

By: Hefner

H.B. No. 4326

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (1) confirm that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) An entity shall file with any tax report on which the
26 credit is claimed a copy of the certificate of eligibility issued by
27 the commission under Section 231.0004 and any other information

1 required by the comptroller to sufficiently demonstrate that the
2 entity is eligible for the credit.

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

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

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

21 (1) the date of the sale or assignment;
22 (2) the amount of the credit sold or assigned;
23 (3) the names and federal tax identification numbers
24 of the entity that sold or assigned the credit or part of the credit
25 and the entity to which the credit or part of the credit was sold or
26 assigned; and

27 (4) the amount of the credit owned by the selling or

1 assigning entity before the sale or assignment, and the amount the
2 selling or assigning entity retained, if any, after the sale or
3 assignment.

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

11 (d) Notwithstanding the requirements of this chapter, a
12 credit earned or purchased by, or assigned to, a partnership,
13 limited liability company, S corporation, or other pass-through
14 entity may be allocated to the partners, members, or shareholders
15 of that entity and claimed under this chapter in accordance with the
16 provisions of any agreement among the partners, members, or
17 shareholders and without regard to the ownership interest of the
18 partners, members, or shareholders in the rehabilitated certified
19 historic structure, provided that the entity that claims the credit
20 must be subject to the tax imposed under Chapter 221, 222, 223, or
21 224.

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

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

27 SECTION 2. Section 171.908(c), Tax Code, is amended to read

1 as follows:

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

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

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

18 SECTION 4. Chapter 231, Insurance Code, as added by this
19 Act, applies only to a report originally due on or after January 1,
20 2022.

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