2015-2016 General Assembly

HOUSE BILL 97: 2015 Appropriations Act, Sec. 32.3: Historic Preservation Tax Credit

Committee:
Introduced by:
Analysis of: Sec. 32.3 of S.L. 2015-241

Date:
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***SUMMARY:** Sec. 32.3 of S.L. 2015-241, as amended by Sec. 54.5 of S.L. 2015-264 and Sec. 10.1(b) of S.L. 2015-268, establishes a temporary tax credit for historic rehabilitation as described below. The tax credit becomes effective January 1, 2016, and applies to qualified rehabilitation expenditures incurred on or after that date. The credit will expire for expenses incurred on or after January 1, 2020.*

- ***<u>Income-Producing Property</u>. - A taxpayer is allowed a tax credit, capped at $4.5 million, that is equal to 15% of the first $10 million in qualified rehabilitation expenditures for an income-producing historic structure, plus 10% of the next $10 million, plus 5% for the first $20 million if the structure is located in a Tier 1 or 2 area, plus 5% for the first $20 million if the structure is located on an eligible targeted investment site.***
- ***<u>Non-Income Producing Property</u>. - A taxpayer is allowed a tax credit, capped at $22,500, that is equal to 15% of expenses to rehabilitate a building listed in the National Register of Historic Places or certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior. The taxpayer must have at least $10,000 in expenses to qualify for the credit.***

The credit also applies for certain 2014 and 2015 expenditures. Section 54.5 of S.L. 2015-264 (General Statutes Commission Technical Corrections Act of 2015) allows a taxpayer to claim the credit for expenses incurred in 2014 and 2015 if: (i) the historic structure is located in a Tier 1 or Tier 2 county; (ii) the structure is owned by a city; (iii) the rehabilitation activity commenced in 2014; and (iv) a certificate of occupancy is issued on or before December 31, 2015.

Finally, this section also modifies the expiration of the Mill Rehabilitation Tax Credit, which expired on January 1, 2015. Under prior law, as long as a taxpayer obtained an eligibility certification prior to the expiration date, the taxpayer could claim the credit whenever the project was ultimately placed in service. This section provides that eligibility certifications will expire on January 1, 2023, so the availability of the credit is not as open-ended.

CURRENT LAW: Article 3D of Chapter 105, titled Historic Rehabilitation Tax Credits, provided a tax credit for rehabilitating income-producing historic structures (G.S. 105-129.35) and a tax credit for rehabilitating non-income-producing historic structures (G.S. 105-129.36). Article 3D expired for rehabilitation expenditures incurred on or after January 1, 2015.

The former Historic Rehabilitation Tax Credits were very similar to the tax credits established by Section 32.3 of S.L. 2015-241. However, the former credits were not capped and had a higher credit percentage. A chart appears in the Background section of this summary comparing the new credit and the former Historic Rehabilitation Tax Credits.

Article 3H of Chapter 105, titled Mill Rehabilitation Tax Credit, provided a tax credit for income-producing rehabilitated mill property (G.S. 105-129.71) and a tax credit for non-income-producing rehabilitated mill property (G.S. 105-129.72). Article 3H expired for rehabilitation projects for which an application for an eligibility certification is submitted on or after January 1, 2015.

The Mill Rehabilitation Tax Credit could not be claimed for the same project as the former Historic Rehabilitation Tax Credit under Article 3D. The Mill Rehabilitation Tax Credit had a higher credit percentage (as high as 40%) than the former Historic Rehabilitation Tax Credit – making the Mill Rehabilitation Tax Credit more valuable, assuming a project qualified.

BILL ANALYSIS:

New Historic Preservation Tax Credit. – Section 32.3 of S.L. 2015-241 reestablishes a historic rehabilitation tax credit after the sunset of the former Article 3D tax credits. The new historic rehabilitation tax credits would appear as Article 3L, titled Historic Rehabilitation Tax Credits Investment Program. The credit percentages are:

- Credit for rehabilitating income‑producing historic structure is the sum of the following but the tax credit cannot exceed $4,500,000:
  - 15% of expenses from $0 to $10 million
  - 10% of expenses from $10 million to $20 million
  - 5% of expenses from $0 to $20 million if the certified historic structure is located in a development tier 1 or 2 area
  - 5% of expenses from $0 to $20 million if the certified historic structure is located on an eligible targeted investment site (i.e., site that was used as a manufacturing facility or for purposes ancillary to manufacturing, as a warehouse for selling agricultural products, or as a public or private utility; is a certified historic structure; and has been at least 65% vacant for a period of at least 2 years)
- Credit for rehabilitating non‑income‑producing historic structures is 15% of the expense if the expense exceeds $10,000 but the tax credit cannot exceed $22,500.

The tax credit for income-producing property (G.S. 105‑129.100) requires the project qualify for the federal historic rehabilitation tax credit under IRC §47. The federal credit only applies to income-producing property, effectively limiting the tax credit to commercial buildings or portions of buildings used for commercial purposes.

The tax credit for non-income-producing property (G.S. 105‑129.101) applies where the federal credit is not allowed. The tax credit for non-income-producing property can apply to personal residences assuming the property meets the other requirements.

The tax credit is nonrefundable. The credit may be elected to apply against franchise tax, individual and corporate income taxes, or gross premiums tax. The credit for rehabilitating income‑producing historic structures may be allocated by pass‑through entities (e.g., partnerships and S corporations) among any of its owners in its discretion as long as an owner's adjusted basis in the pass‑through entity is at least 40% of the credit allocated to that owner. Normally, federal and State rules require allocation of tax items by pass-through entities to meet certain tests to prevent owners from taking a disproportionate share of tax benefits.

The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process and may adopt a schedule of fees for providing any certifications.

The Department of Revenue must include in the economic incentives report the following information itemized by taxpayer:

- Number of taxpayers that took the credits
- Amount of rehabilitation expenses with respect to which credits were taken
- Total cost to the General Fund of the credits taken
- For all taxpayers, total amount of tax credits claimed and the total amount of tax credits taken against current taxes, by type of tax, during the relevant tax year
- For all taxpayers, total amount of tax credits carried forward, by type of tax

New Article 3L sunsets for rehabilitation expenditures incurred on or after January 1, 2020.

Limited Application for 2014 and 2015 Expenses. – Section 54.5 of S.L. 2015-264 modifies the effective date application of the new Historic Preservation Tax Credit for 2014 and 2015 expenses, but only if certain conditions are met. A taxpayer is eligible to apply for the credit in 2016 for 2014 and 2015 expenses if the taxpayer otherwise meets the requirements for the credit and all of the following conditions are met:

- The certified historic structure is located in a Tier 1 or a Tier 2 county.
- The certified historic structure is owned by a city.
- The qualifying rehabilitation activity commenced in 2014.
- A certificate of occupancy is issued on or before December 31, 2015.

Mill Rehabilitation Credit Sunset Modification. – Section 32.3(b) limits any existing eligibility certification for Mill Rehabilitation Tax Credit under former Article 3H by expiring the certifications on January 1, 2023.

EFFECTIVE DATE: The tax credits apply to rehabilitation expenditures incurred on or after January 1, 2016 and sunset for rehabilitation expenditures incurred on or after January 1, 2020. Section 32.3(b) completely sunsets the Mill Rehabilitation Tax Credit under Article 3H effective January 1, 2023 by expiring any eligibility certifications issued before January 1, 2015.

BACKGROUND: The following table compares the new credits and the tax credits under prior law:

	Section 32.3 of S.L. 2015-241 New Historic Preservation Tax Credit (Article 3L)		**Prior Law Historic Rehabilitation (Article 3D)**	
	Income-Producing Property	***Non-Income-Producing Property***	***Income-Producing Property***	***Non-Income-Producing Property***
Statute	**105‑129.100**	**105‑129.101**	**Repealed 105-129.35**	**Repealed 105-129.36**
State Credit Amount (see Maximum Credit for cap)	Sum of: +15% for $0M-$10M +10% for	15%	20% If facility served as a State training school for juvenile offenders,	30% If facility served as a State training school for juvenile offenders,

	$10M-20M +if Tier 1 or 2, 5% for $0M-$20M +if eligible targeted investment site, 5% for $0M-$20M (defined as manufacturing facility, agricultural warehouse or utility that is a certified historic structure and 65% vacant for 2 years)		40%	40%
State Maximum Credit	$4,500,000	$22,500 per discrete property parcel (defined as lot or tract described by deed or condominium); credit allowed only once every 5 years	No cap	No cap
Federal Credit (IRC §47)	Yes, must be allowed a federal credit +20% federal credit (federal credit can be enhanced for some locations and reduced to 10% for some properties)	No, must not be allowed a federal credit	Yes, must be allowed a federal credit +20% federal credit (federal credit can be enhanced for some locations and reduced to 10% for some properties)	No, must not be allowed a federal credit
Substantial Rehabilitation Test	Cost of a project must exceed the greater of $5,000 or the building's adjusted basis	Expenses must exceed $10,000	Cost of a project must exceed the greater of $5,000 or the building's adjusted basis	Expenses must exceed $25,000 in a 24 month period
Structure Type	Certified historic structure using federal definition (any building and its structure components which is listed in the National Register, or is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district)	Individually listed in the National Register of Historic Places or certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.	Certified historic structure using federal definition (any building and its structure components which is listed in the National Register, or is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district)	Individually listed in the National Register of Historic Places or certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior

Sunset	January 1, 2020	January 1, 2020	January 1, 2015	January 1, 2015