

SENATE BILL 523
SECOND PRINTING

Unofficial Copy
Q7

2001 Regular Session
11r1707
CF 11r1460

By: **Senators Middleton and Hoffman**
Introduced and read first time: February 2, 2001
Assigned to: Budget and Taxation

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 21, 2001
Returned to second reading: March 23, 2001
Senate action: Adopted with floor amendments
Read second time: March 23, 2001

CHAPTER 160

1 AN ACT concerning

2 **Heritage Structure Rehabilitation Tax Credit ~~—Transfer of Credit~~**

3 FOR the purpose of providing that certain tax credits for certain heritage structure
4 rehabilitations may be allocated in a certain manner among the partners,
5 members, or shareholders of an entity making the qualified rehabilitation
6 expenditures; ~~allowing a business entity or individual to transfer certain tax~~
7 ~~credits for certain heritage structure rehabilitations to another business entity~~
8 ~~or individual under certain circumstances; allowing a business entity or~~
9 ~~individual to whom certain tax credits are transferred to claim a certain tax~~
10 ~~credit; providing that a business entity or individual to whom certain tax credits~~
11 ~~are transferred is entitled to rely on certain information received from the~~
12 ~~business entity or individual transferring the credit; providing a subtraction~~
13 ~~modification under the Maryland income tax for certain amounts received by an~~
14 ~~individual or corporation in consideration of the transfer of certain tax credits;~~
15 altering a certain definition for purposes of certain tax credits for certified
16 heritage structure rehabilitations to exclude certain structures owned by certain
17 governments; making certain tax credits for certain heritage structure
18 rehabilitations refundable under certain circumstances; providing for certain
19 recapture of certain tax credits for certain heritage structure rehabilitations
20 under certain circumstances; specifying the revenue effect of certain refunds
21 payable under certain tax credits; providing that certain persons may file
22 certain tax returns to claim refunds of certain tax credits under certain
23 circumstances; requiring the Director of the Maryland Historical Trust to
24 submit a certain report annually to the Governor and General Assembly on
25 certain credits for certain heritage structure rehabilitations; requiring certain

1 persons subject to certain recapture provisions to file certain reports or returns
2 under certain circumstances; repealing certain tax credits as to the financial
3 institution franchise tax and the public service company franchise tax;
4 including certain tax-exempt organizations within the definition of business
5 entity under a certain tax credit for certain heritage structure rehabilitations;
6 providing that under certain circumstances certain provisions of law in effect on
7 a certain date shall apply to the certified heritage structure rehabilitation credit
8 for certain projects; providing for the application of this Act; and generally
9 relating to ~~allowing the transfer of~~ certain tax credits for certain heritage
10 structure rehabilitations ~~from one business entity or individual to another~~
11 ~~business entity or individual.~~

12 BY repealing and reenacting, with amendments,
13 Article 83B - Department of Housing and Community Development
14 Section 5-801
15 Annotated Code of Maryland
16 (1998 Replacement Volume and 2000 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article - Insurance
19 Section 6-105.2
20 Annotated Code of Maryland
21 (1997 Volume and 2000 Supplement)

22 BY adding to
23 Article - Insurance
24 Section 6-107(c)
25 Annotated Code of Maryland
26 (1997 Volume and 2000 Supplement)

27 BY repealing
28 Article - Tax - General
29 Section 8-208.1 and 8-406.1
30 Annotated Code of Maryland
31 (1997 Replacement Volume and 2000 Supplement)

32 BY repealing and reenacting, with amendments,
33 Article - Tax - General
34 Section 10-207(u) and ~~10-307(g)~~ and 10-704.5
35 Annotated Code of Maryland
36 (1997 Replacement Volume and 2000 Supplement)

37 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
38 MARYLAND, That the Laws of Maryland read as follows:

Article 83B - Department of Housing and Community Development

2 5-801.

3 (a) (1) In this section the following words have the meanings indicated.

4 (2) "Business entity" means [a]:

5 (I) A person conducting or operating a trade or business in the
6 State; OR

7 (II) AN ORGANIZATION OPERATING IN MARYLAND THAT IS EXEMPT
8 FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE.

9 (3) "Certified heritage area" has the meaning stated in § 13-1101(d) of
10 the Financial Institutions Article.

11 (4) (I) "Certified heritage structure" means a structure that is
12 LOCATED IN THE STATE AND IS:

13 (i) 1. Listed in the National Register of Historic Places;

14 (ii) 2. Designated as a historic property under local law;

15 (iii) 3. 1. A. Located in a historic district listed on the National
16 Register of Historic Places or in a local historic district; and

17 2. B. Certified by the Director of the Maryland Historical
18 Trust as contributing to the significance of the district; or

19 (iv) 4. Located in a certified heritage area and which has been
20 certified by the Maryland Heritage Areas Authority as contributing to the
21 significance of the certified heritage area.

22 (II) "CERTIFIED HERITAGE STRUCTURE" DOES NOT INCLUDE A
23 STRUCTURE THAT IS OWNED BY THE STATE, A POLITICAL SUBDIVISION OF THE
24 STATE, OR THE FEDERAL GOVERNMENT, OTHER THAN A STRUCTURE LOCATED ON
25 THE HIPPODROME SITE, AS DEFINED IN § 13-701 OF THE FINANCIAL INSTITUTIONS
26 ARTICLE.

27 (5) "Certified rehabilitation" means A COMPLETED rehabilitation of a
28 certified heritage structure which the Director certifies is substantial rehabilitation
29 in conformance with the rehabilitation standards of the United States Secretary of
30 the Interior.

31 (6) "Director" means the Director of the Maryland Historical Trust.

32 (7) "Local historic district" means a district that the governing body of a
33 county or municipal corporation, or the Mayor and City Council of Baltimore, has
34 designated under local law as historic.

1 (8) "Qualified rehabilitation expenditure" means any amount that is
 2 properly chargeable to capital account and is expended in the rehabilitation of a
 3 structure that by the end of the taxable year in which the certified rehabilitation is
 4 completed is a certified heritage structure.

5 (9) "Substantial rehabilitation" means rehabilitation of a structure for
 6 which the qualified rehabilitation expenditures, during the 24-month period selected
 7 by the taxpayer ending with or within the taxable year, exceed:

8 (i) For owner-occupied residential property, \$5,000; or

9 (ii) For all other property, the greater of:

10 1. The adjusted basis of the structure; or

11 2. \$5,000.

12 (b) (1) Subject to subsection (e) (E) of this section, for the taxable year in
 13 which a certified rehabilitation is completed, a business entity or an individual may
 14 claim a tax credit in an amount equal to 25% of the taxpayer's qualified rehabilitation
 15 expenditures for the rehabilitation.

16 (2) THE STATE TAX CREDIT ALLOWED UNDER THIS SECTION MAY BE
 17 ALLOCATED AMONG THE PARTNERS, MEMBERS, OR SHAREHOLDERS OF AN ENTITY
 18 IN ANY MANNER AGREED TO BY THOSE PERSONS IN WRITING:-

19 ~~(I) REGARDLESS OF THE ALLOCATION OF ANY FEDERAL INCOME~~
 20 ~~TAX REHABILITATION CREDIT FOR THE QUALIFIED REHABILITATION~~
 21 ~~EXPENDITURES AMONG THOSE PERSONS; AND~~

22 ~~(II) WHETHER OR NOT THE PERSONS RECEIVING THE ALLOCATION~~
 23 ~~OF THE STATE TAX CREDIT ARE ALLOCATED OR ALLOWED ANY PORTION OF ANY~~
 24 ~~FEDERAL INCOME TAX REHABILITATION CREDIT FOR THE QUALIFIED~~
 25 ~~REHABILITATION EXPENDITURES.~~

26 [(2)] (3) The same tax credit may not be applied more than once against
 27 different taxes.

28 (c) If the credit allowed under this section in any taxable year exceeds the
 29 total tax otherwise payable by the business entity or the individual for that taxable
 30 year, the business entity or individual may ~~apply the excess as a credit for succeeding~~
 31 ~~years until the earlier of:~~

32 ~~(1) The full amount of the excess is used; or~~

33 ~~(2) The expiration of the tenth taxable year after the taxable year in~~
 34 ~~which the certified rehabilitation is completed~~ CLAIM A REFUND IN THE AMOUNT OF
 35 THE EXCESS.

1 (d) (1) If a certified heritage structure for which a certified rehabilitation
2 has been completed is sold or transferred, the amount of any credit unused at the time
3 of sale or transfer may be transferred to the individual or business entity to which the
4 building is sold or transferred.

5 (2) If a certified heritage structure for which a certified rehabilitation
6 has been completed by a nonprofit corporation exempt from taxation is sold or
7 transferred, the full amount of the credit to which the nonprofit corporation would be
8 entitled if taxable may be transferred to the purchaser or transferee at the time of the
9 sale or transfer.

10 (e) (D) (1) A EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
11 SUBSECTION, A business entity or individual that incurs qualified rehabilitation
12 expenditures in the rehabilitation of a certified historic structure in a state other than
13 Maryland may claim a tax credit to the same extent as provided under subsection (b)
14 of this section if the other state has in effect a reciprocal historic rehabilitation tax
15 credit program and agreement for taxpayers of that state who rehabilitate historic
16 structures in Maryland.

17 (2) A BUSINESS ENTITY OR INDIVIDUAL THAT QUALIFIES FOR A TAX
18 CREDIT UNDER THIS SUBSECTION MAY NOT CLAIM A REFUND UNDER SUBSECTION
19 (C) OF THIS SECTION.

20 (3) IF THE CREDIT ALLOWED TO A BUSINESS ENTITY OR INDIVIDUAL
21 UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TOTAL TAX
22 OTHERWISE PAYABLE BY THE BUSINESS ENTITY OR THE INDIVIDUAL FOR THAT
23 TAXABLE YEAR, THE BUSINESS ENTITY OR INDIVIDUAL MAY APPLY THE EXCESS AS A
24 CREDIT FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

25 (I) THE FULL AMOUNT OF THE CREDIT IS USED; OR

26 (II) THE EXPIRATION OF THE TENTH TAXABLE YEAR AFTER THE
27 TAXABLE YEAR IN WHICH THE REHABILITATION IS COMPLETED.

28 (f) (1) (i) In this subsection the following words have the meanings
29 indicated.

30 (ii) "Historic rehabilitation mortgage credit certificate" means a
31 certificate issued under this subsection by the Director to a business entity or
32 individual that elects to receive the certificate in lieu of the credit allowed under this
33 section.

34 (iii) "Qualified purchased heritage structure" means a certified
35 heritage structure:

36 1. For which a certified rehabilitation has been completed
37 and as to which the full amount of the credit is unused and could be transferred to the
38 purchaser under subsection (d) of this section;

1 (i) To reduce the principal amount or to reduce the interest rate on
2 the loan to result in interest payment reductions substantially equal on a present
3 value basis to the face amount of the historic rehabilitation mortgage credit
4 certificate, as discounted; or

5 (ii) To reduce the business entity's or individual's cost of purchasing
6 the certified heritage structure by an amount equal to the face amount of the
7 certificate, as discounted.

8 (6) (i) A lending institution may claim a tax credit under this section
9 in an amount equal to the face amount specified in a historic rehabilitation mortgage
10 credit certificate.

11 (ii) If the credit allowed under this subsection in any taxable year
12 exceeds the total tax otherwise payable by the lending institution for that taxable
13 year, the lending institution may apply the excess as a credit for succeeding years
14 until the earlier of:

15 1. The full amount of the excess is used; or

16 2. The expiration of the 10th taxable year after the taxable
17 year in which the historic rehabilitation mortgage credit certificate is issued.

18 (7) If the amount of the discount retained by a lending institution
19 exceeds the amount by which the lending institution's federal income tax is increased
20 as a result of its use of the historic rehabilitation mortgage credit certificate to offset
21 State taxes under this subsection, the lending institution shall refund the excess to
22 the business entity or individual and any interest earned by the institution on the
23 excess.

24 (8) A lending institution that accepts a historic rehabilitation mortgage
25 credit certificate from a business entity or individual under this subsection shall be
26 entitled to rely in good faith on the information contained in and used in connection
27 with obtaining the certificate by the business entity or individual including, without
28 limitation, the amount of the qualified rehabilitation expenditures.

29 (9) Notwithstanding any provision in this subsection, a lending
30 institution is not required to accept a historic rehabilitation mortgage credit
31 certificate from any business entity or individual.

32 (e) (E) (1) The Director and the Maryland Heritage Areas Authority may
33 adopt regulations to establish procedures and standards for certifying heritage
34 structures and rehabilitations under this section and for issuance and use of historic
35 rehabilitation mortgage credit certificates under subsection (f) of this section.

36 (2) THE DIRECTOR MAY NOT CERTIFY THAT A REHABILITATION IS A
37 CERTIFIED REHABILITATION ELIGIBLE FOR THE TAX CREDIT UNDER THIS SECTION
38 UNLESS THE INDIVIDUAL OR BUSINESS ENTITY SEEKING CERTIFICATION STATES
39 UNDER OATH THE AMOUNT OF THE INDIVIDUAL'S OR BUSINESS ENTITY'S QUALIFIED
40 REHABILITATION EXPENDITURES.

1 ~~(H)~~ (F) (1) In this subsection, "Authority affiliate" has the meaning stated
2 in § 13-701(t) of the Financial Institutions Article.

3 (2) As authorized under § 13-708 of the Financial Institutions Article,
4 the Maryland Stadium Authority or an Authority affiliate may transfer to any
5 business entity or individual any credit under this section for qualified rehabilitation
6 expenditures of the Maryland Stadium Authority or an Authority affiliate.

7 (3) A business entity or individual to whom any credit is transferred by
8 the Maryland Stadium Authority or an Authority affiliate under this subsection may
9 claim a tax credit under this section in the full amount of the credit transferred.

10 ~~(I) (1) A BUSINESS ENTITY OR INDIVIDUAL MAY TRANSFER ALL OR ANY
11 PART OF THE CREDIT UNDER THIS SECTION TO ONE OR MORE BUSINESS ENTITIES
12 OR INDIVIDUALS.~~

13 ~~(2) A CREDIT MAY NOT BE TRANSFERRED UNDER THIS SUBSECTION
14 UNLESS THE BUSINESS ENTITY OR INDIVIDUAL TRANSFERRING THE CREDIT
15 NOTIFIES THE MARYLAND HISTORICAL TRUST WITHIN 30 DAYS AFTER THE
16 EFFECTIVE DATE OF THE TRANSFER.~~

17 ~~(3) A BUSINESS ENTITY OR INDIVIDUAL TO WHOM ANY CREDIT IS
18 TRANSFERRED BY ANOTHER BUSINESS ENTITY OR INDIVIDUAL UNDER THIS
19 SUBSECTION:~~

20 ~~(4) MAY CLAIM A TAX CREDIT UNDER THIS SECTION IN THE FULL
21 AMOUNT OF THE CREDIT TRANSFERRED, BY FILING WITH ITS TAX RETURN A COPY
22 OF THE FORM EVIDENCING THE TRANSFER OF THE TAX CREDIT; AND~~

23 ~~(H) SHALL BE ENTITLED TO RELY IN GOOD FAITH ON
24 INFORMATION ON WHICH THE CREDIT IS BASED, INCLUDING THE AMOUNT OF THE
25 QUALIFIED REHABILITATION EXPENDITURES.~~

26 (G) (1) IN THIS SUBSECTION, "DISQUALIFYING WORK" MEANS WORK THAT:

27 (I) IS PERFORMED ON A CERTIFIED HERITAGE STRUCTURE FOR
28 WHICH A REHABILITATION HAS BEEN CERTIFIED UNDER THIS SECTION; AND

29 (II) IF PERFORMED AS PART OF THE REHABILITATION CERTIFIED
30 UNDER THIS SECTION, WOULD HAVE MADE THE REHABILITATION INELIGIBLE FOR
31 CERTIFICATION.

32 (2) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE
33 CREDIT ALLOWED UNDER THIS SECTION SHALL BE RECAPTURED AS PROVIDED IN
34 PARAGRAPH (3) OF THIS SUBSECTION IF, DURING THE TAXABLE YEAR IN WHICH A
35 CERTIFIED REHABILITATION IS COMPLETED OR ANY OF THE 4 TAXABLE YEARS
36 SUCCEEDING THE TAXABLE YEAR IN WHICH THE CERTIFIED REHABILITATION IS
37 COMPLETED, ANY DISQUALIFYING WORK IS PERFORMED ON THE CERTIFIED
38 HERITAGE STRUCTURE FOR WHICH THE CERTIFIED REHABILITATION HAS BEEN
39 COMPLETED.

1 (3) (I) 1. IF THE DISQUALIFYING WORK IS PERFORMED DURING
2 THE TAXABLE YEAR IN WHICH THE CERTIFIED REHABILITATION WAS COMPLETED,
3 100% OF THE CREDIT SHALL BE RECAPTURED.

4 2. IF THE DISQUALIFYING WORK IS PERFORMED DURING
5 THE FIRST FULL YEAR SUCCEEDING THE TAXABLE YEAR IN WHICH THE CERTIFIED
6 REHABILITATION WAS COMPLETED, 80% OF THE CREDIT SHALL BE RECAPTURED.

7 3. IF THE DISQUALIFYING WORK IS PERFORMED DURING
8 THE SECOND FULL YEAR SUCCEEDING THE TAXABLE YEAR IN WHICH THE
9 CERTIFIED REHABILITATION WAS COMPLETED, 60% OF THE CREDIT SHALL BE
10 RECAPTURED.

11 4. IF THE DISQUALIFYING WORK IS PERFORMED DURING
12 THE THIRD FULL YEAR SUCCEEDING THE TAXABLE YEAR IN WHICH THE CERTIFIED
13 REHABILITATION WAS COMPLETED, 40% OF THE CREDIT SHALL BE RECAPTURED.

14 5. IF THE DISQUALIFYING WORK IS PERFORMED DURING
15 THE FOURTH FULL YEAR SUCCEEDING THE TAXABLE YEAR IN WHICH THE
16 CERTIFIED REHABILITATION WAS COMPLETED, 20% OF THE CREDIT SHALL BE
17 RECAPTURED.

18 (II) EXCEPT AS PROVIDED UNDER PARAGRAPH (4) OF THIS
19 SUBSECTION, THE BUSINESS ENTITY OR INDIVIDUAL THAT CLAIMED THE CREDIT
20 SHALL PAY THE AMOUNT TO BE RECAPTURED AS DETERMINED UNDER
21 SUBPARAGRAPH ~~(H)~~(I) OF THIS PARAGRAPH AS TAXES PAYABLE TO THE STATE FOR
22 THE TAXABLE YEAR IN WHICH THE DISQUALIFYING WORK IS PERFORMED.

23 (4) RECAPTURE OF THE CREDIT ALLOWED UNDER THIS SECTION IS NOT
24 REQUIRED IF THE BUSINESS ENTITY OR INDIVIDUAL THAT CLAIMED THE CREDIT
25 DOES NOT OWN AN INTEREST IN THE CERTIFIED HERITAGE STRUCTURE WHEN THE
26 DISQUALIFYING WORK IS PERFORMED.

27 (H) A REFUND PAYABLE UNDER SUBSECTION (C) OF THIS SECTION:

28 (1) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM
29 CORPORATIONS IF THE PERSON ENTITLED TO THE REFUND IS A CORPORATION
30 SUBJECT TO THE INCOME TAX UNDER TITLE 10 OF THE TAX - GENERAL ARTICLE;

31 (2) OPERATES TO REDUCE INSURANCE PREMIUM TAX REVENUES IF THE
32 PERSON ENTITLED TO THE REFUND IS SUBJECT TO TAXATION UNDER TITLE 6 OF
33 THE INSURANCE ARTICLE; AND

34 (3) OPERATES TO REDUCE THE INCOME TAX REVENUE FROM
35 INDIVIDUALS IF THE PERSON ENTITLED TO THE REFUND IS:

36 (I) AN INDIVIDUAL SUBJECT TO THE INCOME TAX UNDER TITLE 10
37 OF THE TAX - GENERAL ARTICLE; OR

1 6-107.

2 (C) A PERSON THAT IS NOT OTHERWISE REQUIRED TO FILE A REPORT WITH
3 THE COMMISSIONER UNDER THIS SECTION SHALL FILE A REPORT AND PAY THE TAX
4 DUE IF THE PERSON:

5 (1) CLAIMED A CREDIT FOR A PREVIOUS YEAR AGAINST THE TAX
6 IMPOSED UNDER THIS SUBTITLE FOR A CERTIFIED REHABILITATION AS PROVIDED
7 UNDER ARTICLE 83B, § 5-801 OF THE CODE; AND

8 (2) IS SUBJECT TO THE RECAPTURE OF THE CREDIT AS PROVIDED
9 UNDER ARTICLE 83B, § 5-801 OF THE CODE.

10 **Article - Tax - General**

11 [8-208.1.

12 A financial institution may claim a credit against the financial institution
13 franchise tax for a certified rehabilitation as provided under Article 83B, § 5-801 of
14 the Code.]

15 [8-406.1.

16 A public service company may claim a credit against the public service company
17 franchise tax for a certified rehabilitation as provided under Article 83B, § 5-801 of
18 the Code.]

19 10-207.

20 (u) The subtraction under subsection (a) of this section includes any amount
21 received by ~~AN INDIVIDUAL, INCLUDING~~ any Authority affiliate, as defined in §
22 13-701(t) of the Financial Institutions [Article] ARTICLE, in consideration of the
23 transfer of the credit allowed under Article 83B, § 5-801 ~~(h) OR (I) (F)~~ of the Code.

24 ~~10-307.~~

25 (g) ~~The subtraction under subsection (a) of this section includes the amounts~~
26 ~~allowed to be subtracted for an individual under:~~

27 (1) ~~§ 10-207(i) of this title (Profits on sale or exchange of State or local~~
28 ~~bonds);~~

29 (2) ~~§ 10-207(k) of this title (Relocation and assistance payments);~~

30 (3) ~~§ 10-207(m) of this title (State or local income tax refunds);~~

31 (4) ~~§ 10-207(e-1) of this title (State tax exempt interest from mutual~~
32 ~~funds); or~~

33 (5) ~~§ 10-207(u) of this title (Amounts received [by Stadium Authority~~
34 ~~affiliate] in consideration of transfer of certified rehabilitation credit).~~

1 10-704.5.

2 (A) An individual or corporation may claim a credit against the State income
3 tax for a certified rehabilitation as provided under Article 83B, § 5-801 of the Code.

4 (B) AN INDIVIDUAL OR CORPORATION THAT IS NOT OTHERWISE REQUIRED TO
5 FILE AN INCOME TAX RETURN, INCLUDING A CORPORATION EXEMPT FROM INCOME
6 TAX UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE:

7 (1) MAY FILE A RETURN TO CLAIM A REFUND OF THE CREDIT UNDER
8 THIS SECTION; AND

9 (2) SHALL FILE A RETURN IF THE INDIVIDUAL OR CORPORATION IS
10 SUBJECT TO THE RECAPTURE OF THE CREDIT UNDER THIS SECTION AS PROVIDED
11 UNDER ARTICLE 83B, § 5-801 OF THE CODE.

12 SECTION 2. AND BE IT FURTHER ENACTED, That, except as otherwise
13 provided in this Section, this Act shall take effect July 1, 2001, and shall be applicable
14 to all taxable years beginning after December 31, 2000 for certified heritage structure
15 rehabilitations certified on or after July 1, 2001. If the Director of the Maryland
16 Historical Trust has preliminarily determined, on or before June 30, 2001, that a
17 proposed substantial rehabilitation meets the Secretary of the Interior's Standards
18 for Rehabilitation, at the option of the person making the qualified rehabilitation
19 expenditures, the provisions of Article 83B, § 5-801 of the Code in effect on June 30,
20 2001, shall apply to the certified heritage structure rehabilitation credit for the
21 substantial rehabilitation project.