

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 344**

BY SENATORS WELD, WOELFEL, PLYMALE, LINDSAY,

NELSON, BALDWIN, MARONEY, AND JEFFRIES

[Originating in the Committee on Finance; reported on

March 4, 2021]



1 A BILL to amend and reenact §11-21-8a of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §11-24-23a of said code, all relating to the credit for qualified  
3 rehabilitated buildings investment; providing for carryback and carryforward provisions for  
4 the tax credit; eliminating the termination date of the tax credit; eliminating the maximum  
5 allowable amount of the tax credit; and making technical modifications.

*Be it enacted by the Legislature of West Virginia:*

**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 is allowed as follows:  
2 ~~(a) Certified historic structures.~~ — For certified historic structures, the credit is equal to 10  
3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United  
4 States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after  
5 December 31, 2017, pursuant to an historic preservation certification application, Part 2 –  
6 Description of Rehabilitation, received by the state historic preservation office after December 31,  
7 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation  
8 expenditure, subject to the ~~limitations and other~~ provisions of §11-24-23a of this code: *Provided*,  
9 *however*, That the credit authorized by this section for qualified rehabilitation expenditures made  
10 after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax  
11 year beginning on or after January 1, 2020: *Provided further*, That the taxpayer is not entitled to  
12 this credit if, when the applicant begins to claim the credit and throughout the time period within  
13 which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by  
14 the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the  
15 taxpayer is delinquent in the payment of property taxes on the property containing the certified  
16 historic tax structure when the applicant begins to claim the credit and throughout the time period  
17 within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in  
18 accordance with §29A-3-1 *et seq.* of this code that provide what information must accompany any

19 claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of  
20 any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal  
21 tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the  
22 certified historic tax structure, and such other administrative requirements as the Tax  
23 Commissioner may specify. This credit is available for both residential and nonresidential  
24 buildings located in this state, that are reviewed by the West Virginia Division of Culture and  
25 History and designated by the National Park Service, United States Department of the Interior as  
26 “certified historic structures”, and further defined as a “qualified rehabilitated building”, as defined  
27 under §47(c)(1), Title 26 of the United States Code, as amended.

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

32 (a) Any unused portion of the credit for qualified rehabilitated buildings investment  
33 authorized by this section which may not be taken in the taxable year to which the credit applies  
34 does not qualify for carryback and carryforward treatment subject to the identical general  
35 provisions under § 39, Title 26 of the United States Code, as amended: *Provided,* That the amount  
36 of the credit taken in a taxable year shall in no event exceed the tax liability due for the taxable  
37 year: *Provided, however,* That for tax years beginning on and after January 1, 2020, any unused  
38 portion of the credit authorized by this section may not be carried back to any prior taxable year:  
39 *Provided further,* That for tax years beginning on and after January 1, 2020, any unused portion  
40 of the credit authorized by this section may be carried over to each of the next 10 tax years  
41 following the first tax year for which the credit entitlement is authorized under this article for a  
42 specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to  
43 lapse of time.

44 (b) Effective for taxable years beginning on and after January 1, 2021, credits granted to  
45 an electing small business corporation (S corporation), limited partnership, general partnership,  
46 limited liability company, or multiple owners of property shall be passed through to the  
47 shareholders, partners, members, or owners, either pro-rata or pursuant to an agreement among  
48 the shareholders, partners, members, or owners, documenting an alternative distribution method.  
49 The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 et seq. of  
50 this code that provide the method of reporting the alternative method of distribution authorized by  
51 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 10  
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 25 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 §29A-3-1 *et seq.* of this code that provide what  
19 information must accompany any claim for the tax credit for the determination that the taxpayer  
20 is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in  
21 the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property  
22 taxes on the property containing the certified historic tax structure, and such other administrative  
23 requirements as the Tax Commissioner may specify. This credit is available for both residential  
24 and nonresidential buildings located in this state that are reviewed by the West Virginia Division  
25 of Culture and History and designated by the National Park Service, United States Department of  
26 the Interior as “certified historic building”, and further defined as a “qualified rehabilitated building”,  
27 as defined under §47(c)(1), Title 26, of 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) At the beginning of each fiscal year, no less than \$5 million of the tax credits authorized~~  
37 ~~by this section and §11-21-8a of this code shall be set aside for reservation and the issuance of~~  
38 ~~tax credits for certified rehabilitation projects with proposed tax credits of \$500,000. The balance~~  
39 ~~of any amount set aside for these projects that has not been reserved pursuant to the procedures~~  
40 ~~in subsection (c) of this section by the end of the fiscal year shall be allocated by the state historic~~  
41 ~~preservation officer for the projects in any amount of other pending applicants otherwise eligible~~

42 ~~for the issuance of tax credits under this section and section eight a, article twenty one of this~~  
43 ~~chapter in the order that the applications for those projects were received.~~

44 ~~(e)~~ (b) *Procedure for issuance of tax credits reservations and certificates by the state*  
45 *historic preservation officer. —*

46 (1) Any claim for the tax credits authorized pursuant to this section and §11-21-8a of this  
47 code shall be accompanied by a tax credit certificate issued by the state historic preservation  
48 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, the state historic preservation officer shall send a~~  
57 ~~request for the fee prescribed in subsection (d) of this section to the property owner. Upon~~  
58 ~~approval of the historic preservation certification application, Part 2 — Description of Rehabilitation,~~  
59 ~~from the National Park Service, including approval with conditions, that the project will meet the~~  
60 ~~Secretary of the Interior's standards for rehabilitation, the owner of the building will receive~~  
61 ~~guarantee of the tax credits from the state historic preservation office.~~

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

66 (4) ~~Once the state historic preservation officer has allocated and reserved the maximum~~  
67 ~~tax credits authorized for any given West Virginia state fiscal year, the state historic preservation~~

68 ~~officer then shall allocate and reserve tax credits against the maximum tax credits authorized for~~  
69 ~~use in the succeeding West Virginia state fiscal year.~~

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

80 ~~(d)~~ (c) The state historic preservation officer shall prescribe and publish a form and  
81 instructions for an application for reservation and issuance of the tax credits authorized by this  
82 section and §11-21-8a of this code.

83 ~~(e)~~ (d) *Application fee.* — Each application for tax credits authorized pursuant to this  
84 section and §11-21-8a of this code shall require a fee payable to the state historic preservation  
85 officer equal to the lesser of: (1) 0.5% of the amount of the tax credits requested for in such  
86 application; and (2) \$10,000. The state historic preservation officer shall review and act on all  
87 such applications within 30 days of receipt.

88 Fees collected under this subsection shall be deposited into a special revenue account  
89 which is hereby created. The fund shall be administered by the state historic preservation officer  
90 and expended for the purposes of administering the provisions of this section and §11-21-8a of  
91 this code.

92 ~~b~~ The tax credit allowed by this section is eliminated after December 31, 2022: *Provided,*  
93 That any tax credits authorized by the state historic preservation officer and eligible to be claimed

94 ~~prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of~~  
95 ~~law governing those tax credits that were in effect prior to January 1, 2023.~~

96 Any unused portion of the credit for qualified rehabilitated buildings investment authorized  
97 by this section which may not be taken in the taxable year to which the credit applies shall qualify  
98 for carryback and carryforward treatment subject to the identical general provisions under § 39,  
99 Title 26 of the United States Code, as amended: *Provided*, That the amount of such credit taken  
100 in a taxable year shall in no event exceed the tax liability due for the taxable year: *Provided*,  
101 *however*, That for tax years beginning on and after January 1, 2020, any unused portion of the  
102 credit authorized by this section, may not be carried back to any prior taxable year: *Provided*  
103 *further*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit  
104 authorized by this section may be carried over to each of the next 10 tax years following the first  
105 tax year for which the credit entitlement is authorized under this article for a specific qualified  
106 rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.