

1999 PUBLIC AND LOCAL ACTS

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[No. 213]

(SB 888)

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," by amending section 39c (MCL 208.39c), as added by 1998 PA 534.

*The People of the State of Michigan enact:*

208.39c Rehabilitation of historic resource; tax credit; plan.  
[M.S.A. 7.558(39c)]

Sec. 39c. (1) A qualified taxpayer with a rehabilitation plan certified after December 31, 1998 and before January 1, 2003 may credit against the tax imposed by this act the amount determined pursuant to subsection (2) for the qualified expenditures for the rehabilitation of a historic resource pursuant to the rehabilitation plan in the year in which the certification of completed rehabilitation of the historic resource is issued provided that the certification of completed rehabilitation was issued not more than 5 years after the rehabilitation plan was certified by the Michigan historical center.

(2) The credit allowed under this section shall be 25% of the qualified expenditures that are eligible for the credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under 47(a)(2) of the internal revenue code, 25% of the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to a historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code, subject to both of the following:

(a) A taxpayer with qualified expenditures that are eligible for the credit under section 47(a)(2) of the internal revenue code may not claim a credit under this section for those qualified expenditures unless the taxpayer has claimed and received a credit for those qualified expenditures under section 47(a)(2) of the internal revenue code.

(b) A credit under this section shall be reduced by the amount of a credit received by the taxpayer for the same qualified expenditures under section 47(a)(2) of the internal revenue code.

(3) To be eligible for the credit under this section, the taxpayer shall apply to and receive from the Michigan historical center certification that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource meet the criteria under subsection (6) and either of the following:

(a) All of the following criteria:

(i) The historic resource contributes to the significance of the historic district in which it is located.

(ii) Both the rehabilitation plan and completed rehabilitation of the historic resource meet the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 C.F.R. 67.

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(iii) All rehabilitation work has been done to or within the walls, boundaries, or structures of the historic resource or to historic resources located within the property boundaries of the property.

(b) The taxpayer has received certification from the national park service that the historic resource's significance, the rehabilitation plan, and the completed rehabilitation qualify for the credit allowed under section 47(a)(2) of the internal revenue code.

(4) If a qualified taxpayer is eligible for the credit allowed under section 47(a)(2) of the internal revenue code, the qualified taxpayer shall file for certification with the center to qualify for the credit allowed under section 47(a)(2) of the internal revenue code. If the qualified taxpayer has previously filed for certification with the center to qualify for the credit allowed under section 47(a)(2) of the internal revenue code, additional filing for the credit allowed under this section is not required.

(5) The center may inspect a historic resource at any time during the rehabilitation process and may revoke certification of completed rehabilitation if the rehabilitation was not undertaken as represented in the rehabilitation plan or if unapproved alterations to the completed rehabilitation are made during the 5 years after the tax year in which the credit was claimed. The center shall promptly notify the department of a revocation.

(6) Qualified expenditures for the rehabilitation of a historic resource may be used to calculate the credit under this section if the historic resource meets 1 of the criteria listed in subdivision (a) and 1 of the criteria listed in subdivision (b):

(a) The resource is 1 of the following during the tax year in which a credit under this section is claimed for those qualified expenditures:

(i) Individually listed on the national register of historic places or state register of historic sites.

(ii) A contributing resource located within a historic district listed on the national register of historic places or the state register of historic sites.

(iii) A contributing resource located within a historic district designated by a local unit pursuant to an ordinance adopted under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(b) The resource meets 1 of the following criteria during the tax year in which a credit under this section is claimed for those qualified expenditures:

(i) The historic resource is located in a designated historic district in a local unit of government with an existing ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(ii) The historic resource is located in an incorporated local unit of government that does not have an ordinance under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, and has a population of less than 5,000.

(iii) The historic resource is located in an unincorporated local unit of government.

(7) If a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or any portion of a credit allowed under this section to its partners, members, or shareholders, based on the partner's, member's, or shareholder's proportionate share of ownership or based on an alternative method approved by the department. A credit assignment under this subsection is irrevocable and shall be made in the tax year in which a certificate of completed rehabilitation is issued. A qualified taxpayer may claim a portion of a credit and assign the remaining credit amount. A partner, member, or shareholder that is an assignee shall not subsequently assign a credit or any portion of a credit assigned to the partner, member, or shareholder under this subsection. A credit amount assigned under this subsection may be claimed

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against the partner's, member's, or shareholder's tax liability under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. A credit assignment under this subsection shall be made on a form prescribed by the department. The qualified taxpayer and assignees shall send a copy of the completed assignment form to the department in the tax year in which the assignment is made and attach a copy of the completed assignment form to the annual return required to be filed under this act for that tax year.

(8) If the credit allowed under this section for the tax year and any unused carry-forward of the credit allowed by this section exceed the taxpayer's tax liability for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurs first. A carryforward under this subsection may be claimed in tax years that began after December 31, 2002 for a credit based on a rehabilitation plan certified before January 1, 2003.

(9) If the taxpayer sells a historic resource for which a credit under this section was claimed less than 5 years after the year in which the credit was claimed, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the sale:

(a) If the sale is less than 1 year after the year in which the credit was claimed, 100%.

(b) If the sale is at least 1 year but less than 2 years after the year in which the credit was claimed, 80%.

(c) If the sale is at least 2 years but less than 3 years after the year in which the credit was claimed, 60%.

(d) If the sale is at least 3 years but less than 4 years after the year in which the credit was claimed, 40%.

(e) If the sale is at least 4 years but less than 5 years after the year in which the credit was claimed, 20%.

(f) If the sale is 5 years or more after the year in which the credit was claimed, an addback to the taxpayer's tax liability shall not be made.

(10) If a certification of completed rehabilitation is revoked under subsection (5) less than 5 years after the year in which a credit was claimed, the following percentage of the credit amount previously claimed relative to that historic resource shall be added back to the tax liability of the taxpayer in the year of the revocation:

(a) If the revocation is less than 1 year after the year in which the credit was claimed, 100%.

(b) If the revocation is at least 1 year but less than 2 years after the year in which the credit was claimed, 80%.

(c) If the revocation is at least 2 years but less than 3 years after the year in which the credit was claimed, 60%.

(d) If the revocation is at least 3 years but less than 4 years after the year in which the credit was claimed, 40%.

(e) If the revocation is at least 4 years but less than 5 years after the year in which the credit was claimed, 20%.

(f) If the revocation is 5 years or more after the year in which the credit was claimed, an addback to the taxpayer's tax liability shall not be made.

(11) The department of state through the Michigan historical center may impose a fee to cover the administrative cost of implementing the program under this section.

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(12) The qualified taxpayer shall attach all of the following to the qualified taxpayer's annual return required under this act or under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, if applicable, on which the credit is claimed:

(a) Certification of completed rehabilitation.

(b) Certification of historic significance related to the historic resource and the qualified expenditures used to claim a credit under this section.

(c) A completed assignment form if the qualified taxpayer has assigned any portion of a credit allowed under this section to a partner, member, or shareholder, or if the taxpayer is an assignee of any portion of a credit allowed under this section.

(13) Not later than July 19, 1999, the department of state shall submit rules to implement this section for public hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(14) The total of the credits claimed under this section and section 266 of the income tax act of 1967, 1967 PA 281, MCL 206.266, for a rehabilitation project shall not exceed 25% of the total qualified expenditures eligible for the credit under this section for that rehabilitation project.

(15) The department of state through the Michigan historical center shall report all of the following to the legislature annually for the immediately preceding state fiscal year:

(a) The fee schedule used by the center and the total amount of fees collected.

(b) A description of each rehabilitation project certified.

(c) The location of each new and ongoing rehabilitation project.

(16) As used in this section:

(a) "Contributing resource" means a historic resource that contributes to the significance of the historic district in which it is located.

(b) "Historic district" means an area, or group of areas not necessarily having contiguous boundaries, that contains 1 resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.

(c) "Historic resource" means a publicly or privately owned historic building, structure, site, object, feature, or open space located within a historic district designated by the national register of historic places, the state register of historic sites, or a local unit acting under the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215; or that is individually listed on the state register of historic sites or national register of historic places and includes all of the following:

(i) An owner-occupied personal residence or a historic resource located within the property boundaries of that personal residence.

(ii) An income-producing commercial, industrial, or residential resource or a historic resource located within the property boundaries of that resource.

(iii) A resource owned by a governmental body, nonprofit organization, or tax-exempt entity that is used primarily by a taxpayer lessee in a trade or business unrelated to the governmental body, nonprofit organization, or tax-exempt entity and that is subject to tax under this act.

(iv) A resource that is occupied or utilized by a governmental body, nonprofit organization, or tax-exempt entity pursuant to a long-term lease or lease with option to buy agreement.

(v) Any other resource that could benefit from rehabilitation.

(d) "Local unit" means a county, city, village, or township.

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(e) "Long-term lease" means a lease term of at least 27.5 years for a residential resource or at least 31.5 years for a nonresidential resource.

(f) "Michigan historical center" or "center" means the state historic preservation office of the Michigan historical center of the department of state or its successor agency.

(g) "Open space" means undeveloped land, a naturally landscaped area, or a formal or man-made landscaped area that provides a connective link or a buffer between other resources.

(h) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(i) "Qualified expenditures" means capital expenditures that qualify for a rehabilitation credit under section 47(a)(2) of the internal revenue code if the taxpayer is eligible for the credit under section 47(a)(2) of the internal revenue code or, if the taxpayer is not eligible for the credit under section 47(a)(2) of the internal revenue code, the qualified expenditures that would qualify under section 47(a)(2) of the internal revenue code except that the expenditures are made to a historic resource that is not eligible for the credit under section 47(a)(2) of the internal revenue code that were paid not more than 5 years after the certification of the rehabilitation plan that included those expenditures was approved by the center, and that were paid after December 31, 1998 for the rehabilitation of a historic resource. Qualified expenditures do not include capital expenditures for nonhistoric additions to a historic resource except an addition that is required by state or federal regulations that relate to historic preservation, safety, or accessibility. Expenditures made after December 31, 2002 and not more than 5 years after the certification of the rehabilitation plan are qualified expenditures only if the rehabilitation plan received certification by the Michigan historical center before January 1, 2003.

(j) "Qualified taxpayer" means a person that is an assignee under subsection (7) or either owns the resource to be rehabilitated or has a long-term lease agreement with the owner of the historic resource and that has qualified expenditures for the rehabilitation of the historic resource equal to or greater than 10% of the state equalized valuation of the property. If the historic resource to be rehabilitated is a portion of a historic or nonhistoric resource, the state equalized valuation of only that portion of the property shall be used for purposes of this subdivision. If the assessor for the local tax collecting unit in which the historic resource is located determines the state equalized valuation of that portion, that assessor's determination shall be used for purposes of this subdivision. If the assessor does not determine that state equalized valuation of that portion, qualified expenditures, for purposes of this subdivision, shall be equal to or greater than 5% of the appraised value as determined by a certified appraiser. If the historic resource to be rehabilitated does not have a state equalized valuation, qualified expenditures for purposes of this subdivision shall be equal to or greater than 5% of the appraised value of the resource as determined by a certified appraiser.

(k) "Rehabilitation plan" means a plan for the rehabilitation of a historic resource that meets the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitation of historic buildings under 36 C.F.R. 67.

This act is ordered to take immediate effect.

Approved December 28, 1999.

Filed with Secretary of State December 28, 1999.

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