

1 AN ACT relating to the certified rehabilitation tax credit cap.

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

3 ➔Section 1. KRS 171.396 is amended to read as follows:

4 As used in this section and KRS 171.3961 and 171.397:

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

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

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

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

14 (3) "Certified rehabilitation credit cap" means an annual amount of:

15 (a) Three million dollars (\$3,000,000) for applications received prior to April 30,  
16 2010;~~and~~

17 (b) Five million dollars (\$5,000,000) for applications received on or after April  
18 30, 2010, ***but before April 30, 2020; and***

19 ***(c) Thirty million dollars (\$30,000,000) for applications received on or after***  
20 ***April 30, 2020;***

21 plus any amount added to the certified rehabilitation credit cap pursuant to KRS  
22 171.397(2)(c);

23 (4) "Council" means the Kentucky Heritage Council;

24 (5) "Disqualifying work" means work that is performed within three (3) years of the  
25 completion of the certified rehabilitation that, if performed as part of the  
26 rehabilitation certified under KRS 171.397, would have made the rehabilitation  
27 ineligible for certification;

- 1 (6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of  
2 the Internal Revenue Code, any political subdivision of the Commonwealth, any  
3 state or local agency, board, or commission, or any quasi-governmental entity;
- 4 (7) "Local government" means a city, county, urban-county, charter county, or  
5 consolidated local government;
- 6 (8) "Owner-occupied residential property" means a building or portion thereof,  
7 condominium, or cooperative occupied by the owner as his or her principal  
8 residence;
- 9 (9) "Qualified rehabilitation expense" means any amount that is properly chargeable to  
10 a capital account, whether or not depreciation is allowed under Section 168 of the  
11 Internal Revenue Code, and is expended in connection with the certified  
12 rehabilitation of a certified historic structure. It shall include the cost of restoring  
13 landscaping and fencing that contributes to the historic significance of this structure,  
14 but shall not include the cost of acquisition of a certified historic structure,  
15 enlargement of or additions to an existing building, or the purchase of personal  
16 property;
- 17 **(10) "Rural county" means a county with a population of less than fifty thousand**  
18 **(50,000) people;**
- 19 **(11)**~~(10)~~ "Substantial rehabilitation" means rehabilitation of a certified historic  
20 structure for which the qualified rehabilitation expenses, during a twenty-four (24)  
21 month period selected by the taxpayer or exempt entity, ending with or within the  
22 taxable year, exceed:
- 23 (a) Twenty thousand dollars (\$20,000) for an owner-occupied residential  
24 property; or
- 25 (b) For all other property, the greater of:
- 26 1. The adjusted basis of the structure; or  
27 2. Twenty thousand dollars (\$20,000);

1 ~~(12)~~~~(11)~~ "Taxpayer" means any individual, corporation, limited liability company,  
 2 business development corporation, partnership, limited partnership, sole  
 3 proprietorship, association, joint stock company, receivership, trust, professional  
 4 service organization, or other legal entity through which business is conducted that:

- 5 (a) Elects to claim the credit on a return and receive a refund as provided in KRS  
 6 171.397(2)(b)2.a.; or  
 7 (b) Is the recipient of a credit which is transferred as provided in KRS  
 8 171.397(2)(b)2.b.; and

9 ~~(13)~~~~(12)~~ "Qualified purchased historic home" means any substantially rehabilitated  
 10 certified historic structure if:

- 11 (a) The taxpayer claiming the credit authorized under KRS 171.397 is the first  
 12 purchaser of the structure after the date of completion of the substantial  
 13 rehabilitation;  
 14 (b) The structure or a portion thereof will be the principal residence of the  
 15 taxpayer; and  
 16 (c) No credit was allowed to the seller under this section.

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

19 ➔Section 2. KRS 171.397 is amended to read as follows:

- 20 (1) (a) For all applications for a preliminary approval received prior to April 30,  
 21 2010, there shall be allowed as a credit against the taxes imposed by KRS  
 22 141.020, 141.040, 141.0401, or 136.505, an amount equal to:  
 23 1. Thirty percent (30%) of the qualified rehabilitation expenses, in the case  
 24 of owner-occupied residential property; and  
 25 2. Twenty percent (20%) of the qualified rehabilitation expenses, in the  
 26 case of all other property.

27 In the case of an exempt entity that has incurred qualified rehabilitation

1 expenses, the credit provided in this subsection shall be available to transfer or  
2 assign as provided under subsection (8) or (9) of this section.

3 (b) For applications for preliminary approval received on or after April 30, 2010,  
4 the credit shall be refundable if the taxpayer makes an election under  
5 subsection (2)(b) of this section.

6 **(c) For applications for preliminary approval received on or after April 30,**  
7 **2020, there shall be allowed as a credit against the taxes imposed by KRS**  
8 **141.020, 141.040, 141.0401, or 136.505, an amount equal to:**

9 **1. Thirty percent (30%) of the qualified rehabilitation expenses, in the**  
10 **case of:**

11 **(a) Owner-occupied residential property; or**

12 **(b) Any property located within a rural county; or**

13 **2. Twenty percent (20%) of the qualified rehabilitation expenses, in the**  
14 **case of all other property.**

15 **The credit shall be refundable if the taxpayer makes an election under**  
16 **subsection (2)(b) of this section.**

17 (2) (a) A taxpayer seeking the credit provided under subsection (1) of this section  
18 shall file an application for a preliminary determination of maximum credit  
19 eligibility before April 30 of the year in which the proposed project will begin.  
20 The application shall describe the project and shall include documentation  
21 supporting the qualification of the project for the credit, the proposed start  
22 date, the proposed completion date, the projected qualified rehabilitation  
23 expenses, and any other information the council may require. The council  
24 shall determine the preliminary maximum credit available for each taxpayer  
25 and shall notify the taxpayer of that amount by June 30 of the year in which  
26 the application was filed. If total credits applied for in any year exceed the  
27 certified rehabilitation credit cap, plus any amounts added to the cap pursuant

1 to paragraph (c) of this subsection, the provisions of subsection (5) of this  
2 section shall be applied to reduce the approved credits for all taxpayers with  
3 qualifying applications for that year.

- 4 (b) 1. An application for a final determination of credit shall be submitted to  
5 the council upon completion of the project.
- 6 2. The application shall include an irrevocable election by the taxpayer to:  
7 a. Use the credit, in which case, the credit shall be refundable; or  
8 b. Transfer the credit.
- 9 3. The council shall determine the final amount of credit approved for each  
10 taxpayer based upon the actual expenditures, preliminary determination  
11 of maximum credit, and a determination that the expenditures are  
12 qualified rehabilitation expenses.
- 13 4. The council shall notify the taxpayer and Department of Revenue of the  
14 final approved credit amount within sixty (60) days of the receipt of a  
15 completed application from the taxpayer.

- 16 (c) 1. If the total amount of credits finally approved for a taxpayer under  
17 paragraph (b) of this subsection are less than the credits initially  
18 approved for a taxpayer under paragraph (a) of this subsection, the  
19 difference between the two (2) amounts shall be added to the certified  
20 rehabilitation credit cap for the next calendar year.
- 21 2. If the total amount of credits approved under paragraph (a) of this  
22 subsection in any calendar year is less than the certified rehabilitation  
23 credit cap, the difference between the credits actually awarded and the  
24 certified rehabilitation credit cap shall be added to the certified  
25 rehabilitation credit cap for the next calendar year.

- 26 (3) (a) The maximum credit which may be claimed with regard to owner-occupied  
27 residential property shall be sixty thousand dollars (\$60,000) subject to

1 subsection (5) of this section. The credit in this section shall be claimed for  
2 the taxable year in which the certified rehabilitation is completed.

3 (b) **For applications for preliminary approval received prior to April 30, 2020,**  
4 the maximum credit which may be claimed with regard to all other property  
5 that is not owner-occupied residential shall be four hundred thousand dollars  
6 (\$400,000) subject to subsection (5) of this section. The credit in this section  
7 shall be claimed for the taxable year in which the certified rehabilitation is  
8 completed.

9 (c) **For applications for preliminary approval received on or after April 30,**  
10 **2020, the maximum credit which may be claimed with regard to all other**  
11 **property that is not owner-occupied residential shall be five million dollars**  
12 **(\$5,000,000) subject to subsection (5) of this section. The credit in this**  
13 **section shall be claimed for the taxable year in which the certified**  
14 **rehabilitation is completed.**

15 (4) In the case of a husband and wife filing separate returns or filing separately on a  
16 joint return, the credit may be taken by either or divided equally, but the combined  
17 credit shall not exceed sixty thousand dollars (\$60,000) if subject to the limitation  
18 in subsection (3)(a) of this section, ~~for~~ four hundred thousand dollars (\$400,000) if  
19 subject to the limitation in subsection (3)(b) of this section, **or five million dollars**  
20 **(\$5,000,000) if subject to the limitation in subsection (3)(c) of this section,** subject  
21 to the provisions of subsection (5) of this section.

22 (5) (a) The credit amount approved for a calendar year for all taxpayers under  
23 subsection (2)(a) of this section shall be limited to the certified rehabilitation  
24 credit cap. When the total credits applied for and approved in any year under  
25 subsection (2)(a) of this section exceed the certified rehabilitation credit cap,  
26 the council shall apportion the certified rehabilitation credit cap as follows:  
27 The certified rehabilitation credit cap for the year under consideration shall be

1 multiplied by a fraction, the numerator which is the approved credit amount  
2 for an individual taxpayer for a calendar year and the denominator which is  
3 the total approved credits for all taxpayers for a calendar year.

4 **(b) For applications for preliminary approval received on or after April 30,**  
5 **2020, forty percent (40%) of the certified rehabilitation credit cap shall be**  
6 **reserved for property located within a rural county.**

7 (6) (a) For all applications received prior to April 30, 2010, if the credit amount that  
8 may be claimed in any tax year as determined under subsections (3) to (5) of  
9 this section exceeds the taxpayer's total tax liabilities under KRS 136.505,  
10 141.020, or 141.040 and 141.0401, the taxpayer may carry the excess tax  
11 credit forward until the tax credit is used, provided that any tax credits not  
12 used within seven (7) years of the taxable year the certified rehabilitation was  
13 complete shall be lost.

14 (b) For all applications received on or after April 30, 2010, if the credit amount  
15 that may be claimed in any tax year as determined under subsections (3) to (5)  
16 of this section exceeds the taxpayer's total tax liabilities under KRS 136.505,  
17 141.020, or 141.040 and 141.0401, the taxpayer may receive a refund, if the  
18 taxpayer elected to take the credit as required by subsection (2)(b) of this  
19 section.

20 (7) (a) The credit shall apply against both the tax imposed by KRS 141.020 or  
21 141.040 and the limited liability entity tax imposed by KRS 141.0401, with  
22 the ordering of credits as provided in KRS 141.0205.

23 (b) 1. For applications received prior to April 30, 2010, if the taxpayer is a  
24 pass-through entity not subject to the tax imposed by KRS 141.040, the  
25 taxpayer shall apply the credit at the entity level against the limited  
26 liability tax entity imposed by KRS 141.0401, and shall also pass the  
27 credit through in the same proportion as the distributive share of income

1 or loss is passed through.

2 2. For applications received on or after April 30, 2010, if the taxpayer is a  
3 pass-through entity not subject to the tax imposed by KRS 141.040, the  
4 taxpayer shall apply the credit at the entity level against the limited  
5 liability tax entity imposed by KRS 141.0401, and may receive a refund  
6 if the taxpayer elected to take the credit as required by subsection  
7 (2)(b)2.a. of this section.

8 (8) Credits received under this section may be transferred or assigned if an election is  
9 made under subsection (2)(b) of this section, for some or no consideration, along  
10 with any related benefits, rights, responsibilities, and liabilities to any entity subject  
11 to the tax imposed by KRS 136.505. Within thirty (30) days of the date of any  
12 transfer of credits, the party transferring the credits shall notify the Department of  
13 Revenue of:

14 (a) The name, address, employer identification number, and bank routing and  
15 transfer number, of the party to which the credits are transferred;

16 (b) The amount of credits transferred; and

17 (c) Any additional information the Department of Revenue deems necessary.

18 The provisions of this subsection shall apply to any credits that pass through to a  
19 successor or beneficiary of a taxpayer.

20 (9) For purposes of this section, a lessee of a certified historic structure shall be treated  
21 as the owner of the structure if the remaining term of the lease is not less than the  
22 minimum period promulgated by administrative regulation by the council.

23 (10) The taxes imposed in KRS 141.020, 141.040, and 141.0401 shall not apply to any  
24 consideration received for the transfer, sale, assignment, or use of a tax credit  
25 approved under this section.

26 (11) The Department of Revenue shall assess a penalty on any taxpayer or exempt entity  
27 that performs disqualifying work, as determined by the Kentucky Heritage Council,

1           on a certified historic structure for which a rehabilitation has been certified under  
2           this section in an amount equal to one hundred percent (100%) of the tax credit  
3           allowed on the rehabilitation. Any penalties shall be assessed against the property  
4           owner who performs the disqualifying work and not against any transferee of the  
5           credits.

6       (12) The council may impose fees for processing applications for tax credits, not to  
7           exceed the actual cost associated with processing the applications.

8       (13) The council may authorize a local government to perform an initial review of  
9           applications for the credit allowed under this section and forward the applications to  
10          the council with its recommendations.

11      (14) The council and the Department of Revenue may promulgate administrative  
12          regulations in accordance with the provisions of KRS Chapter 13A to establish  
13          policies and procedures to implement the provisions of subsections (1) to (13) of  
14          this section.

15      (15) The tax credit authorized by this section shall apply to tax periods ending on or after  
16          December 31, 2005.