

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 4568

BY DELEGATES BARRETT, HOUSEHOLDER, STORCH,
CRISS, ESPINOSA, LINVILLE, ELLINGTON, ROWAN, RILEY,
GRAVES, AND HARDY

[Passed March 11, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §11-24-23a of the Code of West Virginia, 1931, as amended,
2 relating to tax credits for qualified rehabilitation expenditures for certified historic
3 structures; elimination of certain limitations on and allocations of tax credits allowed
4 against corporation net income tax and personal income tax per year and per rehabilitation
5 of a certified historic structure; elimination of allocation of portion of limited tax credits for
6 certified rehabilitation projects with proposed tax credits of \$500,000; authorizing phased
7 rehabilitations of certified historic structures; authorizing tax credit certificates for
8 completed phases of a phased rehabilitation; providing for recapture of tax credits;
9 removing provisions providing for guarantee of tax credits; and requiring issuance of tax
10 credit certificates based on issuance of Phase Advisory Determination in certain
11 circumstances.

Be it enacted by the Legislature of West Virginia:

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) *Phased rehabilitations.* — Phased rehabilitations are authorized for any rehabilitation
29 completed after July 1, 2022. For certified rehabilitations that may reasonably be expected to be
30 completed in phases set forth in a plan of rehabilitation submitted contemporaneously with the
31 Description of Rehabilitation, which may be amended by the applicant, the state historic
32 preservation officer shall permit phased rehabilitations. A rehabilitation may reasonably be
33 expected to be completed in phases if it consists of two or more distinct stages of development.
34 A phased rehabilitation plan shall be consistent with phasing guidance issued by the National
35 Park Service. The state historic preservation officer may review each phase as it is presented,
36 but a phased rehabilitation cannot be designated a certified rehabilitation until all of the phases
37 are completed. The owner may elect to claim the credit allowable for each completed phase of a
38 phased rehabilitation, upon receipt from the state historic preservation officer of a written tax credit

39 certificate, for each phase of the phased rehabilitation. Written tax credit certificates for completed
40 phases of a phased rehabilitation shall be issued when the substantial rehabilitation test has been
41 satisfied with respect to the completed phase and the completed phase has been placed into
42 service, consistent with phase advisory guidance issued by the National Park Service. Any claims
43 of a tax credit associated with a completed phase of a phased rehabilitation are contingent upon
44 final certification of the completed project. Tax credits claimed by a taxpayer, including, but not
45 limited to, the applicant or a third-party transferee of the tax credit, as applicable, associated with
46 a completed phase of a phased rehabilitation are subject to recapture by the Tax Commissioner
47 if an applicant for tax credits fails to submit an approved historic preservation certification
48 application, Part 3 – Request for Certification of Completed Work, for the rehabilitation within 60
49 months of the date of the advisory determination by the National Park Service that such phase
50 has been completed in accordance with the Secretary of the Interior standards for rehabilitation.

51 *(c) Procedure for issuance of tax credits reservations and certificates by the state historic*
52 *preservation officer —*

53 (1) Any claim for the tax credits authorized pursuant to this section and §11-21-8a of this
54 code shall be accompanied by a tax credit certificate issued by the state historic preservation
55 officer.

56 (2) The historic preservation certification application, Part 2 – Description of Rehabilitation,
57 will be reviewed by the State Historic Preservation Office for completion and submitted to the
58 National Park Service for full review. At the time the historic preservation certification application,
59 Part 2 – Description of Rehabilitation, is submitted to the National Park Service, the state historic
60 preservation officer shall send a request for the fee prescribed in subsection (e) of this section to
61 the property owner.

62 (3) The state historic preservation officer shall issue tax credit certificates for rehabilitation
63 projects that the National Park Service has determined have met the Secretary of the Interior
64 standards for rehabilitation based on the issuance of an approved historic preservation

65 certification application, Part 3 – Request for Certification of Completed Work, or a Phase
66 Advisory Determination.

67 (d) The state historic preservation officer shall prescribe and publish a form and
68 instructions for an application for issuance of the tax credits authorized by this section and §11-
69 21-8a of this code.

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

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

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2022.

.....
Governor