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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 Fees pursuant to section 44-33.2-4(d) are not qualified rehabilitation expenditures.
17 Notwithstanding the foregoing, except in the case of a nonprofit corporation, there will be
18 deducted from qualified rehabilitation expenditures for the purposes of calculating the tax credit
19 any funds made available to the person (including any entity specified in section 44-33.2-3(a))
20 incurring the qualified rehabilitation expenditures in the form of a direct grant from a federal,
21 state or local governmental entity or agency or instrumentality of government.

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

24 (10) "Substantial rehabilitation" means, with respect to a certified historic structure, that
25 the qualified rehabilitation expenses of the building during the twenty-four (24) month period
26 selected by the taxpayer ending with or within the taxable year exceed fifty percent (50%) of the
27 adjusted basis in such building and its structural components as of the beginning of such period.
28 In the case of any rehabilitation, which may reasonably be expected to be completed in phases set
29 forth in architectural plans and specifications completed before the rehabilitation begins, the
30 above definition shall be applied by substituting "sixty (60) month period" for "twenty-four (24)
31 month period".

32 **44-33.2-3. Tax credit.** -- (a) Any person, firm, partnership, trust, estate, limited liability
33 company, corporation (whether for profit or non-profit) or other business entity that incurs
34 qualified rehabilitation expenditures for the substantial rehabilitation of a property officially

1 recorded as having applied to be certified as a certified historic structure, by the Rhode Island
2 historical preservation and heritage commission through its historic tax credit application process
3 prior to January 1, 2008, and verified by the division of taxation, provided the rehabilitation
4 meets standards consistent with the standards of the Secretary of the United States Department of
5 the Interior for rehabilitation as certified by the commission, shall be entitled to a credit against
6 the taxes imposed on such person or entity pursuant to chapter 11, 12, 13, 14, 17 or 30 of this
7 title. For certified historical structures or some identifiable portion of a structure placed in service
8 prior to January 1, 2008 the credit shall ~~in~~ be an amount equal to thirty percent (30%) of the
9 qualified rehabilitation expenditures. For certified historical structures or some identifiable
10 portion of a structure placed in service after December 31, 2007, the credit shall not exceed
11 twenty-five percent (25%), twenty-six percent (26%), or twenty-seven percent (27%) of the
12 qualified rehabilitation expenditures as contracted between the division of taxation and the
13 person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit
14 or non-profit) or other business entity that incurs qualified rehabilitation expenditures for the
15 substantial rehabilitation of certified historic structures or some identifiable portion of a structure
16 to be placed in service after December 31, 2007.

17 (b) Notwithstanding any provisions of the general laws or regulations adopted thereunder
18 to the contrary, including, but not limited to, the provisions of chapter 2 of title 37, the division of
19 taxation is hereby expressly authorized and empowered to enter into contracts with persons,
20 firms, partnerships, trusts, estates, limited liability companies, corporations (whether for profit or
21 non-profit) or other business entities that incur qualified rehabilitation expenditures for the
22 substantial rehabilitation of certified historic structures or some identifiable portion of a structure
23 to be placed in service after December 31, 2007, for the following purposes, all of which shall be
24 set forth in more particular detail as follows:

25 (1) Upon payment of the fees as set forth in this section, the division of taxation shall, on
26 behalf of the state of Rhode Island, guaranty through a contract with persons, firms, partnerships,
27 trusts, estates, limited liability companies, corporations (whether for profit or non-profit) or other
28 business entities that will incur qualified rehabilitation expenditures for the substantial
29 rehabilitation of a certified historic structure or some identifiable portion of a structure to be
30 placed in service after December 31, 2007, the delivery of one hundred percent (100%) of the tax
31 credit in an amount which is the lesser of: (i) the amount of the tax credit identified in the contract
32 with the division of taxation on or before May 15, 2008 in consideration of any processing fees;
33 or (ii) the actual qualified rehabilitation expenditures multiplied by the tax credit percentage
34 selected by the taxpayer on or before May 15, 2008 and any processing fees. The tax credit and

1 fee shall not exceed the following combinations which shall be selected by any person, firm,
2 partnership, trust, estate, limited liability company, corporation (whether for profit or non-profit)
3 or other business entity that will incur qualified rehabilitation expenditures for the substantial
4 rehabilitation of certified historic structures or some identifiable portion of a structure to be
5 placed in service after December 31, 2007:

6 (A) For an amount of credit not exceeding twenty-five percent (25%) of the qualified
7 rehabilitation expenditures, the fee shall be an amount equal to three percent (3%) of the qualified
8 rehabilitation expenditures.

9 (B) For an amount of credit not exceeding twenty-six percent (26%) of the qualified
10 rehabilitation expenditures, the fee shall be an amount equal to four percent (4%) of the qualified
11 rehabilitation expenditures.

12 (C) For an amount of credit not exceeding twenty-seven percent (27%) of the qualified
13 rehabilitation expenditures, the fee shall be an amount equal to five percent (5%) of the qualified
14 rehabilitation expenditures.

15 (D) As referred to in subsection 44-33.2-4(d), two and one quarter percent (2.25%) of the
16 qualified rehabilitation expenditures shall be paid by May 15, 2008 with the remaining percent to
17 be paid by March 5, 2009. Payments made after March 5, 2009 shall accrue interest as set forth in
18 section 44-1-7.

19 (E) The division of taxation and the Rhode Island historical preservation and heritage
20 commission shall reconcile tax credits and fees with the persons, firms, partnerships, trusts,
21 estates, limited liability companies, corporation (whether for profit or non-profit) or other
22 business entities contracted with as part of the final project certification. In the event that the
23 processing fee paid is greater than the amount of actual qualified rehabilitation expenditures
24 multiplied by the percentage chosen pursuant to subsection 44-33.2-3(b), the persons, firms,
25 partnerships, trusts, estates, limited liability companies, corporations (whether for profit or non-
26 profit) or other business entities that incur qualified rehabilitation expenditures for the substantial
27 rehabilitation of certified historic structures or some identifiable portion of a structure to be
28 placed in service after December 31, 2007, shall be refunded such difference, without interest.

29 (F) Any contract executed pursuant to this chapter by a person, firm, partnership, trust,
30 estate, limited liability company, corporation (whether for profit or non-profit) or other business
31 entity that incurs qualified rehabilitation expenditures for the substantial rehabilitation of certified
32 historic structures or some identifiable portion of a structure to be placed in service after
33 December 31, 2007, shall be assignable to: (i) an affiliate thereof without any consent from the
34 division of taxation or (ii) a person, firm, partnership, trust, estate, limited liability company,

1 corporation (whether for profit or non-profit) or other business entity that incurs qualified
2 rehabilitation expenditures for the substantial rehabilitation of certified historic structures or some
3 identifiable portion of a structure to be placed in service after December 31, 2007, with such
4 assignment to be approved by the division of taxation, which approval shall not be unreasonably
5 withheld. For purposes of this subsection, "affiliate" shall be defined as any entity controlling,
6 controlled by or under common control with such person, firm, partnership, trust, estate, limited
7 liability company, corporation (whether for profit or non-profit) or other business entity.

8 ~~(b)~~ (c) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year
9 in which such certified historic structure or an identifiable portion of the structure is placed in
10 service provided that the substantial rehabilitation test is met for such year.

11 ~~(e)~~ (d) If the amount of the tax credit exceeds the taxpayer's total tax liability for the year
12 in which the substantially rehabilitated property is placed in service, the amount that exceeds the
13 taxpayer's tax liability may be carried forward for credit against the taxes imposed for the
14 succeeding ten (10) years, or until the full credit is used, whichever occurs first for the tax credits.
15 Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple
16 owners of property shall be passed through to the persons designated as partners, members or
17 owners respectively pro rata or pursuant to an executed agreement among such persons
18 designated as partners, members or owners documenting an alternate distribution method without
19 regard to their sharing of other tax or economic attributes of such entity.

20 ~~(d)~~ (e) (1) If the taxpayer has not claimed the tax credits in whole or part, taxpayers
21 eligible for the tax credits may assign, transfer or convey the credits, in whole or in part, by sale
22 or otherwise to any individual or entity, including, but not limited to, condominium owners in the
23 event the certified historic structure is converted into condominiums. The assignee of the tax
24 credits may use acquired credits to offset up to one hundred percent (100%) of the tax liabilities
25 otherwise imposed pursuant to chapter 11, 12, 13, (other than the tax imposed under section 44-
26 13-13), 14, 17 or 30 of this title. The assignee may apply the tax credit against taxes imposed on
27 the assignee until the end of the tenth (10th) calendar year after the year in which the substantially
28 rehabilitated property is placed in service or until the full credit assigned is used, whichever
29 occurs first. Fiscal year assignees may claim the credit until the expiration of the fiscal year that
30 ends within the tenth (10th) year after the year in which the substantially rehabilitated property is
31 placed in service. The assignor shall perfect the transfer by notifying the state of Rhode Island
32 division of taxation, in writing, within thirty (30) calendar days following the effective date of the
33 transfer and shall provide any information as may be required by the division of taxation to
34 administer and carry out the provisions of this section.

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

11 ~~(e)~~ (f) Substantial rehabilitation of property that is exempt from real property tax shall be
12 ineligible for the tax credits authorized under this chapter. In the event a certified historic
13 structure undergoes a substantial rehabilitation pursuant to this chapter and within twenty-four
14 (24) months after issuance of a certificate of completed work the property becomes exempt from
15 real property tax, the taxpayer's tax for the year shall be increased by the total amount of credit
16 actually used against the tax.

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

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

33 (b) Within ninety (90) days after the commission's and the division of taxation's receipt
34 of the taxpayer's application requesting certification for the completed rehabilitation work, (i) the

1 commission shall issue the taxpayer: ~~(i)~~ a written determination either denying or certifying the
2 rehabilitation, and (ii) the division of taxation shall issue a certification of the amount of credit for
3 which the rehabilitation qualifies. To claim the tax credit, the commission's and the division of
4 taxation's certification as to the amount of the tax credit shall be attached to all state tax returns
5 on which the credit is claimed.

6 (c) No taxpayer may benefit from the provisions of this chapter unless the owner of the
7 certified historic structure grants a restrictive covenant to the commission, agreeing that during
8 the holding period no alterations to the certified historic structure will be made without the
9 commission's approval and in a manner inconsistent with the standards of the Secretary of the
10 United States Department of the Interior.

11 (d) The division of taxation ~~commission~~ shall charge a fee equal to two and one quarter
12 percent (2.25%) of the qualified rehabilitation expenditures of structures placed in service after
13 July 31, 2005 and prior to January 1, 2008. The fee shall have been paid by May 15, 2008 for
14 certified historic al structures or some identifiable portion of a structure to qualify for the thirty
15 percent (30%) tax credits under subsection 44-33.2-3(a). For certified historical structures or
16 some identifiable portion of a structure placed in service after December 31, 2007, the division of
17 taxation shall charge a fee equal to three percent (3%), four percent (4%), or five percent (5%) of
18 the qualified rehabilitation expenditures as contracted between the division of taxation and the
19 person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit
20 or non-profit) or other business entity that incurs qualified rehabilitation expenditures for the
21 substantial rehabilitation of certified historic structures or some identifiable portion of a structure
22 to be placed in service after December 31, 2007; provided further that two and one quarter
23 percent (2.25%) of the qualified rehabilitation expenditures shall be paid by May 15, 2008 with
24 the remaining percent to be paid by March 5, 2009. Payments made after March 5, 2009 shall
25 accrue interest as set forth in section 44-1-7.

26 (e) If information comes to the attention of the commission or the division of taxation at
27 any time up to and including the last day of the holding period that is materially inconsistent with
28 representations made in an application, the commission or the division of taxation may deny the
29 requested certification, ~~or~~ revoke a certification previously given or terminate the contract, with
30 any processing fees paid to be forfeited.

31 (f) The general assembly hereby finds that the state's fiscal budgetary crisis is of such a
32 nature to cause immediate peril to the public health, safety or welfare that any regulations
33 promulgated by the division of taxation or the Rhode Island historical preservation and heritage
34 commission in furtherance of this chapter must be promulgated as emergency regulations

1 [pursuant to subsection 42-35-3\(b\).](#)

2 SECTION 2. Chapter 44-33.2 of the General Laws entitled "Historic Structures - Tax
3 Credit" is hereby amended by adding thereto the following section:

4 **44-33.2-4.1. Historic preservation tax credit trust fund.** – [There is hereby created the](#)
5 [historic preservation tax credit trust fund outside of the state general fund for the purpose of](#)
6 [reserving funds for tax credits issued under this section. The assembly may cause sufficient](#)
7 [amounts to be deposited into the fund equal to the amounts of credits under contract no later than](#)
8 [September 1, 2008. The assembly authorizes the governor to borrow such funds as necessary to](#)
9 [guarantee all obligations incurred under contracts, subject to the provisions of chapter 35-18, the](#)
10 [public corporation debt management act. The state controller shall transfer amounts from the fund](#)
11 [to the state general revenues equal to the credits taken by taxpayers as certified by the division of](#)
12 [taxation.](#)

13 [All processing fees collected pursuant to this chapter after June 30, 2008 shall be](#)
14 [deposited in the historic preservation tax credit trust fund and not the state general fund.](#)

15 SECTION 3 This act shall take effect upon passage.

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LC02420/SUB A/6
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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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