

WEST VIRGINIA LEGISLATURE
2017 SECOND EXTRAORDINARY SESSION

ENGROSSED

House Bill 203

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Introduced October 16, 2017]

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 or delinquent on certain tax payments; directing rule-making by the
8 Tax Commissioner; eliminating allowance of tax credits after December 31, 2022; allowing
9 prior authorized tax credits to be claimed; limiting the maximum amount available for tax
10 credit per project and in the aggregate per West Virginia state fiscal year; requiring the
11 state historic preservation officer to reserve a certain amount of available tax credits for
12 projects where proposed tax credits will not exceed \$500,000 per project; authorizing the
13 state historic preservation officer to reallocate unused credits reserved for certain projects;
14 modifying carry-back and carry-forward provisions for tax credits; providing requirements
15 and procedures for the allocation and issuance of tax credit reservations and certificates
16 by the state historic preservation officer; establishing requirements to claim tax credits;
17 requiring the state historic preservation officer to prescribe and publish a form and
18 instructions for applications for credits; providing for an application fee payable to the state
19 historic preservation officer; establishing and providing for the administration of and
20 expenditures from a special revenue account; and providing time limits for certain actions
21 of the state historic preservation officer.

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, subject to the limitations and other provisions of section twenty-three-a, article
10 twenty-four of this chapter: Provided, however, That the credit authorized by this section for
11 qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset
12 tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: Provided
13 further, That the taxpayer is not entitled to this credit if, when the applicant begins to claim the
14 credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears
15 in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the
16 payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property
17 taxes on the property containing the certified historic tax structure when the applicant begins to
18 claim the credit and throughout the time period within which the credit is claimed. The Tax
19 Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-
20 nine-a of this code that provide what information must accompany any claim for the tax credit for
21 the determination that the taxpayer is not in arrears in the payment of any tax administered by the
22 Tax Division is not delinquent in the payment of any local or municipal tax, nor is the taxpayer
23 delinquent in the payment of property taxes on the property containing the certified historic tax
24 structure, and such other administrative requirements as the Tax Commissioner may specify. This
25 credit is available for both residential and nonresidential buildings located in this state, that are

26 reviewed by the West Virginia Division of Culture and History and designated by the National Park
27 Service, United States Department of the Interior as “certified historic structures,” and further
28 defined as a “qualified rehabilitated building,” as defined under §47(c)(1), Title 26 of the United
29 States Code, as amended.

30 (b) The tax credit allowed by this section is eliminated after December 31, 2022: *Provided,*
31 That any tax credits authorized by the state historic preservation officer and eligible to be claimed
32 prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of
33 law governing those tax credits that were in effect prior to January 1, 2023.

§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 is
21 not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the

22 payment of property taxes on the property containing the certified historic tax structure, and such
23 other administrative requirements as the Tax Commissioner may specify. This credit is available
24 for both residential and nonresidential buildings located in this state that are reviewed by the West
25 Virginia Division of Culture and History and designated by the National Park Service, United
26 States Department of the Interior as “certified historic building”, and further defined as a “qualified
27 rehabilitated building”, as defined under §47(c)(1), Title 26, of the United States Code, as
28 amended.

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

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

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

37 (3) At the beginning of each fiscal year, no less than \$5 million of the tax credits authorized
38 by this section and section eight-a, article twenty-one of this chapter shall be set aside for
39 reservation and the issuance of tax credits for certified rehabilitation projects with proposed tax
40 credits of \$500,000. The balance of any amount set aside for these projects that has not been
41 reserved pursuant to the procedures in subsection (c) of this section by the end of the fiscal year
42 shall be allocated by the state historic preservation officer for the projects in any amount of other
43 pending applicants otherwise eligible for the issuance of tax credits under this section and section
44 eight-a, article twenty-one of this chapter in the order that the applications for those projects were
45 received.

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

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

51 (2) The tax credits will be awarded on a first come, first served basis. At the time the
52 historic preservation certification application, Part 2 – Description of Rehabilitation, is received by
53 the state historic preservation office, the project will be placed on a reservation list, which will
54 reserve the tax credit amount listed on the application. The historic preservation certification
55 application, Part 2 – Description of Rehabilitation, will be reviewed by the state historic
56 preservation office for completion and submitted to the National Park Service for full review. At
57 the time the historic preservation certification application, Part 2 – Description of Rehabilitation,
58 is submitted to the National Park Service, the state historic preservation officer shall send a
59 request for the fee prescribed in subsection (e) of this section to the property owner. Upon
60 approval of the historic preservation certification application, Part 2 – Description of Rehabilitation,
61 from the National Park Service, including approval with conditions, that the project will meet the
62 Secretary of the Interior’s standards for rehabilitation, the owner of the building will receive
63 guarantee of the tax credits from the state historic preservation office.

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

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

72 (5) If an applicant for tax credits that receives a reservation for tax credits for any given
73 West Virginia state fiscal year fails to submit an approved historic preservation certification

74 application, Part 3 – Request for Certification of Completed Work in the instance of a certified
75 rehabilitation within thirty-six (36) months of the date of the approved historic preservation
76 certification application, Part 2 – Description of Rehabilitation, therefor or in the instance of a
77 phased project as determined by the National Park Service within sixty (60) months of the date of
78 the advisory determination by the National Park Service therefor that such phase has been
79 completed in accordance with the Secretary of the Interior standards for rehabilitation then the
80 state historic preservation officer may reallocate part or all of the tax credits reserved therefor to
81 other applicants in the order their applications were received.

82 (d) The state historic preservation officer shall prescribe and publish a form and
83 instructions for an application for reservation and issuance of the tax credits authorized by this
84 section and section eight-a, article twenty-one of this chapter.

85 (e) Application fee - Each application for tax credits authorized pursuant to this section
86 and section eight-a, article twenty-one of this chapter shall require a fee payable to the state
87 historic preservation officer equal to the lesser of (1) 0.5% of the amount of the tax credits
88 requested for in such application and (2) \$10,000. The state historic preservation officer shall
89 review and act on all such applications within thirty days of receipt.

90 Fees collected under this subsection shall be deposited into a special revenue account
91 which is hereby created. The fund shall be administered by the state historic preservation officer
92 and expended for the purposes of administering the provisions of this section and section eight-
93 a, article twenty-one of this chapter.

94 (f) The tax credit allowed by this section is eliminated after December 31, 2022: *Provided,*
95 That any tax credits authorized by the state historic preservation officer and eligible to be claimed
96 prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of
97 law governing those tax credits that were in effect prior to January 1, 2023.

§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.