

1 SB404
2 159217-1
3 By Senator Waggoner
4 RFD: Finance and Taxation Education
5 First Read: 25-FEB-14

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8 SYNOPSIS: Under existing law, a tax credit is provided
9 against the tax liability of the taxpayer for the
10 rehabilitation, preservation, and development of
11 historic structures.

12 This bill would clarify that tax credits are
13 awarded on a calendar year basis and to clarify the
14 ability to change the ownership of the applicant.

15 This bill would also allow the tax credits
16 to be transferred.

17
18 A BILL

19 TO BE ENTITLED

20 AN ACT

21
22 To amend Sections 3, 4, and 5 of Act 2013-241, 2013
23 Regular Session, now appearing as Sections 40-9F-3, 40-9F-4,
24 and 40-9F-5, Code of Alabama 1975, to allow the tax credits to
25 be transferred; to clarify that tax credits are awarded on a
26 calendar year basis and to clarify the ability to change the
27 ownership of an applicant.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 3, 4, and 5 of Act 2013-241,
3 2013 Regular Session, now appearing as Sections 40-9F-3,
4 40-9F-4, and 40-9F-5, Code of Alabama 1975, are amended to
5 read as follows:

6 "§40-9F-3.

7 "(a) The commission shall develop standards for the
8 approval of the substantial rehabilitation of qualified
9 structures for which a tax credit is sought. The standards
10 shall take into account whether the substantial rehabilitation
11 of a qualified structure is consistent with the historic
12 character of the structure or of the Registered Historic
13 District in which the property is located.

14 "(b) Prior to beginning any substantial
15 rehabilitation work on a qualified structure, the owner shall
16 submit an application and rehabilitation plan to the
17 commission and an estimate of the qualified rehabilitation
18 expenditures under the rehabilitation plan; provided, however,
19 that the owner, at its own risk, may incur qualified
20 rehabilitation expenditures no earlier than six months prior
21 to the submission of the application and rehabilitation plan
22 that are limited to architectural, engineering, and land
23 surveying fees and related soft costs and any costs related to
24 the protection of the qualified structure from deterioration.
25 Owners may submit an application and rehabilitation plan, and
26 may commence rehabilitation, before the property is listed in
27 the National Register of Historic Places; provided, however,

1 that owners, at their own risk, may incur qualified
2 rehabilitation expenditures which are limited to architectural
3 engineering and land surveying fees and related soft costs and
4 emergency costs and expenses necessary for the protection of
5 the qualified structure from deterioration and which are
6 incurred no earlier than six months prior to the submission of
7 the application and rehabilitation plan to the commission.

8 "(c) The commission shall review the application and
9 rehabilitation plan to determine that the information
10 contained therein is complete. If the commission determines
11 that the application and rehabilitation plan are complete, the
12 commission shall reserve for the benefit of the owner an
13 allocation for a tax credit as provided in Section 40-9F-4 and
14 the commission shall notify the owner in writing of the amount
15 of the reservation. The reservation of tax credits does not
16 entitle the owner to an issuance of tax credits until the
17 owner complies with all other requirements of this chapter for
18 the issuance of the tax credits. The reservation of tax
19 credits shall be made by the commission in the order in which
20 completed applications and rehabilitation plans are received
21 by the commission, and the reservation of tax credits shall be
22 issued by the commission within a reasonable time, not to
23 exceed 90 days from the filing of a completed application and
24 rehabilitation plan. Applications received by the commission
25 on the same day shall go through a lottery process to
26 determine the order in which the applications will be reviewed
27 by the commission. Only the property for which a property

1 address, legal description or other specific location is
2 provided in the application shall be reviewed. The owner shall
3 not be permitted to request the review of another property for
4 approval in the place of the property contained in the
5 application. The owner may add or remove partners, members, or
6 shareholders as part of its ownership structure, or may
7 convert to another entity form or transfer the property to
8 another entity so long as at least 50 percent of the ownership
9 ~~remains the same~~ one partner, limited liability company member
10 or five percent or greater shareholder, as the case may be, of
11 the owner or its successor remains the same. The foregoing
12 provision restricting changes in ownership shall apply only to
13 the direct partners, members, or shareholders of the owner,
14 and not to any partners, members, or shareholders of any such
15 direct partners, members or shareholders of the owner.
16 Further, no restriction on ownership changes is applicable
17 after commencement of rehabilitation. If the ownership of the
18 qualified structure is changed due to a foreclosure, deed in
19 lieu of a foreclosure, or a transfer in bankruptcy or
20 receivership, the foregoing provisions restricting a change in
21 ownership structure are not applicable, provided that the
22 successor owner of the qualified structure furnishes
23 sufficient documentation to the commission as evidence of the
24 foreclosure, deed in lieu of foreclosure or bankruptcy or
25 receivership. Any application disapproved by the commission
26 shall be removed from the review process, and the commission
27 shall notify the owner in writing of the decision to remove

1 the application. Disapproved applications shall lose their
2 priority in the review process. A disapproved application may
3 be resubmitted, but shall be deemed to be a new submission for
4 purposes of the priority procedures described in this section
5 and may be charged a new application fee. In the event that
6 the commission grants reservations for tax credits equal to
7 the total amount available for reservations during the ~~fiscal~~
8 tax year, all owners with applications then awaiting approval
9 or thereafter submitted for approval shall be notified by the
10 commission that no additional approvals shall be granted
11 during that ~~fiscal~~ tax year and shall be notified of the
12 priority number given to the owner's application then awaiting
13 approval. The applications shall remain in priority status for
14 two years from the date of the original application and shall
15 be considered for reservations of tax credits in the priority
16 order established in this section in the event that additional
17 credits become available due to the rescission of approvals or
18 when a new ~~fiscal~~ tax year's allocation of tax credits becomes
19 available.

20 "Owners receiving a reservation of tax credits shall
21 commence rehabilitation, if rehabilitation has not previously
22 begun, within 18 months of the date of issuance of the written
23 notice from the commission to the owner granting the
24 reservation of tax credits. "Commencement of rehabilitation"
25 shall mean that, as of the date in which actual physical work
26 contemplated by the rehabilitation plan submitted with the
27 application has begun, the owner has incurred no less than 20

1 percent of the estimated costs of rehabilitation provided in
2 the application. Owners receiving a reservation of tax credits
3 shall submit evidence of compliance with the provisions of
4 this subsection. If the commission determines that an owner
5 has failed to comply with the requirements provided under this
6 section, the reservation of tax credits for the owner may be
7 rescinded and, if so, the amount of tax credits shall then be
8 included in the total amount of available tax credits provided
9 for in subsection (c) of Section 40-9F-4, from which
10 reservations may be granted. Any owner whose reservation of
11 tax credits shall be rescinded shall be notified of the
12 rescission from the commission and, upon receipt of the
13 notice, may submit a new application but may be charged a new
14 application fee.

15 "(d) Following the completion of a substantial
16 rehabilitation of a qualified structure, the owner shall
17 notify the commission that the substantial rehabilitation has
18 been completed and shall certify the qualified rehabilitation
19 expenditures incurred with respect to the rehabilitation plan.
20 In addition, the owner shall provide the commission with: (i)
21 a cost and expense certification, prepared by a licensed
22 certified public accountant that is not an affiliate of the
23 owner, certifying the total qualified rehabilitation
24 expenditures and the total amount of tax credits against any
25 state tax due that is specified in this chapter for which the
26 owner is eligible under Section 40-9F-4 and, if the qualified
27 rehabilitation expenditures exceed two hundred thousand

1 dollars (\$200,000), the cost and expense certification must be
2 audited by the licensed certified public accountant; and (ii)
3 an appraisal of the qualified structure prepared by an
4 independent MAI designated and licensed real estate appraiser.
5 The commission shall review the documentation of the
6 rehabilitation and verify its compliance with the
7 rehabilitation plan. Within 90 days after receipt of the
8 foregoing documentation from the owner, the commission shall
9 issue a tax credit certificate in an amount equivalent to the
10 lesser of: (i) the amount of the tax credit reservation issued
11 for the project under the provisions of subsection (c), or
12 (ii) 25 percent of the actual qualified rehabilitation
13 expenditures for certified historic structures and 10 percent
14 of the actual qualified rehabilitation expenditures for
15 qualified pre-1936 non-historic structures. In the event the
16 amount of qualified rehabilitation expenditures incurred by
17 the owner would result in the issuance of an amount of tax
18 credits in excess of the amount of tax credits reserved for
19 the owner under subsection (c), the owner may apply to the
20 commission for issuance of tax credits in an amount equal to
21 the excess. Applications for issuance of tax credits in excess
22 of the amount of tax credits reserved for the owner shall be
23 made on a form prescribed by the commission and shall
24 represent a separate certificate that shall be issued, subject
25 to all provisions regarding priority provided in this section.

26 "(e) In order to obtain a credit against any state
27 tax due that is specified in this chapter, a taxpayer shall

1 file the tax credit certificate with the taxpayer's Alabama
2 state ~~income~~ tax return.

3 "(f) The department shall grant a tax credit against
4 any state tax due that is specified in this chapter to a
5 taxpayer holding the tax credit certificate issued under
6 subsection (d) against any tax due under Chapters 16 and 18 in
7 the amount stated on the tax credit certificate. The
8 department shall have the right to audit and to reassess any
9 credit improperly obtained by the owner, in accordance with
10 the Taxpayers' Bill of Rights and the Uniform Revenue
11 Procedures contained in Chapter 2A; provided, however that
12 only the owner initially awarded the tax credit certificate,
13 and not any subsequent transferee of the tax credit
14 certificate or person to whom tax credits have been passed
15 through pursuant to Section 40-9F-4(d), shall be liable for
16 any credit improperly obtained by the owner.

17 "(g) For processing the taxpayer's application for a
18 tax credit, the commission may impose reasonable application
19 fees of up to one percent of the qualified rehabilitation
20 expenses but not to exceed ten thousand dollars (\$10,000).

21 "(h) The commission shall, in consultation with the
22 department, report to the Legislature in the third year
23 following passage of this chapter, and annually thereafter, on
24 the overall economic activity, usage, and impact to the state
25 from the substantial rehabilitation of qualified structures
26 for which tax credits have been allowed.

27 "§40-9F-4.

1 "(a) The state portion of any ~~taxes~~ tax credit
2 against the tax imposed by Chapters 16 and 18, for the taxable
3 year in which the certified rehabilitation is placed in
4 service, shall be equal to 25 percent of the qualified
5 rehabilitation expenditures for certified historic structures,
6 and shall be 10 percent of the qualified rehabilitation
7 expenditures for qualified pre-1936 non-historic structures.
8 No tax credit claimed for any certified rehabilitation may
9 exceed five million dollars (\$5,000,000) for all allowable
10 property types except a certified historic residential
11 structure, and fifty thousand dollars (\$50,000) for a
12 certified historic residential structure.

13 "(b) The entire tax credit may be claimed by the
14 taxpayer in the taxable year in which the certified
15 rehabilitation is placed in service. Where the taxes owed by
16 the taxpayer are less than the tax credit, the taxpayer shall
17 not be entitled to claim a refund for the difference, but any
18 unused portion of the credit may be carried forward for up to
19 10 additional tax years.

20 "(c) The aggregate amount of all tax credits in any
21 tax year that may be reserved by the commission upon
22 certification of rehabilitation plans under subsection (c) of
23 Section 40-9F-3 shall not exceed twenty million dollars
24 (\$20,000,000) plus any amount of previous reservations of tax
25 credits that were rescinded under subsection (c) of Section
26 40-9F-3 during the tax year. However, if all of the allowable
27 tax credit amount for any tax year is not requested and

1 reserved, any unreserved tax credits may be utilized by the
2 commission in awarding tax credits in subsequent years. For
3 purposes of this chapter, "tax year" shall mean the calendar
4 year.

5 "(d) Tax credits granted to a partnership, a limited
6 liability company taxed as a partnership or multiple owners of
7 a property shall be passed through to the partners, members,
8 or owners (including any not-for-profit entity that is a
9 partner, member, or owner) respectively pro rata or pursuant
10 to an executed agreement among the partners, members, or
11 owners documenting an alternate distribution method without
12 regard to their sharing of other tax or economic attributes of
13 the entity.

14 "(e) All or any portion of the tax credits under
15 this act shall be freely transferable and assignable, subject
16 to any notice and verification requirements to be determined
17 by the commission or the department, or both. Any transferee
18 of the tax credits may use the amount of tax credits
19 transferred to offset any state tax due under Chapters 16 and
20 18 of Title 40 or the transferee may freely transfer and
21 assign all or any portion of the tax credits to any other
22 person or entity, including an entity that is exempt from
23 federal income taxation pursuant to Section 501(c) of the
24 Internal Revenue Code, as amended, and the other person or
25 entity may freely transfer and assign all or any portion of
26 the tax credits to any other person or entity. The tax credits
27 may be transferred, passed through, or assigned until the time

1 that the credit is claimed on a State of Alabama tax return by
2 any taxpayer. The transferor and the transferee of the tax
3 credits shall jointly file a copy of the written transfer
4 agreement with the commission within 30 days after the
5 transfer. Such filing of the written transfer agreement with
6 the commission shall perfect such transfer. The commission
7 shall develop a system to track the transfers of tax credits
8 and to certify the ownership of tax credits, and the
9 commission may promulgate rules to permit verification of the
10 ownership of the tax credits but shall not promulgate any
11 rules which unduly restrict or hinder the transfer of the tax
12 credits.

13 "§40-9F-5.

14 "(a) Recapture of any of the credit, and any
15 required adjustments to basis due to recapture, shall be
16 governed by Section 50 of the Internal Revenue Code; provided,
17 however, that only the owner initially awarded the tax credit
18 certificate, and not any subsequent transferee of the tax
19 credit certificate or person to whom tax credits have been
20 passed through pursuant to Section 40-9F-4(d), shall be liable
21 for any amount of the credit recaptured.

22 "(b) In the taxable year the certified
23 rehabilitation is placed in service for any structure for
24 which a tax credit has been issued, the commission shall
25 provide notice of the certified rehabilitation and a copy of
26 the appraisal provided by the owner to the taxing authority
27 responsible for the assessment of ad valorem taxes. Upon

1 notification, the taxing authority responsible for the
2 assessment of ad valorem taxes shall complete a new assessment
3 for the structure to be used in the assessment of ad valorem
4 taxes for the tax year in which the certified rehabilitation
5 was placed in service."

6 Section 2. The provisions of this act are severable.
7 If any part of this act is declared invalid or
8 unconstitutional, that declaration shall not affect the part
9 which remains.

10 Section 3. Except for the amendments made by this
11 act to Section 40-9F-4(e), Code of Alabama 1975, that shall
12 only apply to tax periods beginning on or after January 1,
13 2014, this act is only a clarification of existing law and
14 shall therefore be effective retroactively to May 15, 2013,
15 the effective date of Act 2013-241, 2013 Regular Session,
16 subject to its passage and approval by the Governor, or its
17 otherwise becoming law.