

SENATE BILL 523

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

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A BILL ENTITLED

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 including certain tax-exempt organizations within the definition of business  
16 entity under a certain tax credit for certain heritage structure rehabilitations;  
17 providing for the application of this Act; and generally relating to allowing the  
18 transfer of certain tax credits for certain heritage structure rehabilitations from  
19 one business entity or individual to another business entity or individual.

20 BY repealing and reenacting, with amendments,  
21 Article 83B - Department of Housing and Community Development  
22 Section 5-801  
23 Annotated Code of Maryland  
24 (1998 Replacement Volume and 2000 Supplement)

25 BY repealing and reenacting, with amendments,  
26 Article - Tax - General  
27 Section 10-207(u) and 10-307(g)  
28 Annotated Code of Maryland  
29 (1997 Replacement Volume and 2000 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
31 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; OR7 (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) "Certified heritage structure" means a structure that is:

12 (i) Listed in the National Register of Historic Places;

13 (ii) Designated as a historic property under local law;

14 (iii) 1. Located in a historic district listed on the National  
15 Register of Historic Places or in a local historic district; and16 2. Certified by the Director of the Maryland Historical Trust  
17 as contributing to the significance of the district; or18 (iv) Located in a certified heritage area and which has been  
19 certified by the Maryland Heritage Areas Authority as contributing to the  
20 significance of the certified heritage area.21 (5) "Certified rehabilitation" means rehabilitation of a certified heritage  
22 structure which the Director certifies is substantial rehabilitation in conformance  
23 with the rehabilitation standards of the United States Secretary of the Interior.

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

25 (7) "Local historic district" means a district that the governing body of a  
26 county or municipal corporation, or the Mayor and City Council of Baltimore, has  
27 designated under local law as historic.28 (8) "Qualified rehabilitation expenditure" means any amount that is  
29 properly chargeable to capital account and is expended in the rehabilitation of a  
30 structure that by the end of the taxable year in which the certified rehabilitation is  
31 completed is a certified heritage structure.32 (9) "Substantial rehabilitation" means rehabilitation of a structure for  
33 which the qualified rehabilitation expenditures, during the 24-month period selected  
34 by the taxpayer ending with or within the taxable year, exceed:

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

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

3 1. The adjusted basis of the structure; or

4 2. \$5,000.

5 (b) (1) Subject to subsection (c) of this section, for the taxable year in which  
6 a certified rehabilitation is completed, a business entity or an individual may claim a  
7 tax credit in an amount equal to 25% of the taxpayer's qualified rehabilitation  
8 expenditures for the rehabilitation.

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

12 (I) REGARDLESS OF THE ALLOCATION OF ANY FEDERAL INCOME  
13 TAX REHABILITATION CREDIT FOR THE QUALIFIED REHABILITATION  
14 EXPENDITURES AMONG THOSE PERSONS; AND

15 (II) WHETHER OR NOT THE PERSONS RECEIVING THE ALLOCATION  
16 OF THE STATE TAX CREDIT ARE ALLOCATED OR ALLOWED ANY PORTION OF ANY  
17 FEDERAL INCOME TAX REHABILITATION CREDIT FOR THE QUALIFIED  
18 REHABILITATION EXPENDITURES.

19 [(2)] (3) The same tax credit may not be applied more than once against  
20 different taxes.

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

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

26 (2) The expiration of the tenth taxable year after the taxable year in  
27 which the certified rehabilitation is completed.

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

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

1 (e) A business entity or individual that incurs qualified rehabilitation  
2 expenditures in the rehabilitation of a certified historic structure in a state other than  
3 Maryland may claim a tax credit to the same extent as provided under subsection (b)  
4 of this section if the other state has in effect a reciprocal historic rehabilitation tax  
5 credit program and agreement for taxpayers of that state who rehabilitate historic  
6 structures in Maryland.

7 (f) (1) (i) In this subsection the following words have the meanings  
8 indicated.

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

13 (iii) "Qualified purchased heritage structure" means a certified  
14 heritage structure:

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

18 2. As to which the purchaser is the first purchaser of the  
19 certified heritage structure after the completion of the certified rehabilitation;

20 3. That was purchased within 10 years after the completion  
21 of the certified rehabilitation; and

22 4. All or a part of which within a reasonable period will be  
23 the principal residence of the purchaser.

24 (2) (i) A business entity or an individual may elect to receive a historic  
25 rehabilitation mortgage credit certificate in lieu of the credit otherwise allowable  
26 under this section.

27 (ii) An election under this subsection shall be made:

28 1. For a qualified purchased heritage structure, on or before  
29 the date of the purchase; and

30 2. For any other certified rehabilitation, on or before the date  
31 the certified rehabilitation is completed.

32 (iii) An election may not be made under this subsection for a  
33 certified rehabilitation of a certified heritage structure that has been sold or  
34 transferred if the seller or transferor of the structure has claimed any portion of the  
35 credit allowed under this section for the certified rehabilitation.

36 (3) If a business entity or individual makes an election under this  
37 subsection, the Director shall issue a historic rehabilitation mortgage credit

1 certificate to the business entity or individual in a face amount equal to the total  
2 amount of the credit that, but for the election under this subsection, would be  
3 allowable to the business entity or individual with respect to the certified  
4 rehabilitation.

5 (4) A business entity or individual may transfer a historic rehabilitation  
6 mortgage credit certificate to a lending institution subject to Maryland tax, including  
7 a nondepository institution, in connection with a loan:

8 (i) That is secured by a certified heritage structure; and

9 (ii) The proceeds of which may not be used for any purpose other  
10 than the acquisition or rehabilitation of the certified heritage structure.

11 (5) A lending institution that accepts a historic rehabilitation mortgage  
12 credit certificate from a business entity or individual shall in exchange provide the  
13 business entity or individual an amount equal to the face amount of the historic  
14 rehabilitation mortgage credit certificate, discounted by the amount by which the  
15 lending institution's federal income tax liability is increased as a result of its use of  
16 the historic rehabilitation mortgage credit certificate to offset State taxes under this  
17 subsection, to be allocated, at the borrower's election:

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

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

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

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

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

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

35 (7) If the amount of the discount retained by a lending institution  
36 exceeds the amount by which the lending institution's federal income tax is increased  
37 as a result of its use of the historic rehabilitation mortgage credit certificate to offset  
38 State taxes under this subsection, the lending institution shall refund the excess to

1 the business entity or individual and any interest earned by the institution on the  
2 excess.

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

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

11 (g) The Director and the Maryland Heritage Areas Authority may adopt  
12 regulations to establish procedures and standards for certifying heritage structures  
13 and rehabilitations under this section and for issuance and use of historic  
14 rehabilitation mortgage credit certificates under subsection (f) of this section.

15 (h) (1) In this subsection, "Authority affiliate" has the meaning stated in §  
16 13-701(t) of the Financial Institutions Article.

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

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

24 (I) (1) A BUSINESS ENTITY OR INDIVIDUAL MAY TRANSFER ALL OR ANY  
25 PART OF THE CREDIT UNDER THIS SECTION TO ONE OR MORE BUSINESS ENTITIES  
26 OR INDIVIDUALS.

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

31 (3) A BUSINESS ENTITY OR INDIVIDUAL TO WHOM ANY CREDIT IS  
32 TRANSFERRED BY ANOTHER BUSINESS ENTITY OR INDIVIDUAL UNDER THIS  
33 SUBSECTION:

34 (I) MAY CLAIM A TAX CREDIT UNDER THIS SECTION IN THE FULL  
35 AMOUNT OF THE CREDIT TRANSFERRED, BY FILING WITH ITS TAX RETURN A COPY  
36 OF THE FORM EVIDENCING THE TRANSFER OF THE TAX CREDIT; AND

37 (II) SHALL BE ENTITLED TO RELY IN GOOD FAITH ON  
38 INFORMATION ON WHICH THE CREDIT IS BASED, INCLUDING THE AMOUNT OF THE  
39 QUALIFIED REHABILITATION EXPENDITURES.

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**Article - Tax - General**

2 10-207.

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

7 10-307.

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

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

12 (2) § 10-207(k) of this title (Relocation and assistance payments);

13 (3) § 10-207(m) of this title (State or local income tax refunds);

14 (4) § 10-207(c-1) of this title (State tax exempt interest from mutual  
15 funds); or

16 (5) § 10-207(u) of this title (Amounts received [by Stadium Authority  
17 affiliate] in consideration of transfer of certified rehabilitation credit).

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 July 1, 2001, and shall be applicable to all taxable years beginning after December 31,  
20 2000.