

KENTUCKY HISTORIC PRESERVATION TAX CREDIT - Excerpt of Sections 150 & 151 of HB272-SCS1, as of 4/19/2005; subject to provisions of HB272-FCCR1; enacted by the General Assembly on 3/8/2005; signed by the Governor on 3/18/2005.

AN ACT relating to revenue and taxation and making an appropriation therefor and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

As used in this section and Section 151 of this Act:

(1) "Certified historic structure" means a structure that is located within the Commonwealth of Kentucky and is:

(a) Listed individually on the National Register of Historic Places; or

(b) Located in a historic district listed on the National Register of Historic Places and is certified by the council as contributing to the historic significance of the district;

(2) "Certified rehabilitation" means a completed substantial rehabilitation of a certified historic structure that the council certifies meets the United States Secretary of the Interior's Standards for Rehabilitation;

(3) "Certified rehabilitation credit cap" means three million dollars (\$3,000,000);

(4) Council means the Kentucky Heritage Council;

(5) "Disqualifying work" means work that is performed within three (3) years of the completion of the certified rehabilitation that, if performed as part of the rehabilitation certified under this section, would have made the rehabilitation ineligible for certification;

(6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of the Internal Revenue Code, any political subdivision of the Commonwealth, any state or local agency, board, or commission, or any quasi-governmental entity;

(7) "Local government" means a city, county, urban-county, charter county, or

consolidated local government;

(8) "Owner-occupied residential property" means a building or portion thereof, condominium, or cooperative occupied by the owner as his principal residence;

(9) "Qualified rehabilitation expense" means any amount that is properly chargeable to a capital account, whether or not depreciation is allowed under Section 168 of the Internal Revenue Code, and is expended in connection with the certified substantial rehabilitation of a certified historic structure. It shall include the cost of restoring landscaping and fencing that contributes to the historic significance of this structure, but shall not include the cost of acquisition of a certified historic structure, enlargement of or additions to an existing building, or the purchase of personal property;

(10) "Substantial rehabilitation" means rehabilitation of a certified historic structure for which the qualified rehabilitation expenses, during a twenty-four (24) month period selected by the taxpayer or exempt entity, ending with or within the taxable year, exceed:

(a) Twenty thousand dollars (\$20,000) for an owner-occupied residential property; or

(b) For all other property, the greater of:

1. The adjusted basis of the structure; or

2. Twenty thousand dollars (\$20,000);

(11) "Taxpayer" means any individual, corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted.

(12) "Qualified purchased historic home" means any substantially rehabilitated certified historic structure if:

(a) The taxpayer claiming the credit authorized under Section 151 of this Act is the first purchaser of the structure after the date of completion of the substantial rehabilitation;

(b) The structure or a portion thereof will be the principal residence of the taxpayer; and

(c) No credit was allowed to the seller under this section.

A qualified purchased historic home shall be deemed owner-occupied residential property for purposes of this section.

SECTION 2. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

(1) There shall be allowed as a credit against the taxes imposed by KRS 141.020, 141.040, 136.070, or 136.505, an amount equal to:

(a) Thirty percent (30%) of the qualified rehabilitation expenses, in the case of owner-occupied residential property; and

(b) Twenty percent (20%) of the qualified rehabilitation expenses, in the case of all other property.

In the case of an exempt entity that has incurred qualified rehabilitation expenses, the credit provided in this subsection shall be available to transfer or assign as provided under subsection (8) or (9) of this section.

(2) An application for credit must be submitted to the council within thirty (30) days following the close of a calendar year. The council shall determine the amount of credit approved for each taxpayer and notify the taxpayer and Revenue Cabinet of the approved credit amount by the thirty first day of the third month following the close of the calendar year.

(3) The maximum credit which may be claimed with regard to owner-occupied residential property shall be sixty thousand dollars (\$60,000) subject to the provisions of subsection (5) of this section. The credit in this section shall be

- claimed for the taxable year in which the certified rehabilitation is completed.
- (4) In the case of a husband and wife filing separate returns or filing separately on a joint return, the credit may be taken by either or divided equally, but the combined credit shall not exceed sixty thousand dollars (\$60,000) subject to the provisions of subsection (5) of this section.
- (5) The credit amount approved for a calendar year for all taxpayers under this section shall be limited to the certified rehabilitation credit cap. The council shall notify the taxpayer and the Revenue Cabinet when the total credit amount approved exceeds the certified rehabilitation credit cap. The council shall apportion the certified rehabilitation credit cap as follows: Three million dollars (\$3,000,000) multiplied by a fraction, the numerator which is the approved credit amount for an individual taxpayer for a calendar year and the denominator which is the total approved credits for all taxpayers for a calendar year.
- (6) If the credit amount that may be claimed in any tax year as determined under subsections (3) to (5) of this section exceeds the taxpayer's total tax liabilities under KRS 141.020, 141.040, 136.070, or 136.505, the taxpayer may carry the excess tax credit forward until the tax credit is used, provided that any tax credits not used within seven (7) years of the taxable year the certified rehabilitation was complete shall be lost.
- (7) If the taxpayer is a pass-through entity not subject to the tax imposed by KRS 141.040, the credit shall pass through in the same proportion as the distributive share of income or loss is passed through.
- (8) Credits received under this section may be transferred or assigned, for some or no consideration, along with any related benefits, rights, responsibilities, and liabilities to any entity subject to the tax imposed by KRS 136.505. Within thirty (30) days of the date of any transfer of credits, the party transferring the credits shall notify the Revenue Cabinet of:

- (a) The name, address, employer identification number, and bank routing and transfer number, of the party to which the credits are transferred;
- (b) The amount of credits transferred; and
- (c) Any additional information the Revenue Cabinet deems necessary.
- The provisions of this subsection shall apply to any credits that pass through to a successor or beneficiary of a taxpayer.
- (9) For purposes of this section, a lessee of a certified historic structure shall be treated as the owner of the structure if the remaining term of the lease is not less than the minimum period promulgated by administrative regulation by the council.
- (10) The taxes imposed in KRS 141.020 and KRS 141.040 shall not apply to any consideration received for the transfer, sale, assignment, or use of a tax credit approved under this section.
- (11) The Revenue Cabinet shall assess a penalty on any taxpayer or exempt entity that performs disqualifying work on a certified historic structure for which a rehabilitation has been certified under this section in an amount equal to one hundred percent (100%) of the tax credit allowed on the rehabilitation.
- (12) The council may impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications.
- (13) The council may authorize a local government to perform an initial review of applications for the credit allowed under this section and forward the applications to the council with its recommendations.
- (14) The council and the Revenue Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to establish policies and procedures to implement the provisions of subsections (1) to (13) of this section.
- (15) The tax credit authorized by this section shall apply to tax periods ending on or after December 31, 2005.

