AN ACT relating to the certified rehabilitation tax credit cap.

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

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

As used in this section and KRS 171.3961 and 171.397:

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

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

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

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

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

(a) Three million dollars ($3,000,000) for applications received prior to April 30, 2010;

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

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

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

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

(5) "Disqualifying work" means work that is performed within three (3) years of the completion of the certified rehabilitation that, if performed as part of the rehabilitation certified under KRS 171.397, would have made the rehabilitation ineligible for certification;
(6) "Exempt entity" means any tax exempt organization pursuant to sec. 501(c)(3) of the Internal Revenue Code, any political subdivision of the Commonwealth, any state or local agency, board, or commission, or any quasi-governmental entity;

(7) "Local government" means a city, county, urban-county, charter county, or consolidated local government;

(8) "Owner-occupied residential property" means a building or portion thereof, condominium, or cooperative occupied by the owner as his or her principal residence;

(9) "Qualified rehabilitation expense" means any amount that is properly chargeable to a capital account, whether or not depreciation is allowed under Section 168 of the Internal Revenue Code, and is expended in connection with the certified rehabilitation of a certified historic structure. It shall include the cost of restoring landscaping and fencing that contributes to the historic significance of this structure, but shall not include the cost of acquisition of a certified historic structure, enlargement of or additions to an existing building, or the purchase of personal property;

(10) "Rural county" means a county with a population of less than fifty thousand people;

(II) "Substantial rehabilitation" means rehabilitation of a certified historic structure for which the qualified rehabilitation expenses, during a twenty-four (24) month period selected by the taxpayer or exempt entity, ending with or within the taxable year, exceed:

(a) Twenty thousand dollars ($20,000) for an owner-occupied residential property; or

(b) For all other property, the greater of:

1. The adjusted basis of the structure; or

2. Twenty thousand dollars ($20,000);
"Taxpayer" means any individual, corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted that:

(a) Elects to claim the credit on a return and receive a refund as provided in KRS 171.397(2)(b)2.a.; or

(b) Is the recipient of a credit which is transferred as provided in KRS 171.397(2)(b)2.b.; and

"Qualified purchased historic home" means any substantially rehabilitated certified historic structure if:

(a) The taxpayer claiming the credit authorized under KRS 171.397 is the first purchaser of the structure after the date of completion of the substantial rehabilitation;

(b) The structure or a portion thereof will be the principal residence of the taxpayer; and

(c) No credit was allowed to the seller under this section.

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

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

(1) (a) For all applications for a preliminary approval received prior to April 30, 2010, there shall be allowed as a credit against the taxes imposed by KRS 141.020, 141.040, 141.0401, or 136.505, an amount equal to:

1. Thirty percent (30%) of the qualified rehabilitation expenses, in the case of owner-occupied residential property; and

2. 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.

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

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

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

   (a) Owner-occupied residential property; or

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

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

The credit shall be refundable if the taxpayer makes an election under
subsection (2)(b) 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 June 30 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) 1. An application for a final determination of credit shall be submitted to
the council upon completion of the project.

2. The application shall include an irrevocable election by the taxpayer to:
   a. Use the credit, in which case, the credit shall be refundable; or
   b. Transfer the credit.

3. 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.

4. The council shall notify the taxpayer and Department of Revenue of the
final approved credit amount within sixty (60) days of the receipt of a
completed application from the taxpayer.

(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 (2) 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 the certified rehabilitation
credit cap, the difference between the credits actually awarded and the
certified rehabilitation credit cap 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
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) For applications for preliminary approval received prior to April 30, 2020,
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 subsection (5) of this section. The credit in this section
shall be claimed for the taxable year in which the certified rehabilitation is
completed.

(c) For applications for preliminary approval received on or after April 30,
2020, the maximum credit which may be claimed with regard to all other
property that is not owner-occupied residential shall be five million dollars
($5,000,000) subject to 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 subsection (3)(a) of this section, or four hundred thousand dollars ($400,000) if
subject to the limitation in subsection (3)(b) of this section, or five million dollars
($5,000,000) if subject to the limitation in subsection (3)(c) of this section, subject
to the provisions of subsection (5) of this section.

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

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

(6) (a) For all applications received prior to April 30, 2010, 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 136.505, 141.020, or 141.040 and 141.0401, 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.

(b) For all applications received on or after April 30, 2010, 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 136.505, 141.020, or 141.040 and 141.0401, the taxpayer may receive a refund, if the taxpayer elected to take the credit as required by subsection (2)(b) of this section.

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

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

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

(8) Credits received under this section may be transferred or assigned if an election is made under subsection (2)(b) of this section, 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, 141.040, and 141.0401 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.