

# WEST VIRGINIA LEGISLATURE

## 2017 SECOND EXTRAORDINARY SESSION

### ENROLLED

## House Bill 203

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Passed October 17, 2017; in effect from passage.]

AN ACT to amend and reenact [§11-21-8a](#) and [§11-21-8e](#) of the Code of West Virginia, 1931, as amended; and to amend and reenact [§11-24-23a](#) and [§11-24-23e](#) of said code, all relating generally to tax credits for rehabilitation of historic buildings and structures; increasing the amount of tax credit against personal and corporate net income taxes from ten percent to twenty-five percent for expenditures made on or after December 31, 2017; providing for the use of tax credit on or after January 1, 2020; prohibiting eligibility for credit if the taxpayer is in arrears or delinquent on certain tax payments; directing rule-making by the Tax Commissioner; eliminating allowance of tax credits after December 31, 2022; allowing prior authorized tax credits to be claimed; limiting the maximum amount available for tax credit per project and in the aggregate per West Virginia state fiscal year; requiring the state historic preservation officer to reserve a certain amount of available tax credits for projects where proposed tax credits will not exceed \$500,000 per project; authorizing the state historic preservation officer to reallocate unused credits reserved for certain projects; modifying carry-back and carry-forward provisions for tax credits; providing requirements and procedures for the allocation and issuance of tax credit reservations and certificates by the state historic preservation officer; establishing requirements to claim tax credits; requiring the state historic preservation officer to prescribe and publish a form and instructions for applications for credits; providing for an application fee payable to the state historic preservation officer; establishing and providing for the administration of and expenditures from a special revenue account; and providing time limits for certain actions of the state historic preservation officer.

*Be it enacted by the Legislature of West Virginia:*

That §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-23a and §11-24-23e of said code be amended and reenacted, all to read as follows:

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-8a. Credit for qualified rehabilitated buildings investment.**

A credit against the tax imposed by the provisions of this article is allowed as follows:

(a) *Certified historic structures.* - For certified historic structures, the credit is equal to tenpercent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 - Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure, subject to the limitations and other provisions of section twenty-three-a, article twenty-four of this chapter: *Provided, however*, That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further*, That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as “certified historic structures,” and further defined as a “qualified rehabilitated building,” as defined under §47(c)(1), Title 26 of the United States Code, as amended.

(b) The tax credit allowed by this section is eliminated after December 31, 2022: *Provided*, That any tax credits authorized by the state historic preservation officer and eligible to be claimed prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of law governing those tax credits that were in effect prior to January 1, 2023.

**§11-21-8e. Carryback, carryforward.**

(a) Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section eight-a of this article which may not be taken in the taxable year to which the credit applies qualifies for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: *Provided, however*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section eight-a of this article, may not be carried back to any prior taxable year: *Provided further*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section eight-a of this article may be carried over to each of the next ten tax years following the first tax year for which the credit entitlement is authorized under this article for a specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.

(b) Effective for taxable years beginning on and after January 1, 2001, credits granted to an electing small business corporation (S corporation), limited partnership, general partnership, limited liability company or multiple owners of property shall be passed through to the shareholders, partners, members or owners, either pro rata or pursuant to an agreement among the shareholders, partners, members or owners documenting an alternative distribution method. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide the method of reporting the alternative method of distribution authorized by this section.

**ARTICLE 24. CORPORATION NET INCOME TAX.**

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

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

*Certified historic structures.* - For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 -

Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure: *Provided, however,* That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further,* That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as "certified historic building", and further defined as a "qualified rehabilitated building", as defined under §47(c)(1), Title 26, of the United States Code, as amended.

(b) *Allocations and maximum amounts of tax credits per project and per fiscal year -*

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

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

(3) At the beginning of each fiscal year, no less than \$5 million of the tax credits authorized by this section and section eight-a, article twenty-one of this chapter shall be set aside for reservation and the issuance of tax credits for certified rehabilitation projects with proposed tax credits of \$500,000. The balance of any amount set aside for these projects that has not been reserved pursuant to the procedures in subsection (c) of this section by the end of the fiscal year shall be allocated by the state historic preservation officer for the projects in any amount of other

pending applicants otherwise eligible for the issuance of tax credits under this section and section eight-a, article twenty-one of this chapter in the order that the applications for those projects were received.

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

(1) Any claim for the tax credits authorized pursuant to this section and section eight-a, article twenty-one of this chapter shall be accompanied by a tax credit certificate issued by the state historic preservation officer.

(2) The tax credits will be awarded on a first come, first served basis. At the time the historic preservation certification application, Part 2 - Description of Rehabilitation, is received by the state historic preservation office, the project will be placed on a reservation list, which will reserve the tax credit amount listed on the application. The historic preservation certification application, Part 2 - Description of Rehabilitation, will be reviewed by the state historic preservation office for completion and submitted to the National Park Service for full review. At the time the historic preservation certification application, Part 2 - Description of Rehabilitation, is submitted to the National Park Service, the state historic preservation officer shall send a request for the fee prescribed in subsection (e) of this section to the property owner. Upon approval of the historic preservation certification application, Part 2 - Description of Rehabilitation, from the National Park Service, including approval with conditions, that the project will meet the Secretary of the Interior's standards for rehabilitation, the owner of the building will receive guarantee of the tax credits from the state historic preservation office.

(3) The state historic preservation officer shall issue tax credit certificates for certified rehabilitation projects that the National Park Service has determined have met the Secretary of the Interior standards for rehabilitation based on the issuance of an approved historic preservation certification application, Part 3 - Request for Certification of Completed Work.

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

(5) If an applicant for tax credits that receives a reservation for tax credits for any given West Virginia state fiscal year fails to submit an approved historic preservation certification application, Part 3 - Request for Certification of Completed Work in the instance of a certified rehabilitation within thirty-six (36) months of the date of the approved historic preservation certification application, Part 2 - Description of Rehabilitation, therefor or in the instance of a phased project as determined by the National Park Service within sixty (60) months of the date of the advisory determination by the National Park Service therefor that such phase has been

completed in accordance with the Secretary of the Interior standards for rehabilitation then the state historic preservation officer may reallocate part or all of the tax credits reserved therefor to other applicants in the order their applications were received.

(d) The state historic preservation officer shall prescribe and publish a form and instructions for an application for reservation and issuance of the tax credits authorized by this section and section eight-a, article twenty-one of this chapter.

(e) *Application fee* - Each application for tax credits authorized pursuant to this section and section eight-a, article twenty-one of this chapter shall require a fee payable to the state historic preservation officer equal to the lesser of (1) 0.5% of the amount of the tax credits requested for in such application and (2) \$10,000. The state historic preservation officer shall review and act on all such applications within thirty days of receipt.

Fees collected under this subsection shall be deposited into a special revenue account which is hereby created. The fund shall be administered by the state historic preservation officer and expended for the purposes of administering the provisions of this section and section eight-a, article twenty-one of this chapter.

(f) The tax credit allowed by this section is eliminated after December 31, 2022: *Provided*, That any tax credits authorized by the state historic preservation officer and eligible to be claimed prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of law governing those tax credits that were in effect prior to January 1, 2023.

**§11-24-23e. Carryback, carryforward.**

Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section twenty-three-a of this article which may not be taken in the taxable year to which the credit applies shall qualify for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: *Provided, however*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section twenty-three a of this article, may not be carried back to any prior taxable year: *Provided further*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by section twenty-three-a of this article may be carried over to each of the next ten tax years following the first tax year for which the credit entitlement is authorized under this article for a specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.