

## CHAPTER 196

## (HB 663)

AN ACT relating to tax credits for rehabilitation of historic structures.

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

Section 1. KRS 171.397 is amended 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) (a) *A taxpayer seeking the credit provided under subsection (1) of this section shall file an application for a preliminary determination of maximum credit eligibility before April 30 of the year in which the proposed project will begin. The application shall describe the project, and shall include documentation supporting the qualification of the project for the credit, the proposed start date, the proposed completion date, the projected qualified rehabilitation expenses, and any other information the council may require. The council shall determine the preliminary maximum credit available for each taxpayer and shall notify the taxpayer of that amount by May 31 of the year in which the application was filed. If total credits applied for in any year exceed the certified rehabilitation credit cap, plus any amounts added to the cap pursuant to paragraph (c) of this subsection, the provisions of subsection (5) of this section shall be applied to reduce the approved credits for all taxpayers with qualifying applications for that year.*
- (b) An application for *a final determination of credit shall ~~must~~* be submitted to the council within thirty (30) days following the close of ~~the~~ calendar year *in which the project is completed*. The council shall determine the *final* amount of credit approved for each taxpayer *based upon the actual expenditures, preliminary determination of maximum credit, and a determination that the expenditures are qualified rehabilitation expenses. The council shall ~~and~~* notify the taxpayer and Department of Revenue of the *final* approved credit amount by the thirty first day of the third month following the close of the calendar year.
- (c) 1. *If the total amount of credits finally approved for a taxpayer under paragraph (b) of this subsection are less than the credits initially approved for a taxpayer under paragraph (a) of this subsection, the difference between the two amounts shall be added to the certified rehabilitation credit cap for the next calendar year.*
2. *If the total amount of credits approved under paragraph (a) of this subsection in any calendar year is less than three million dollars (\$3,000,000), the difference between the credits actually awarded and the cap amount of three million dollars (\$3,000,000) shall be added to the certified rehabilitation credit cap for the next calendar year.*
- (3) (a) 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.
- (b) *The maximum credit which may be claimed with regard to all other property that is not owner-occupied residential shall be four hundred thousand dollars (\$400,000) 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) *if subject to the limitation in paragraph (a) of subsection (3) of this section, or four hundred thousand dollars*

*(\$400,000) if subject to the limitation in paragraph (b) of subsection (3) of this section, subject to the provisions of subsection (5) of this section.*

- (5) The credit amount approved for a calendar year for all taxpayers under *the provisions of paragraph (a) of subsection (2) of this section* shall be limited to the certified rehabilitation credit cap *plus any amounts added to the cap pursuant to paragraph (c) of subsection (2) of this section.* ~~The council shall notify the taxpayer and the Department of Revenue when the total credit amount approved exceeds the certified rehabilitation credit cap.~~ *When the total credits applied for and approved in any year under the provisions of paragraph (a) of subsection (2) of this section exceed the certified rehabilitation credit cap, plus any amounts added to the cap pursuant to paragraph (c) of subsection (2) of this section, the council shall apportion the certified rehabilitation credit cap as follows: Three million dollars (\$3,000,000) plus any amounts added to the cap pursuant to paragraph (c) of subsection (2) of this section, 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 ~~136.070,~~ 136.505, 141.020, or 141.040, 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 Department of Revenue 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 Department of Revenue 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 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 Department of Revenue shall assess a penalty on any taxpayer or exempt entity that performs disqualifying work, *as determined by the Kentucky Heritage Council*, 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. *Any penalties shall be assessed against the property owner who performs the disqualifying work and not against any transferee of the credits.*
- (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 Department of Revenue 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.

Section 2. The provisions of this Act apply for taxable periods beginning on or after January 1, 2007.

Section 3. This Act takes effect January 1, 2007.

**Approved April 21, 2006.**