

By: Noble

H.B. No. 3709

A BILL TO BE ENTITLED

AN ACT

relating to the franchise and insurance premium tax credit for the certified rehabilitation of certified historic structures.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subtitle F, Title 2, Tax Code, is amended to read as follows:

SUBTITLE F. FRANCHISE TAX; CREDITS

SECTION 2. Subchapter S, Chapter 171, Tax Code, is transferred to Subtitle F, Title 2, Tax Code, redesignated as Chapter 172, Tax Code, and amended to read as follows:

CHAPTER 172 [~~SUBCHAPTER S~~]. TAX CREDIT FOR CERTIFIED REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

Sec. 172.101 [~~171.901~~]. DEFINITIONS. (a) Terms used in this chapter and defined by Chapter 171 have the meanings assigned by Chapter 171.

(b) In this chapter [~~subchapter~~]:

(1) "Certified historic structure" means a property in this state that is:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under Section 442.006, Government Code, or as a state archeological landmark under Chapter 191, Natural Resources Code;

or

1 (C) certified by the commission as contributing
2 to the historic significance of:

3 (i) a historic district listed in the
4 National Register of Historic Places; or

5 (ii) a local district certified by the
6 United States Department of the Interior in accordance with 36
7 C.F.R. Section 67.9.

8 (2) "Certified rehabilitation" means the
9 rehabilitation of a certified historic structure that the
10 commission has certified as meeting the United States secretary of
11 the interior's Standards for Rehabilitation as defined in 36 C.F.R.
12 Section 67.7.

13 (3) "Commission" means the Texas Historical
14 Commission.

15 Sec. 172.102 [~~171.9015~~]. ELIGIBLE COSTS AND EXPENSES. (a)
16 Subject to Subsections (b) and (c), in this chapter [~~subchapter~~],
17 "eligible costs and expenses" means qualified rehabilitation
18 expenditures as defined by Section 47(c)(2), Internal Revenue Code.

19 (b) Except as provided by Subsection (c), the depreciation
20 and tax-exempt use provisions of Section 47(c)(2), Internal Revenue
21 Code, do not apply to costs and expenses incurred by an entity
22 exempted from the federal income tax under Section 501(a), Internal
23 Revenue Code [~~exempt from the tax imposed under this chapter by~~
24 ~~Section 171.063~~], and those costs and expenses are eligible costs
25 and expenses if the other provisions of Section 47(c)(2), Internal
26 Revenue Code, are satisfied.

27 (c) Expenditures by an entity described by Subsection (b) to

1 rehabilitate a structure that is leased to a tax-exempt entity in a
2 disqualified lease, as those terms are defined by Section 168(h),
3 Internal Revenue Code, are not eligible costs and expenses.

4 Sec. 172.103 [~~171.902~~]. ELIGIBILITY FOR CREDIT. An entity
5 is eligible to apply for a credit in the amount and under the
6 conditions and limitations provided by this chapter [~~subchapter~~]
7 against the taxes [~~tax~~] imposed under Chapter 171 of this code and,
8 as provided by Section 172.109(e), Chapters 221, 222, 223, and 224,
9 Insurance Code [~~this chapter~~].

10 Sec. 172.104 [~~171.903~~]. QUALIFICATION. An entity is
11 eligible for a credit for eligible costs and expenses incurred in
12 the certified rehabilitation of a certified historic structure as
13 provided by this chapter [~~subchapter~~] if:

14 (1) the rehabilitated certified historic structure is
15 placed in service on or after September 1, 2013;

16 (2) the entity has an ownership interest in the
17 certified historic structure in the year during which the structure
18 is placed in service after the rehabilitation; and

19 (3) the total amount of the eligible costs and
20 expenses incurred exceeds \$5,000.

21 Sec. 172.105 [~~171.904~~]. CERTIFICATION OF ELIGIBILITY. (a)
22 Before claiming, selling, or assigning a credit under this chapter
23 [~~subchapter~~], the entity that incurred the eligible costs and
24 expenses in the rehabilitation of a certified historic structure
25 must request from the commission a certificate of eligibility on
26 which the commission certifies that the work performed meets the
27 definition of a certified rehabilitation. The entity must include

1 with the entity's request:

2 (1) information on the property that is sufficient for
3 the commission to determine whether the property meets the
4 definition of a certified historic structure; and

5 (2) information on the rehabilitation, and
6 photographs before and after work is performed, sufficient for the
7 commission to determine whether the rehabilitation meets the United
8 States secretary of the interior's Standards for Rehabilitation as
9 defined in 36 C.F.R. Section 67.7.

10 (b) The commission shall issue a certificate of eligibility
11 to an entity that has incurred eligible costs and expenses as
12 provided by this chapter [~~subchapter~~]. The certificate must:

13 (1) confirm that:

14 (A) the property to which the eligible costs and
15 expenses relate is a certified historic structure; and

16 (B) the rehabilitation qualifies as a certified
17 rehabilitation; and

18 (2) specify the date the certified historic structure
19 was first placed in service after the rehabilitation.

20 (c) The entity must forward the certificate of eligibility
21 and the following documentation to the comptroller to claim the tax
22 credit:

23 (1) an audited cost report issued by a certified
24 public accountant, as defined by Section 901.002, Occupations Code,
25 that itemizes the eligible costs and expenses incurred in the
26 certified rehabilitation of the certified historic structure by the
27 entity;

1 (2) the date the certified historic structure was
2 first placed in service after the rehabilitation and evidence of
3 that placement in service; and

4 (3) an attestation of the total eligible costs and
5 expenses incurred by the entity on the rehabilitation of the
6 certified historic structure.

7 (d) For purposes of approving the tax credit under
8 Subsection (c), the comptroller may rely on the audited cost report
9 provided by the entity that requested the tax credit.

10 (e) An entity that sells or assigns a credit under this
11 chapter [~~subchapter~~] to another entity shall provide a copy of the
12 certificate of eligibility, together with the audited cost report,
13 to the purchaser or assignee.

14 Sec. 172.106 [~~171.905~~]. AMOUNT OF CREDIT; LIMITATIONS.

15 (a) The total amount of the credit under this chapter [~~subchapter~~]
16 with respect to the rehabilitation of a single certified historic
17 structure that may be claimed may not exceed 25 percent of the total
18 eligible costs and expenses incurred in the certified
19 rehabilitation of the certified historic structure.

20 (b) The total credit claimed for a report, including the
21 amount of any carryforward under Section 172.107 [~~171.906~~], may not
22 exceed the amount of franchise tax due for the report after any
23 other applicable tax credits.

24 (c) Eligible costs and expenses may only be counted once in
25 determining the amount of the tax credit available, and more than
26 one entity may not claim a credit for the same eligible costs and
27 expenses.

1 Sec. 172.107 [~~171.906~~]. CARRYFORWARD. (a) If an entity is
2 eligible for a credit that exceeds the limitation under Section
3 172.106(b) [~~171.905(b)~~], the entity may carry the unused credit
4 forward for not more than five consecutive reports.

5 (b) A carryforward is considered the remaining portion of a
6 credit that cannot be claimed in the current year because of the
7 limitation under Section 172.106(b) [~~171.905(b)~~].

8 Sec. 172.108 [~~171.907~~]. APPLICATION FOR CREDIT. (a) An
9 entity must apply for a credit under this chapter [~~subchapter~~] on or
10 with the report for the period for which the credit is claimed.

11 (b) An entity shall file with any report on which the credit
12 is claimed a copy of the certificate of eligibility issued by the
13 commission under Section 172.105 [~~171.904~~] and any other
14 information required by the comptroller to sufficiently
15 demonstrate that the entity is eligible for the credit.

16 (c) The burden of establishing eligibility for and the value
17 of the credit is on the entity.

18 Sec. 172.109 [~~171.908~~]. SALE OR ASSIGNMENT OF CREDIT. (a)
19 An entity that incurs eligible costs and expenses may sell or assign
20 all or part of the credit that may be claimed for those costs and
21 expenses to one or more entities, and any entity to which all or
22 part of the credit is sold or assigned may sell or assign all or part
23 of the credit to another entity. There is no limit on the total
24 number of transactions for the sale or assignment of all or part of
25 the total credit authorized under this chapter [~~subchapter~~],
26 however, collectively all transfers are subject to the maximum
27 total limits provided by Section 172.106 [~~171.905~~].

1 (b) An entity that sells or assigns a credit under this
2 section and the entity to which the credit is sold or assigned shall
3 jointly submit written notice of the sale or assignment to the
4 comptroller on a form promulgated by the comptroller not later than
5 the 30th day after the date of the sale or assignment. The notice
6 must include:

7 (1) the date of the sale or assignment;

8 (2) the amount of the credit sold or assigned;

9 (3) the names and federal tax identification numbers
10 of the entity that sold or assigned the credit or part of the credit
11 and the entity to which the credit or part of the credit was sold or
12 assigned; and

13 (4) the amount of the credit owned by the selling or
14 assigning entity before the sale or assignment, and the amount the
15 selling or assigning entity retained, if any, after the sale or
16 assignment.

17 (c) The sale or assignment of a credit in accordance with
18 this section does not extend the period for which a credit may be
19 carried forward and does not increase the total amount of the credit
20 that may be claimed. After an entity claims a credit for eligible
21 costs and expenses, another entity may not use the same costs and
22 expenses as the basis for claiming a credit.

23 (d) Notwithstanding the requirements of this chapter
24 [~~subchapter~~], a credit earned or purchased by, or assigned to, a
25 partnership, limited liability company, S corporation, or other
26 pass-through entity may be allocated to the partners, members, or
27 shareholders of that entity and claimed under this chapter

1 ~~[subchapter]~~ in accordance with the provisions of any agreement
2 among the partners, members, or shareholders and without regard to
3 the ownership interest of the partners, members, or shareholders in
4 the rehabilitated certified historic structure, provided that the
5 entity that claims the credit must be subject to the tax imposed
6 under Chapter 171 ~~[this chapter]~~.

7 (e) An entity that incurs eligible costs and expenses or to
8 which all or part of a credit is sold or assigned and that is subject
9 to a premium tax imposed under Chapter 221, 222, 223, or 224,
10 Insurance Code, may claim all or part of the credit against that
11 tax. The provisions of this chapter ~~[subchapter]~~, including
12 provisions relating to the total amount of the credit that may be
13 claimed for a report, the carryforward of the credit, and the sale
14 or assignment of the credit, apply with respect to a credit claimed
15 against a tax imposed under Chapter 221, 222, 223, or 224, Insurance
16 Code, to the same extent those provisions apply to a credit claimed
17 against the tax imposed under Chapter 171 of this code ~~[this~~
18 ~~chapter]~~. An entity claiming all or part of a credit as authorized
19 by this subsection is not required to pay any additional
20 retaliatory tax levied under Chapter 281, Insurance Code, as a
21 result of claiming that credit.

22 Sec. 172.110 ~~[171.909]~~. RULES. The commission and the
23 comptroller shall adopt rules necessary to implement this chapter
24 ~~[subchapter]~~.

25 SECTION 3. The changes in law made by this Act do not affect
26 the validity of a credit that accrued under Subchapter S, Chapter
27 171, Tax Code, before the effective date of this Act. The credit

H.B. No. 3709

1 continues in effect as a credit under Chapter 172, Tax Code, as
2 transferred, redesignated, and amended by this Act.

3 SECTION 4. This Act takes effect September 1, 2023.