87R6534 SMT-D

By:  Hughes S.B. No. 813

A BILL TO BE ENTITLED

AN ACT

relating to the 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.  Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 231 to read as follows:

CHAPTER 231. PREMIUM TAX CREDIT FOR CERTIFIED REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

Sec. 231.0001.  DEFINITIONS. In this chapter:

(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

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

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

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

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

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

(4)  "Eligible costs and expenses" means qualified rehabilitation expenditures as defined by Section 47(c)(2), Internal Revenue Code of 1986, except that the depreciation and tax-exempt use provisions of that section do not apply to costs and expenses incurred by a federal tax-exempt organization, and those costs and expenses are eligible costs and expenses if the other provisions of Section 47(c)(2), Internal Revenue Code of 1986, are satisfied.

(5)  "Federal tax-exempt organization" means an entity exempted from the federal income tax under Section 501(a), Internal Revenue Code of 1986.

(6)  "State premium tax liability" means any liability incurred by an entity under Chapter 221, 222, 223, or 224.

Sec. 231.0002.  ELIGIBILITY FOR CREDIT. An entity is eligible to apply for a credit against state premium tax liability in the amount and under the conditions provided by this chapter.

Sec. 231.0003.  QUALIFICATION. An entity is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure as provided by this chapter if:

(1)  the rehabilitated certified historic structure is placed in service on or after September 1, 2021;

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

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

Sec. 231.0004.  CERTIFICATION OF ELIGIBILITY. (a) Before claiming, selling, or assigning a credit under this chapter, the entity that incurred the eligible costs and expenses in the rehabilitation of a certified historic structure must request from the commission a certificate of eligibility on which the commission certifies that the work performed meets the definition of a certified rehabilitation. The entity must include with the entity's request:

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

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

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

(1)  confirm that:

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

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

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

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

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

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

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

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

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

Sec. 231.0005.  AMOUNT OF CREDIT; LIMITATIONS. (a) The total amount of the credit under this chapter with respect to the rehabilitation of a single certified historic structure that may be claimed may not exceed 25 percent of the total eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

(b)  The total credit that may be claimed on a tax report, including the amount of any carryforward under Section 231.0006, may not exceed the amount of state premium tax liability due for the report after any other applicable credits.

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

Sec. 231.0006.  CARRYFORWARD. (a) If an entity is eligible for a credit that exceeds the limitation under Section 231.0005(b), the entity may carry the unused credit forward for not more than five consecutive tax reports.

(b)  A carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation under Section 231.0005(b).

Sec. 231.0007.  APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax report for the period for which the credit is claimed.

(b)  An entity shall file with any tax report on which the credit is claimed a copy of the certificate of eligibility issued by the commission under Section 231.0004 and any other information required by the comptroller to sufficiently demonstrate that the entity is eligible for the credit.

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

Sec. 231.0008.  SALE OR ASSIGNMENT OF CREDIT. (a) An entity that incurs eligible costs and expenses may sell or assign all or part of the credit that may be claimed for those costs and expenses to one or more entities, and any entity to which all or part of the credit is sold or assigned may sell or assign all or part of the credit to another entity. There is no limit on the total number of transactions for the sale or assignment of all or part of the total credit authorized under this chapter, however, collectively all transfers are subject to the maximum total limits provided by Section 231.0005.

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

(1)  the date of the sale or assignment;

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

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

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

(c)  The sale or assignment of a credit in accordance with this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed. After an entity claims a credit under this chapter for eligible costs and expenses, another entity may not use the same costs and expenses as the basis for claiming a credit under this chapter or Subchapter S, Chapter 171, Tax Code.

(d)  Notwithstanding the requirements of this chapter, a credit earned or purchased by, or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity and claimed under this chapter in accordance with the provisions of any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure, provided that the entity that claims the credit must be subject to the tax imposed under Chapter 221, 222, 223, or 224.

Sec. 231.0009.  RETALIATORY TAX. An entity that claims a credit under this chapter is not required to pay any additional retaliatory tax levied under Chapter 281 as a result of the credit.

Sec. 231.0010.  RULES. The commission and the comptroller shall adopt rules necessary to implement this chapter.

SECTION 2.  Section 171.908(c), Tax Code, is amended to read as follows:

(c)  The sale or assignment of a credit in accordance with this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed.  After an entity claims a credit under this subchapter for eligible costs and expenses, another entity may not use the same costs and expenses as the basis for claiming a credit under this subchapter or Chapter 231, Insurance Code.

SECTION 3.  (a) Section 171.908(e), Tax Code, is repealed.

(b)  The repeal of Section 171.908(e), Tax Code, by this section does not affect a credit that accrued under Subchapter S, Chapter 171, Tax Code, before the effective date of this Act. The provisions of that subchapter as they existed immediately before the effective date of this Act are continued in effect for purposes of determining the amount of the credit an entity may claim and the manner in which the entity may claim, sell, or assign the credit or claim any carryforward of the credit.

SECTION 4.  Chapter 231, Insurance Code, as added by this Act, applies only to a report originally due on or after January 1, 2022.

SECTION 5.  This Act takes effect January 1, 2022.