

SPONSOR: Rep. DiPinto & Rep. Hudson &

Sen. Adams & Sen. McDowell & Sen. Sharp & Sen.
Sorenson;

Reps. Brady, Carey, B. Ennis, D. Ennis, Fallon, Gilligan,
Houghton, Keeley, Lavelle, Lee, Miro, Price, Schroeder,
Scott, Spence, Ulbrich, Valihura, Williams; Sens. Amick,
Blevins, Bunting, Cloutier, Connor, Henry, McBride, Still,
Winslow

HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE BILL NO. 1

AN ACT TO AMEND TITLE 5 AND TITLE 30 OF THE DELAWARE CODE RELATING TO TAXES; AND
PROVIDING FOR A HISTORIC PRESERVATION TAX CREDIT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 18, Title 30 of the Delaware Code by striking the word "chapter" wherever the same appears in §1801, §1803, §1805, §1806 and §1807 therein, and substituting the word "subchapter" in lieu thereof.

Section 2. Amend Chapter 18, Title 30 of the Delaware Code by designating all of the present chapter as new subchapter I of said Chapter 18, which new subchapter shall be entitled as follows:

"SUBCHAPTER I. LAND DONATED FOR CONSERVATION OR PRESERVATION."

Section 3. Amend Chapter 18, Title 30 of the Delaware Code by adding thereto a new subchapter, designated as Subchapter II, which new subchapter shall read as follows:

"SUBCHAPTER II. HISTORIC PRESERVATION AND REPAIR.

§1811. Statement of Purpose.

The General Assembly finds and declares that many properties and structures associated with Delaware's history, and in some cases the history of this nation, have been steadily disappearing over the past fifty years, or longer. Once gone, they are gone forever, and can never be replaced. Each year, it seems, there are less and less. The General Assembly firmly believes that the private sector is uniquely able to be a major factor in the preservation of many of Delaware's historic structures.

§1812. Definitions.

The following words, terms and phrases, when used in this Subchapter, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning (singular includes plural):

(a) "Certified historic property" shall mean property located within the State of Delaware that is:

- (1) individually listed in the National Register of Historic Places; or
- (2) located in a historic district listed in the National Register of Historic Places, and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or
- (3) individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or
- (4) located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

(b) "Certification of Completion", "Completion Certificate" or "Certificate" shall mean the certificate issued jointly by the Delaware State Historic Preservation Officer and the Director of the Division of Revenue attesting that certified rehabilitation has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credit under §47 of the Internal Revenue Code (whether or not such project would be eligible for such federal tax credit) has been obtained.

(c) "Certified rehabilitation" shall mean that rehabilitation of a certified historic structure which has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation; and is in conformance with the Standards of the Secretary of the Interior for Rehabilitation (36 CFR, part 67) or such other standards as the State Historic Preservation Office shall from time to time adopt.

(d) "Delaware State Historic Preservation Officer" shall mean the person designated and appointed in accordance with 16 USC §470a(b)(1)(a), as amended.

(e) "Lending institution" shall mean any bank, trust company, savings and loan association, building and loan association or licensed lender and which is taxable under Title 5 or taxable under Chapter 19 of Title 30.

(f) "Office" or "State Office" shall mean the Delaware State Historic Preservation Office.

(g) "Owner-occupied historic property" shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used (or within a reasonable period as may be determined by the Delaware Historic Preservation Office on a case-by-case basis will be used) by such taxpayer as the taxpayer's principal residence. Such property may consist of part of a multiple-dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

(h) "Person" shall include any individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations), whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships), whether or not for profit; any trust or estate, and any lawful joint

venture. "Person" shall also include any governmental entity, pass-through entity, or person under a lease contract for five years or longer.

(i) "Property" shall mean real estate, and shall include any building or structure, including multiple-unit structures.

(j) "Qualified expenditure" shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

(1) acquisition of real property, or acquiring an interest in real property;

(2) any addition to an existing structure, except where the combined square footage of all additions is one-half or less than the total square footage of the historic portion of the property; and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

a. preserving the character-defining features of the certified historic property,

b. adequately differentiating the new construction from the existing structure, and

c. complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;

(3) paving or landscaping costs which exceed ten percent (10%) of the total qualified expenditures; and

(4) sales and marketing costs; and

(5) expenditures not properly charged to a capital account, including, in the case of owner occupied property, expenditures that would not properly be charged to a capital account where the owner using such property in a trade or business.

(k) "Residential property" shall include cooperatives and condominiums.

(l) "Substantial rehabilitation" shall mean rehabilitation of a certified historic property for which the qualified expenditures, during the twenty-four month period selected by the taxpayer and ending with or within the taxable year, exceed:

(1) for income-producing property, and non-income producing property other than owner-occupied historic property, the current standard required by §47(c)(I)(C) of the Internal Revenue Code; and

(2) for owner-occupied historic property, five thousand dollars (\$5,000).

(m) "Taxpayer" shall include any 'person' as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either Chapter 11 or Chapter 19 of Title 30.

(a) Any person incurring qualified expenditures pursuant to this subchapter in the rehabilitation of any certified historic property shall be entitled to a credit against bank franchise or income taxes imposed under Title 5; or under Chapter 11 or Chapter 19 of Title 30, respectively, subject to limitations set forth in this section and up to a maximum of:

(1) twenty percent (20%) of qualified expenditures made in the rehabilitation of any certified historic property which is eligible for a federal tax credit under §47 of the Internal Revenue Code;

(2) thirty percent (30%) of the qualified expenditures made in the rehabilitation of any certified historic property which is not eligible for a federal tax credit under §47 of the Internal Revenue Code.

(b) Any person, in order to receive a Certificate of Completion from the Delaware State Historic Preservation Officer that would entitle said person to a tax credit under this section, shall submit documentation of those qualified expenditures and project plans that would be required in order to qualify for tax credit under §47 of the Internal Revenue Code whether or not such project would be eligible for such federal tax credit.

(c) Any taxpayer must begin taking the credit for the year such taxpayer receives the Certificate of Completion from the Delaware State Historic Preservation Officer.

(d) Any person eligible for credits under this Chapter may transfer, sell or assign any or all unused credits. If a certified historic property for which a certified rehabilitation has been completed is sold or transferred, the amount of any credit not used by the time of such sale or transfer may be transferred to the person to which the structure is sold or transferred.

(e) *Carrying tax credits forward.* Except as otherwise provided, if the amount of credit allowed pursuant to this subchapter exceeds that total tax liability of the taxpayer for the tax year for which the credit is claimed, the amount of the credit not used as an offset against income or franchise taxes in said tax year shall not be refunded, but may be carried forward as a credit against subsequent years' income or franchise tax liability for a period not exceeding ten years, and shall be applied first to the earliest tax years possible.

(f) Whenever any part of the certified rehabilitation of a residential property is determined under regulations promulgated by the State Office to be committed to low income housing, subsection (a) of this section shall be applied with respect to such part by substituting '30%' for '20%' and '40%' for '30%' in said subsection.

§1814. Preservation tax credits; distribution, transfer and assignment.

(a) Any person eligible for credit under this subchapter may transfer, sell or assign any unused credits. Any person that transfers, sells or assigns any unused portion of a tax credit shall obtain and produce to the transferee, purchaser or assignee a certificate from the Division of Revenue or the Office of the State Bank Commissioner setting forth the amount of unused credit.

(b) Credits granted to or acquired by a pass-through entity created or recognized under Delaware law, or by multiple owners of property, if not transferred, sold or assigned, may be divided among the partners, members, shareholders or owners either according to the distributive shares of income of such entity or pursuant to an executed agreement among such partners, members, shareholders or owners if such agreement documents an alternate method of distribution.

(c) Any transferee, purchaser or assignee of tax credits under this subchapter may use such acquired credits to offset State income or franchise tax liabilities imposed upon such transferee, purchaser or assignee. To claim the State tax credit, the transferee, purchaser or assignee shall attach the certificate obtained by the transferor, seller or assignor in accordance with subsection (a) of this section to the Delaware tax return against which the credit is claimed and

submit such tax return to the Division of Revenue or the Office of the State Bank Commissioner with respect to Title 30 income taxes and Title 5 franchise taxes, respectively.

(d) If the credit allowed under this section exceeds the transferee, purchaser or assignee's tax due for the current tax year, the transferee, purchaser or assignee of the tax credit may carry forward such excess in accordance with §1813 of this Title.

§1815. Preservation tax credits: procedures and administration.

(a) The Delaware State Historic Preservation Office is hereby established within the Division of Historical and Cultural Affairs, and shall be administered by the Delaware State Historic Preservation Officer.

(b) Except where otherwise provided, the Division of Historical and Cultural Affairs may establish by regulation all requirements for implementation of the provisions of this subchapter (except tax matters), including but not limited to the following:

(1) fees to be charged by the State Office for inspections and other expenses; and

(2) standards for rehabilitation of historic property where those standards set forth in 36 CFR part 67 are not applicable.

(c) The Division of Historical and Cultural Affairs shall have the authority to promulgate the application and forms governing participation in the certification program.

(d) The Division of Revenue and the State Bank Commissioner may establish regulations and develop all appropriate procedures and applications or other forms for the implementation of all provisions of this subchapter which are directly tax-related or related to certifying the value of the tax credits issued under Title 30 and Title 5, respectively.

(e) Any person or entity seeking the historic preservation tax credit set forth in this subchapter shall apply to the Delaware State Historic Preservation Office. Each applicant shall complete the application, and all other information requested, in whole; and shall include such sketches, renderings, charts or photographs as may be requested by the State Office.

(f) The State Office shall, upon consideration of the application and such other matters as it deems appropriate, determine whether or not the property constitutes a certified historic property. If the application is for a certified historic property, the State Office shall review, approve, disapprove or suggest modifications to any proposed rehabilitation plan to insure that the rehabilitation, when completed, can be considered a certified rehabilitation. All repairs and rehabilitation shall be consistent with those standards set forth in 36 CFR §67.7 for federal certification; and otherwise shall comply with regulations promulgated by the State Office.

(g) Upon completion of the rehabilitation, the person or entity shall notify the Delaware State Historic Preservation Officer. Upon determination by the Preservation Officer that the property is a certified historic property and that the rehabilitation of the certified historic property has been completed, and that the rehabilitation is in conformance with the requirements of this subchapter and the regulations of the State Office; and upon determination by the Director of the Division of Revenue or the Office of the State Banking Commissioner as to the value of the tax credit associated with the Certificate of Completion, the Delaware State Historic Preservation Officer shall certify such rehabilitation and shall issue a Certificate of Completion to the applicant.

(h) In the alternative, the Delaware State Historic Preservation Officer may certify such rehabilitation and issue a Certificate of Completion to any applicant who has obtained a Part I and Part II certification from the federal government issued pursuant to 36 CFR part 67, where applicable.

(i) To claim the State tax credit allowed by this subchapter the applicant, any assignee, any purchaser, or any transferee of the credit shall attach the Certificate of Completion to the Delaware tax return against which the credit is claimed and submit such tax return to the Division of Revenue or to the Office of the Office of the State Bank Commissioner with respect to Title 30 income taxes and Title 5 franchise taxes, respectively.

§1816. Appeals.

(a) Where any taxpayer or other person who has applied for State approval or certification that a property is a certified historic property, or that any repairs or improvements are certified rehabilitation, in accordance with this subchapter, objects to a non-certification decision by the Delaware State Historic Preservation Officer, such person shall be entitled to appeal such decision to the Delaware Secretary of State or the Secretary's designee. Such appeal shall be filed with the Delaware Secretary of State within 60 days from the issuance of such non-certification decision. Such appeal shall be conducted in accordance with the Administrative Procedures Act, *29 Del. C. §10101 et seq.* Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act.

(b) Where a taxpayer or other person who is or was engaged in qualified repairs in accordance with this subchapter is aggrieved by a tax decision which directly affects such person, that person shall be entitled to pursue an appeal pursuant to the administrative procedures of the Department of Finance as set forth in Title 30 or regulations promulgated thereunder, or the State Bank Commissioner as set forth in Title 5 or regulations promulgated thereunder. Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act."

Section 4. Amend §1105, Chapter 11, Title 5 of the Delaware Code by adding thereto a new subsection, designated as subsection (g), which new subsection shall read as follows:

"(g) Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Subchapter II, Chapter 18, Title 30 of the Delaware Code), which credits shall be against taxes imposed under this Chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 5. Amend §1801, Chapter 18, Title 5 of the Delaware Code by adding thereto a new subsection, designated as subsection (d), which new section shall read as follows:

"(d) Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Subchapter II, Chapter 18, Title 30 of the Delaware Code), which credits shall be against any taxes imposed under this Chapter; provide however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 6. Amend Subchapter II, Chapter 11, Title 30 of the Delaware Code by adding thereto a new section, designated as §1112, which new section shall read as follows:

"§1112. Historic Rehabilitation.

A resident individual shall be allowed a credit against such individual's tax otherwise due under this Chapter in accordance with the provisions of the Historic Preservation Tax Credit Act (Chapter 18 of this Title), which credits shall be against any taxes imposed under this chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 7. Amend Chapter 19, Title 30 of the Delaware Code by adding thereto a new section, designated as §1908, which new section shall read as follows:

"§1908. Historic Rehabilitation.

Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Chapter 18, of this Title), which credits shall be against taxes imposed under this Chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 8. This Act may be known and cited as the *Historic Preservation Tax Credit Act*.

Section 9. This Act shall be effective for credits to be taken in tax years commencing on or after January 1, 2001, with regard to any qualified expenditure paid (in the case of cash basis taxpayers) or accrued (in the case of accrual basis taxpayers) on or after the date on which this Act shall be enacted into law, but before December 31, 2009.

SYNOPSIS

This legislation creates the Historic Preservation Tax Credit Act. Under this Act, Delaware would join 15 other states in granting tax credits to those persons who work to promote community revitalization and restoration, and the rehabilitation of historic properties located in Delaware. These credits are available for both income-producing historic properties and owner-occupied historic residences.

Under this Act a person who wishes to repair, rehabilitate or otherwise preserve a historic property would apply to the State Office of Historic Preservation, within the Division of Historical and Cultural Affairs. When the Office approves the restoration of the property, the person making the improvements is entitled, upon completion, to income or franchise tax credits worth up to thirty (30%) of qualified expenditures (40% in the case of certain low income housing).

Additionally, this Act permits persons to transfer credits to another person, entity or lending institution. The person, entity or lending institution may then use these credits to offset income or franchise taxes. The ability to transfer credits provides many benefits to the community, including the ability to transfer the credits to a lending institution in exchange for a reduction in the principal amount of a mortgage, to reduce the interest rate on a mortgage, or for rehabilitation expenses. This is particularly beneficial to the creation of moderate and low-income housing in historic buildings.

In addition to the tax benefits, this legislation will encourage revitalization of both urban and rural communities in the State, generate jobs (both during the construction phase and in the spin-off effects of increased earning and consumption), attract new private investment to historic areas, enhance property values, promote tourism, and help reduce sprawl by encouraging redevelopment of existing communities.