage or materials.

21 (4) "Commission" means the Rhode Island historical preservation and heritage
22 commission created pursuant to section 42-45-2.

23 (5) "Exempt from real property tax" means, with respect to any certified historic
24 structure, that the structure is exempt from taxation pursuant to section 44-3-3.

25 (6) "Holding period" means twenty-four (24) months after the commission issues a
26 certificate of completed work to the owner. In the case of a rehabilitation which may reasonably
27 be expected to be completed in phases as described in subdivision (12) of this section, "holding
28 period" shall be extended to include a period of time beginning on the date of issuance of a
29 certificate of completed work for the first phase or phases for which a certificate of completed
30 work is issued and continuing until the expiration of twenty-four (24) months after the certificate
31 of completed work issued for the last phase.

32 (7) "Placed in service" means that substantial rehabilitation work has been completed
33 which would allow for occupancy of the entire structure or some identifiable portion of the
34 structure, or the owner has commenced depreciation of the qualified rehabilitation expenditures,

1 whichever occurs first.

2 (8) "Principal residence" means the principal residence of the owner within the meaning
3 of section 121 of the Internal Revenue Code [26 U.S.C. 121] or any successor provision.

4 (9) "Qualified rehabilitation expenditures" means any amounts expended in the
5 rehabilitation of a certified historic structure properly capitalized to the building and either:

6 (i) Depreciable under the Internal Revenue Code, 26 U.S.C. section 1 et seq., or

7 (ii) Made with respect to property (other than the principal residence of the owner) held
8 for sale by the owner. Fees paid pursuant to this chapter are not qualified rehabilitation
9 expenditures. Notwithstanding the foregoing, except in the case of a nonprofit corporation, there
10 will be deducted from qualified rehabilitation expenditures for the purposes of calculating the tax
11 credit any funds made available to the person (including any entity specified in section 44-33.5-
12 3(a)) incurring the qualified rehabilitation expenditures in the form of a direct grant from a
13 federal, state or local governmental entity or agency or instrumentality of government.

14 (10) "Registered historic district" means any district listed in the national register of
15 historic places, or the state register of historic places.

16 (11) "Remain idle" shall mean that substantial work has ceased at the subject project;
17 work crews have been reduced by more than twenty-five percent (25%) for reasons unrelated to
18 scheduled completion of work in accordance with the project schedule, reasonably unanticipated
19 physical conditions, or force majeure; or the project schedule that was originally submitted by the
20 taxpayer to the commission has been extended by more than twelve (12) months for reasons other
21 than reasonably unanticipated physical conditions or an event of force majeure (by way of
22 example, and not in limitation, any delays, work stoppage, or work force reduction caused by
23 issues with project funding, finances, disputes, or violation of laws shall be deemed to cause a
24 project to remain idle).

25 (12) "Scattered Site Development" shall mean a development project for which the
26 developer seeks unified financing to rehabilitate dwelling units in two (2) or more buildings
27 located in an area that is defined by a neighborhood revitalization plan and is not more than one
28 mile in diameter.

29 (13) "Social club" shall mean a corporation or other entity and/or its affiliate that offers
30 its facilities primarily to members for social or recreational purposes and the majority source of
31 its revenue is from funds and/or dues paid by its members and/or an entity defined as a social club
32 pursuant to the Internal Revenue Code section 501(c)(7).

33 (14) "Substantial rehabilitation" means, with respect to a certified historic structure, that
34 the qualified rehabilitation expenses of the building during the twenty-four (24) month period

1 selected by the taxpayer ending with or within the taxable year exceed one hundred percent
2 (100%) of the adjusted basis in such building and its structural components as of the beginning of
3 such period. In the case of any rehabilitation, which may reasonably be expected to be completed
4 in phases set forth in architectural plans and specifications completed before the rehabilitation
5 begins, the above definition shall be applied by substituting "sixty (60) month period" for
6 "twenty-four (24) month period".

7 (15) "Trade or business" means an activity that is carried on for the production of income
8 from the sale of goods or performance of services, excluding residential rental activity.

9 **44-33.6-3. Tax credit.** – (a) Any person, firm, partnership, trust, estate, limited liability
10 company, corporation (whether for profit or non-profit) or other business entity that incurs
11 qualified rehabilitation expenditures for the substantial rehabilitation of a certified historic
12 structure, provided the rehabilitation meets standards consistent with the standards of the
13 Secretary of the United States Department of the Interior for rehabilitation as certified by the
14 commission and said person, firm, partnership, trust, estate, limited liability company,
15 corporation or other business entity is not a social club as defined in subdivision 44-33.6-2 (13) of
16 this chapter, shall be entitled to a credit against the taxes imposed on such person or entity
17 pursuant to chapter 11, 12, 13, 14, 17 or 30 of this title in an amount equal to the following:

18 (i) Twenty percent (20%) of the qualified rehabilitation expenditures; or

19 (ii) Twenty-five percent (25%) of the qualified rehabilitation expenditures provided that
20 either:

21 (A) At least twenty-five percent (25%) of the total rentable area of the certified historic
22 structure will be made available for a trade or business; or

23 (B) The entire rentable area located on the first floor of the certified historic structure will
24 be made available for a trade or business.

25 (b) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in
26 which such certified historic structure or an identifiable portion of the structure is placed in
27 service provided that the substantial rehabilitation test is met for such year. Notwithstanding the
28 foregoing, in the event that tax credits allowed for the substantial rehabilitation of such certified
29 historic structure or an identifiable portion of the certified historic structure is greater than five
30 million dollars (\$5,000,000) for such taxable year, such tax credits shall be issued, but shall be
31 phased in up to four (4) calendar years with five million dollars (\$5,000,000) in tax credits being
32 the maximum allowed in the first (1st) taxable year, up to five million dollars (\$5,000,000) in tax
33 credits in the second (2nd) taxable year, five million dollars (\$5,000,000) in tax credits in the third
34 (3rd) year and the remaining balance of the tax credits, if any, allowed in the fourth (4th) taxable

1 year. Neither taxpayers nor assignees may apply any tax credits issued in accordance with this
2 section until fiscal year 2013.

3 (c) If the amount of the tax credit exceeds the taxpayer's total tax liability for the year in
4 which the substantially rehabilitated property is placed in service, the amount that exceeds the
5 taxpayer's tax liability may be carried forward for credit against the taxes imposed for the
6 succeeding ten (10) years, or until the full credit is used, whichever occurs first for the tax credits.
7 Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple
8 owners of property shall be passed through to the persons designated as partners, members or
9 owners respectively pro rata or pursuant to an executed agreement among such persons
10 designated as partners, members or owners documenting an alternate distribution method without
11 regard to their sharing of other tax or economic attributes of such entity.

12 (d) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for
13 the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or otherwise
14 to any individual or entity, including, but not limited to, condominium owners in the event the
15 certified historic structure is converted into condominiums and assignees of the credits that have
16 not claimed the tax credits in whole or part may assign, transfer or convey the credits, in whole or
17 in part, by sale or otherwise to any individual or entity. The assignee of the tax credits may use
18 acquired credits to offset up to one hundred percent (100%) of the tax liabilities otherwise
19 imposed pursuant to chapter 11, 12, 13, (other than the tax imposed under section 44-13-13), 14,
20 17 or 30 of this title. The assignee may apply the tax credit against taxes imposed on the assignee
21 until the end of the tenth (10th) calendar year after the year in which the substantially
22 rehabilitated property is placed in service or until the full credit assigned is used, whichever
23 occurs first. Fiscal year assignees may claim the credit until the expiration of the fiscal year that
24 ends within the tenth (10th) year after the year in which the substantially rehabilitated property is
25 placed in service. The assignor shall perfect the transfer by notifying the State of Rhode Island
26 division of taxation, in writing, within thirty (30) calendar days following the effective date of the
27 transfer and shall provide any information as may be required by the division of taxation to
28 administer and carry out the provisions of this section.

29 For purposes of this chapter, any assignment or sales proceeds received by the taxpayer
30 for its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from
31 this title. If a tax credit is subsequently recaptured under subsection (e) of this section, revoked or
32 adjusted, the seller's tax calculation for the year of revocation, recapture, or adjustment shall be
33 increased by the total amount of the sales proceeds, without proration, as a modification under
34 chapter 30 of this title. In the event that the seller is not a natural person, the seller's tax

1 calculation under chapters 11, 12, 13 (other than with respect to the tax imposed under section 44-
2 13-13), 14, 17, or 30 of this title, as applicable, for the year of revocation, recapture, or
3 adjustment, shall be increased by including the total amount of the sales proceeds without
4 proration.

5 (e) Substantial rehabilitation of property that either:

6 (i) Is exempt from real property tax;

7 (ii) Is a social club; or

8 (iii) Consists of a single family home or a property that contains less than three (3)
9 residential apartments or condominiums shall be ineligible for the tax credits authorized under
10 this chapter; provided, however, a scattered site development with five (5) or more residential
11 units in the aggregate (which may include single family homes) shall be eligible for tax credit. In
12 the event a certified historic structure undergoes a substantial rehabilitation pursuant to this
13 chapter and within twenty-four (24) months after issuance of a certificate of completed work the
14 property becomes exempt from real property tax, the taxpayer's tax for the year shall be increased
15 by the total amount of credit actually used against the tax.

16 (f) In the case of a corporation, this credit is only allowed against the tax of a corporation
17 included in a consolidated return that qualifies for the credit and not against the tax of other
18 corporations that may join in the filing of a consolidated tax return.

19 **44-33.6-4. Administration.** – (a) To claim the tax credit authorized in this chapter,
20 taxpayers shall apply:

21 (1) To the commission prior to the certified historic structure being placed in service for a
22 certification that the certified historic structure's rehabilitation will be consistent with the
23 standards of the Secretary of the United States Department of the Interior for rehabilitation;

24 (2) To the commission after completion of the rehabilitation work of the certified historic
25 structure for a certification that the rehabilitation is consistent with the standards of the Secretary
26 of the United States Department of the Interior for rehabilitation; and

27 (3) To the division of taxation for a certification as to the amount of tax credit for which
28 the rehabilitation qualifies. The commission and the division of taxation shall rely on the facts
29 represented in the application without independent investigation and, with respect to the amount
30 of tax credit for which the rehabilitation qualifies, upon the certification of a certified public
31 accountant licensed in the State of Rhode Island. The application shall be developed by the
32 commission and the division of taxation and may be amended from time to time.

33 (b) Within thirty (30) days after the commission's and division of taxation's receipt of
34 the taxpayer's application requesting certification for the completed rehabilitation work:

1 (1) The commission shall issue the taxpayer a written determination either denying or
2 certifying the rehabilitation; and

3 (2) Division of taxation shall issue a certification of the amount of credit for which the
4 rehabilitation qualifies. To claim the tax credit, the division of taxation's certification as to the
5 amount of the tax credit shall be attached to all state tax returns on which the credit is claimed.

6 (c) No taxpayer may benefit from the provisions of this chapter unless the owner of the
7 certified historic structure grants a restrictive covenant to the commission, agreeing that during
8 the holding period no material alterations to the certified historic structure will be made without
9 the commission's prior approval and agreeing that such shall be done in a manner inconsistent
10 with the standards of the Secretary of the United States Department of the Interior; and, in the
11 event the owner applies for the twenty-five percent (25%) tax credit, that either:

12 (1) At least twenty-five percent (25%) of the total rentable area of the certified historic
13 structure will be made available for a trade or business; or

14 (2) The entire rentable area located on the first floor of the certified historic structure will
15 be made available for a trade or business, in either case, for a period of sixty (60) months after the
16 placed in service date of the certified historic structure or identifiable portion thereof.

17 (d) The commission shall charge a fee equal to three percent (3%) of tax credits allowed.
18 The fee shall be payable in two installments:

19 (1) Fifty (50%) percent of the total fee shall be paid upon submission of the Part II
20 application. This portion of the fee shall be non-refundable; and

21 (2) Fifty (50%) shall be paid upon issuance of the written determination by the
22 commission certifying the rehabilitation and issuance by the division of taxation of the
23 certification of the amount of credit for which the rehabilitation qualifies.

24 (e) Notwithstanding any provisions of the general laws or regulations adopted thereunder
25 to the contrary, including, but not limited to, the provisions of chapter 2 of title 37, the division of
26 taxation is hereby expressly authorized and empowered to enter into contracts with persons,
27 firms, partnerships, trusts, estates, limited liability companies, corporations (whether for profit or
28 non-profit) or other business entities that incur qualified rehabilitation expenditures for the
29 substantial rehabilitation of certified historic structures or some identifiable portion of a structure.
30 Upon payment of the portion of the fee set forth in subdivision (d)(1) above, the division of
31 taxation and the applicant shall enter into a contract for tax credits consistent with the terms and
32 provisions of this chapter.

33 (f) Upon satisfaction of the requirements set forth herein and the payment of the fees as
34 set forth in subdivision (d)(2) above, the division of taxation shall, on behalf of the State of

1 Rhode Island, guarantee the delivery of one hundred percent (100%) of the tax credit and use of
2 one hundred percent (100%) of the tax credit in the tax year a certified historic structure is placed
3 in service through a contract with persons, firms, partnerships, trusts, estates, limited liability
4 companies, corporations (whether for profit or non-profit) or other business entities that will incur
5 qualified rehabilitation expenditures for the substantial rehabilitation of a certified historic
6 structure or some identifiable portion of a structure.

7 (g) Any contract executed pursuant to this chapter by a person, firm, partnership, trust,
8 estate, limited liability company, corporation (whether for profit or non-profit) or other business
9 entity shall be assignable to:

10 (1) An affiliate thereof without any consent from the division of taxation;

11 (2) A banking institution as defined by subdivision 44-14-2(2) or credit union as defined
12 in subdivision 44-15-1.1(1) without any consent from the division of taxation; or

13 (3) A person, firm, partnership, trust, estate, limited liability company, corporation
14 (whether for profit or non-profit) or other business entity that incurs qualified rehabilitation
15 expenditures for the substantial rehabilitation of certified historic structures or some identifiable
16 portion of a structure, with such assignment to be approved by the division of taxation, which
17 approval shall not be unreasonably withheld or conditioned. For purposes of this subsection,
18 "affiliate" shall be defined as any entity controlling, controlled by or under common control with
19 such person, firm, partnership, trust, estate, limited liability company, corporation (whether for
20 profit or non-profit) or other business entity.

21 (h) If information comes to the attention of the commission or division of taxation at any
22 time up to and including the last day of the holding period that is materially inconsistent with
23 representations made in an application, the commission may deny the requested certification or
24 revoke a certification previously given, and in either instance all fees paid by the applicant shall
25 be deemed forfeited. In the event that tax credits or a portion of tax credits are subject to
26 recapture for ineligible costs and such tax credits have been transferred, assigned and/or
27 allocated, the state will pursue its recapture remedies and rights against the applicant of the tax
28 credits, and all fees paid by the applicant shall be deemed forfeited. No redress shall be sought
29 against assignees, transferees or allocates of such credits provided they acquired the tax credits by
30 way of an arms-length transaction, for value, and without notice of violation, fraud or
31 misrepresentation.

32 **44-33.6-5. Information Requests.** - The tax division and its agents, for the purpose of
33 ascertaining the correctness of any credit claimed under the provisions of this chapter, may
34 examine any books, papers, records, or memoranda bearing upon the matters required to be

1 included in the return, report, or other statement, and may require the attendance of the person
2 executing the return, report, or other statement, or of any officer or employee of any taxpayer, or
3 the attendance of any other person, and may examine the person under oath respecting any matter
4 which the tax administrator or his or her agent deems pertinent or material in determining the
5 eligibility for credits claimed and may request information from the commission, and the
6 commission shall provide the information in all cases, to the extent not otherwise prohibited by
7 statute.

8 **44-33.6-6. Election; Limitations.** - Taxpayers who elect and qualify to claim tax credits
9 for the substantial rehabilitation of a certified historic structure pursuant to this chapter are
10 ineligible for any tax credits that may also be available to the taxpayer for the substantial
11 rehabilitation of that particular certified historic structure under the provisions of chapters 33.1 of
12 this title, 64.7 of title 42, and/or 31 of this title. As stated above, neither taxpayers nor assignees
13 may apply any tax credits issued in accordance with this section until fiscal year 2013.
14 Applicants or their affiliates that have entered into a contract for tax credits concerning a certain
15 property under chapter 44-33.2 and subsequently withdraw from or otherwise terminate said
16 contract shall not reapply under this chapter with respect to the same property, provided,
17 however, the foregoing shall not prohibit a subsequent bona fide third-party from terminating a
18 contract for tax credits entered into under chapter 44-33.2 by an unrelated and unaffiliated party
19 and applying under this chapter with respect to said property.

20 **44-33.6-7. Timing and Reapplication.** - Taxpayers shall have twelve (12) months from
21 the approval of Part II application to commence substantial construction activities related to the
22 subject substantial rehabilitation. Upon commencing substantial construction activities, the
23 taxpayer shall submit an affidavit of commencement of substantial construction to the
24 commission, together with evidence of such requirements having been satisfied. Furthermore,
25 after commencement of substantial construction activities, no project shall remain idle prior to
26 completion for a period of time exceeding six (6) months. In the event that a taxpayer does not
27 commence substantial construction activities within twelve (12) months from the approval of Part
28 II application, or in the event that a project remains idle prior to completion for a period of time
29 exceeding six (6) months, the subject taxpayer shall forfeit all fees paid prior to such date and its
30 then-current contract for tax credits shall be deemed null and void, and shall terminate without
31 need for further action or documentation. Upon any such forfeiture and termination, a taxpayer
32 may re-apply for tax credits pursuant to this chapter, however, notwithstanding anything
33 contained herein to the contrary, one hundred percent (100%) of the fees required shall be paid
34 upon reapplication and such fees shall be non-refundable. Additionally, any taxpayer reapplying

1 for tax credits pursuant to this section 44-33.6-7 shall be required to submit evidence with its
2 application establishing the reason for delay in commencement or the project sitting idle, as the
3 case may be, and provide evidence, reasonably satisfactory to the commission, that such
4 condition or event causing same has been resolved. All taxpayers shall submit a reasonably
5 detailed project timeline to the commission together with the Part II application. The provisions
6 of this section shall be further detailed and incorporated into the form of contract for tax credits
7 used in connection with this chapter.

8 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION - HISTORIC STRUCTURES

- 1 This act would create economic incentives for the redevelopment and reuse of Rhode
- 2 Island's historic structures.
- 3 This act would take effect upon passage.

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