

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 390

1 AN ACT TO AMEND SECTION 27-7-22.31, MISSISSIPPI CODE OF 1972,
 2 WHICH AUTHORIZES AN INCOME TAX CREDIT FOR COSTS AND EXPENSES
 3 INCURRED FOR THE REHABILITATION OF CERTAIN HISTORIC STRUCTURES, TO
 4 REVISE THE TIME DURING WHICH A TAXPAYER, IN LIEU OF CLAIMING A TAX
 5 CREDIT, MAY ELECT TO CLAIM A REBATE IN THE AMOUNT OF 75% OF THE
 6 AMOUNT THAT WOULD BE ELIGIBLE TO CLAIM AS A CREDIT; TO PROVIDE
 7 THAT IF A TAXPAYER HAS UTILIZED A TAX CREDIT ON AN INCOME TAX
 8 RETURN PRIOR TO MAKING AN ELECTION TO CLAIM A REBATE, THEN THE
 9 AVAILABLE REBATE WILL BE REDUCED BY THE AMOUNT OF CREDIT UTILIZED;
 10 AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** Section 27-7-22.31, Mississippi Code of 1972, is
 13 amended as follows:

14 27-7-22.31. (1) As used in this section:

15 (a) "Certified historic structure" means a property
 16 located in Mississippi that has been:

17 (i) Listed individually on the National Register
 18 of Historic Places; or

19 (ii) Determined eligible for the National Register
 20 of Historic Places by the Secretary of the United States
 21 Department of the Interior and will be listed within thirty (30)



22 months of claiming the rebate or credit authorized by this
23 section; or

24 (iii) Property designated a Mississippi Landmark
25 by the Department of Archives and History pursuant to Section
26 39-7-3 et seq.

27 (b) "Eligible property" means property located in
28 Mississippi and offered or used for residential or business
29 purposes.

30 (c) "Structure in a certified historic district" means
31 a structure (and its structural components) located in Mississippi
32 which:

33 (i) Is listed in the National Register of Historic
34 Places; or

35 (ii) Has been determined eligible for the National
36 Register of Historic Places by the Secretary of the United States
37 Department of the Interior and will be listed within thirty (30)
38 months of claiming the rebate or credit authorized by this
39 section; or

40 (iii) Is located in a registered historic district
41 listed on the National Register of Historic Places or located in a
42 potential district that has been determined eligible for the
43 National Register of Historic Places by the Secretary of the
44 United States Department of the Interior and will be listed within
45 thirty (30) months of claiming the rebate or credit authorized by
46 this section, and is certified by the Secretary of the United



47 States Department of the Interior as being of historic
48 significance to the district; or

49 (iv) Is certified by the Mississippi Department of
50 Archives and History as contributing to the historic significance
51 of:

52 1. A certified historic district listed on
53 the National Register of Historic Places; or

54 2. A potential district that has been
55 determined eligible for the National Register of Historic Places
56 by the Secretary of the United States Department of the Interior
57 and will be listed within thirty (30) months of claiming the
58 rebate or credit authorized by this section; or

59 3. A local district that has been certified
60 by the United States Department of the Interior.

61 (d) "Department" means the Department of Archives and
62 History.

63 (2) Any taxpayer incurring costs and expenses for the
64 rehabilitation of eligible property, which is a certified historic
65 structure or a structure in a certified historic district, shall
66 be entitled to a rebate or credit against the taxes imposed
67 pursuant to this chapter in an amount equal to twenty-five percent
68 (25%) of the total costs and expenses of rehabilitation incurred
69 after January 1, 2006, which shall include, but not be limited to,
70 qualified rehabilitation expenditures as defined under Section



71 47(c)(2)(A) of the Internal Revenue Code of 1986, as amended, and
72 the related regulations thereunder:

73 (a) If the costs and expenses associated with
74 rehabilitation exceed:

75 (i) Five Thousand Dollars (\$5,000.00) in the case
76 of an owner-occupied dwelling; or

77 (ii) Fifty percent (50%) of the adjusted basis in
78 the property in the case of all other properties; and

79 (b) The rehabilitation is consistent with the standards
80 of the Secretary of the United States Department of the Interior
81 as determined by the department.

82 (3) Any taxpayer eligible for the rebate or credit
83 authorized by this section may claim the rebate or credit in
84 phases if:

85 (a) There is a written set of architectural plans and
86 specifications for all phases of the rehabilitation (written plans
87 outlining and describing all phases of the rehabilitation shall be
88 accepted as written plans and specifications);

89 (b) The written set of architectural plans and
90 specifications are completed before the physical work on the
91 rehabilitation begins; and

92 (c) The project receives final certification by the
93 department within sixty (60) months of the project start date
94 certified in the first phase.



95 (4) (a) (i) If the amount of the tax credit established by
96 this section exceeds the total state income tax liability for the
97 credit year, the amount that exceeds the total state income tax
98 liability may be carried forward for the ten (10) succeeding tax
99 years.

100 (ii) In lieu of claiming a tax credit, the
101 taxpayer may elect to claim a rebate in the amount of seventy-five
102 percent (75%) of the amount that would be eligible to claim as a
103 credit. * * * The election may be made at any time after the
104 certification of the rebate. If the taxpayer has utilized a tax
105 credit on an income tax return prior to making an election to
106 claim a rebate, then the available rebate will be reduced by the
107 amount of credit utilized.

108 (iii) Rebate requests shall be submitted to the
109 department on forms prescribed by the department. The department
110 will then provide the taxpayer with a voucher for the approved
111 amount. Within twelve (12) months of the issuance of the voucher
112 by the department, the taxpayer may submit the voucher to the
113 Department of Revenue to receive payment. Rebates shall be made
114 from current tax collections.

115 (b) Not-for-profit entities, including, but not limited
116 to, nonprofit corporations organized under Section 79-11-101 et
117 seq., shall be ineligible for the rebate or credit authorized by
118 this section. Credits granted to a partnership, a limited
119 liability company taxed as a partnership or multiple owners of



120 property shall be passed through to the partners, members or
121 owners on a pro rata basis or pursuant to an executed agreement
122 among the partners, members or owners documenting an alternative
123 distribution method. Partners, members or other owners of a
124 pass-through entity are not eligible to elect a refund of excess
125 credit in lieu of a carryforward of the credit. However, a
126 partnership or limited liability company taxed as a partnership
127 may elect to claim a rebate at the entity level on a form
128 prescribed by the department. Additionally, excess tax credits
129 that are attributable to rehabilitated property that was placed in
130 service by a pass-through entity prior to January 1, 2011, and
131 that have previously been allocated to and are held by another
132 pass-through entity prior to January 1, 2011, may be refunded to
133 such other pass-through entity.

134 (5) (a) (i) To claim the rebate or credit authorized
135 pursuant to this section, the taxpayer shall apply to the
136 department which shall determine the amount of eligible
137 rehabilitation costs and expenses and whether the rehabilitation
138 is consistent with the standards of the Secretary of the United
139 States Department of the Interior. The department shall issue a
140 certificate evidencing the date of the rebate or credit and amount
141 of eligible rebate or credit if the taxpayer is found to be
142 eligible for the tax rebate or credit. The taxpayer shall attach
143 the certificate to all income tax returns on which the credit is
144 claimed. Except as otherwise provided in this paragraph (a), the



145 department shall not issue certificates evidencing the eligible
146 rebate or credit which will result in rebates or credits being
147 awarded in excess of Twelve Million Dollars (\$12,000,000.00) in
148 any one (1) calendar year for projects with total qualified
149 rehabilitation costs and expenses of One Million Seven Hundred
150 Fifty Thousand Dollars (\$1,750,000.00) or more. The department
151 shall also not issue certificates evidencing the eligible rebate
152 or credit which will result in rebates or credits being awarded in
153 excess of Twelve Million Dollars (\$12,000,000.00) in any one (1)
154 calendar year for projects with total qualified rehabilitation
155 costs and expenses of less than One Million Seven Hundred Fifty
156 Thousand Dollars (\$1,750,000.00).

157 (ii) If claiming a credit instead of a rebate, the
158 taxpayer shall claim such credit on the income tax return for the
159 tax year for which the credit is certified.

160 (b) The date of the rebate or credit shall be certified
161 in the following order:

162 (i) The rebate or credit shall be certified based
163 on the date of project completion.

164 (ii) If the eligible rebate or credit exceeds the
165 available limit in the year in which the project is completed, the
166 rebate or credit shall be certified based on the date the
167 certification is issued by the department. The department shall
168 issue the certification in the first calendar year in which the



169 requested rebate or credit would not exceed the calendar year
170 limit.

171 (c) The aggregate amount of tax rebates or credits that
172 may be awarded under this section shall not exceed One Hundred
173 Eighty Million Dollars (\$180,000,000.00).

174 (6) (a) The rebate or credit received by a taxpayer
175 pursuant to this section is subject to recapture if:

176 (i) The property is one that has been determined
177 eligible for the National Register of Historic Places but is not
178 listed on the National Register of Historic Places within thirty
179 (30) months of claiming the rebate or credit authorized by this
180 section;

181 (ii) The potential district in which the property
182 is located is not listed on the National Register of Historic
183 Places within thirty (30) months of claiming the rebate or credit
184 authorized by this section; or

185 (iii) The project has not received final
186 certification by the department within sixty (60) months of the
187 project start date certified in the first phase.

188 (b) The taxpayer shall notify the department and the
189 Department of Revenue if any of the situations that subject the
190 credit to recapture occur.

191 (7) (a) The board of trustees of the department shall
192 establish fees to be charged for the services performed by the
193 department under this section and shall publish the fee schedule.



194 The fees contained in the schedule shall be in amounts reasonably
195 calculated to recover the costs incurred by the department for the
196 administration of this section. Any taxpayer desiring to
197 participate in the tax credits authorized by this section shall
198 pay the appropriate fee as contained in the fee schedule to the
199 department, which shall be used by the department, without
200 appropriation, to offset the administrative costs of the
201 department associated with its duties under this section.

202 (b) There is hereby created within the State Treasury a
203 special fund into which shall be deposited all the fees collected
204 by the department pursuant to this section. Money deposited into
205 the fund shall not lapse at the end of any fiscal year and
206 investment earnings on the proceeds in such special fund shall be
207 deposited into such fund. Money from the fund shall be disbursed
208 upon warrants issued by the State Fiscal Officer upon requisitions
209 signed by the executive director of the department to assist the
210 department in carrying out its duties under this section.

211 (8) This section shall only apply to taxpayers:

212 (a) Who have been issued a certificate evidencing the
213 eligible credit before December 31, 2030; or

214 (b) Who, before December 31, 2030, have received a
215 determination in writing from the Mississippi Department of
216 Archives and History, in accordance with the department's Historic
217 Preservation Certificate Application, Part 2, that the
218 rehabilitation is consistent with the historic character of the



219 property and that the property meets the United States Secretary
220 of the Interior's Standards for Rehabilitation, or will meet the
221 standards if certain specified conditions are met, and, who are
222 issued a certificate evidencing the eligible credit on or after
223 December 31, 2030.

224 **SECTION 2.** This act shall take effect and be in force from
225 and after its passage.

