

House Bill 469 (AS PASSED HOUSE AND SENATE)

By: Representatives Stephens of the 164th, Newton of the 123rd, and Buckner of the 137th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, computation, exemptions, and credits relative to state income
3 taxes, so as to provide for aggregate caps and extend the sunset date for tax credits for the
4 rehabilitation of historic structures; to extend a provision for an automatic repeal of such tax
5 credits; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
9 imposition, rate, computation, exemptions, and credits relative to state income taxes, is
10 amended by revising Code Section 48-7-29.8 of the Official Code of Georgia Annotated,
11 relating to tax credits for the rehabilitation of historic structures, conditions, and limitations,
12 as follows:

13 "48-7-29.8.

14 (a) As used in this Code section, the term:

15 (1) 'Certified rehabilitation' means repairs or alterations to a certified structure which are
16 certified by the Department of Community Affairs as meeting the United States Secretary

17 of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation
18 as provided by the Department of Community Affairs.

19 (2) 'Certified structure' means a historic building or structure that is located within a
20 national historic district, individually listed on the National Register of Historic Places,
21 individually listed in the Georgia Register of Historic Places, or is certified by the
22 Department of Community Affairs as contributing to the historic significance of a
23 Georgia Register Historic District.

24 (3) 'Historic home' means a certified structure which, or any portion of which is or will,
25 within a reasonable period, be owned and used as the principal residence of the person
26 claiming the tax credit allowed under this Code section. Historic home shall include any
27 structure or group of structures that constitute a multifamily or multipurpose structure,
28 including a cooperative or condominium. If only a portion of a building is used as such
29 person's principal residence, only those qualified rehabilitation expenditures that are
30 properly allocable to such portion shall be deemed to be made to a historic home.

31 (4) 'Qualified rehabilitation expenditure' means any qualified rehabilitation expenditure
32 as defined by Section 47(c)(2) of the Internal Revenue Code of 1986 and any amount
33 properly chargeable to a capital account expended in the substantial rehabilitation of a
34 structure that by the end of the taxable year in which the certified rehabilitation is
35 completed is a certified structure. This term does not include the cost of acquisition of
36 the certified structure, the cost attributable to enlargement or additions to an existing
37 building, site preparation, or personal property.

38 (5) 'Substantial rehabilitation' means rehabilitation of a certified structure for which the
39 qualified rehabilitation expenditures, at least 5 percent of which must be allocable to the
40 exterior during the 24 month period selected by the taxpayer ending with or within the
41 taxable year, exceed:

42 (A) For a historic home, the lesser of \$25,000.00 or 50 percent of the adjusted basis of
43 the property as defined in subparagraph (a)(1)(B) of Code Section 48-5-7.2; or, in the
44 case of a historic home located in a target area, \$5,000.00; or

45 (B) For any other certified structure, the greater of \$5,000.00 or the adjusted basis of
46 the property.

47 (6) 'Target area' means a qualified census tract under Section 42 of the Internal Revenue
48 Code of 1986, found in the United States Department of Housing and Urban
49 Development document number N-94-3821; FR-3796-N-01.

50 (b) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter in the
51 year that the certified rehabilitation is placed in service, which may be up to two years after
52 the end of the taxable year for which the credit was originally reserved:

53 (1) In the case of a historic home, equal to 25 percent of qualified rehabilitation
54 expenditures, except that, in the case of a historic home located within a target area, an
55 additional credit equal to 5 percent of qualified rehabilitation expenditures shall be
56 allowed; and

57 (2) In the case of any other certified structure, equal to 25 percent of qualified
58 rehabilitation expenditures.

59 Qualified rehabilitation expenditures may only be counted once in determining the amount
60 of the tax credit available, and more than one entity may not claim a credit for the same
61 qualified rehabilitation expenditures.

62 (c)(1) In no event shall credits for a historic home exceed \$100,000.00 in any 120 month
63 period.

64 (2) The maximum credit for any other individual certified structure shall be \$5 million
65 for any taxable year, except in the case that the project creates 200 or more full-time,
66 permanent jobs or \$5 million in annual payroll within two years of the placed in service
67 date, in which case the project is eligible for credits up to \$10 million for an individual

68 certified structure. In no event shall more than one application for any individual
69 certified structure under this paragraph be approved in any 120 month period.

70 (3)(A) Prior to January 1, 2022, in no event shall credits issued under this Code section
71 for projects earning more than \$300,000.00 in credits exceed in the aggregate \$25
72 million per calendar year.

73 (B) For calendar year 2022, in no event shall credits issued under this Code section
74 exceed \$5 million in aggregate for all projects earning \$300,000.00 or less, or \$25
75 million in aggregate for all projects earning more than \$300,000.00.

76 ~~(C) On and after January 1, 2023, in no event shall credits be issued under this Code~~
77 ~~section.~~ For calendar years 2023 and 2024, in no event shall credits issued under this
78 Code section for historic homes exceed \$5 million in aggregate per year. On and after
79 January 1, 2025, no credits shall be issued under this Code section for historic homes.

80 (D) For calendar years 2023 through 2027, in no event shall credits issued under this
81 Code section for certified structures other than historic homes exceed \$30 million in
82 aggregate per year.

83 (E) On and after January 1, 2028, in no event shall credits be issued under this Code
84 section.

85 (d)(1) A taxpayer seeking to claim a tax credit under paragraph (2) of subsection (b) of
86 this Code section shall submit an application to the commissioner for preapproval of such
87 tax credit. Such application shall include a precertification from the Department of
88 Community Affairs certifying that the improvements to the certified structure are to be
89 consistent with the Department of Community Affairs Standards for Rehabilitation. The
90 Department shall have the authority to require electronic submission of such application
91 in the manner specified by the department. The commissioner shall preapprove the tax
92 credits within 30 days based on the order in which properly completed applications were
93 submitted. In the event that two or more applications were submitted on the same day
94 and the amount of funds available will not be sufficient to fully fund the tax credits

95 requested, the commissioner shall prorate the available funds between or among the
96 applicants. ~~For applications on projects~~ Applications submitted ~~over~~ after the annual \$25
97 ~~million limitation~~, limitations provided for in paragraph (3) of subsection (c) of this Code
98 section have been met ~~those applications~~ shall be given priority the following year.

99 (2) In order to be eligible to receive the credit authorized under subsection (b) of this
100 Code section, a taxpayer must attach to the taxpayer's state tax return a copy of the
101 completed certification of the Department of Community Affairs verifying that the
102 improvements to the certified structure are consistent with the Department of Community
103 Affairs Standards for Rehabilitation.

104 (e)(1) If the credit allowed under paragraph (1) of subsection (b) of this Code section in
105 any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable
106 year, the taxpayer may apply the excess as a credit for succeeding years until the earlier
107 of:

108 (A) The full amount of the excess is used; or

109 (B) The expiration of the tenth taxable year after the taxable year in which the certified
110 rehabilitation has been completed.

111 (2) Any tax credits with respect to credits earned by a taxpayer under paragraph (2) of
112 subsection (b) of this Code section and previously claimed but not used by such taxpayer
113 against its income tax may be transferred or sold in whole or in part by such taxpayer to
114 another Georgia taxpayer, subject to the following conditions:

115 (A) A taxpayer who makes qualified rehabilitation expenditures may sell or assign all
116 or part of the tax credit that may be claimed for such costs and expenses to one or more
117 entities, but no further sale or assignment of any credit previously sold or assigned
118 pursuant to this subparagraph shall be allowed. All such transfers shall be subject to
119 the maximum total limits provided by subsection (c) of this Code section;

120 (B) A taxpayer who sells or assigns a credit under this Code section and the entity to
121 which the credit is sold or assigned shall jointly submit written notice of the sale or

122 assignment to the department not later than 30 days after the date of the sale or
123 assignment. The notice must include:

124 (i) The date of the sale or assignment;

125 (ii) The amount of the credit sold or assigned;

126 (iii) The names and federal tax identification numbers of the entity that sold or
127 assigned the credit or part of the credit and the entity to which the credit or part of the
128 credit was sold or assigned; and

129 (iv) The amount of the credit owned by the selling or assigning entity before the sale
130 or assignment and the amount the selling or assigning entity retained, if any, after the
131 sale or assignment;

132 (C) The sale or assignment of a credit in accordance with this Code section does not
133 extend the period for which a credit may be carried forward and does not increase the
134 total amount of the credit that may be claimed. After an entity claims a credit for
135 eligible costs and expenses, another entity may not use the same costs and expenses as
136 the basis for claiming a credit;

137 (D) Notwithstanding the requirements of this subsection, a credit earned or purchased
138 by, or assigned to, a partnership, limited liability company, Subchapter 'S' corporation,
139 or other pass-through entity may be allocated to the partners, members, or shareholders
140 of that entity and claimed under this Code section in accordance with the provisions of
141 any agreement among the partners, members, or shareholders of that entity and without
142 regard to the ownership interest of the partners, members, or shareholders in the
143 rehabilitated certified structure, provided that the entity or person that claims the credit
144 must be subject to Georgia tax; and

145 (E) Only a taxpayer who earned a credit, and no subsequent good faith transferee, shall
146 be responsible in the event of a recapture, reduction, disallowance, or other failure
147 related to such credit.

148 (3) No such credit shall be allowed the taxpayer against prior years' tax liability.

149 (f) In the case of any rehabilitation which may reasonably be expected to be completed in
150 phases set forth in architectural plans and specifications completed before the rehabilitation
151 begins, a 60 month period may be substituted for the 24 month period provided for in
152 paragraph (5) of subsection (a) of this Code section.

153 (g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event
154 a tax credit under this Code section has been claimed and allowed the taxpayer, upon the
155 sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the
156 remaining unused amount of such credit to the purchaser of such certified structure. If
157 a historic home for which a certified rehabilitation has been completed by a nonprofit
158 corporation is sold or transferred, the full amount of the credit to which the nonprofit
159 corporation would be entitled if taxable shall be transferred to the purchaser or transferee
160 at the time of sale or transfer.

161 (2) Such purchaser shall be subject to the limitations of subsection (e) of this Code
162 section. Such purchaser shall file with such purchaser's tax return a copy of the approval
163 of the rehabilitation by the Department of Community Affairs as provided in subsection
164 (d) of this Code section and a copy of the form evidencing the transfer of the tax credit.

165 (3) Such purchaser shall be entitled to rely in good faith on the information contained in
166 and used in connection with obtaining the approval of the credit including, without
167 limitation, the amount of qualified rehabilitation expenditures.

168 (h)(1) If an owner other than a nonprofit corporation sells a historic home within three
169 years of receiving the credit, the seller shall recapture the credit to the Department of
170 Revenue as follows:

171 (A) If the property is sold within one year of receiving the credit, the recapture amount
172 will equal the lesser of the credit or the net profit of the sale;

173 (B) If the property is sold within two years of receiving the credit, the recapture
174 amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

175 (C) If the property is sold within three years of receiving the credit, the recapture
176 amount will equal the lesser of one-third of the credit or the net profit of the sale.

177 (2) The recapture provisions of this subsection shall not apply to a sale resulting from the
178 death of the owner.

179 (i)(1) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection
180 (b) of this Code section and leases such certified structure, the department shall aggregate
181 all total sales tax receipts from the certified structure.

182 (2) Any taxpayer claiming credits under paragraph (2) of subsection (b) of this Code
183 section shall report to the department the average full-time employees employed at the
184 certified structure. A full-time employee for the purposes of this Code section shall mean
185 a person who works a job that requires 30 or more hours per week. Such reports must be
186 submitted to the department for five calendar years following the year in which the credit
187 is claimed by the taxpayer.

188 (3) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection
189 (b) of this Code section and leases such certified structure, the department shall aggregate
190 all total full-time employees at the certified structure.

191 (j) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, the department shall
192 furnish a report to the chairperson of the House Committee on Ways and Means and the
193 chairperson of the Senate Finance Committee by June 30 of each year. Such report shall
194 contain the total sales tax collected in the prior calendar year and the average number of
195 full-time employees at the certified structure and the total value of credits claimed for each
196 taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section.

197 (k) The tax credit allowed under paragraph (1) of subsection (b) of this Code section, and
198 any recaptured tax credit, shall be allocated among some or all of the partners, members,
199 or shareholders of the entity owning the project in any manner agreed to by such persons,
200 whether or not such persons are allocated or allowed any portion of any other tax credit
201 with respect to the project.

- 202 (l) The Department of Community Affairs and the Department of Revenue shall prescribe
203 such regulations as may be appropriate to carry out the purposes of this Code section.
- 204 (m) The Department of Community Affairs shall report, on an annual basis, on the overall
205 economic activity, usage, and impact to the state from the rehabilitation of eligible
206 properties for which credits provided by this Code section have been allowed.
- 207 (n) This Code section shall stand repealed and reserved by operation of law on
208 December 31, ~~2022~~ 2027."

209

SECTION 2.

210 All laws and parts of laws in conflict with this Act are repealed.