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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO TAXATION -- HISTORIC STRUCTURES -- TAX CREDITS

Introduced By: Representatives Fox, Murphy, McCauley, E Coderre, and Slater

Date Introduced: March 06, 2008

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-33.2-2, 44-33.2-3 and 44-33.2-4 of the General Laws in
2 Chapter 44-33.2 entitled "Historic Structures - Tax Credit" are hereby amended to read as
3 follows:

4 **44-33.2-2. Definitions.** -- As used in this chapter:

5 (1) "Certified historic structure" means a property which is located in the state of Rhode
6 Island and is:

7 (i) Listed individually on the National Register of Historic Places; or

8 (ii) Listed individually in the state register of historic places; or

9 (iii) Located in a registered historic district and certified by either the commission or
10 Secretary of the Interior as being of historic significance to the district.

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

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

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

18 (5) "Holding period" means twenty-four (24) months after the commission issues a
19 certificate of completed work to the owner. In the case of a rehabilitation which may reasonably

1 be expected to be completed in phases as described in subdivision (10) of this section, "holding
2 period" shall be extended to include a period of time beginning on the date of issuance of a
3 certificate of completed work for the first phase or phases for which a certificate of completed
4 work is issued and continuing until the expiration of twenty-four (24) months after the certificate
5 of completed work issued for the last phase.

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

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

12 (8) "Qualified rehabilitation expenditures" means any amounts expended in the
13 rehabilitation of a certified historic structure properly capitalized to the building and either: (i)
14 depreciable under the Internal Revenue Code, 26 U.S.C. section 1 et seq., or (ii) made with
15 respect to property (other than the principal residence of the owner) held for sale by the owner.
16 Notwithstanding the foregoing, except in the case of a nonprofit corporation, there will be
17 deducted from qualified rehabilitation expenditures for the purposes of calculating the tax credit
18 any funds made available to the person (including any entity specified in section 44-33.2-3(a))
19 incurring the qualified rehabilitation expenditures in the form of a direct grant from a federal,
20 state or local governmental entity or agency or instrumentality of government.

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

23 (10) "Social club" shall mean a corporation or other entity and/or its affiliate that offers
24 its facilities primarily to members for social or recreational purposes and the majority source of
25 its revenue is from funds and/or dues paid by its members and/or an entity defined as a social club
26 pursuant to the Internal Revenue Code section 501(c)(7).

27 (11) "Substantial construction" means that the owner of the certified historic structure has
28 applied on or before December 31, 2007 to the commission that the certified historic structure's
29 rehabilitation will be consistent with the standards of the United States Department of the Interior
30 as set forth in section 44-33.2-4 hereof and the owner has expended ten percent (10%) of its
31 qualified rehabilitation expenditures for the property or its first phase of a phased project on or
32 before December 31, 2008, as set forth in the certification provided to the commission.

33 ~~(10)~~ (12) "Substantial rehabilitation" means, with respect to a certified historic structure,
34 that the qualified rehabilitation expenses of the building during the twenty-four (24) month period

1 selected by the taxpayer ending with or within the taxable year exceed either fifty percent (50%)
2 if the certified historic structure is under substantial construction, as defined herein, or one
3 hundred percent (100%) of the adjusted basis in such building and its structural components as of
4 the beginning of such period. In the case of any rehabilitation, which may reasonably be expected
5 to be completed in phases set forth in architectural plans and specifications completed before the
6 rehabilitation begins, the above definition shall be applied by substituting "sixty (60) month
7 period" for "twenty-four (24) month period".

8 **44-33.2-3. Tax credit.** -- (a) Any person, firm, partnership, trust, estate, limited liability
9 company, corporation (whether for profit or non-profit) or other business entity that incurs
10 qualified rehabilitation expenditures for the substantial rehabilitation of a certified historic
11 structure, provided the rehabilitation meets standards consistent with the standards of the
12 Secretary of the United States Department of the Interior for rehabilitation as certified by the
13 commission, and said person, firm, partnership, trust, estate, limited liability company,
14 corporation or other business entity is not a Social club as defined in subsection 44-33.2-2(10) of
15 this chapter, shall be entitled to a credit against the taxes imposed on such person or entity
16 pursuant to chapter 11, 12, 13, 14, 17 or 30 of this title in an amount equal to the following: ~~thirty~~
17 (i) twenty-two percent (22%) of the qualified rehabilitation expenditures- ~~or (ii) twenty-~~
18 five percent (25%) of the qualified rehabilitation expenditures provided that ten percent (10%) of
19 the total gross square footage of the certified historic structure will be made available for a trade
20 or business as determined by the commission, or (iii) thirty percent (30%) of the qualified
21 rehabilitation expenditures in the event that the owner has commenced substantial construction,
22 as defined herein, of the property or of its first phase of a phased project and the property or
23 identifiable portion thereof is placed in service on or before December 31, 2009.

24 (b) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in
25 which such certified historic structure or an identifiable portion of the structure is placed in
26 service provided that the substantial rehabilitation test is met for such year. Notwithstanding the
27 foregoing, in the event that tax credits allowed for the substantial rehabilitation of such certified
28 historic structure or an identifiable portion of the certified historic structure is placed in service
29 after December 31, 2008, and is greater than six million dollars (\$6,000,000) for such taxable
30 year, such tax credits shall be issued, but shall be phased in over three (3) calendar years with six
31 million dollars (\$6,000,000) in tax credits being the maximum allowed in the first taxable year,
32 up to six million dollars (\$6,000,000) in tax credits in the second taxable year and the remaining
33 balance of the tax credits, if any, allowed in the third taxable year.

34 (c) If the amount of the tax credit exceeds the taxpayer's total tax liability for the year in

1 which the substantially rehabilitated property is placed in service, the amount that exceeds the
2 taxpayer's tax liability may be carried forward for credit against the taxes imposed for the
3 succeeding ten (10) years, or until the full credit is used, whichever occurs first for the tax credits.
4 Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple
5 owners of property shall be passed through to the persons designated as partners, members or
6 owners respectively pro rata or pursuant to an executed agreement among such persons
7 designated as partners, members or owners documenting an alternate distribution method without
8 regard to their sharing of other tax or economic attributes of such entity.

9 (d) (1) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible
10 for the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or
11 otherwise to any individual or entity, including, but not limited to, condominium owners in the
12 event the certified historic structure is converted into condominiums: and assignees of the credits
13 that have not claimed the tax credits in whole or part may assign, transfer or convey the credits, in
14 whole or in part, by sale or otherwise to any individual or entity. The assignee of the tax credits
15 may use acquired credits to offset up to one hundred percent (100%) of the tax liabilities
16 otherwise imposed pursuant to chapter 11, 12, 13, (other than the tax imposed under section 44-
17 13-13), 14, 17 or 30 of this title. The assignee may apply the tax credit against taxes imposed on
18 the assignee until the end of the tenth (10th) calendar year after the year in which the substantially
19 rehabilitated property is placed in service or until the full credit assigned is used, whichever
20 occurs first. Fiscal year assignees may claim the credit until the expiration of the fiscal year that
21 ends within the tenth (10th) year after the year in which the substantially rehabilitated property is
22 placed in service. The assignor shall perfect the transfer by notifying the state of Rhode Island
23 division of taxation, in writing, within thirty (30) calendar days following the effective date of the
24 transfer and shall provide any information as may be required by the division of taxation to
25 administer and carry out the provisions of this section.

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

1 proration.

2 (e) Substantial rehabilitation of property that either: (i) is exempt from real property tax;
3 (ii) is a social club; or (iii) contains less than ten (10) residential apartments or condominiums and
4 has no space available for a trade or business shall be ineligible for the tax credits authorized
5 under this chapter. In the event a certified historic structure undergoes a substantial rehabilitation
6 pursuant to this chapter and within twenty-four (24) months after issuance of a certificate of
7 completed work the property becomes exempt from real property tax, the taxpayer's tax for the
8 year shall be increased by the total amount of credit actually used against the tax.

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

12 **44-33.2-4. Administration.** -- (a) To claim the tax credit authorized in this chapter,
13 taxpayers shall apply to the commission: (i) prior to the certified historic structure being placed in
14 service for a certification that the certified historic structure's rehabilitation will be consistent with
15 the standards of the Secretary of the United States Department of the Interior for rehabilitation;
16 and (ii) after completion of the rehabilitation work of the certified historic structure for: (A) a
17 certification that the rehabilitation is consistent with the standards of the Secretary of the United
18 States Department of the Interior for rehabilitation, and (B) a certification as to the amount of tax
19 credit for which the rehabilitation qualifies. The commission shall be entitled to rely on the facts
20 represented in the application without independent investigation and, with respect to the amount
21 of tax credit for which the rehabilitation qualifies, upon the certification of a certified public
22 accountant licensed in the state of Rhode Island. The applications shall be developed by the
23 commission and may be amended from time to time.

24 (b) Within ninety (90) days after the commission's receipt of the taxpayer's application
25 requesting certification for the completed rehabilitation work, the commission shall issue the
26 taxpayer: (i) a written determination either denying or certifying the rehabilitation, and (ii) a
27 certification of the amount of credit for which the rehabilitation qualifies. To claim the tax credit,
28 the commission's certification as to the amount of the tax credit shall be attached to all state tax
29 returns on which the credit is claimed.

30 (c) No taxpayer may benefit from the provisions of this chapter unless the owner of the
31 certified historic structure grants a restrictive covenant to the commission, agreeing that during
32 the holding period no alterations to the certified historic structure will be made without the
33 commission's approval and in a manner inconsistent with the standards of the Secretary of the
34 United States Department of the Interior; and, in the event the owner applies for the twenty-five

1 percent (25%) tax credit and the property is not under substantial construction, as defined herein,
2 that at least ten percent (10%) of the total gross square footage of the certified historic structure
3 will be made available for a trade or business for a period of twenty-four (24) months after the
4 placed in service date of the certified historic structure or identifiable portion thereof.

5 (d) The commission shall charge a fee equal to (i) two and one quarter percent (2.25%)
6 of the qualified rehabilitation expenditures ~~of structures placed in service after July 31, 2005~~ for
7 projects receiving a thirty percent (30%) tax credit which are not subject to a phase in of tax
8 credits under subsection 44-33.2-3(b); or (ii) one percent (1%) of tax credits allowed for projects
9 receiving a twenty-two percent (22%) tax credit, twenty-five percent (25%) tax credit or projects
10 receiving a thirty percent (30%) tax credit that are subject to a phasing of the tax credits under
11 subsection 44-33.2-3(b).

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

16 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO TAXATION -- HISTORIC STRUCTURES -- TAX CREDITS

- 1 This act would make several amendments to the historic structures tax credits.
- 2 This act would take effect upon passage.

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