

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENGROSSED

House Bill 4568

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[Introduced February 07, 2022; referred to the
Committee on Finance]

1 A BILL to amend and reenact §11-24-23a of the Code of West Virginia, 1931, as amended,
2 relating to tax credits for qualified rehabilitation expenditures for certified historic
3 structures; elimination of certain limitations on and allocations of tax credits allowed
4 against corporation net income tax and personal income tax per year and per rehabilitation
5 of a certified historic structure; elimination of allocation of portion of limited tax credits for
6 certified rehabilitation projects with proposed tax credits of \$500,000; authorizing phased
7 rehabilitations of certified historic structures; tax credit certificates for completed phases
8 of a phased rehabilitation; providing for recapture of tax credits; removing provisions
9 providing for guarantee of tax credits; and requiring issuance of tax credit certificates
10 based on issuance of Phase Advisory Determination.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

1 (a) A credit against the tax imposed by the provisions of this article shall be allowed as
2 follows:

3 *Certified historic structures.* — For certified historic structures, the credit is equal to 10
4 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
5 States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after
6 December 31, 2017, pursuant to an historic preservation certification application, Part 2 –
7 Description of Rehabilitation, received by the state historic preservation office after December 31,
8 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation
9 expenditure: *Provided, however*, That the credit authorized by this section for qualified
10 rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities
11 of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further*, That
12 the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and
13 throughout the time period within which the credit is claimed, the taxpayer is in arrears in the

14 payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment
15 of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the
16 property containing the certified historic tax structure when the applicant begins to claim the credit
17 and throughout the time period within which the credit is claimed. The Tax Commissioner shall
18 promulgate procedural rules in accordance with §29A-3-1 *et seq.* of this code that provide what
19 information must accompany any claim for the tax credit for the determination that the taxpayer
20 is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in
21 the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property
22 taxes on the property containing the certified historic tax structure, and such other administrative
23 requirements as the Tax Commissioner may specify. This credit is available for both residential
24 and nonresidential buildings located in this state that are reviewed by the West Virginia Division
25 of Culture and History and designated by the National Park Service, United States Department of
26 the Interior as “certified historic building”, and further defined as a “qualified rehabilitated building”,
27 as defined under §47(c)(1), Title 26, of the United States Code, as amended.

28 ~~(b) Allocations and maximum amounts of tax credits per project and per fiscal year—~~

29 ~~(1) No more than \$10 million of the tax credits authorized by this section and section eight-~~
30 ~~a, article twenty one of this chapter may be allocated, reserved or issued by the state historic~~
31 ~~preservation officer to any single certified rehabilitation.~~

32 ~~(2) No more than \$30 million of the tax credits authorized by this section and section eight-~~
33 ~~a, article twenty one of this chapter cumulatively may be issued by the state historic preservation~~
34 ~~officer for use in any given West Virginia state fiscal year, and any amount remaining up to \$30~~
35 ~~million may not be carried over to a subsequent West Virginia state fiscal year.~~

36 ~~(3) At the beginning of each fiscal year, no less than \$5 million of the tax credits authorized~~
37 ~~by this section and §11-21-8a of this code shall be set aside for reservation and the issuance of~~
38 ~~tax credits for certified rehabilitation projects with proposed tax credits of \$500,000. The balance~~
39 ~~of any amount set aside for these projects that has not been reserved pursuant to the procedures~~

40 in subsection (c) of this section by the end of the fiscal year shall be allocated by the state historic
41 preservation officer for the projects in any amount of other pending applicants otherwise eligible
42 for the issuance of tax credits under this section and §11-21-8a of this code in the order that the
43 applications for those projects were received

44 (b) Phased rehabilitations. — Phased rehabilitations are authorized for any rehabilitation
45 completed after July 1, 2022. For certified rehabilitations that may reasonably be expected to be
46 completed in phases set forth in a plan of rehabilitation submitted contemporaneously with the
47 Description of Rehabilitation, which may be amended by the applicant, the state historic
48 preservation officer shall permit phased rehabilitations. A rehabilitation may reasonably be
49 expected to be completed in phases if it consists of two or more distinct stages of development.
50 A phased rehabilitation plan shall be consistent with phasing guidance issued by the National
51 Park Service. The state historic preservation officer may review each phase as it is presented,
52 but a phased rehabilitation cannot be designated a certified rehabilitation until all of the phases
53 are completed. The owner may elect to claim the credit allowable for each completed phase of a
54 phased rehabilitation, upon receipt from the state historic preservation officer of a written tax credit
55 certificate, for each phase of the phased rehabilitation. Written tax credit certificates for completed
56 phases of a phased rehabilitation shall be issued when the substantial rehabilitation test has been
57 satisfied with respect to the completed phase and the completed phase has been placed into
58 service, consistent with phase advisory guidance issued by the National Park Service. Any claims
59 of a tax credit associated with a completed phase of a phased rehabilitation are contingent upon
60 final certification of the completed project. Tax credits claimed by a taxpayer, including, but not
61 limited to, the applicant or a third-party transferee of the tax credit, as applicable, associated with
62 a completed phase of a phased rehabilitation are subject to recapture by the Tax Commissioner
63 if an applicant for tax credits fails to submit an approved historic preservation certification
64 application, Part 3 – Request for Certification of Completed Work, for the rehabilitation within 60

65 months of the date of the advisory determination by the National Park Service that such phase
66 has been completed in accordance with the Secretary of the Interior standards for rehabilitation.

67 (c) *Procedure for issuance of tax credits reservations and certificates by the state historic*
68 *preservation officer —*

69 (1) Any claim for the tax credits authorized pursuant to this section and §11-21-8a of this
70 code shall be accompanied by a tax credit certificate issued by the state historic preservation
71 officer.

72 ~~(2) The tax credits will be awarded on a first come, first served basis. At the time the~~
73 ~~historic preservation certification application, Part 2 – Description of Rehabilitation, is received by~~
74 ~~the state historic preservation office, the project will be placed on a reservation list, which will~~
75 ~~reserve the tax credit amount listed on the application. The historic preservation certification~~
76 ~~application, Part 2 – Description of Rehabilitation, will be reviewed by the State Historic~~
77 ~~Preservation Office for completion and submitted to the National Park Service for full review. At~~
78 ~~the time the historic preservation certification application, Part 2 – Description of Rehabilitation,~~
79 ~~is submitted to the National Park Service, the state historic preservation officer shall send a~~
80 ~~request for the fee prescribed in subsection (e) of this section to the property owner. Upon~~
81 ~~approval of the historic preservation certification application, Part 2 – Description of Rehabilitation,~~
82 ~~from the National Park Service, including approval with conditions, that the project will meet the~~
83 ~~Secretary of the Interior’s standards for rehabilitation, the owner of the building will receive~~
84 ~~guarantee of the tax credits from the State Historic Preservation Office~~

85 (3) The state historic preservation officer shall issue tax credit certificates for ~~certified~~
86 rehabilitation projects that the National Park Service has determined have met the Secretary of
87 the Interior standards for rehabilitation based on the issuance of an approved historic preservation
88 certification application, Part 3 – Request for Certification of Completed Work, or a Phase
89 Advisory Determination.

90 ~~(4) Once the state historic preservation officer has allocated and reserved the maximum~~
91 ~~tax credits authorized for any given West Virginia state fiscal year, the state historic preservation~~
92 ~~officer then shall allocate and reserve tax credits against the maximum tax credits authorized for~~
93 ~~use in the succeeding West Virginia state fiscal year.~~

94 ~~(5) If an applicant for tax credits that receives a reservation for tax credits for any given~~
95 ~~West Virginia state fiscal year fails to submit an approved historic preservation certification~~
96 ~~application, Part 3—Request for Certification of Completed Work in the instance of a certified~~
97 ~~rehabilitation within 36 months of the date of the approved historic preservation certification~~
98 ~~application, Part 2—Description of Rehabilitation, therefor or in the instance of a phased project~~
99 ~~as determined by the National Park Service within 60 months of the date of the advisory~~
100 ~~determination by the National Park Service therefor that such phase has been completed in~~
101 ~~accordance with the Secretary of the Interior standards for rehabilitation then the state historic~~
102 ~~preservation officer may reallocate part or all of the tax credits reserved therefor to other~~
103 ~~applicants in the order their applications were received.~~

104 (d) The state historic preservation officer shall prescribe and publish a form and
105 instructions for an application for reservation and issuance of the tax credits authorized by this
106 section and §11-21-8a of this code.

107 (e) Application fee - Each application for tax credits authorized pursuant to this section
108 and §11-21-8a of this code shall require a fee payable to the state historic preservation officer
109 equal to the lesser of: (1) 0.5% of the amount of the tax credits requested for in such application;
110 and (2) \$10,000. The state historic preservation officer shall review and act on all such
111 applications within 30 days of receipt.

112 Fees collected under this subsection shall be deposited into a special revenue account
113 which is hereby created. The fund shall be administered by the state historic preservation officer
114 and expended for the purposes of administering the provisions of this section and §11-21-8a of
115 this code.

NOTE: The purpose of this bill is to allow phased rehabilitations of certified historic structures and to remove certain limitations on and allocations of tax credits allowed against corporation net income tax and personal income tax per year and per rehabilitation and phased rehabilitation of certified historic structures.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.