

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO TAXATION – HISTORIC STRUCTURES--TAX CREDIT--DISTRESSED
COMMUNITIES

Introduced By: Senators Doyle, Crowley, E O'Neill, and Nesselbush

Date Introduced: March 10, 2011

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 STRUCTURES -- TAX CREDIT--DISTRESSED COMMUNITIES

5 **44-33.6-1. Declaration of purpose.** -- The general assembly finds and declares that
6 Rhode Island's historic structures in distressed communities have experienced high vacancy rates
7 and physical deterioration. These conditions were greatly improved by the historic structures tax
8 credit provided in chapter 44-33.2 until said credit was phased-out. Without reinstating this
9 phased-out tax credit and adding economic incentive, these structures are not viable for the
10 redevelopment and reuse by modern commercial, residential or manufacturing enterprises and
11 will continue their physical deterioration. The redevelopment and reuse of these historic
12 structures are of critical importance to the economic measures and will assist in stimulating the
13 reuse and redevelopment of historic structures and will improve property values, foster civic
14 beauty, and promote public education, pleasure, and welfare. The purpose of this chapter is to
15 reinstitute the historic structures tax credit in distressed communities to provide economic
16 incentives for the purpose of stimulating the redevelopment and reuse of Rhode Island's historic
17 structures in distressed communities.

18 **44-33.6-2. Definitions.** -- As used in this chapter:

1 (1) "Certified historic structure" means a property which is located in a distressed
2 community, as defined by section 45-13-12, in the State of Rhode Island and is:

- 3 (i) Listed individually on the national register of historic places; or
- 4 (ii) Listed individually in the state register of historic places; or
- 5 (iii) Located in a registered historic district and certified by either the commission or
6 secretary of the interior as being of historic significance to the district.

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

10 (3) "Commission" means the Rhode Island historical preservation and heritage
11 commission created pursuant to section 42-45-2.

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

14 (5) "Holding period" means twenty-four (24) months after the commission issues a
15 certificate of completed work to the owner. In the case of a rehabilitation which may reasonably
16 be expected to be completed in phases as described in subdivision (10) of this section, "holding
17 period" shall be extended to include a period of time beginning on the date of issuance of a
18 certificate of completed work for the first phase or phases for which a certificate of completed
19 work is issued and continuing until the expiration of twenty-four (24) months after the certificate
20 of completed work issued for the last phase.

21 (6) "Placed in service" means that substantial rehabilitation work has been completed
22 which would allow for occupancy of the entire structure or some identifiable portion of the
23 structure, or the owner has commenced depreciation of the qualified rehabilitation expenditures,
24 whichever occurs first.

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

27 (8) "Qualified rehabilitation expenditures" means any amounts expended in the
28 rehabilitation of a certified historic structure properly capitalized to the building and either: (i)
29 Depreciable under the Internal Revenue Code, 26 U.S.C. section 1 et seq., or (ii) Made with
30 respect to property (other than the principal residence of the owner) held for sale by the owner.
31 Notwithstanding the foregoing, except in the case of a nonprofit corporation, there will be
32 deducted from qualified rehabilitation expenditures for the purposes of calculating the tax credit
33 any funds made available to the person (including any entity specified in subsection 44-33.2-3(a))
34 incurring the qualified rehabilitation expenditures in the form of a direct grant from a federal,

1 state or local governmental entity or agency or instrumentality of government.

2 (9) "Registered historic district" means any district listed in the National Register of
3 Historic Places or the state register of historic places.

4 (10) "Substantial rehabilitation" means, with respect to a certified historic structure, that
5 the qualified rehabilitation expenses of the building during the twenty-four (24) month period
6 selected by the taxpayer ending with or within the taxable year exceed fifty percent (50%) of the
7 adjusted basis in such building and its structural components as of the beginning of such period.
8 In the case of any rehabilitation, which may reasonably be expected to be completed in phases set
9 forth in architectural plans and specifications completed before the rehabilitation begins, the
10 above definition shall be applied by substituting "sixty (60) month period" for "twenty-four (24)
11 month period."

12 **44-33.6-3. Tax credit.** -- (a) Any person, firm, partnership, trust, estate, limited liability
13 company, corporation (whether for profit or non-profit) or other business entity that incurs
14 qualified rehabilitation expenditures for the substantial rehabilitation of a certified historic
15 structure, provided the rehabilitation meets standards consistent with the standards of the
16 Secretary of the United States Department of the Interior for rehabilitation as certified by the
17 commission, shall be entitled to a credit against the taxes imposed on such person or entity
18 pursuant to chapter 11, 12, 13, 14, 17 or 30 of this title in an amount equal to thirty percent (30%)
19 of the qualified rehabilitation expenditures.

20 (b) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in
21 which such certified historic structure or an identifiable portion of the structure is placed in
22 service provided that the substantial rehabilitation test is met for such year.

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

32 (d)(1) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible
33 for the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or
34 otherwise to any individual or entity, including, but not limited to, condominium owners in the

1 event the certified historic structure is converted into condominiums. The assignee of the tax
2 credits may use acquired credits to offset up to one hundred percent (100%) of the tax liabilities
3 otherwise imposed pursuant to chapter 11, 12, 13, (other than the tax imposed under section 44-
4 13-13), 14, 17 or 30 of this title. The assignee may apply the tax credit against taxes imposed on
5 the assignee until the end of the tenth (10th) calendar year after the year in which the substantially
6 rehabilitated property is placed in service or until the full credit assigned is used, whichever
7 occurs first. Fiscal year assignees may claim the credit until the expiration of the fiscal year that
8 ends within the tenth (10th) year after the year in which the substantially rehabilitated property is
9 placed in service. The assignor shall perfect the transfer by notifying the State of Rhode Island
10 division of taxation, in writing, within thirty (30) calendar days following the effective date of the
11 transfer and shall provide any information as may be required by the division of taxation to
12 administer and carry out the provisions of this section.

13 (2) For purposes of this chapter, any assignment or sales proceeds received by the
14 taxpayer for its assignment or sale of the tax credits allowed pursuant to this section shall be
15 exempt from this title. If a tax credit is subsequently recaptured under subsection (e) of this
16 section, revoked or adjusted, the seller's tax calculation for the year of revocation, recapture, or
17 adjustment shall be increased by the total amount of the sales proceeds, without proration, as a
18 modification under chapter 30 of this title. In the event that the seller is not a natural person, the
19 seller's tax calculation under chapters 11, 12, 13 (other than with respect to the tax imposed under
20 section 44-13-13), 14, 17, or 30 of this title, as applicable, for the year of revocation, recapture, or
21 adjustment, shall be increased by including the total amount of the sales proceeds without
22 proration.

23 (e) Substantial rehabilitation of property that is exempt from real property tax shall be
24 ineligible for the tax credits authorized under this chapter. In the event a certified historic
25 structure undergoes a substantial rehabilitation pursuant to this chapter and within twenty-four
26 (24) months after issuance of a certificate of completed work the property becomes exempt from
27 real property tax, the taxpayer's tax for the year shall be increased by the total amount of credit
28 actually used against the tax.

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

32 **44-33.6-4. Administration. -- (a) To claim the tax credit authorized in this chapter,**
33 **taxpayers shall apply to the commission;**

34 (1) Prior to the certified historic structure being placed in service for a certification that

1 the certified historic structure's rehabilitation will be consistent with the standards of the
2 Secretary of the United States Department of the Interior for rehabilitation; and

3 (2) After completion of the rehabilitation work of the certified historic structure for:

4 (i) A certification that the rehabilitation is consistent with the standards of the Secretary
5 of the United States Department of the Interior for rehabilitation, and

6 (ii) A certification as to the amount of tax credit for which the rehabilitation qualifies.
7 The commission shall be entitled to rely on the facts represented in the application without
8 independent investigation and, with respect to the amount of tax credit for which the
9 rehabilitation qualifies, upon the certification of a certified public accountant licensed in the state
10 of Rhode Island. The applications shall be developed by the commission and may be amended
11 from time to time.

12 (b) Within ninety (90) days after the commission's receipt of the taxpayer's application
13 requesting certification for the completed rehabilitation work, the commission shall issue the
14 taxpayer:

15 (1) A written determination either denying or certifying the rehabilitation, and

16 (2) A certification of the amount of credit for which the rehabilitation qualifies. To claim
17 the tax credit, the commission's certification as to the amount of the tax credit shall be attached to
18 all state tax returns on which the credit is claimed.

19 (c) No taxpayer may benefit from the provisions of this chapter unless the owner of the
20 certified historic structure grants a restrictive covenant to the commission, agreeing that during
21 the holding period no alterations to the certified historic structure will be made without the
22 commission's approval and in a manner inconsistent with the standards of the Secretary of the
23 United States Department of the Interior.

24 (d) The commission is authorized to establish a schedule of fees for the review of tax
25 credit applications, but the fees shall be no greater than two thousand dollars (\$2,000) in total for
26 each project.

27 (e) If information comes to the attention of the commission at any time up to and
28 including the last day of the holding period that is materially inconsistent with representations
29 made in an application, the commission may deny the requested certification or revoke a
30 certification previously given.

31 **44-33.6-5. Information requests.** – The tax administrator and his or her agents, for the
32 purpose of ascertaining the correctness of any credit claimed under the provisions of this chapter,
33 may examine any books, papers, records, or memoranda bearing upon the matters required to be
34 included in the return, report, or other statement, and may require the attendance of the person

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

7 **44-33.6-6. Election.** – Taxpayers who elect and qualify to claim tax credits for the
8 substantial rehabilitation of a certified historic structure pursuant to this chapter are ineligible for
9 any tax credits that may also be available to the taxpayer for the substantial rehabilitation of that
10 particular certified historic structure under the provisions of chapters 33.1 of this title, 64.7 of title
11 42, and/or 31 of this title.

12 SECTION 4. 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--TAX CREDIT--DISTRESSED
COMMUNITIES

- 1 This act would create a tax credit for historic structures in distressed communities.
- 2 This act would take effect upon passage.

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