

House File 2453

AN ACT

RELATING TO THE ADMINISTRATION OF THE HISTORIC PRESERVATION AND CULTURAL AND ENTERTAINMENT DISTRICT TAX CREDIT PROGRAM BY THE DEPARTMENT OF CULTURAL AFFAIRS, PROVIDING FOR FEES, AND INCLUDING APPLICABILITY PROVISIONS.

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

Section 1. Section 16.188, subsection 3, paragraph b, subparagraph (1), Code 2014, is amended to read as follows:

(1) Projects that are eligible for historic preservation and cultural and entertainment district tax credits under section ~~404A.1~~ 404A.2.

Sec. 2. Section 404A.1, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

**404A.1 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "*Completion date*" means the date on which property that is the subject of a qualified rehabilitation project is placed in service, as that term is used in section 47 of the Internal Revenue Code.

2. "*Department*" means the department of cultural affairs.

3. "*Eligible taxpayer*" means the owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project.

4. "*Nonprofit organization*" means an organization described in section 501 of the Internal Revenue Code unless the exemption is denied under section 501, 502, 503, or 504 of the Internal Revenue Code. "*Nonprofit organization*" does not include a governmental body, as that term is defined in section 362.2.

5. "*Program*" shall mean the historic preservation and cultural and entertainment district tax credit program set forth in this chapter.

6. a. "*Qualified rehabilitation expenditures*" means the same as defined in section 47 of the Internal Revenue Code. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered "*qualified rehabilitation expenditures*" if they are any of the following:

(1) Expenditures made for structural components, as that term is defined in 26 C.F.R. §1.48-1(e)(2).

(2) Expenditures made for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, and development fees.

b. "*Qualified rehabilitation expenditures*" does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under section 47 of the Internal Revenue Code.

c. "*Qualified rehabilitation expenditures*" may include expenditures incurred prior to the date an agreement is entered into under section 404A.3, subsection 3.

7. *“Qualified rehabilitation project”* means a project for the rehabilitation of property in this state that meets all of the following criteria:

a. The property is at least one of the following:

(1) Property listed on the national register of historic places or eligible for such listing.

(2) Property designated as of historic significance to a district listed in the national register of historic places or eligible for such designation.

(3) Property or district designated a local landmark by a city or county ordinance.

(4) A barn constructed prior to 1937.

b. The property meets the physical criteria and standards for rehabilitation established by the department by rule. To the extent applicable, the physical standards and criteria shall be consistent with the United States secretary of the interior's standards for rehabilitation.

c. The project has qualified rehabilitation expenditures that meet or exceed the following:

(1) In the case of commercial property, expenditures totaling at least fifty thousand dollars or fifty percent of the assessed value of the property, excluding the land, prior to rehabilitation, whichever is less.

(2) In the case of property other than commercial property, including but not limited to barns constructed prior to 1937, expenditures totaling at least twenty-five thousand dollars or twenty-five percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

Sec. 3. Section 404A.2, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

**404A.2 Historic preservation and cultural and entertainment district tax credit.**

1. An eligible taxpayer who has entered into an agreement under section 404A.3, subsection 3, is eligible to receive a historic preservation and cultural and entertainment district tax credit in an amount equal to twenty-five percent of the qualified rehabilitation expenditures of a qualified rehabilitation project that are specified in the agreement. Notwithstanding any other provision of this chapter or any provision in the agreement to the contrary, the amount of the tax credits shall not exceed twenty-five percent of the final qualified rehabilitation expenditures verified by the department pursuant to section 404A.3, subsection 5, paragraph

“c”.

2. The tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust. For an individual claiming a tax credit of a partnership, limited liability company, or S corporation, the amount claimed by the partner, member, or shareholder, respectively, shall be based upon the amounts designated by the eligible partnership, S corporation, or limited liability company, as applicable.

3. Any credit in excess of the taxpayer's tax liability for the tax year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following year.

4. a. To claim a tax credit under this section, a taxpayer shall include one or more tax credit certificates with the taxpayer's tax return.

b. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the credit, the name of the eligible taxpayer, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

c. The tax credit certificate, unless rescinded by the department, shall be accepted by the department of revenue as payment for taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, subject to any conditions or restrictions placed by the department or the department of revenue upon the face of the tax credit certificate and subject to the limitations of this program.

5. a. Tax credit certificates issued under section 404A.3 may be transferred to any person. Within ninety days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, the denomination that each replacement

tax credit certificate is to carry, and any other information required by the department of revenue. However, tax credit certificate amounts of less than the minimum amount established by rule of the department of revenue shall not be transferable.

*b.* Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.

*c.* A tax credit shall not be claimed by a transferee under this section until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

6. For purposes of the individual and corporate income taxes and the franchise tax, the increase in the basis of the rehabilitated property that would otherwise result from the qualified rehabilitation expenditures shall be reduced by the amount of the credit computed under this section.

Sec. 4. Section 404A.3, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

**404A.3 Application and registration — agreement — compliance and examination.**

1. *Application and fees.*

*a.* An eligible taxpayer seeking historic preservation and cultural and entertainment district tax credits provided in section 404A.2 shall make application to the department in the manner prescribed by the department.

*b.* The department may accept applications on a continuous basis or may accept applications, or one or more components of an application, during one or more application periods.

*c.* The application shall include any information deemed necessary by the department to evaluate the eligibility under

the program of the applicant and the rehabilitation project, the amount of projected qualified rehabilitation expenditures of a rehabilitation project, and the amount and source of all funding for a rehabilitation project. An applicant shall have the burden of proof to demonstrate to the department that the applicant is an eligible taxpayer and the project is a qualified rehabilitation project under the program.

*d.* The department may establish criteria for the use of electronic or other alternative filing or submission methods for any application, document, or payment requested or required under this program. Such criteria may provide for the acceptance of a signature in a form other than the handwriting of a person.

*e.* (1) The department may charge application and other fees to eligible taxpayers who apply to participate in the program. The amount of such fees shall be determined based on the costs of the department associated with administering the program.

(2) Fees collected by the department pursuant to this paragraph shall be deposited with the department pursuant to section 303.9, subsection 1.

*2. Registration.*

*a.* Upon review of the application, the department may register a qualified rehabilitation project under the program. If the department registers the project, the department shall make a preliminary determination as to the amount of tax credits for which the project qualifies.

*b.* After registering the qualified rehabilitation project, the department shall notify the eligible taxpayer of successful registration under the program. The notification shall include the amount of tax credits under section 404A.2 for which the qualified rehabilitation project has received a tentative award and a statement that the amount is a preliminary determination only.

*3. Agreement.*

*a.* Upon successful registration of a qualified rehabilitation project, the eligible taxpayer shall enter into an agreement with the department for the successful completion of all requirements of the program.

*b.* The agreement shall contain mutually agreeable terms and conditions which, at a minimum, provide for the following:

(1) The amount of the tax credit award. An eligible taxpayer has no right to receive a tax credit certificate or claim a tax credit until all requirements of the agreement and

subsections 4 and 5 have been satisfied. The amount of tax credit included on a tax credit certificate issued under this section shall be contingent upon verification by the department of the amount of final qualified rehabilitation expenditures.

(2) The rehabilitation work to be performed.

(3) The budget of the qualified rehabilitation project, including the projected qualified rehabilitation expenditures, allowable cost overruns, and the source and amount of all funding received or anticipated to be received. The amount of allowable cost overruns provided for in the agreement shall not exceed the following amount:

(a) For a qualified rehabilitation project with final qualified rehabilitation expenditures of not more than seven hundred fifty thousand dollars, fifteen percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(b) For a qualified rehabilitation project with final qualified rehabilitation expenditures of more than seven hundred fifty thousand dollars but not more than six million dollars, ten percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(c) For a qualified rehabilitation project with final qualified rehabilitation expenditures of more than six million dollars, five percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(4) The commencement date of the qualified rehabilitation project, which shall not be later than the end of the fiscal year in which the agreement is entered into.

(5) The completion date of the qualified rehabilitation project, which shall be within thirty-six months of the commencement date.

(6) The date on which the agreement terminates, which date shall not be earlier than five years from the date on which the tax credit certificate is issued.

#### 4. *Compliance.*

a. The eligible taxpayer shall, for the length of the agreement, annually certify to the department compliance with the requirements of the agreement. The certification shall be made at such time as the department shall determine in the agreement.

b. The eligible taxpayer shall have the burden of proof to demonstrate to the department that all requirements of the agreement are satisfied. The taxpayer shall notify

the department in a timely manner of any changes in the qualification of the rehabilitation project or in the eligibility of the taxpayer to claim the tax credit provided under this chapter, or of any other change that may have a negative impact on the eligible taxpayer's ability to successfully complete any requirement under the agreement.

c. (1) If after entering into the agreement but before a tax credit certificate is issued, the eligible taxpayer or the qualified rehabilitation project no longer meets the requirements of the agreement, the department may find the taxpayer in default under the agreement and may revoke the tax credit award.

(2) If an eligible taxpayer obtains a tax credit certificate from the department by way of a prohibited activity, the eligible taxpayer and any transferee shall be jointly and severally liable to the state for the amount of the tax credits so issued, interest and penalties allowed under chapter 422, and reasonable attorney fees and litigation costs, except that the liability of the transferee shall not exceed an amount equal to the amount of the tax credits acquired by the transferee. The department of revenue, upon notification or discovery that a tax credit certificate was issued to an eligible taxpayer by way of a prohibited activity, shall revoke any outstanding tax credit and seek repayment of the value of any tax credit already claimed, and the failure to make such a repayment may be treated by the department of revenue in the same manner as a failure to pay the tax shown due or required to be shown due with the filing of a return or deposit form. A qualifying transferee is not subject to the liability, revocation, and repayment imposed under this subparagraph.

(3) For purposes of this paragraph:

(a) "*Prohibited activity*" means a breach or default under the agreement with the department, the violation of any warranty provided by the eligible taxpayer to the department or the department of revenue, the claiming of a tax credit issued under this chapter for expenditures that are not qualified rehabilitation expenditures, the violation of any requirements of this chapter or rules adopted pursuant to this chapter, misrepresentation, fraud, or any other unlawful act or omission.

(b) "*Qualifying transferee*" means a transferee who acquires a tax credit certificate issued under this chapter for value, in good faith, without actual or constructive notice of a



prohibited activity of the eligible taxpayer who was originally issued the tax credit, and without actual or constructive notice of any other claim to or defense against the tax credit, and which transferee is not associated with the eligible taxpayer by being one or more of the following:

(i) An owner, member, shareholder, or partner of the eligible taxpayer who directly or indirectly owns or controls, in whole or in part, the eligible taxpayer.

(ii) A director, officer, or employee of the eligible taxpayer.

(iii) A relative of the eligible taxpayer or a person listed in subparagraph subdivision (i) or (ii) or, if the eligible taxpayer or an owner, member, shareholder, or partner of the eligible taxpayer is a legal entity, the natural persons who ultimately own such legal entity.

(iv) A person who is owned or controlled, in whole or in part, by a person listed in subparagraph subdivision (i) or (ii).

(c) "*Relative*" means an individual related by consanguinity within the second degree as determined by common law, a spouse, or an individual related to a spouse within the second degree as so determined, and includes an individual in an adoptive relationship within the second degree.

5. *Examination and audit of project.*

a. An eligible taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the project in accordance with the American institute of certified public accountants' statements on standards for attestation engagements. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the department, along with a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the department or the department of revenue in order to verify that all requirements of the agreement, this chapter, and all rules adopted pursuant to this chapter have been satisfied.

b. Notwithstanding paragraph "a", the department may waive the examination requirement in this subsection if all the following requirements are satisfied:

(1) The final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the department, do not exceed one hundred thousand dollars.

(2) The qualified rehabilitation project is funded

exclusively by private funding sources.

c. Upon review of the examination, if applicable, the department shall verify that all requirements of the agreement, this chapter, and all rules adopted pursuant to this chapter have been satisfied and shall verify the amount of final qualified rehabilitation expenditures. After consultation with the department of revenue, the department may issue a tax credit certificate to the eligible taxpayer stating the amount of tax credit under section 404A.2 the eligible taxpayer may claim. The department shall issue the tax credit certificate not later than sixty days following the completion of the examination review, if applicable, and the verifications and consultation required under this paragraph.

6. Notwithstanding any other provision of this chapter to the contrary, the department may waive the requirements of subsections 1 through 4, except the requirements relating to allowable cost overruns in subsection 3, paragraph "b", subparagraph (3), and the requirements in subsection 4, paragraphs "b" and "c", for qualified rehabilitation projects with final qualified rehabilitation expenditures of seven hundred fifty thousand dollars or less and may establish by rule different application, registration, agreement, compliance, or other requirements relating to such projects.

7. The department may for good cause amend an agreement.

Sec. 5. Section 404A.4, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

**404A.4 Aggregate tax credit award limit.**

1. a. Except as provided in subsections 2 and 3, the department shall not award in any one fiscal year an amount of tax credits provided in section 404A.2 in excess of forty-five million dollars.

b. Of the tax credits that may be awarded in a fiscal year pursuant to paragraph "a", at least five percent of the dollar amount of the tax credits shall be allocated for purposes of new qualified rehabilitation projects with final qualified rehabilitation expenditures of seven hundred fifty thousand dollars or less.

2. a. The amount of a tax credit that is awarded during a fiscal year beginning on or after July 1, 2016, and that is irrevocably declined or revoked on or before June 30 of the next fiscal year may be awarded under section 404A.3 during the fiscal year in which the declination or revocation occurs.

b. The amount of a tax credit that was reserved prior to

the effective date of this Act under section 404A.4, Code 2014, for use in a fiscal year beginning before July 1, 2016, that is irrevocably declined or revoked on or after the effective date of this Act, but before July 1, 2016, may be awarded under section 404A.3 during the fiscal year in which such declination or revocation occurs. Such tax credits awarded shall not be claimed by a taxpayer in a fiscal year that is earlier than the fiscal year for which the tax credits were originally reserved.

*c.* The amount of a tax credit that was available for approval by the state historical preservation office of the department under section 404A.4, Code 2014, in a fiscal year beginning on or after July 1, 2010, but before July 1, 2014, that was required to be allocated to new projects with final qualified rehabilitation costs of five hundred thousand dollars or less, or seven hundred fifty thousand dollars or less, as the case may be, and that was not finally approved by the state historical preservation office, may be awarded under section 404A.3 during the fiscal years beginning on or after July 1, 2014, but before July 1, 2016.

*d.* Tax credits awarded pursuant to this subsection shall not be considered for purposes of calculating the aggregate tax credit award limit in subsection 1.

3. *a.* If during the fiscal year beginning July 1, 2016, or any fiscal year thereafter, the department awards an amount of tax credits that is less than the maximum aggregate tax credit award limit specified in subsection 1, the difference between the amount so awarded and the amount specified in subsection 1, not to exceed ten percent of the amount specified in subsection 1, may be carried forward to the succeeding fiscal year and awarded during that fiscal year.

*b.* Tax credits awarded pursuant to this subsection shall not be considered for purposes of calculating the aggregate tax credit award limit in subsection 1.

Sec. 6. Section 404A.5, Code 2014, is amended to read as follows:

**404A.5 Economic impact — recommendations.**

1. The department ~~of cultural affairs~~, in consultation with the department of revenue, shall be responsible for keeping the general assembly and the legislative services agency informed on the overall economic impact to the state of ~~the rehabilitation of eligible properties~~ qualified rehabilitation projects.

2. An annual report shall be filed which shall include

but is not limited to data on the number and potential value of qualified rehabilitation projects begun during the latest twelve-month period, the total historic preservation and cultural and entertainment district tax credits originally ~~granted~~ awarded or tax credit certificates originally issued during that period, the potential reduction in state tax revenues as a result of all awarded or issued tax credits still ~~unused~~ unclaimed and eligible for refund, and the potential increase in local property tax revenues as a result of the ~~rehabilitated~~ qualified rehabilitation projects.

3. The department ~~of cultural affairs~~, to the extent it is able, shall provide recommendations on whether a the limit on tax credits should be ~~established~~ changed, the need for a broader or more restrictive definition of ~~eligible property~~ qualified rehabilitation project, and other adjustments to the tax credits under this chapter.

Sec. 7. NEW SECTION. 404A.6 Rules.

The department and the department of revenue shall each adopt rules to jointly administer this chapter.

Sec. 8. Section 422.11D, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

**422.11D Historic preservation and cultural and entertainment district tax credit.**

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a historic preservation and cultural and entertainment district tax credit allowed under section 404A.2.

Sec. 9. Section 422.33, subsection 10, Code 2014, is amended by striking the subsection and inserting in lieu thereof the following:

10. The taxes imposed under this division shall be reduced by a historic preservation and cultural and entertainment district tax credit allowed under section 404A.2.

Sec. 10. Section 422.60, subsection 4, Code 2014, is amended by striking the subsection and inserting in lieu thereof the following:

4. The taxes imposed under this division shall be reduced by a historic preservation and cultural and entertainment district tax credit allowed under section 404A.2.

Sec. 11. Section 432.12A, Code 2014, is amended by striking the section and inserting in lieu thereof the following:

**432.12A Historic preservation and cultural and entertainment district tax credit.**

The taxes imposed under this chapter shall be reduced by a historic preservation and cultural and entertainment district tax credit allowed under section 404A.2.

Sec. 12. APPLICABILITY. Unless otherwise provided in this Act, this Act applies to agreements entered into by the department and an eligible taxpayer on or after the effective date of this Act, and rehabilitation projects for which a project application was approved and tax credits reserved prior to the effective date of this Act shall be governed by sections 404A.1 through 404A.5, Code 2014.

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KRAIG PAULSEN  
Speaker of the House

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PAM JOCHUM  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2453, Eighty-fifth General Assembly.

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CARMINE BOAL  
Chief Clerk of the House

Approved \_\_\_\_\_, 2014

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TERRY E. BRANSTAD  
Governor