

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 541 Session of  
2019

---

INTRODUCED BY ARGALL, SCHWANK, MARTIN, FARNESE, KEARNEY,  
KILLION, COSTA, J. WARD, YUDICHAK, BLAKE, BREWSTER, STEFANO,  
LEACH AND DINNIMAN, APRIL 10, 2019

---

REFERRED TO FINANCE, APRIL 10, 2019

---

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," in historic preservation incentive tax credit,  
11 further providing for definitions and for tax credit  
12 certificates, establishing the Historic Rehabilitation Tax  
13 Credit Administration Account, further providing for  
14 carryover, carryback and assignment of credit and for pass-  
15 through entity, providing for annual report to General  
16 Assembly, further providing for application of Internal  
17 Revenue Code and for limitation and providing for recapture.

18 The General Assembly of the Commonwealth of Pennsylvania  
19 hereby enacts as follows:

20 Section 1. Sections 1702-H, 1703-H, 1705-H(d) and (e) and  
21 1706-H of the act of March 4, 1971 (P.L.6, No.2), known as the  
22 Tax Reform Code of 1971, are amended to read:

23 Section 1702-H. Definitions.

24 The following words and phrases when used in this article  
25 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Commission." The Pennsylvania Historical and Museum  
3 Commission.

4 "Completed project." The completion of the [restoration]  
5 rehabilitation of a qualified historic structure in accordance  
6 with a qualified rehabilitation plan and the receipt of an  
7 occupancy certificate for the structure.

8 "Department." The Department of Revenue of the Commonwealth.

9 "Internal Revenue Code." The Internal Revenue Code of 1986  
10 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

11 "Qualified expenditures." The costs and expenses incurred by  
12 a qualified taxpayer in the [restoration] rehabilitation of a  
13 qualified historic structure pursuant to a qualified  
14 rehabilitation plan and which are defined as qualified  
15 rehabilitation expenditures under section 47(c)(2) of the  
16 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
17 47(c)(2)).

18 "Qualified historic structure." A [commercial] building  
19 located in this Commonwealth that qualifies as a certified  
20 historic structure under section 47(c)(3) of the Internal  
21 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(3)).

22 "Qualified rehabilitation plan." A plan to rehabilitate a  
23 qualified historic structure that is approved by the  
24 Pennsylvania Historical and Museum Commission as being  
25 consistent with the standards for rehabilitation and guidelines  
26 for rehabilitation of historic buildings as adopted by the  
27 United States Secretary of the Interior.

28 "Qualified tax liability." Tax liability imposed on a  
29 taxpayer under Article III, IV, VI, VII, VIII, IX, XI or XV,  
30 excluding any tax withheld by an employer under Article III.

1 "Qualified taxpayer." Any natural person, corporation,  
2 business trust, limited liability company, partnership, limited  
3 liability partnership, association or any other form of legal  
4 business entity that:

5 (1) Is subject to a tax imposed under Article III, IV,  
6 VI, VII, VIII, IX, XI or XV, excluding any tax withheld by an  
7 employer under Article III.

8 (2) Owns a qualified historic structure.

9 "Region." A community action team region as established by  
10 the Department of Community and Economic Development.

11 "Workforce housing." A completed project in which at least  
12 5% of the units meet the Department of Housing and Urban  
13 Development's definition of "affordable" for individuals earning  
14 80% of the area median income for a period of seven years after  
15 the building is placed in service.

16 Section 1703-H. Tax credit certificates.

17 (a) Application.--

18 (1) A qualified taxpayer may apply to the Department of  
19 Community and Economic Development for a tax credit  
20 certificate under this section.

21 (2) The application shall be on the form required by the  
22 Department of Community and Economic Development [and], shall  
23 include a qualified rehabilitation plan[.], shall state  
24 whether the project meets the definition of "workforce  
25 housing" and, if applicable, shall include the plan for the  
26 project to meet the definition of "workforce housing."

27 [(3) The application shall be filed on or before  
28 February 1 for qualified expenditures incurred and to be  
29 incurred in connection with the completed project.]

30 (3) The Department of Community and Economic Development

1 shall establish an application processing fee. The fee  
2 structure shall be tiered based on the amount of tax credits  
3 requested and in no case shall exceed \$2,000.

4 (4) The proceeds of the fee under paragraph (3) shall be  
5 deposited into the Historic Rehabilitation Tax Credit  
6 Administration Account, which is established as a special  
7 fund in the State Treasury. The money in the account shall be  
8 appropriated on a continuing basis to the Department of  
9 Community and Economic Development and used by the commission  
10 and the Department of Community and Economic Development to  
11 offset the costs of the review of tax credit applications and  
12 awarding of tax credit certificates.

13 (5) The Department of Community and Economic Development  
14 shall begin accepting applications for credit certificates on  
15 October 1 and close the initial application period on October  
16 31.

17 (b) Review, recommendation and approval.--

18 (1) The Department of Community and Economic Development  
19 shall forward applications received under this section to the  
20 commission for review.

21 [(2) The commission shall review the proposed  
22 rehabilitation plan, verify that the building is a qualified  
23 historic structure and recommend approval or disapproval to  
24 the Department of Community and Economic Development within  
25 30 days of receipt of the application. The commission shall  
26 notify the qualified taxpayer within 15 days of its  
27 determination.]

28 (2.1) The commission shall review the proposed  
29 rehabilitation plan in each application, verify that the  
30 building is a qualified historic structure and by December 1

1 provide the Department of Community and Economic Development  
2 a list of eligible projects.

3 (2.2) The Department of Community and Economic  
4 Development shall allocate the credits and release a list of  
5 allocated projects within 15 days. Applicants with approved  
6 allocations shall be provided with an award letter.

7 (2.3) Any amount of tax credit certificates up to the  
8 annual program limit of \$30,000,000 not awarded within the  
9 initial application period shall be available on a first-  
10 come, first-served basis through a process determined by the  
11 Department of Community and Economic Development.

12 (3) The commission shall notify the Department of  
13 Community and Economic Development of verification of a  
14 completed project and notify the Department of Community and  
15 Economic Development of the amount of qualified expenditures  
16 incurred by the taxpayer in connection with the completed  
17 project.

18 (4) If the Department of Community and Economic  
19 Development has approved the application and received  
20 notification of a completed project, it shall issue the  
21 qualified taxpayer a tax credit certificate [by April 1]  
22 within 45 days of the receipt of an approved, completed  
23 project. A tax credit certificate issued under this section  
24 shall not exceed [25%] either:

25 (i) twenty-five percent of qualified expenditures  
26 determined by the commission to have been incurred by the  
27 qualified taxpayer in connection with the completed  
28 project[.]; or

29 (ii) thirty percent of qualified expenditures  
30 determined by the commission to have been incurred by the

1 qualified taxpayer in connection with a completed  
2 workforce housing project.

3 (5) In granting tax credit certificates under this  
4 article, the Department of Community and Economic  
5 Development:

6 (i) Shall not grant more than [~~\$3,000,000~~]  
7 \$30,000,000 in tax credit certificates in any fiscal year  
8 exclusive of any tax credit certificates not awarded or  
9 returned from previous fiscal years.

10 (ii) Shall not grant more than [~~\$500,000~~] \$2,500,000  
11 in tax credit certificates to a single qualified taxpayer  
12 in any fiscal year.

13 (iii) Shall assure that credits are awarded in an  
14 equitable manner to each region in this Commonwealth.  
15 However, credits allocated to a region that are unclaimed  
16 shall be promptly reallocated to eligible projects in  
17 other regions.

18 (6) Tax credits under this article shall be made  
19 available on a first-come, first-served basis within the  
20 limitation established under subsection (b) (5).

21 Section 1705-H. Carryover, carryback and assignment of credit.

22 \* \* \*

23 (d) Sale or assignment.--The following shall apply:

24 (1) A qualified taxpayer or a purchaser or assignee of  
25 the tax credit or a shareholder, member or partner of a pass-  
26 through entity that was transferred the tax credit or a  
27 portion of the tax credit from such pass-through entity  
28 subject to section 1706-H, upon application to and approval  
29 by the Department of Community and Economic Development, may  
30 sell or assign[, in whole or in part,] a tax credit granted

1 to the qualified taxpayer under this article[.] without  
2 regard to its actual ability to use the credit against its  
3 qualified tax liability. Any sale or assignment, whether by a  
4 qualified taxpayer or a purchaser or assignee of the tax  
5 credit or a shareholder, member or partner of a pass-through  
6 entity, pursuant to this paragraph, may be of the whole tax  
7 credit or any part or parts thereof.

8 (2) Before an application is approved, the department  
9 must find that the applicant has filed all required State tax  
10 reports and returns for all applicable taxable years and paid  
11 any balance of State tax due as determined at settlement,  
12 assessment or determination by the department.

13 (e) Purchasers and assignees.--[The purchaser or assignee of  
14 all or a portion of a tax credit obtained under section 1703-H  
15 shall immediately claim the credit in the taxable year in which  
16 the purchase or assignment is made. The purchaser or assignee  
17 may not carry forward, carry back or obtain a refund of or sell  
18 or assign the tax credit. The purchaser or assignee shall notify  
19 the department of the seller or assignor of the tax credit in  
20 compliance with procedures specified by the department.]

21 (1) If a purchaser or assignee of all or a portion of a  
22 tax credit obtained under section 1703-H cannot use the  
23 entire amount of the tax credit for the taxable year in which  
24 the tax credit was purchased or assigned, the excess may be  
25 carried over to succeeding taxable years and used as a credit  
26 against the qualified tax liability of the purchaser or  
27 assignee for those taxable years.

28 (2) Each time the tax credit is carried over to a  
29 succeeding taxable year, the tax credit shall be reduced by  
30 the amount that was used as a credit during the immediately

1 preceding taxable year.

2 (3) The tax credit obtained by the purchaser or assignee  
3 may be carried over and applied to succeeding taxable years  
4 for not more than seven taxable years following the first  
5 taxable year for which the original qualified taxpayer was  
6 entitled to claim the credit.

7 (4) The purchaser or assignee may not carry back the  
8 credit or obtain a refund.

9 (5) The purchaser or assignee shall be permitted to make  
10 a further sale or assignment of the credit. The purchaser or  
11 assignee shall notify the department of the seller or  
12 assignor of the tax credit in compliance with procedures  
13 specified by the department.

14 Section 1706-H. Pass-through entity.

15 (a) General rule.--If a pass-through entity has any unused  
16 tax credit under section 1705-H, it may elect, in writing,  
17 according to procedures established by the department, to  
18 transfer all or a portion of the credit to its shareholders,  
19 members or partners in [proportion to the share of the entity's  
20 distributive income to which the shareholder, member or partner  
21 is entitled.] any manner agreed to by the shareholders, members  
22 or partners without regard to their sharing or other economic  
23 attributes. A shareholder, member or partner that is transferred  
24 a tax credit or a portion of a tax credit may elect to sell or  
25 assign that credit under the provisions of section 1705-H(d).

26 (b) Limitation.--A pass-through entity and a shareholder,  
27 member or partner of a pass-through entity shall not claim the  
28 credit under subsection (a) for the same qualified expenditures.

29 (c) Application.--[A shareholder, member or partner of a  
30 pass-through entity to whom a credit is transferred under



1 subsection (a) shall immediately claim the credit in the taxable  
2 year in which the transfer is made. The shareholder, member or  
3 partner may not carry forward, carry back, obtain a refund of or  
4 sell or assign the credit.]

5 (1) If a shareholder, member or partner of a pass-  
6 through entity that is transferred a tax credit or a portion  
7 of a tax credit under subsection (a) cannot use the entire  
8 amount of the tax credit for the taxable year in which the  
9 tax credit is transferred, the excess may be carried over to  
10 succeeding taxable years and used as a credit against the  
11 qualified tax liability of the shareholder, member or partner  
12 for those taxable years.

13 (2) Each time the tax credit is carried over to a  
14 succeeding taxable year, the tax credit shall be reduced by  
15 the amount that was used as a credit during the immediately  
16 preceding taxable year.

17 (3) The tax credit transferred to a shareholder, member  
18 or partner may be carried over and applied to succeeding  
19 taxable years for not more than seven taxable years following  
20 the first taxable year for which the original qualified  
21 taxpayer was entitled to claim the credit.

22 (4) A shareholder, member or partner may not carry back  
23 the credit or obtain a refund.

24 (5) A shareholder, member or partner may sell or assign  
25 the tax credit or a portion of a tax credit without regard to  
26 its ability to use the tax credit against qualified tax  
27 liability.

28 Section 2. The act is amended by adding a section to read:  
29 Section 1707.1-H. Annual report to General Assembly.

30 (a) Report on tax credit.--By October 1, 2020, and October 1

1 of each year thereafter, the Department of Community and  
2 Economic Development shall submit a report on the tax credit  
3 under this article to:

4 (1) The chairperson and minority chairperson of the  
5 Appropriations Committee of the Senate.

6 (2) The chairperson and minority chairperson of the  
7 Appropriations Committee of the House of Representatives.

8 (3) The chairperson and minority chairperson of the  
9 Finance Committee of the Senate.

10 (4) The chairperson and minority chairperson of the  
11 Finance Committee of the House of Representatives.

12 (b) Report content.--The report shall include:

13 (1) The list of projects that have been awarded tax  
14 credits.

15 (2) The amount of Federal rehabilitation tax credits  
16 received by each completed project.

17 (3) The amount of State historic preservation incentive  
18 tax credits awarded per project.

19 (4) Total project costs and the amount of private  
20 investment in each completed project.

21 (5) The total number of completed projects placed into  
22 service in the past year that were vacant for at least 12  
23 months prior to commencement of redevelopment work.

24 (6) The total number of completed projects placed into  
25 service in the past year that had not paid property taxes for  
26 at least 12 months prior to the commencement of redevelopment  
27 work.

28 (7) The total number of temporary construction jobs and  
29 permanent jobs created by completed projects placed into  
30 service in the prior year.

1           (8) The amount of completed workforce housing projects  
2           placed into service in the prior year.

3           (c) Information to be posted on public Internet website.--  
4           Notwithstanding any law providing for the confidentiality of tax  
5           records, the information in the report shall be public  
6           information and shall be posted on the Department of Community  
7           and Economic Development's publicly accessible Internet website.

8           (d) Review of tax credit program.--The Department of  
9           Community and Economic Development, in cooperation with the  
10           commission, shall undertake a review of the Historic  
11           Preservation Incentive Tax Credit Program to determine the  
12           effectiveness of the program in preserving and rehabilitating  
13           the Commonwealth's historic structures and the impact these  
14           preservation efforts have in stimulating investment in this  
15           Commonwealth. The results of the review shall be included in the  
16           annual report due October 1, 2025.

17           Section 3. Sections 1708-H and 1709-H of the act are amended  
18           to read:

19           Section 1708-H. Application of Internal Revenue Code.

20           The provisions of section 47 of the Internal Revenue Code and  
21           the regulations promulgated regarding those provisions shall  
22           apply to the department's interpretation and administration of  
23           the credit provided under this article without regard to ratably  
24           allocating the credit over a five-year period as required by  
25           section 47(a) of the Internal Revenue Code. References to the  
26           Internal Revenue Code shall mean the sections of the Internal  
27           Revenue Code as existing on any date of interpretation of this  
28           article, except, if those sections of the Internal Revenue Code  
29           referenced in this article are repealed or terminated,  
30           references to the Internal Revenue Code shall mean those

1 sections last having full force and effect without regard to  
2 ratably allocating the credit over a five-year period as  
3 required by section 47(a) of the Internal Revenue Code. If after  
4 repeal or termination the Internal Revenue Code sections are  
5 revised or reenacted, references in this article to Internal  
6 Revenue Code sections shall mean those revised or reenacted  
7 sections.

8 Section 1709-H. Limitation.

9 Taxpayers shall not be entitled to apply for historic  
10 preservation tax credits after [the seventh fiscal year  
11 following the effective date of this article] February 1, 2031.

12 Section 4. The act is amended by adding a section to read:

13 Section 1710-H. Recapture.

14 In the event that a tax credit or a portion of a tax credit  
15 is subject to recapture and the tax credit has been purchased,  
16 assigned or transferred, the State shall pursue its recapture  
17 remedies and rights against the qualified taxpayer that applied  
18 for the credit. No redress shall be sought against an assignee,  
19 purchaser or transferee of the tax credit if the assignee,  
20 purchaser or transferee acquired the tax credit by way of an  
21 arm's-length transaction, for value and without notice of  
22 violation, fraud or misrepresentation.

23 Section 5. This act shall take effect in 60 days.