
By: **Delegates Hixson, Howard, Healey, Bozman, and C. Davis**
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Assigned to: Ways and Means

Committee Report: Favorable with amendments
House action: Adopted
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CHAPTER _____

1 AN ACT concerning

2 **Maryland Heritage Structure Rehabilitation Tax Credit**

3 FOR the purpose of limiting the qualifying expenditures under the Maryland
4 Heritage Structure Rehabilitation Tax Credit allowed for a commercial
5 rehabilitation to the amount of proposed expenditures approved as qualifying
6 for purposes of the credit by the Director of the Maryland Historical Trust;
7 altering the calculation of the credit; providing that certain expenditures
8 funded, financed, or otherwise reimbursed by certain State or local financial
9 assistance do not qualify for the credit; limiting the credit allowed for certain
10 rehabilitations to a certain amount; ~~repealing a provision making the credit~~
11 ~~refundable under certain circumstances; providing for the carry forward of~~
12 ~~certain unused credit amounts; allowing certain unused credit amounts to be~~
13 ~~transferred under certain circumstances; making the credit refundable under~~
14 ~~certain circumstances for certain tax exempt organizations and for certain~~
15 ~~rehabilitations; providing that for certain rehabilitations, the credit may not be~~
16 ~~claimed unless the proposed rehabilitation work and the amount of the proposed~~
17 ~~rehabilitation expenditures qualifying for purposes of the credit have been~~
18 ~~approved by the Director of the Maryland Historical Trust; limiting the amount~~
19 ~~of proposed rehabilitation expenditures that the Director may approve for~~
20 ~~purposes of the credit for any commercial project; limiting the aggregate amount~~
21 ~~of proposed rehabilitation expenditures that the Director may approve as~~
22 ~~qualifying for purposes of the credit in any calendar year; requiring that a~~
23 ~~certain portion of the aggregate credit available each year be allocated to certain~~
24 ~~projects; requiring the Director to approve proposed rehabilitation expenditures~~
25 ~~for purposes of the credit on a certain basis; altering certain reporting~~
26 ~~requirements under the credit; limiting the amount of the credit that may be~~
27 ~~claimed for any taxable year for certain rehabilitations to a certain amount;~~
28 ~~allowing certain excess credit to be carried forward and applied as a credit in~~

1 ~~future tax years, subject to a certain limitation~~; providing for the application of
 2 this Act; requiring the Comptroller to allow certain amended returns and to
 3 waive certain interest and penalty; providing for the allocation of the available
 4 credit for a certain calendar year under certain circumstances; and generally
 5 relating to the Maryland Heritage Structure Rehabilitation Tax Credit.

6 BY repealing and reenacting, with amendments,
 7 Article 83B - Department of Housing and Community Development
 8 Section 5-801
 9 Annotated Code of Maryland
 10 (1998 Replacement Volume and 2001 Supplement)

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

13 **Article 83B - Department of Housing and Community Development**

14 5-801.

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

16 (2) "Business entity" means:

17 (i) A person conducting or operating a trade or business in the
 18 State; or

19 (ii) An organization operating in Maryland that is exempt from
 20 taxation under § 501(c)(3) of the Internal Revenue Code.

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

23 (4) (i) "Certified heritage structure" means a structure that is located
 24 in the State and is:

25 1. Listed in the National Register of Historic Places;

26 2. Designated as a historic property under local law AND
 27 DETERMINED BY THE DIRECTOR TO BE ELIGIBLE FOR LISTING ON THE NATIONAL
 28 REGISTER OF HISTORIC PLACES;

29 3. A. Located in a historic district listed on the National
 30 Register of Historic Places or in a local historic district THAT THE DIRECTOR
 31 DETERMINES IS ELIGIBLE FOR LISTING ON THE NATIONAL REGISTER OF HISTORIC
 32 PLACES; and

33 B. Certified by the Director ~~of the Maryland Historical Trust~~
 34 as contributing to the significance of the district; or

1 3. STATE ~~OR LOCAL~~ TAX CREDIT OTHER THAN THE TAX
2 CREDIT UNDER THIS SECTION; OR

3 4. OTHER FINANCIAL ASSISTANCE FROM THE STATE OR A
4 POLITICAL SUBDIVISION OF THE STATE, OTHER THAN A LOAN THAT MUST BE
5 REPAID.

6 [(9)] (10) "Substantial rehabilitation" means rehabilitation of a structure
7 for which the qualified rehabilitation expenditures, during the 24-month period
8 selected by the taxpayer ending with or within the taxable year, exceed:

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

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

11 1. The adjusted basis of the structure; or

12 2. \$5,000.

13 (b) (1) [Subject to subsection (e) of] EXCEPT AS OTHERWISE PROVIDED IN
14 this section, for the taxable year in which a certified rehabilitation is completed, a
15 business entity or an individual may claim a tax credit in an amount equal to ~~20%~~ 25%
16 of the taxpayer's qualified rehabilitation expenditures for the rehabilitation.

17 (2) The State tax credit allowed under this section may be allocated
18 among the partners, members, or shareholders of an entity in any manner agreed to
19 by those persons in writing.

20 ~~(3) (I) FOR ANY COMMERCIAL REHABILITATION, THE STATE TAX~~
21 ~~CREDIT ALLOWED UNDER THIS SECTION MAY NOT EXCEED \$1,000,000.~~

22 ~~(II) FOR PURPOSES OF THE LIMITATION UNDER SUBPARAGRAPH (I)~~
23 ~~OF THIS PARAGRAPH, THE FOLLOWING SHALL BE TREATED AS A SINGLE~~
24 ~~REHABILITATION:~~

25 1. ~~THE PHASED REHABILITATION OF THE SAME STRUCTURE~~
26 ~~OR PROPERTY;~~

27 2. ~~THE SEPARATE REHABILITATION OF DIFFERENT~~
28 ~~COMPONENTS OF THE SAME STRUCTURE OR PROPERTY; OR~~

29 3. ~~THE REHABILITATION OF MULTIPLE STRUCTURES THAT~~
30 ~~ARE FUNCTIONALLY RELATED TO SERVE AN OVERALL PURPOSE, SUCH AS A MILL~~
31 ~~COMPLEX, AN INDUSTRIAL COMPLEX, OR A RESIDENCE AND CARRIAGE HOUSE.~~

32 (3) FOR A REHABILITATION OTHER THAN A COMMERCIAL
33 REHABILITATION, THE STATE TAX CREDIT ALLOWED UNDER THIS SECTION MAY NOT
34 EXCEED \$50,000.

35 [(3)] (4) The same tax credit may not be applied more than once against
36 different taxes.

1 (c) (1) ~~[f] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,~~
 2 ~~IF~~ the credit allowed under this section in any taxable year exceeds the total tax
 3 otherwise payable by the business entity or the individual for that taxable year, the
 4 business entity or individual may ~~f~~claim a refund in the amount of the excess.

5 (d) (1) ~~Except as provided in paragraph (2) of this subsection, a business~~
 6 ~~entity or individual that incurs qualified rehabilitation expenditures in the~~
 7 ~~rehabilitation of a certified historic structure in a state other than Maryland may~~
 8 ~~claim a tax credit to the same extent as provided under subsection (b) of this section~~
 9 ~~if the other state has in effect a reciprocal historic rehabilitation tax credit program~~
 10 ~~and agreement for taxpayers of that state who rehabilitate historic structures in~~
 11 ~~Maryland.~~

12 (2) ~~A business entity or individual that qualifies for a tax credit under~~
 13 ~~this subsection may not claim a refund under subsection (c) of this section.~~

14 (3) ~~If the credit allowed to a business entity or individual under this~~
 15 ~~subsection for any taxable year exceeds the total tax otherwise payable by the~~
 16 ~~business entity or the individual for that taxable year, the business entity or~~
 17 ~~individual may] apply the excess as a credit for succeeding taxable years until the~~
 18 ~~earlier of:~~

19 (i) ~~The full amount of the credit is used; or~~

20 (ii) ~~The expiration of the tenth taxable year after the taxable year~~
 21 ~~in which the rehabilitation is completed.~~

22 (2) ~~IF A CERTIFIED HERITAGE STRUCTURE FOR WHICH A CERTIFIED~~
 23 ~~REHABILITATION HAS BEEN COMPLETED IS SOLD OR TRANSFERRED, THE AMOUNT~~
 24 ~~OF ANY CREDIT UNUSED AT THE TIME OF SALE OR TRANSFER MAY BE TRANSFERRED~~
 25 ~~TO THE INDIVIDUAL OR BUSINESS ENTITY TO WHICH THE BUILDING IS SOLD OR~~
 26 ~~TRANSFERRED.~~

27 (3) (1) ~~IF THE CREDIT ALLOWED UNDER THIS SECTION FOR A~~
 28 ~~CERTIFIED REHABILITATION THAT IS NOT A COMMERCIAL REHABILITATION IN ANY~~
 29 ~~TAXABLE YEAR EXCEEDS THE TOTAL TAX OTHERWISE PAYABLE BY AN INDIVIDUAL~~
 30 ~~FOR THAT TAXABLE YEAR, THE INDIVIDUAL MAY CLAIM A REFUND IN THE AMOUNT~~
 31 ~~OF THE EXCESS.~~

32 (H) ~~AN ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER §~~
 33 ~~501(C)(3) OF THE INTERNAL REVENUE CODE MAY CLAIM A REFUND IN THE AMOUNT~~
 34 ~~BY WHICH THE CREDIT ALLOWED UNDER THIS SECTION EXCEEDS ANY STATE~~
 35 ~~INCOME TAX DUE ON UNRELATED BUSINESS TAXABLE INCOME AS PROVIDED UNDER~~
 36 ~~§§ 10-304 AND 10-812 OF THIS TITLE.~~

37 (D) (1) ~~FOR A COMMERCIAL REHABILITATION, THE CREDIT UNDER THIS~~
 38 ~~SECTION MAY NOT BE CLAIMED UNLESS THE PROPOSED REHABILITATION WORK~~
 39 ~~AND THE AMOUNT OF THE PROPOSED REHABILITATION EXPENDITURES FOR THE~~
 40 ~~COMMERCIAL REHABILITATION MAXIMUM CREDIT FOR THE REHABILITATION HAVE~~

1 BEEN APPROVED BY THE DIRECTOR IN ACCORDANCE WITH THIS SUBSECTION
2 BEFORE THE EXPENDITURES ARE MADE.

3 (2) (I) IN ANY CALENDAR YEAR AFTER CALENDAR YEAR 2001:

4 ~~(I) THE DIRECTOR MAY NOT APPROVE PROPOSED~~
5 ~~REHABILITATION EXPENDITURES FOR ANY COMMERCIAL REHABILITATION IN AN~~
6 ~~AMOUNT GREATER THAN THE AMOUNT OF EXPENDITURES THAT IF COMPLETED~~
7 ~~WOULD RESULT IN A CREDIT OF \$1,000,000 FOR THAT COMMERCIAL REHABILITATION~~
8 ~~UNDER THIS SECTION; AND~~

9 (II) THE DIRECTOR MAY NOT APPROVE PROPOSED
10 REHABILITATION EXPENDITURES FOR COMMERCIAL PROJECTS IN THE AGGREGATE
11 IN AN AMOUNT GREATER THAN THE AMOUNT OF EXPENDITURES THAT IF
12 COMPLETED WOULD RESULT IN CREDITS TOTALING ~~\$20,000,000~~ \$50,000,000 IN A
13 CALENDAR YEAR FOR ALL COMMERCIAL PROJECTS FOR WHICH PROPOSED
14 REHABILITATION EXPENDITURES ARE APPROVED IN THAT CALENDAR YEAR.

15 (II) OF THE AVAILABLE CREDITS TO BE ALLOCATED EACH YEAR:

16 1. \$30,000,000 SHALL BE ALLOCATED TO COMMERCIAL
17 REHABILITATIONS FOR WHICH THE MAXIMUM CREDIT DOES NOT EXCEED \$3,000,000;
18 AND

19 2. \$20,000,000 SHALL BE ALLOCATED TO COMMERCIAL
20 REHABILITATIONS FOR WHICH THE MAXIMUM CREDIT IS GREATER THAN \$3,000,000.

21 (3) IN EACH CALENDAR YEAR, SUBJECT TO PARAGRAPH (2)(II) OF THIS
22 SUBSECTION, THE DIRECTOR SHALL APPROVE PROPOSED REHABILITATION
23 EXPENDITURES ON A FIRST-COME, FIRST-SERVED BASIS.

24 (e) (1) The Director and the Maryland Heritage Areas Authority may adopt
25 regulations to establish procedures and standards for certifying heritage structures
26 and rehabilitations under this section.

27 (2) The Director may not certify that a rehabilitation is a certified
28 rehabilitation eligible for the tax credit under this section unless the individual or
29 business entity seeking certification states under oath the amount of the individual's
30 or business entity's qualified rehabilitation expenditures.

31 (f) (1) In this subsection, "Authority affiliate" has the meaning stated in §
32 13-701(t) of the Financial Institutions Article.

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

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

4 (g) (1) In this subsection, "disqualifying work" means work that:

5 (i) Is performed on a certified heritage structure for which a
6 rehabilitation has been certified under this section; and

7 (ii) If performed as part of the rehabilitation certified under this
8 section, would have made the rehabilitation ineligible for certification.

9 (2) Except as provided in paragraph (4) of this subsection, the credit
10 allowed under this section shall be recaptured as provided in paragraph (3) of this
11 subsection if, during the taxable year in which a certified rehabilitation is completed
12 or any of the 4 taxable years succeeding the taxable year in which the certified
13 rehabilitation is completed, any disqualifying work is performed on the certified
14 heritage structure for which the certified rehabilitation has been completed.

15 (3) (i) 1. If the disqualifying work is performed during the taxable
16 year in which the certified rehabilitation was completed, 100% of the credit shall be
17 recaptured.

18 2. If the disqualifying work is performed during the first full
19 year succeeding the taxable year in which the certified rehabilitation was completed,
20 80% of the credit shall be recaptured.

21 3. If the disqualifying work is performed during the second
22 full year succeeding the taxable year in which the certified rehabilitation was
23 completed, 60% of the credit shall be recaptured.

24 4. If the disqualifying work is performed during the third full
25 year succeeding the taxable year in which the certified rehabilitation was completed,
26 40% of the credit shall be recaptured.

27 5. If the disqualifying work is performed during the fourth
28 full year succeeding the taxable year in which the certified rehabilitation was
29 completed, 20% of the credit shall be recaptured.

30 (ii) Except as provided under paragraph (4) of this subsection, the
31 business entity or individual that claimed the credit shall pay the amount to be
32 recaptured as determined under subparagraph (i) of this paragraph as taxes payable
33 to the State for the taxable year in which the disqualifying work is performed.

34 (4) Recapture of the credit allowed under this section is not required if
35 the business entity or individual that claimed the credit does not own an interest in
36 the certified heritage structure when the disqualifying work is performed.

37 (h) A refund payable under ~~subsection (c)~~ ~~SUBSECTION (C)(3)~~ of this section
38 ~~is~~:

1 (1) Operates to reduce the income tax revenue from corporations if the
 2 person entitled to the refund is a corporation subject to the income tax under Title 10
 3 of the Tax - General Article;

4 (2) Operates to reduce insurance premium tax revenues if the person
 5 entitled to the refund is subject to taxation under Title 6 of the Insurance Article; and

6 (3) Operates ~~OPERATES~~ to reduce the income tax revenue from
 7 individuals ~~if~~ the person entitled to the refund is:

8 (i) An individual subject to the income tax under Title 10 of the Tax
 9 - General Article; or

10 (ii) An organization exempt from taxation under § 501(c)(3) of the
 11 Internal Revenue Code.

12 (i) (1) On or before January 15, APRIL 15, JULY 15, AND OCTOBER 15 of each
 13 year, the Director shall report to the Governor and, subject to § 2-1246 of the State
 14 Government Article, to the General Assembly, on the credit allowed under this
 15 section.

16 (2) The report required under paragraph (1) of this subsection shall
 17 include FOR THE PRECEDING CALENDAR YEAR, QUARTER, FOR EACH COMMERCIAL
 18 REHABILITATION THAT WAS COMPLETED DURING THE CALENDAR QUARTER AND
 19 FOR EACH PROPOSED REHABILITATION THAT REMAINS INCOMPLETE AS OF THE END
 20 OF THE CALENDAR QUARTER:

21 (I) THE NAME OF THE OWNER OR DEVELOPER THAT HAS APPLIED
 22 FOR APPROVAL OF THE TAX CREDIT;

23 (II) THE NAME AND ADDRESS OF THE PROPOSED OR CERTIFIED
 24 REHABILITATION AND THE COUNTY WHERE THE PROJECT IS LOCATED;

25 (III) THE DATES OF RECEIPT AND APPROVAL BY THE TRUST OF ALL
 26 APPLICATIONS REGARDING THE PROJECT, INCLUDING APPLICATIONS FOR
 27 CERTIFICATION THAT A STRUCTURE OR PROPERTY WILL QUALIFY AS A CERTIFIED
 28 HERITAGE STRUCTURE, FOR APPROVAL OF THE PROPOSED REHABILITATION, AND
 29 FOR CERTIFICATION OF THE COMPLETED REHABILITATION; AND

30 (IV) THE AMOUNT OF PROPOSED REHABILITATION EXPENDITURES
 31 FOR WHICH THE APPLICANT SOUGHT APPROVAL FOR PURPOSES OF THE CREDIT AND
 32 THE MAXIMUM CREDIT APPROVED FOR THE PROJECT; AND

33 (V) FOR PROJECTS COMPLETED DURING THE CALENDAR QUARTER,
 34 THE FINAL QUALIFIED REHABILITATION COSTS FOR THE PROJECT AND THE
 35 AMOUNT OF THE CREDIT FOR THE CERTIFIED REHABILITATION.

36 (3) THE REPORT REQUIRED ON JANUARY 15 OF EACH YEAR SHALL
 37 SUMMARIZE FOR THE PRECEDING CALENDAR YEAR, for each category of certified
 38 rehabilitations specified in paragraph ~~(3)~~ (4) of this subsection:

1 (i) The number of applicants [for certification of rehabilitations
2 during the preceding calendar year] FOR:

3 1. CERTIFICATION THAT A STRUCTURE OR PROPERTY WILL
4 QUALIFY AS A CERTIFIED HERITAGE STRUCTURE;

5 2. APPROVAL OF PROPOSED REHABILITATION
6 ~~EXPENDITURES~~ REHABILITATIONS; OR

7 3. CERTIFICATION OF COMPLETED REHABILITATIONS;

8 (ii) The number of PROPOSED REHABILITATIONS APPROVED AND
9 THE NUMBER OF COMPLETED rehabilitations certified as qualifying for the tax credit
10 under this section [during the preceding calendar year]; AND

11 (iii) The total ~~PROPOSED MAXIMUM~~ REHABILITATION
12 EXPENDITURES APPROVED FOR PURPOSES OF THE CREDIT FOR PROPOSED
13 REHABILITATIONS AND THE TOTAL qualified rehabilitation expenditures for
14 COMPLETED rehabilitations certified [during the preceding calendar year]; ~~and~~.

15 (iv) ~~The average PROPOSED REHABILITATION EXPENDITURES OF~~
16 ~~PROPOSED REHABILITATIONS APPROVED AND THE AVERAGE~~ qualified rehabilitation
17 expenditures of COMPLETED rehabilitations certified [during the preceding calendar
18 year].

19 ~~(3)~~ (4) The information required under paragraph ~~(2)~~ (3) of this
20 subsection shall be provided in the aggregate and separately for each of the following
21 categories of certified rehabilitations:

22 (i) Owner-occupied single family residential structures;

23 ~~(ii) Other single family residential structures;~~

24 ~~(iii) Multifamily residential structures; and~~

25 ~~(iv) Nonresidential structures.~~

26 (II) COMMERCIAL REHABILITATIONS FOR WHICH THE MAXIMUM
27 CREDIT DOES NOT EXCEED \$3,000,000; AND

28 (III) COMMERCIAL REHABILITATIONS FOR WHICH THE MAXIMUM
29 CREDIT IS GREATER THAN \$3,000,000.

30 ~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

31 ~~(a) Except as otherwise provided in this section, this Act applies to all tax~~
32 ~~credits under Article 83B, § 5-801 of the Code for any taxable year for which an~~
33 ~~income tax return is required to be filed in any calendar year after 2001.~~

34 (b) ~~Notwithstanding the limitation under Article 83B, § 5-801(b)(3) and (e)(1)~~
35 ~~of the Code, but subject to subsection (c) of this section, with respect to any~~

1 rehabilitation project that received the approval of the Director of the Maryland
2 Historical Trust of the proposed rehabilitation work before February 1, 2002:

3 (1) The State tax credit allowed under Article 83B, § 5-801 of the Code
4 for a single certified rehabilitation may exceed \$1,000,000; and

5 (2) If the credit allowed in any taxable year exceeds the total tax
6 otherwise payable by the taxpayer for that taxable year, the taxpayer may claim a
7 refund in the amount of the excess.

8 (e) (1) With respect to any rehabilitation project that received the approval
9 of the Director of the Maryland Historical Trust of the proposed rehabilitation work
10 before February 1, 2002, the credit allowed for any taxable year for a single certified
11 rehabilitation may not exceed \$5,000,000 for any taxable year.

12 (2) If the credit otherwise allowable for a single certified rehabilitation
13 exceeds the limit under paragraph (1) of this subsection, the excess may be applied as
14 a credit against the State tax for succeeding taxable years until the full amount of the
15 excess is used.

16 (3) For each taxable year, the amount carried forward to the taxable year
17 under paragraph (2) of this subsection may not exceed the limitation under paragraph
18 (1) of this subsection.

19 (d) (1) Subject to paragraph (2) of this subsection, for any taxable year for
20 which a tax return is required to be filed in calendar year 2002, the Comptroller shall
21 allow amended returns to be filed and shall waive any interest or penalty imposed
22 relating to payment of tax for calendar year 2001 to the extent the Comptroller
23 determines that the interest or penalty would not have been incurred but for the
24 revisions under this Act.

25 (2) Paragraph (1) of this subsection does not apply to any interest or
26 penalty accruing on or after July 1, 2002 for any tax required to be paid for calendar
27 year 2001 that remains unpaid as of July 1, 2002.

28 (e) If the proposed rehabilitation expenditures for all commercial projects
29 approved by the Director of the Maryland Historical Trust in calendar year 2002
30 before February 1, 2002 in the aggregate are greater than the amount of expenditures
31 that if completed would result in credits totaling \$20,000,000, the Director shall
32 allocate the \$20,000,000 available credit among the projects for which the Director
33 approved proposed rehabilitation expenditures before February 1, 2002 on a prorated
34 basis.

35 ~~SECTION 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of~~
36 ~~this Act, this Act shall take effect June 1, 2002.~~

37 SECTION 2. AND BE IT FURTHER ENACTED, That, except as otherwise
38 provided in this section, this Act shall take effect June 1, 2002, and shall be applicable
39 to all taxable years beginning after December 31, 2001. For commercial rehabilitation
40 projects that received the approval of the Director of the Maryland Historical Trust on

1 or before February 1, 2002 for the proposed rehabilitations, the provisions of Article
2 83B, § 5-801 of the Code in effect on May 31, 2002 shall apply to the certified heritage
3 structure rehabilitation credit for the substantial rehabilitation project.