

2018 -- S 2073

LC003457

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO TAXATION -- HISTORIC PRESERVATION TAX CREDITS 2013

Introduced By: Senators Satchell, Conley, Jabour, Pearson, and Euer

Date Introduced: January 18, 2018

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 44-33.6-4 of the General Laws in Chapter 44-33.6 entitled "Historic  
2 Preservation Tax Credits 2013" is hereby amended to read as follows:

3 **44-33.6-4. Administration.**

4 (a) To claim the tax credit authorized in this chapter, taxpayers shall apply:

5 (1) To the commission prior to the certified historic structure being placed in service for a  
6 certification that the certified historic structure's rehabilitation will be consistent with the  
7 standards of the Secretary of the United States Department of the Interior for rehabilitation;

8 (2) To the commission after completion of the rehabilitation work of the certified historic  
9 structure for a certification that the rehabilitation is consistent with the standards of the Secretary  
10 of the United States Department of the Interior for rehabilitation; and

11 (3) To the division of taxation after completion of the rehabilitation work of the certified  
12 historic structure for a certification as to the amount of tax credit for which the rehabilitation  
13 qualifies. The commission and the division of taxation may rely on the facts represented in the  
14 application without independent investigation and, with respect to the amount of tax credit for  
15 which the rehabilitation qualifies, upon the certification of a certified public accountant licensed  
16 in the state of Rhode Island. The applications shall be developed by the commission and the  
17 division of taxation and may be amended from time to time.

18 (b) Within thirty (30) days after the commission's and division of taxation's receipt of the  
19 taxpayer's application requesting certification for the completed rehabilitation work:

1 (1) The commission shall issue the taxpayer a written determination either denying or  
2 certifying the rehabilitation; and

3 (2) Division of taxation shall issue a certification of the amount of credit for which the  
4 rehabilitation qualifies. To claim the tax credit, the division of taxation's certification as to the  
5 amount of the tax credit shall be attached to all state tax returns on which the credit is claimed.

6 (c) No taxpayer may benefit from the provisions of this chapter unless the owner of the  
7 certified historic structure grants a restrictive covenant to the commission, agreeing that during  
8 the holding period no material alterations to the certified historic structure will be made without  
9 the commission's prior approval and agreeing that such shall be done in a manner consistent with  
10 the standards of the Secretary of the United States Department of the Interior; and, in the event  
11 the owner applies for the twenty-five percent (25%) tax credit, that either:

12 (1) At least twenty-five percent (25%) of the total rentable area of the certified historic  
13 structure will be made available for a trade or business; or

14 (2) The entire rentable area located on the first floor of the certified historic structure will  
15 be made available for a trade or business, in either case, for a period of sixty (60) months after the  
16 placed in service date of the certified historic structure or identifiable portion thereof.

17 (d) The division of taxation shall charge a fee equal to three percent (3%) of qualified  
18 rehabilitation expenditures. The fee shall be payable upon submission of the Part 2 application [no](#)  
19 [later than ninety \(90\) days after the date of the commission's written determination certifying the](#)  
20 [rehabilitation.](#) The fee shall be non-refundable.

21 (e) Notwithstanding any provisions of the general laws or regulations adopted thereunder  
22 to the contrary, including, but not limited to, the provisions of chapter 2 of title 37, the division of  
23 taxation is hereby expressly authorized and empowered to enter into contracts with persons,  
24 firms, partnerships, trusts, estates, limited liability companies, corporations (whether for profit or  
25 nonprofit) or other business entities that incur qualified rehabilitation expenditures for the  
26 substantial rehabilitation of certified historic structures or some identifiable portion of a structure.  
27 Upon payment of the portion of the fee set forth in subdivision (d) above, the division of taxation  
28 and the applicant shall enter into a contract for tax credits consistent with the terms and  
29 provisions of this chapter.

30 (f) Upon satisfaction of the requirements set forth herein and the payment of the fees as  
31 set forth in subdivision (d) above, the division of taxation shall, on behalf of the State of Rhode  
32 Island, guarantee the delivery of one hundred percent (100%) of the tax credit and use of one  
33 hundred percent (100%) of the tax credit in the tax year a certified historic structure is placed in  
34 service through a contract with persons, firms, partnerships, trusts, estates, limited liability

1 companies, corporations (whether for profit or nonprofit) or other business entities that will incur  
2 qualified rehabilitation expenditures for the substantial rehabilitation of a certified historic  
3 structure or some identifiable portion of a structure.

4 (g) Any contract executed pursuant to this chapter by a person, firm, partnership, trust,  
5 estate, limited liability company, corporation (whether for profit or nonprofit) or other business  
6 entity shall be assignable to:

7 (1) An affiliate thereof without any consent from the division of taxation;

8 (2) A banking institution as defined by subdivision 44-14-2(2) or credit union as defined  
9 in subdivision 44-15-1.1(1) without any consent from the division of taxation; or

10 (3) A person, firm, partnership, trust, estate, limited liability company, corporation  
11 (whether for profit or nonprofit) or other business entity that incurs qualified rehabilitation  
12 expenditures for the substantial rehabilitation of certified historic structures or some identifiable  
13 portion of a structure, with such assignment to be approved by the division of taxation, which  
14 approval shall not be unreasonably withheld or conditioned. For purposes of this subsection,  
15 "affiliate" shall be defined as any entity controlling, controlled by or under common control with  
16 such person, firm, partnership, trust, estate, limited liability company, corporation (whether for  
17 profit or nonprofit) or other business entity.

18 (h) If information comes to the attention of the commission or division of taxation at any  
19 time up to and including the last day of the holding period that is materially inconsistent with  
20 representations made in an application, the commission may deny the requested certification or  
21 revoke a certification previously given, and in either instance all fees paid by the applicant shall  
22 be deemed forfeited. In the event that tax credits or a portion of tax credits are subject to  
23 recapture for ineligible costs and such tax credits have been transferred, assigned and/or  
24 allocated, the state will pursue its recapture remedies and rights against the applicant of the tax  
25 credits, and all fees paid by the applicant shall be deemed forfeited. No redress shall be sought  
26 against assignees, transferees or allocates of such credits provided they acquired the tax credits by  
27 way of an arms-length transaction, for value, and without notice of violation, fraud or  
28 misrepresentation.

29 (i) The commission, in consultation with the division of taxation, shall promulgate such  
30 rules and regulations as are necessary to carry out the intent and purpose of this chapter.

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would provide that applicants for historic tax credits shall have ninety (90) days  
2 after the date of the commission's written determination certifying the rehabilitation to pay the  
3 required three percent (3%) non-refundable fee to the division of taxation.

4           This act would take effect upon passage.

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