

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 344

BY SENATORS WELD, WOELFEL, PLYMALE, LINDSAY,

NELSON, BALDWIN, MARONEY, AND JEFFRIES

[Passed April 10, 2021; to take effect July 1, 2021]

1 AN ACT to amend and reenact §11-21-8a of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §11-24-23a of said code, all relating to eliminating the termination
3 date of the tax credit for qualified rehabilitated buildings investment.

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 *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.

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 §11-21-8a of this code in the order that the
43 applications for those projects were received.

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 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 (e) 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 36 months of the date of the approved historic preservation certification
74 application, Part 2 – Description of Rehabilitation, therefor or in the instance of a phased project
75 as determined by the National Park Service within 60 months of the date of the advisory
76 determination by the National Park Service therefor that such phase has been completed in
77 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) 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) *Application fee* - Each application for tax credits authorized pursuant to this section
84 and §11-21-8a of this code shall require a fee payable to the state historic preservation officer
85 equal to the lesser of: (1) 0.5% of the amount of the tax credits requested for in such application;
86 and (2) \$10,000. The state historic preservation officer shall review and act on all such
87 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 section eight-
91 a, article twenty-one of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

To take effect July, 1 2021.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2021.

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Governor