

1 SB123  
2 146539-1  
3 By Senators Blackwell, Waggoner and Ward  
4 RFD: Finance and Taxation Education  
5 First Read: 05-FEB-13

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8 SYNOPSIS: Under existing law, there is no state income  
9 tax credit in Alabama for the rehabilitation,  
10 preservation, or development of historic  
11 structures.

12 This bill would provide an income tax credit  
13 against the tax liability of the taxpayer for the  
14 rehabilitation, preservation, and development of  
15 historic structures.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 To provide an income tax credit against the tax  
22 liability of the taxpayer for the rehabilitation,  
23 preservation, and development of historic structures.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This act shall apply to qualified  
26 structures throughout the State of Alabama.

1           Section 2. As used in this act, the following terms  
2 shall have the following meanings:

3           (1) CERTIFIED HISTORIC STRUCTURE. A property located  
4 in Alabama which is certified by the Alabama Historical  
5 Commission as being individually listed in the National  
6 Register of Historic Places, eligible for listing in the  
7 National Register of Historic Places, or certified by the  
8 commission as contributing to the historic significance of a  
9 Registered Historic District.

10           (2) CERTIFIED REHABILITATION. Repairs or alterations  
11 to a certified historic structure that is certified by the  
12 commission as meeting the U.S. Secretary of the Interior's  
13 Standards for Rehabilitation, or to non-historic structures  
14 built before 1936 which are certified by the commission as  
15 meeting the requirements contained in Section 47(c)(1)(a) and  
16 (b) of the Internal Revenue Code, as amended, or to a  
17 certified historic residential structure as defined in  
18 subdivision (4).

19           (3) COMMISSION. The Alabama Historical Commission  
20 and or its successor.

21           (4) CERTIFIED HISTORIC RESIDENTIAL STRUCTURE. A  
22 certified historic structure as defined in subdivision (1), or  
23 a non-historic structure built prior to 1936 which is or will  
24 be owned and used as a single family, owner occupied  
25 residential property and which is contained within a single  
26 family residential structure, either free standing or  
27 supported by party walls, but not to include individual units

1 within a multi-residential structure such as a condominium or  
2 cooperative.

3 (5) DEPARTMENT. The Alabama Department of Revenue or  
4 its successor.

5 (6) OWNER. Any taxpayer filing a State of Alabama  
6 tax return or any entity that is exempt from federal income  
7 taxation pursuant to Section 501(c) of the Internal Revenue  
8 Code, as amended, that: a. owns title to a qualified  
9 structure, or b. owns prospective title to a qualified  
10 structure in the form of a purchase agreement or option to  
11 purchase, or c. owns a leasehold interest in a qualified  
12 structure for a term of not less than 39 years.

13 (7) QUALIFIED REHABILITATION EXPENDITURES. Any  
14 expenditure as defined under Section 47(c)(2)(A) of the  
15 Internal Revenue Code, as amended, and the related regulations  
16 thereunder, and other reasonable expenses and costs expended  
17 in the rehabilitation of a qualified structure. For certified  
18 historic residential structures, this term shall mean expenses  
19 incurred by the taxpayer in the certified rehabilitation of a  
20 certified historic residential structure, including  
21 preservation and rehabilitation work done to the exterior of a  
22 certified historic residential structure, repair and  
23 stabilization of historic structural systems, restoration of  
24 historic plaster, energy efficiency measures except insulation  
25 in frame walls, repairs or rehabilitation of heating, air  
26 conditioning, or ventilation systems, repairs or  
27 rehabilitation of electrical or plumbing systems exclusive of

1 new electrical appliances and electrical or plumbing fixtures,  
2 and architectural, engineering, and land surveying fees.  
3 Qualified rehabilitation expenditures do not include the cost  
4 of acquisition of the qualified structure, the personal labor  
5 by the owner, or any cost associated with the rehabilitation  
6 of an outbuilding of the qualified structure, unless the  
7 outbuilding is certified by the commission to contribute to  
8 the historical significance of the qualified structure.

9 (8) QUALIFIED STRUCTURE. Certified historic  
10 structures and non-historic structures built before 1936 which  
11 are certified by the commission as meeting the requirements  
12 contained in Section 47(c)(1)(a) and (b) of the Internal  
13 Revenue Code, as amended, and to certified historic  
14 residential structures as defined herein.

15 (9) REGISTERED HISTORIC DISTRICT. Any district  
16 listed in the National Register of Historic Places and any  
17 district which is either of the following:

18 a. Designated under Alabama or local law certified  
19 by the U.S. Secretary of the Interior as containing criteria  
20 which substantially achieves the purpose of preserving and  
21 rehabilitating buildings of historic significance to the  
22 district.

23 b. Certified by the U.S. Secretary of the Interior  
24 as meeting substantially all of the requirements for the  
25 listing of districts in the National Register of Historic  
26 Places.

1           (10) REHABILITATION PLAN. Construction plans and  
2 specifications for the proposed rehabilitation of a qualified  
3 structure in sufficient detail to enable the commission to  
4 evaluate compliance with the standards developed under this  
5 act.

6           (11) SUBSTANTIAL REHABILITATION. Rehabilitation of  
7 a qualified structure for which the qualified rehabilitation  
8 expenditures exceed 50 percent of the owner's original  
9 purchase price of the qualified structure or twenty-five  
10 thousand dollars (\$25,000), whichever is greater.

11           Section 3. (a) The commission shall develop  
12 standards for the approval of the substantial rehabilitation  
13 of qualified structures for which a tax credit is sought. The  
14 standards shall take into account whether the substantial  
15 rehabilitation of a qualified structure is consistent with the  
16 historic character of the structure or of the Registered  
17 Historic District in which the property is located.

18           (b) Prior to beginning any substantial  
19 rehabilitation work on a qualified structure, the owner shall  
20 submit an application and rehabilitation plan to the  
21 commission and an estimate of the qualified rehabilitation  
22 expenditures under the rehabilitation plan; provided, however,  
23 that the owner, at its own risk, may incur qualified  
24 rehabilitation expenditures no earlier than six months prior  
25 to the submission of the application and rehabilitation plan  
26 that are limited to architectural, engineering, and land  
27 surveying fees and related soft costs and any costs related to

1 the protection of the qualified structure from deterioration.  
2 Owners may submit an application and rehabilitation plan, and  
3 may commence rehabilitation, before the property is listed in  
4 the National Register of Historic Places; provided, however,  
5 that owners, at their own risk, may incur qualified  
6 rehabilitation expenditures which are limited to architectural  
7 engineering and land surveying fees and related soft costs and  
8 emergency costs and expenses necessary for the protection of  
9 the qualified structure from deterioration and which are  
10 incurred no earlier than six months prior to the submission of  
11 the application and rehabilitation plan to the commission.

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

1 rehabilitation plan. Applications received by the commission  
2 on the same day shall go through a lottery process to  
3 determine the order in which the applications will be reviewed  
4 by the commission. Only the property for which a property  
5 address, legal description or other specific location is  
6 provided in the application shall be reviewed. The owner shall  
7 not be permitted to request the review of another property for  
8 approval in the place of the property contained in the  
9 application. The owner may add or remove partners, members, or  
10 shareholders as part of its ownership structure, so long as at  
11 least 50 percent of the ownership remains the same. If the  
12 ownership of the qualified structure is changed due to a  
13 foreclosure, deed in lieu of a foreclosure, or a transfer in  
14 bankruptcy or receivership, the foregoing provisions  
15 restricting a change in ownership structure are not  
16 applicable, provided that the successor owner of the qualified  
17 structure furnishes sufficient documentation to the commission  
18 as evidence of the foreclosure, deed in lieu of foreclosure or  
19 bankruptcy or receivership. Any application disapproved by the  
20 commission shall be removed from the review process, and the  
21 commission shall notify the owner in writing of the decision  
22 to remove the application. Disapproved applications shall lose  
23 their priority in the review process. A disapproved  
24 application may be resubmitted, but shall be deemed to be a  
25 new submission for purposes of the priority procedures  
26 described in this section and may be charged a new application  
27 fee. In the event that the commission grants reservations for



1 tax credits equal to the total amount available for  
2 reservations during the fiscal year, all owners with  
3 applications then awaiting approval or thereafter submitted  
4 for approval shall be notified by the commission that no  
5 additional approvals shall be granted during that fiscal year  
6 and shall be notified of the priority given to the owner's  
7 application then awaiting approval. The applications shall  
8 remain in priority status for two (2) years from the date of  
9 the original application and shall be considered for  
10 reservations of tax credits in the priority order established  
11 in this section in the event that additional credits become  
12 available due to the rescission of approvals or when a new  
13 fiscal year's allocation of tax credits becomes available.

14 Owners receiving a reservation of tax credits shall  
15 commence rehabilitation, if rehabilitation has not previously  
16 begun, within 18 months of the date of issuance of the written  
17 notice from the commission to the owner granting the  
18 reservation of tax credits. "Commencement of rehabilitation"  
19 shall mean that, as of the date in which actual physical work  
20 contemplated by the rehabilitation plan submitted with the  
21 application has begun, the owner has incurred no less than 20  
22 percent of the estimated costs of rehabilitation provided in  
23 the application. Owners receiving a reservation of tax credits  
24 shall submit evidence of compliance with the provisions of  
25 this subsection. If the commission determines that an owner  
26 has failed to comply with the requirements provided under this  
27 section, the reservation of tax credits for the owner may be

1 rescinded and, if so, the amount of tax credits shall then be  
2 included in the total amount of available tax credits provided  
3 for in subsection (c) of Section 4, from which reservations  
4 may be granted. Any owner whose reservation of tax credits  
5 shall be rescinded shall be notified of the rescission from  
6 the commission and, upon receipt of the notice, may submit a  
7 new application but may be charged a new application fee.

8 (d) Following the completion of a substantial  
9 rehabilitation of a qualified structure, the owner shall  
10 notify the commission that the substantial rehabilitation has  
11 been completed and shall certify the qualified rehabilitation  
12 expenditures incurred with respect to the rehabilitation plan.  
13 In addition, the owner shall provide the commission with: (i)  
14 a cost and expense certification, prepared by a licensed  
15 certified public accountant that is not an affiliate of the  
16 owner, certifying the total qualified rehabilitation  
17 expenditures and the total amount of tax credits for which the  
18 owner is eligible under Section 4 and, if the qualified  
19 rehabilitation expenditures exceed five hundred thousand  
20 dollars (\$500,000), the cost and expense certification must be  
21 audited by the licensed certified public accountant; and (ii)  
22 an appraisal of the qualified structure prepared by an  
23 independent MAI designated and licensed real estate appraiser.  
24 The commission shall review the documentation of the  
25 rehabilitation and verify its compliance with the  
26 rehabilitation plan. Within 90 days after receipt of the  
27 foregoing documentation from the owner, the commission shall

1 issue a tax credit certificate in an amount equivalent to the  
2 lesser of: (i) the amount of the tax credit reservation issued  
3 for the project under the provisions of subsection (c), or  
4 (ii) 25 percent of the actual qualified rehabilitation  
5 expenditures for certified historic structures and 10 percent  
6 of the actual qualified rehabilitation expenditures for  
7 qualified pre-1936 non-historic structures. In the event the  
8 amount of qualified rehabilitation expenditures incurred by  
9 the owner would result in the issuance of an amount of tax  
10 credits in excess of the amount of tax credits reserved for  
11 the owner under subsection (c) of section 3, the owner may  
12 apply to the commission for issuance of tax credits in an  
13 amount equal to the excess. Applications for issuance of tax  
14 credits in excess of the amount of tax credits reserved for  
15 the owner shall be made on a form prescribed by the commission  
16 and shall represent a separate certificate that shall be  
17 issued, subject to all provisions regarding priority provided  
18 in this section.

19 (e) In order to obtain a credit against any state  
20 tax due that is specified in this act, a taxpayer shall file  
21 the tax credit certificate with the taxpayer's Alabama state  
22 income tax return.

23 (f) The Department shall grant a tax credit to a  
24 taxpayer holding the tax credit certificate issued under  
25 subsection (d) against any tax due under Chapters 14A, 14B,  
26 16, 18, and 21 of Title 40, and Chapters 3 and 4 of Title 27,  
27 Code of Alabama 1975, in the amount stated on the tax credit

1 certificate. The Department shall have the right to audit and  
2 to reassess any credit improperly obtained by the owner, in  
3 accordance with the Taxpayers' Bill of Rights and the Uniform  
4 Revenue Procedures contained in Chapter 2A of Title 40, Code  
5 of Alabama 1975; provided, however that only the owner  
6 initially awarded the tax credit certificate, and not any  
7 subsequent transferee of the tax credit certificate, shall be  
8 liable for any credit improperly obtained by the owner.

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

13 (h) The commission shall, in consultation with the  
14 department, report to the Legislature in the third year  
15 following passage of this act, and annually thereafter, on the  
16 overall economic activity, usage, and impact to the state from  
17 the substantial rehabilitation of qualified structures for  
18 which tax credits have been allowed.

19 Section 4. (a) The tax credit against the tax  
20 imposed by Chapters 14A, 14B, 16, 18 and 21 of Title 40, and  
21 Chapters 3 and 4 of Title 27, Code of Alabama 1975, for the  
22 taxable year in which the certified rehabilitation is placed  
23 in service, shall be equal to 25 percent of the qualified  
24 rehabilitation expenditures for certified historic structures,  
25 and shall be 10 percent of the qualified rehabilitation  
26 expenditures for qualified pre-1936 non-historic structures.  
27 No tax credit claimed for any certified rehabilitation may

1 exceed five million dollars (\$5,000,000) for all allowable  
2 property types except a certified historic residential  
3 structure, and fifty thousand dollars (\$50,000) for a  
4 certified historic residential structure.

5 (b) The entire tax credit may be claimed by the  
6 taxpayer in the taxable year in which the certified  
7 rehabilitation is placed in service. Where the taxes owed by  
8 the taxpayer are less than the tax credit, the taxpayer shall  
9 not be entitled to claim a refund for the difference, but any  
10 unused portion of the credit may be carried forward for up to  
11 10 additional tax years.

12 (c) The aggregate amount of all tax credits in any  
13 tax year that may be reserved by the commission upon  
14 certification of rehabilitation plans under subsection (c) of  
15 Section 3 shall not exceed thirty million dollars  
16 (\$30,000,000) plus any amount of previous reservations of tax  
17 credits that were rescinded under subsection (c) of Section 3  
18 during the tax year. However, if all of the allowable tax  
19 credit amount for any tax year is not requested and reserved,  
20 any unreserved tax credits may be utilized by the commission  
21 in awarding tax credits in subsequent years.

22 (d) Tax credits granted to a partnership, a limited  
23 liability company taxed as a partnership or multiple owners of  
24 a property shall be passed through to the partners, members or  
25 owners (including any not-for-profit entity that is a partner,  
26 member or owner) respectively pro rata or pursuant to an

1       executed agreement among the partners, members or owners  
2       documenting an alternate distribution method.

3               (e) All or any portion of the tax credits under this  
4       act shall be freely transferable and assignable, subject to  
5       any notice and verification requirements to be determined by  
6       the commission or the Department, or both. Any transferee of  
7       the tax credits may use the amount of tax credits transferred  
8       to offset against any tax due under Chapters 14A, 14B, 16, 18  
9       and 21 of Title 40, and Chapters 3 and 4 of Title 27, Code of  
10       Alabama 1975, or the transferee may freely transfer and assign  
11       all or any portion of the tax credits to any other person or  
12       entity, including an entity that is exempt from federal income  
13       taxation pursuant to Section 501(c) of the Internal Revenue  
14       Code, as amended, and the other person or entity may freely  
15       transfer and assign all or any portion of the tax credits to  
16       any other person or entity. The tax credits may be transferred  
17       or assigned until the time that the credit is claimed on a  
18       State of Alabama tax return by any taxpayer.

19               Section 5. (a) Recapture of any of the credit, and  
20       any required adjustments to basis due to recapture, shall be  
21       governed by Section 50 of the Internal Revenue Code; provided,  
22       however, that only the owner initially awarded the tax credit  
23       certificate, and not any subsequent transferee of the tax  
24       credit certificate, shall be liable for any amount of the  
25       credit recaptured.

26               (b) In the taxable year the certified rehabilitation  
27       is placed in service for any structure for which a tax credit

1 has been issued, the commission shall provide notice of the  
2 certified rehabilitation and a copy of the appraisal provided  
3 by the owner to the taxing authority responsible for the  
4 assessment of ad valorem taxes. Upon notification, the taxing  
5 authority responsible for the assessment of ad valorem taxes  
6 shall complete a new assessment for the structure to be used  
7 in the assessment of ad valorem taxes for the tax year in  
8 which the certified rehabilitation was placed in service.

9 Section 6. Owners or their duly authorized  
10 representatives may appeal any official decision, including  
11 all preliminary or final reservations, approvals and denials,  
12 made by the commission or the Department with regard to an  
13 application and rehabilitation plan submitted under Section 3,  
14 in accordance with the Alabama Administrative Procedures Act  
15 contained in Chapter 22 of Title 41, Code of Alabama 1975.  
16 Appeals shall constitute an administrative review of the  
17 decision appealed from and shall not be conducted as an  
18 adjudicative proceeding. Appeals shall be submitted within  
19 thirty days of receipt by the owner or the owner's duly  
20 authorized representative of the decision that is the subject  
21 of the appeal.

22 Section 7. The commission shall promulgate by  
23 September 1, 2013 any and all rules and regulations necessary  
24 to implement the provisions of this act. Applications for the  
25 reservation of tax credits shall be accepted beginning October  
26 1, 2013, but no tax credit may be credited prior to the  
27 taxpayer's return for the taxable year 2014.

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

5                   Section 9. This act shall become effective  
6                   immediately following its passage and approval by the  
7                   Governor, or its otherwise becoming law.