

By: Senator(s) Harkins

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2831

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 AUTHORIZE THE SALE OR TRANSFER OF THE CREDITS; TO CAP THE AMOUNT
5 OF THE CREDIT A SINGLE TAXPAYER MAY BE AWARDED IN ANY ONE FISCAL
6 YEAR; AND FOR RELATED PURPOSES.

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

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

10 27-7-22.31. (1) As used in this section:

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

13 (i) Listed individually on the National Register
14 of Historic Places; or

15 (ii) Determined eligible for the National Register
16 of Historic Places by the Secretary of the United States
17 Department of the Interior and will be listed within thirty (30)
18 months of claiming the credit authorized by this section; or



19 (iii) Property designated a Mississippi Landmark
20 by the Department of Archives and History pursuant to Section
21 39-7-3 et seq.

22 (b) "Eligible property" means property located in
23 Mississippi and offered or used for residential or business
24 purposes; however, the term "eligible property" shall not include
25 a single-family dwelling unless:

26 (i) A certificate evidencing the eligible credit
27 has been issued to the taxpayer by the department prior to July 1,
28 2016, that applies to such dwelling; or

29 (ii) The dwelling is designated as a National
30 Historic Landmark under the National Historic Landmarks Program.

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

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

36 (ii) Has been determined eligible for the National
37 Register of Historic Places by the Secretary of the United States
38 Department of the Interior and will be listed within thirty (30)
39 months of claiming the credit authorized by this 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 credit authorized by this
46 section, and is certified by the Secretary of the United States
47 Department of the Interior as being of historic significance to
48 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 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 credit against the taxes imposed pursuant to this
67 chapter in an amount equal to twenty-five percent (25%) of the
68 total costs and expenses of rehabilitation incurred after January



69 1, 2006, which shall include, but not be limited to, qualified
70 rehabilitation expenditures as defined under Section 47(c)(2)(A)
71 of the Internal Revenue Code of 1986, as amended, and the related
72 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 total basis in the
78 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 credit authorized by this
83 section may claim the credit in phases if:

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

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

91 (c) It can reasonably be expected that all phases of
92 the rehabilitation will be completed.



93 (4) (a) (i) If the amount of the tax credit established by
94 this section exceeds the total state income tax liability for the
95 year in which the rehabilitated property is placed in service, the
96 amount that exceeds the total state income tax liability may be
97 carried forward for the ten (10) succeeding tax years. In
98 addition, a taxpayer may sell or transfer the excess portion of a
99 tax credit for which the department issued a certificate of
100 eligible credit on or after July 1, 2021, to any taxpayer having a
101 liability for taxes under this chapter. A tax credit may not be
102 sold or transferred more than one (1) time, subject to guidelines
103 established by the Department of Revenue. The buyer or transferee
104 of a tax credit may use the acquired credit in the same manner and
105 to the same extent as the seller or transferor of the credit;
106 however, the sale or transfer of a credit will not extend the
107 length of time that the credit may be carried forward. In order
108 to sell or transfer a tax credit, the seller or transferor shall
109 notify the department and the Department of Revenue in writing
110 within thirty (30) days after the date of the sale or transfer.
111 The notice shall include:

112 1. The seller's or transferor's tax credit
113 balance before the sale or transfer of the credit;

114 2. The tax credit identification number
115 assigned by the department;

116 3. The unused portion of the credit remaining
117 after the sale or transfer;



118 4. All federal and state tax identification
119 numbers for both the seller or transferor and the buyer or
120 transferee;

121 5. The date of the sale or transfer;

122 6. The amount of the credit sold or
123 transferred; and

124 7. Any other information required by the
125 department or the Department of Revenue.

126 Failure by the seller or transferor to comply with the notice
127 requirements of this subparagraph (i) shall void the sale or
128 transfer.

129 (ii) The taxpayer may elect to claim a refund in
130 the amount of seventy-five percent (75%) of the excess credit in
131 lieu of the ten-year carryforward and the sale or transfer of the
132 credit. The election must be made in the year in which the
133 rehabilitated property is placed in service. Refunds will be paid
134 in equal installments over a two-year period and shall be made
135 from current collections.

136 (iii) Refund requests shall be submitted to the
137 Department of Revenue on forms prescribed by the department.
138 Refunds shall be made from current tax collections.

139 (b) Not-for-profit entities, including, but not limited
140 to, nonprofit corporations organized under Section 79-11-101 et
141 seq. shall be ineligible for the credit authorized by this
142 section. Credits granted to a partnership, a limited liability



143 company taxed as a partnership or multiple owners of property
144 shall be passed through to the partners, members or owners on a
145 pro rata basis or pursuant to an executed agreement among the
146 partners, members or owners documenting an alternative
147 distribution method. Partners, members or other owners of a
148 pass-through entity are not eligible to elect a refund of excess
149 credit in lieu of a carryforward of the credit. However, a
150 partnership or limited liability company taxed as a partnership
151 may elect to claim a refund of excess credit at the entity level
152 on a form prescribed by the Department of Revenue. Additionally,
153 excess tax credits that are attributable to rehabilitated property
154 that was placed in service by a pass-through entity prior to
155 January 1, 2011, and that have previously been allocated to and
156 are held by another pass-through entity prior to January 1, 2011,
157 may be refunded to such other pass-through entity.

158 (5) (a) To claim the credit authorized pursuant to this
159 section, the taxpayer shall apply to the department which shall
160 determine the amount of eligible rehabilitation costs and expenses
161 and whether the rehabilitation is consistent with the standards of
162 the Secretary of the United States Department of the Interior.
163 The department shall issue a certificate evidencing the eligible
164 credit if the taxpayer is found to be eligible for the tax credit.
165 The taxpayer shall attach the certificate to all income tax
166 returns on which the credit is claimed. The department shall not
167 issue certificates evidencing the eligible credit which, when



168 combined with certificates of eligible credits issued prior to
169 July 1, 2016, will result in credits being awarded in excess of
170 Twelve Million Dollars (\$12,000,000.00) in any one (1) state
171 fiscal year. No one (1) taxpayer may be awarded a credit in
172 excess of Three Million Dollars (\$3,000,000.00) in any one (1)
173 state fiscal year.

174 (b) The aggregate amount of tax credits that may be
175 awarded under this section shall not exceed One Hundred Eighty
176 Million Dollars (\$180,000,000.00). A taxpayer who was issued a
177 certificate evidencing the eligible credit by the department prior
178 to July 1, 2020, but who was unable to be awarded the credit due
179 to the limit on the aggregate amount of credits authorized under
180 this section prior to July 1, 2020:

181 (i) May be awarded the credit so long as the award
182 does not cause the aggregate amount of tax credits awarded to
183 exceed the amount authorized in this paragraph; and

184 (ii) Shall be given priority for tax credits
185 awarded after July 1, 2020.

186 (6) (a) The credit received by a taxpayer pursuant to this
187 section is subject to recapture if:

188 (i) The property is one that has been determined
189 eligible for the National Register of Historic Places but is not
190 listed on the National Register of Historic Places within thirty
191 (30) months of claiming the credit authorized by this section;



192 (ii) The potential district in which the property
193 is located is not listed on the National Register of Historic
194 Places within thirty (30) months of claiming the credit authorized
195 by this section; or

196 (iii) The rehabilitation of the property for which
197 the credit was granted is abandoned.

198 (b) The taxpayer shall notify the department and the
199 Department of Revenue if any of the situations that subject the
200 credit to recapture occur.

201 (7) (a) The board of trustees of the department shall
202 establish fees to be charged for the services performed by the
203 department under this section and shall publish the fee schedule.
204 The fees contained in the schedule shall be in amounts reasonably
205 calculated to recover the costs incurred by the department for the
206 administration of this section. Any taxpayer desiring to
207 participate in the tax credits authorized by this section shall
208 pay the appropriate fee as contained in the fee schedule to the
209 department, which shall be used by the department, without
210 appropriation, to offset the administrative costs of the
211 department associated with its duties under this section.

212 (b) There is hereby created within the State Treasury a
213 special fund into which shall be deposited all the fees collected
214 by the department pursuant to this section. Money deposited into
215 the fund shall not lapse at the end of any fiscal year and
216 investment earnings on the proceeds in such special fund shall be



217 deposited into such fund. Money from the fund shall be disbursed
218 upon warrants issued by the State Fiscal Officer upon requisitions
219 signed by the executive director of the department to assist the
220 department in carrying out its duties under this section.

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

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

224 (b) Who, before December 31, 2030, have received a
225 determination in writing from the Mississippi Department of
226 Archives and History, in accordance with the department's Historic
227 Preservation Certificate Application, Part 2, that the
228 rehabilitation is consistent with the historic character of the
229 property and that the property meets the United States Secretary
230 of the Interior's Standards for Rehabilitation, or will meet the
231 standards if certain specified conditions are met, and, who are
232 issued a certificate evidencing the eligible credit on or after
233 December 31, 2030.

234 **SECTION 2.** This act shall take effect and be in force from
235 and after July 1, 2021, and shall stand repealed on June 30, 2021.

