

WEST VIRGINIA LEGISLATURE
2017 SECOND EXTRAORDINARY SESSION

Introduced

Senate Bill 2004

**FISCAL
NOTE**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced October 17, 2017; Referred to the
Committee on Finance]

1 A BILL to amend and reenact §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating
3 generally to tax credits for rehabilitation of historic buildings and structures; increasing the
4 amount of tax credit against personal and corporate net income taxes from ten percent to
5 twenty-five percent for expenditures made on or after December 31, 2017; providing for
6 the use of tax credit on or after January 1, 2020; prohibiting eligibility for credit if the
7 taxpayer is in arrears on certain tax payments; providing rule-making authority to the Tax
8 Commissioner; amending carry back and carry forward provisions for tax credit; limiting
9 the maximum amount available for tax credit per project and in the aggregate per West
10 Virginia state fiscal year; requiring the state Historic Preservation Officer to reserve a
11 certain amount of available tax credits for projects where proposed tax credits will not
12 exceed \$500,000 per project; authorizing the state Historic Preservation Officer to
13 reallocate unused credits reserved for certain projects; providing procedures for the
14 issuance of tax credit reservations and certificates by the state Historic Preservation
15 Officer; requiring the state Historic Preservation Officer to prescribe and publish a form
16 and instructions for applications for credits; providing for an application fee payable to the
17 state Historic Preservation Officer; requiring the state Historic Preservation Officer to
18 review and act upon applications within thirty days of receipt; and providing a sunset
19 provision.

Be it enacted by the Legislature of West Virginia:

1 That §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted; and that §11-24-23a and §11-24-23e of said code be amended and
3 reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article ~~shall be~~ is allowed as

2 follows:

3 (a) Certified historic structures. – For certified historic structures, the credit is equal to ten
4 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
5 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after
6 December 31, 2017, pursuant to an historic preservation certification application, Part 2 –
7 Description of Rehabilitation, received by the state historic preservation office after December 31,
8 2017, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation
9 expenditure: Provided, however, That the credit authorized by this section for qualified
10 rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities
11 of the taxpayer prior to the tax year beginning on or after January 1, 2020: Provided further, That
12 the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and
13 throughout the time period within which the credit is claimed, the taxpayer is in arrears in the
14 payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment
15 of property taxes on the property containing the certified historic tax structure when the applicant
16 begins to claim the credit and throughout the time period within which the credit is claimed. The
17 Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter
18 twenty-nine-a of this code that provide what information must accompany any claim for the tax
19 credit for the determination that the taxpayer is not in arrears in the payment of any tax
20 administered by the Tax Division nor is the taxpayer delinquent in the payment of property taxes
21 on the property containing the certified historic tax structure, and such other administrative
22 requirements as the Tax Commissioner may specify. This credit is available for both residential
23 and nonresidential buildings located in this state, that are reviewed by the West Virginia Division
24 of Culture and History and designated by the National Park Service, United States Department of
25 the Interior as “certified historic structures,” and further defined as a “qualified rehabilitated
26 building,” as defined under §47(c)(1), Title 26 of the United States Code, as amended.

27 (b) Unless extended by action of the Legislature, the provisions of this section will

28 terminate and have no more effect on or after December 31, 2022.

§11-21-8e. Carryback, carryforward.

1 (a) Any unused portion of the credit for qualified rehabilitated buildings investment
2 authorized by section eight-a of this article which may not be taken in the taxable year to which
3 the credit applies qualifies for carryback and carryforward treatment subject to the identical
4 general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That
5 the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for
6 the taxable year: *Provided, however, That for tax years beginning on and after January 1, 2020,*
7 *any unused portion of the credit authorized by section eight-a of this article, may not be carried*
8 *back to any prior taxable year: Provided further, That for tax years beginning on and after January*
9 *1, 2020, any unused portion of the credit authorized by section eight-a of this article may be*
10 *carried over to each of the next ten tax years following the first tax year for which the credit*
11 *entitlement is authorized under this article for a specific qualified rehabilitation buildings*
12 *investment until used to exhaustion or forfeited due to lapse of time.*

13 (b) Effective for taxable years beginning on and after January 1, 2001, credits granted to
14 an electing small business corporation (S corporation), limited partnership, general partnership,
15 limited liability company or multiple owners of property shall be passed through to the
16 shareholders, partners, members or owners, either pro rata or pursuant to an agreement among
17 the shareholders, partners, members or owners documenting an alternative distribution method.
18 The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter
19 twenty-nine-a of this code that provide the method of reporting the alternative method of
20 distribution authorized by this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

1 (a) A credit against the tax imposed by the provisions of this article shall be allowed as
2 follows:

3 *Certified historic structures.* – For certified historic structures, the credit is equal to ten
4 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
5 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after
6 December 31, 2017, pursuant to an historic preservation certification application, Part 2 –
7 Description of Rehabilitation, received by the state historic preservation office after December 31,
8 2017, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation
9 expenditure: Provided, however, That the credit authorized by this section for qualified
10 rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities
11 of the taxpayer prior to the tax year beginning on or after January 1, 2020: Provided further, That
12 the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and
13 throughout the time period within which the credit is claimed, the taxpayer is in arrears in the
14 payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment
15 of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the
16 property containing the certified historic tax structure when the applicant begins to claim the credit
17 and throughout the time period within which the credit is claimed. The Tax Commissioner shall
18 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
19 that provide what information must accompany any claim for the tax credit for the determination
20 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
21 is the taxpayer delinquent in the payment of property taxes on the property containing the certified
22 historic tax structure, and such other administrative requirements as the Tax Commissioner may
23 specify. This credit is available for both residential and nonresidential buildings located in this
24 state that are reviewed by the West Virginia Division of Culture and History and designated by
25 the National Park Service, United States Department of the Interior as "certified historic building",
26 and further defined as a "qualified rehabilitated building", as defined under §47(c)(1), Title 26, of
27 the United States Code, as amended.

28 (b) Allocations and maximum amounts of tax credits per project and per fiscal year -

29 (1) No more than \$10 million of the tax credits authorized by this section and section eight-
30 a, article twenty-one of this chapter may be allocated, reserved or issued by the state historic
31 preservation officer to any single certified rehabilitation.

32 (2) No more than \$30 million of the tax credits authorized by this section and section eight-
33 a, article twenty-one of this chapter cumulatively may be issued by the state historic preservation
34 officer for use in any given West Virginia state fiscal year, and any amount remaining up to \$30
35 million may not be carried over to a subsequent West Virginia state fiscal year.

36 (3) No less than \$5 million of the tax credits authorized by this section and section eight-
37 a, article twenty-one of this chapter shall be allocated to and reserved by the state historic
38 preservation officer in any West Virginia state fiscal year for certified rehabilitation projects with
39 proposed tax credits of \$500,000 or less. If after the end of each West Virginia state fiscal year,
40 the state historic preservation officer has not issued to applicants for which reservations have
41 been made tax credit certificates cumulatively equal to \$5 million, then the state historic
42 preservation officer shall reallocate the unused tax credits to other applicants in the order that
43 their applications were received irrespective of the amounts of the tax credits requested.

44 (c) Procedure for issuance of tax credits reservations and certificates by the state historic
45 preservation officer –

46 (1) Any claim for the tax credit authorized pursuant to this section and section eight-a,
47 article twenty-one of this chapter shall be accompanied by a tax credit certificate issued by the
48 state historic preservation officer.

49 (2) The tax credits will be awarded on a first come, first served basis. At the time the
50 historic preservation certification application, Part 2 – Description of Rehabilitation, is received by
51 the state historic preservation office, the project will be placed on a reservation list, which will
52 reserve the tax credit amount listed on the application. The historic preservation certification
53 application, Part 2 – Description of Rehabilitation, will be reviewed by the state historic
54 preservation office for completion and submitted to the National Park Service for full review. At

55 the time the historic preservation certification application, Part 2 – Description of Rehabilitation,
56 is submitted to the National Park Service, a fee request will be sent to the property owner. Upon
57 approval of the historic preservation certification application, Part 2 – Description of Rehabilitation,
58 from the National Park Service, including approval with conditions, that the project will meet the
59 Secretary of the Interior’s standards for rehabilitation, the owner of the building will receive
60 guarantee of the tax credits from the state historic preservation office.

61 (3) The state historic preservation officer shall issue tax credit certificates for certified
62 rehabilitation projects that the National Park Service has determined have met the Secretary of
63 the Interior standards for rehabilitation based on the issuance of an approved historic preservation
64 certification application, Part 3 – Request for Certification of Completed Work.

65 (4) Once the state historic preservation officer has allocated and reserved the maximum
66 tax credits authorized for any given West Virginia state fiscal year, the state historic preservation
67 officer then shall allocate and reserve tax credits against the maximum tax credits authorized for
68 use in the succeeding West Virginia state fiscal year.

69 (5) If an applicant for tax credits that receives a reservation for tax credits for any given
70 West Virginia state fiscal year fails to submit an approved historic preservation certification
71 application, Part 3 – Request for Certification of Completed Work in the instance of a certified
72 rehabilitation within thirty-six (36) months of the date of the approved historic preservation
73 certification application, Part 2 – Description of Rehabilitation, therefor or in the instance of a
74 phased project as determined by the National Park Service within sixty (60) months of the date of
75 the advisory determination by the National Park Service therefor that such phase has been
76 completed in accordance with the Secretary of the Interior standards for rehabilitation then the
77 state historic preservation officer may reallocate part or all of the tax credits reserved therefor to
78 other applicants in the order their applications were received.

79 (d) The state historic preservation officer shall prescribe and publish a form and
80 instructions for an application for reservation and issuance of the tax credits authorized by this

81 section and section eight-a, article twenty-one of this chapter.

82 (e) Application fee - Each application for tax credits authorized pursuant to this section
83 shall be accompanied by a fee payable to the state historic preservation officer equal to the lesser
84 of (1) 0.5% of the amount of the tax credits requested for in such application and (2) \$10,000. The
85 state historic preservation officer shall review and act on all such applications within thirty days of
86 receipt.

87 (f) Unless extended by action of the Legislature, the provisions of this section will terminate
88 and have no more effect on or after December 31, 2022.

§11-24-23e. Carryback, carryforward.

1 Any unused portion of the credit for qualified rehabilitated buildings investment authorized
2 by section twenty-three-a of this article which may not be taken in the taxable year to which the
3 credit applies shall qualify for carryback and carryforward treatment subject to the identical
4 general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That
5 the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for
6 the taxable year: *Provided, however*, That for tax years beginning on and after January 1, 2020,
7 any unused portion of the credit authorized by section twenty-three a of this article, may not be
8 carried back to any prior taxable year: *Provided further*, That for tax years beginning on and after
9 January 1, 2020, any unused portion of the credit authorized by section twenty-three-a of this
10 article may be carried over to each of the next ten tax years following the first tax year for which
11 the credit entitlement is authorized under this article for a specific qualified rehabilitation buildings
12 investment until used to exhaustion or forfeited due to lapse of time.

NOTE: The purpose of this bill is to increase the amount of tax credit for qualified rehabilitation expenditures on historic structures to be used against personal and corporate net income taxes from 10 percent to 25 percent for expenditures made on or after December 31, 2017, to provide for use of the tax credit on or after January 1, 2020, and to make these changes subject to certain annual and per-project caps. Also, this bill provides for a five-year sunset period on the historic tax credit.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.