

SENATE BILL No. 82

January 27, 2009, Introduced by Senator CLARKE and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 266 (MCL 206.266), as amended by 2008 PA 447.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 266. (1) A qualified taxpayer with a rehabilitation plan
2 certified after December 31, 1998 may credit against the tax
3 imposed by this act the amount determined pursuant to subsection
4 (2) for the qualified expenditures for the rehabilitation of a
5 historic resource pursuant to the rehabilitation plan in the year
6 in which the certification of completed rehabilitation of the
7 historic resource is issued. Only those expenditures that are paid
8 or incurred during the time periods prescribed for the credit under
9 section 47(a)(2) of the internal revenue code and any related
10 treasury regulations shall be considered qualified expenditures.

11 (2) The credit allowed under this section shall be 25% of the

1 qualified expenditures that are eligible, or would have been
2 eligible except that the taxpayer elected to transfer the credit
3 under subsection (12), for the credit under section 47(a)(2) of the
4 internal revenue code if the taxpayer is eligible for the credit
5 under section 47(a)(2) of the internal revenue code or, if the
6 taxpayer is not eligible for the credit under section 47(a)(2) of
7 the internal revenue code, 25% of the qualified expenditures that
8 would qualify under section 47(a)(2) of the internal revenue code
9 except that the expenditures are made to a historic resource that
10 is not eligible for the credit under section 47(a)(2) of the
11 internal revenue code, subject to both of the following:

12 (a) A taxpayer with qualified expenditures that are eligible
13 for the credit under section 47(a)(2) of the internal revenue code
14 may not claim a credit under this section for those qualified
15 expenditures unless the taxpayer has claimed and received a credit
16 for those qualified expenditures under section 47(a)(2) of the
17 internal revenue code or the taxpayer has elected to transfer the
18 credit under subsection (12).

19 (b) A credit under this section shall be reduced by the amount
20 of a credit received by the taxpayer for the same qualified
21 expenditures under section 47(a)(2) of the internal revenue code.

22 (3) To be eligible for the credit under this section, the
23 taxpayer shall apply to and receive from the Michigan historical
24 center certification that the historic significance, the
25 rehabilitation plan, and the completed rehabilitation of the
26 historic resource meet the criteria under subsection (6) and either
27 of the following:

1 (a) All of the following criteria:

2 (i) The historic resource contributes to the significance of
3 the historic district in which it is located.

4 (ii) Both the rehabilitation plan and completed rehabilitation
5 of the historic resource meet the federal secretary of the
6 interior's standards for rehabilitation and guidelines for
7 rehabilitating historic buildings, 36 CFR part 67.

8 (iii) All rehabilitation work has been done to or within the
9 walls, boundaries, or structures of the historic resource or to
10 historic resources located within the property boundaries of the
11 resource.

12 (b) The taxpayer has received certification from the national
13 park service that the historic resource's significance, the
14 rehabilitation plan, and the completed rehabilitation qualify for
15 the credit allowed under section 47(a)(2) of the internal revenue
16 code.

17 (4) If a qualified taxpayer is eligible for the credit allowed
18 under section 47(a)(2) of the internal revenue code, the qualified
19 taxpayer shall file for certification with the center to qualify
20 for the credit allowed under section 47(a)(2) of the internal
21 revenue code. If the qualified taxpayer has previously filed for
22 certification with the center to qualify for the credit allowed
23 under section 47(a)(2) of the internal revenue code, additional
24 filing for the credit allowed under this section is not required.

25 (5) The center may inspect a historic resource at any time
26 during the rehabilitation process and may revoke certification of
27 completed rehabilitation if the rehabilitation was not undertaken

as represented in the rehabilitation plan or if unapproved alterations to the completed rehabilitation are made during the 5 years after the tax year in which the credit was claimed. The center shall promptly notify the department of a revocation.

(6) Qualified expenditures for the rehabilitation of a historic resource may be used to calculate the credit under this section if the historic resource meets 1 of the criteria listed in subdivision (a) and 1 of the criteria listed in subdivision (b):

(a) The resource is 1 of the following during the tax year in which a credit under this section is claimed for those qualified expenditures:

(i) Individually listed on the national register of historic places or state register of historic sites.

(ii) A contributing resource located within a historic district listed on the national register of historic places or the state register of historic sites.

(iii) A contributing resource located within a historic district designated by a local unit pursuant to an ordinance adopted under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(b) The resource meets 1 of the following criteria during the tax year in which a credit under this section is claimed for those qualified expenditures:

(i) The historic resource is located in a designated historic district in a local unit of government with an existing ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(ii) The historic resource is located in an incorporated local unit of government that does not have an ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and has a population of less than 5,000.

(iii) The historic resource is located in an unincorporated local unit of government.

(iv) The historic resource is located in an incorporated local unit of government that does not have an ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and is located within the boundaries of an association that has been chartered under 1889 PA 39, MCL 455.51 to 455.72.

(v) The historic resource is subject to a historic preservation easement.

(7) A credit amount assigned under section 39c(7) of former 1975 PA 228 or section 435 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, may be claimed against the partner's, member's, or shareholder's tax liability under this act as provided in section 39c(7) of former 1975 PA 228 or section 435 of the Michigan business tax act, 2007 PA 36, MCL 208.1435.

(8) ~~IF~~ **FOR PROJECTS FOR WHICH A CERTIFICATE OF COMPLETED REHABILITATION IS ISSUED BEFORE JANUARY 1, 2007, IF** the credit allowed under this section for the tax year and any unused carryforward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first.

FOR PROJECTS FOR WHICH A CERTIFICATE OF COMPLETED REHABILITATION IS
ISSUED AFTER DECEMBER 31, 2006, IF THE CREDIT ALLOWED UNDER THIS
SECTION FOR THE TAX YEAR AND ANY UNUSED CARRYFORWARD OF THE CREDIT
ALLOWED BY THIS SECTION EXCEED THE TAXPAYER'S TAX LIABILITY FOR THE
TAX YEAR, THAT PORTION THAT EXCEEDS THE TAX LIABILITY FOR THE TAX
YEAR SHALL NOT BE REFUNDED BUT MAY BE CARRIED FORWARD TO OFFSET TAX
LIABILITY IN SUBSEQUENT TAX YEARS FOR 30 YEARS OR UNTIL USED UP,
WHICHEVER OCCURS FIRST. For projects for which a certificate of
completed rehabilitation is issued for a tax year beginning after
December 31, 2008 and for which the credit amount allowed is less
than \$250,000.00, a qualified taxpayer may elect to forgo the
carryover period and receive a refund of the amount of the credit
that exceeds the qualified taxpayer's tax liability. The amount of
the refund shall be equal to 90% of the amount of the credit that
exceeds the qualified taxpayer's tax liability. An election under
this subsection shall be made in the year that a certificate of
completed rehabilitation is issued and shall be irrevocable.

(9) For tax years beginning before January 1, 2009, if a
taxpayer sells a historic resource for which a credit under this
section was claimed less than 5 years after the year in which the
credit was claimed, the following percentage of the credit amount
previously claimed relative to that historic resource shall be
added back to the tax liability of the taxpayer in the year of the
sale:

(a) If the sale is less than 1 year after the year in which
the credit was claimed, 100%.

(b) If the sale is at least 1 year but less than 2 years after

1 the year in which the credit was claimed, 80%.

2 (c) If the sale is at least 2 years but less than 3 years
3 after the year in which the credit was claimed, 60%.

4 (d) If the sale is at least 3 years but less than 4 years
5 after the year in which the credit was claimed, 40%.

6 (e) If the sale is at least 4 years but less than 5 years
7 after the year in which the credit was claimed, 20%.

8 (f) If the sale is 5 years or more after the year in which the
9 credit was claimed, an addback to the taxpayer's tax liability
10 shall not be made.

11 (10) For tax years beginning before January 1, 2009, if a
12 certification of completed rehabilitation is revoked under
13 subsection (5) less than 5 years after the year in which a credit
14 was claimed, the following percentage of the credit amount
15 previously claimed relative to that historic resource shall be
16 added back to the tax liability of the taxpayer in the year of the
17 revocation:

18 (a) If the revocation is less than 1 year after the year in
19 which the credit was claimed, 100%.

20 (b) If the revocation is at least 1 year but less than 2 years
21 after the year in which the credit was claimed, 80%.

22 (c) If the revocation is at least 2 years but less than 3
23 years after the year in which the credit was claimed, 60%.

24 (d) If the revocation is at least 3 years but less than 4
25 years after the year in which the credit was claimed, 40%.

26 (e) If the revocation is at least 4 years but less than 5
27 years after the year in which the credit was claimed, 20%.

1 (f) If the revocation is 5 years or more after the year in
2 which the credit was claimed, an addback to the taxpayer's tax
3 liability shall not be made.

4 (11) For tax years beginning after December 31, 2008, if a
5 certificate of completed rehabilitation is revoked under subsection
6 (5) or if the historic resource is sold or disposed of less than 5
7 years after being placed in service as defined in section 47(b)(1)
8 of the internal revenue code and related treasury regulations, the
9 following percentage of the credit amount previously claimed
10 relative to that historic resource shall be added back to the tax
11 liability of the qualified taxpayer that received the certificate
12 of completed rehabilitation and not the assignee in the year of the
13 revocation:

14 (a) If the revocation is less than 1 year after the historic
15 resource is placed in service, 100%.

16 (b) If the revocation is at least 1 year but less than 2 years
17 after the historic resource is placed in service, 80%.

18 (c) If the revocation is at least 2 years but less than 3
19 years after the historic resource is placed in service, 60%.

20 (d) If the revocation is at least 3 years but less than 4
21 years after the historic resource is placed in service, 40%.

22 (e) If the revocation is at least 4 years but less than 5
23 years after the historic resource is placed in service, 20%.

24 (f) If the revocation is at least 5 years or more after the
25 historic resource is placed in service, an addback to the qualified
26 taxpayer tax liability shall not be required.

27 (12) A qualified taxpayer who receives a certificate of

1 completed rehabilitation after December 31, 2008 may elect to forgo
2 claiming the credit and transfer the credit along with the
3 ownership of the property for which the credit may be claimed to a
4 new owner. The new owner shall be treated as the qualified taxpayer
5 having incurred the rehabilitation costs and shall be subject to
6 the recapture provisions under subsection (11) if the new owner
7 sells or disposes of the property within 5 years after the new
8 owner acquired the property. For purposes of this subsection and
9 subsection (11), the placed in service date for a new owner is the
10 date the new owner acquired the property for which the credit is
11 claimed.

12 (13) The department of history, arts, and libraries through
13 the Michigan historical center may impose a fee to cover the
14 administrative cost of implementing the program under this section.

15 (14) The qualified taxpayer shall attach all of the following
16 to the qualified taxpayer's annual return under this act:

17 (a) Certification of completed rehabilitation.

18 (b) Certification of historic significance related to the
19 historic resource and the qualified expenditures used to claim a
20 credit under this section.

21 (c) A completed assignment form if the qualified taxpayer is
22 an assignee under section 39c of former 1975 PA 228 or section 435
23 of the Michigan business tax act, 2007 PA 36, MCL 208.1435, of any
24 portion of a credit allowed under that section.

25 (15) The department of history, arts, and libraries shall
26 promulgate rules to implement this section pursuant to the
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328.

2 (16) The total of the credits claimed under this section and
3 section 39c of former 1975 PA 228 or section 435 of the Michigan
4 business tax act, 2007 PA 36, MCL 208.1435, for a rehabilitation
5 project shall not exceed 25% of the total qualified expenditures
6 eligible for the credit under this section for that rehabilitation
7 project.

8 (17) The department of history, arts, and libraries through
9 the Michigan historical center shall report all of the following to
10 the legislature annually for the immediately preceding state fiscal
11 year:

12 (a) The fee schedule used by the center and the total amount
13 of fees collected.

14 (b) A description of each rehabilitation project certified.

15 (c) The location of each new and ongoing rehabilitation
16 project.

17 (18) As used in this section:

18 (a) "Contributing resource" means a historic resource that
19 contributes to the significance of the historic district in which
20 it is located.

21 (b) "Historic district" means an area, or group of areas not
22 necessarily having contiguous boundaries, that contains 1 resource
23 or a group of resources that are related by history, architecture,
24 archaeology, engineering, or culture.

25 (c) "Historic resource" means a publicly or privately owned
26 historic building, structure, site, object, feature, or open space
27 located within a historic district designated by the national

1 register of historic places, the state register of historic sites,
2 or a local unit acting under the local historic districts act, 1970
3 PA 169, MCL 399.201 to 399.215; or that is individually listed on
4 the state register of historic sites or national register of
5 historic places and includes all of the following:

6 (i) An owner-occupied personal residence or a historic resource
7 located within the property boundaries of that personal residence.

8 (ii) An income-producing commercial, industrial, or residential
9 resource or a historic resource located within the property
10 boundaries of that resource.

11 (iii) A resource owned by a governmental body, nonprofit
12 organization, or tax-exempt entity that is used primarily by a
13 taxpayer lessee in a trade or business unrelated to the
14 governmental body, nonprofit organization, or tax-exempt entity and
15 that is subject to tax under this act.

16 (iv) A resource that is occupied or utilized by a governmental
17 body, nonprofit organization, or tax-exempt entity pursuant to a
18 long-term lease or lease with option to buy agreement.

19 (v) Any other resource that could benefit from rehabilitation.

20 (d) "Local unit" means a county, city, village, or township.

21 (e) "Long-term lease" means a lease term of at least 27.5
22 years for a residential resource or at least 31.5 years for a
23 nonresidential resource.

24 (f) "Michigan historical center" or "center" means the state
25 historic preservation office of the Michigan historical center of
26 the department of history, arts, and libraries or its successor
27 agency.

1 (g) "Open space" means undeveloped land, a naturally
2 landscaped area, or a formal or man-made landscaped area that
3 provides a connective link or a buffer between other resources.

4 (h) "Person" means an individual, partnership, corporation,
5 association, governmental entity, or other legal entity.

6 (i) "Qualified expenditures" means capital expenditures that
7 qualify, or would qualify except that the taxpayer elected to
8 transfer the credit under subsection (12), for a rehabilitation
9 credit under section 47(a)(2) of the internal revenue code if the
10 taxpayer is eligible for the credit under section 47(a)(2) of the
11 internal revenue code or, if the taxpayer is not eligible for the
12 credit under section 47(a)(2) of the internal revenue code, the
13 qualified expenditures that would qualify under section 47(a)(2) of
14 the internal revenue code except that the expenditures are made to
15 a historic resource that is not eligible for the credit under
16 section 47(a)(2) of the internal revenue code, that were paid.
17 Qualified expenditures do not include capital expenditures for
18 nonhistoric additions to a historic resource except an addition
19 that is required by state or federal regulations that relate to
20 historic preservation, safety, or accessibility.

21 (j) "Qualified taxpayer" means a person that is an assignee
22 under section 39c of former 1975 PA 228 or section 435 of the
23 Michigan business tax act, 2007 PA 36, MCL 208.1435, or either owns
24 the resource to be rehabilitated or has a long-term lease agreement
25 with the owner of the historic resource and that has qualified
26 expenditures for the rehabilitation of the historic resource equal
27 to or greater than 10% of the state equalized valuation of the

1 property. If the historic resource to be rehabilitated is a portion
2 of a historic or nonhistoric resource, the state equalized
3 valuation of only that portion of the property shall be used for
4 purposes of this subdivision. If the assessor for the local tax
5 collecting unit in which the historic resource is located
6 determines the state equalized valuation of that portion, that
7 assessor's determination shall be used for purposes of this
8 subdivision. If the assessor does not determine that state
9 equalized valuation of that portion, qualified expenditures, for
10 purposes of this subdivision, shall be equal to or greater than 5%
11 of the appraised value as determined by a certified appraiser. If
12 the historic resource to be rehabilitated does not have a state
13 equalized valuation, qualified expenditures for purposes of this
14 subdivision shall be equal to or greater than 5% of the appraised
15 value of the resource as determined by a certified appraiser.

16 (k) "Rehabilitation plan" means a plan for the rehabilitation
17 of a historic resource that meets the federal secretary of the
18 interior's standards for rehabilitation and guidelines for
19 rehabilitation of historic buildings under 36 CFR part 67.