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3 SUBSTITUTE FOR HB509
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8 SYNOPSIS: Under existing law, a tax credit is provided
9 against the tax liability of the taxpayer for the
10 rehabilitation, preservation, and development of
11 historic structures.

12 This bill would clarify that tax credits are
13 awarded on a calendar year basis and to remove all
14 restrictions on the ability to change the ownership
15 of the applicant.

16 This bill would also allow the tax credits
17 to be transferred.
18

19 A BILL

20 TO BE ENTITLED

21 AN ACT
22

23 To amend Sections 3, 4, and 5 of Act 2013-241, 2013
24 Regular Session, now appearing as Sections 40-9F-3, 40-9F-4,
25 and 40-9F-5, Code of Alabama 1975, to clarify that tax credits
26 are awarded on a calendar year basis; to remove all

1 restrictions on the ability to change the ownership of the
2 applicant; and to allow the tax credit to be transferred.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 3, 4, and 5 of Act 2013-241,
5 2013 Regular Session, now appearing as Sections 40-9F-3,
6 40-9F-4, and 40-9F-5, Code of Alabama 1975, are amended to
7 read as follows:

8 "§40-9F-3.

9 "(a) The commission shall develop standards for the
10 approval of the substantial rehabilitation of qualified
11 structures for which a tax credit is sought. The standards
12 shall take into account whether the substantial rehabilitation
13 of a qualified structure is consistent with the historic
14 character of the structure or of the Registered Historic
15 District in which the property is located.

16 "(b) Prior to beginning any substantial
17 rehabilitation work on a qualified structure, the owner shall
18 submit an application and rehabilitation plan to the
19 commission and an estimate of the qualified rehabilitation
20 expenditures under the rehabilitation plan; provided, however,
21 that the owner, at its own risk, may incur qualified
22 rehabilitation expenditures no earlier than six months prior
23 to the submission of the application and rehabilitation plan
24 that are limited to architectural, engineering, and land
25 surveying fees and related soft costs and any costs related to
26 the protection of the qualified structure from deterioration.
27 ~~Owners may submit an application and rehabilitation plan, and~~

1 ~~may commence rehabilitation, before the property is listed in~~
2 ~~the National Register of Historic Places; provided, however,~~
3 ~~that owners, at their own risk, may incur qualified~~
4 ~~rehabilitation expenditures which are limited to architectural~~
5 ~~engineering and land surveying fees and related soft costs and~~
6 ~~emergency costs and expenses necessary for the protection of~~
7 ~~the qualified structure from deterioration and which are~~
8 ~~incurred no earlier than six months prior to the submission of~~
9 ~~the application and rehabilitation plan to the commission.~~

10 "(c) The commission shall review the application and
11 rehabilitation plan to determine that the information
12 contained therein is complete. If the commission determines
13 that the application and rehabilitation plan are complete, the
14 commission shall reserve for the benefit of the owner an
15 allocation for a tax credit as provided in Section 40-9F-4 and
16 the commission shall notify the owner in writing of the amount
17 of the reservation. The reservation of tax credits does not
18 entitle the owner to an issuance of tax credits until the
19 owner complies with all other requirements of this chapter for
20 the issuance of the tax credits. The reservation of tax
21 credits shall be made by the commission in the order in which
22 completed applications and rehabilitation plans are received
23 by the commission, and the reservation of tax credits shall be
24 issued by the commission within a reasonable time, not to
25 exceed 90 days from the filing of a completed application and
26 rehabilitation plan. Applications received by the commission
27 on the same day shall go through a lottery process to

1 determine the order in which the applications will be reviewed
2 by the commission. Only the property for which a property
3 address, legal description or other specific location is
4 provided in the application shall be reviewed. Ownership of an
5 entity that is the owner of property contained in the
6 application shall not be a factor in the commission's review
7 of the application and no subsequent change in the ownership
8 structure of such entity shall result in the loss or
9 rescission of a reservation of tax credits. The owner shall
10 not be permitted to request the review of another property for
11 approval in the place of the property contained in the
12 application. ~~The owner may add or remove partners, members, or~~
13 ~~shareholders as part of its ownership structure, so long as at~~
14 ~~least 50 percent of the ownership remains the same. If the~~
15 ~~ownership of the qualified structure is changed due to a~~
16 ~~foreclosure, deed in lieu of a foreclosure, or a transfer in~~
17 ~~bankruptcy or receivership, the foregoing provisions~~
18 ~~restricting a change in ownership structure are not~~
19 ~~applicable, provided that the successor owner of the qualified~~
20 ~~structure furnishes sufficient documentation to the commission~~
21 ~~as evidence of the foreclosure, deed in lieu of foreclosure or~~
22 ~~bankruptcy or receivership.~~ Any application disapproved by the
23 commission shall be removed from the review process, and the
24 commission shall notify the owner in writing of the decision
25 to remove the application. Disapproved applications shall lose
26 their priority in the review process. A disapproved
27 application may be resubmitted, but shall be deemed to be a

1 new submission for purposes of the priority procedures
2 described in this section and may be charged a new application
3 fee. In the event that the commission grants reservations for
4 tax credits equal to the total amount available for
5 reservations during the ~~fiscal~~ tax year, all owners with
6 applications then awaiting approval or thereafter submitted
7 for approval shall be notified by the commission that no
8 additional approvals shall be granted during that ~~fiscal~~ tax
9 year and shall be notified of the priority number given to the
10 owner's application then awaiting approval. The applications
11 shall remain in priority status for two years from the date of
12 the original application and shall be considered for
13 reservations of tax credits in the priority order established
14 in this section in the event that additional credits become
15 available due to the rescission of approvals or when a new
16 ~~fiscal~~ tax year's allocation of tax credits becomes available.

17 "Owners receiving a reservation of tax credits shall
18 commence rehabilitation, if rehabilitation has not previously
19 begun, within 18 months of the date of issuance of the written
20 notice from the commission to the owner granting the
21 reservation of tax credits. "Commencement of rehabilitation"
22 shall mean that, as of the date in which actual physical work
23 contemplated by the rehabilitation plan submitted with the
24 application has begun, the owner has incurred no less than 20
25 percent of the estimated costs of rehabilitation provided in
26 the application. Owners receiving a reservation of tax credits
27 shall submit evidence of compliance with the provisions of

1 this subsection. If the commission determines that an owner
2 has failed to comply with the requirements provided under this
3 section, the reservation of tax credits for the owner may be
4 rescinded and, if so, the amount of tax credits shall then be
5 included in the total amount of available tax credits provided
6 for in subsection (c) of Section 40-9F-4, from which
7 reservations may be granted. Any owner whose reservation of
8 tax credits shall be rescinded shall be notified of the
9 rescission from the commission and, upon receipt of the
10 notice, may submit a new application but may be charged a new
11 application fee.

12 "(d) Following the completion of a substantial
13 rehabilitation of a qualified structure, the owner shall
14 notify the commission that the substantial rehabilitation has
15 been completed and shall certify the qualified rehabilitation
16 expenditures incurred with respect to the rehabilitation plan.
17 In addition, the owner shall provide the commission with: (i)
18 a cost and expense certification, prepared by a licensed
19 certified public accountant that is not an affiliate of the
20 owner, certifying the total qualified rehabilitation
21 expenditures and the total amount of tax credits against any
22 state tax due that is specified in this chapter for which the
23 owner is eligible under Section 40-9F-4 and, if the qualified
24 rehabilitation expenditures exceed two hundred thousand
25 dollars (\$200,000), the cost and expense certification must be
26 audited by the licensed certified public accountant; and (ii)
27 an appraisal of the qualified structure prepared by an

1 independent MAI designated and licensed real estate appraiser.
2 The commission shall review the documentation of the
3 rehabilitation and verify its compliance with the
4 rehabilitation plan. Within 90 days after receipt of the
5 foregoing documentation from the owner, the commission shall
6 issue a tax credit certificate in an amount equivalent to the
7 lesser of: (i) the amount of the tax credit reservation issued
8 for the project under the provisions of subsection (c), or
9 (ii) 25 percent of the actual qualified rehabilitation
10 expenditures for certified historic structures and 10 percent
11 of the actual qualified rehabilitation expenditures for
12 qualified pre-1936 non-historic structures. In the event the
13 amount of qualified rehabilitation expenditures incurred by
14 the owner would result in the issuance of an amount of tax
15 credits in excess of the amount of tax credits reserved for
16 the owner under subsection (c), the owner may apply to the
17 commission for issuance of tax credits in an amount equal to
18 the excess. Applications for issuance of tax credits in excess
19 of the amount of tax credits reserved for the owner shall be
20 made on a form prescribed by the commission and shall
21 represent a separate certificate that shall be issued, subject
22 to all provisions regarding priority provided in this section.

23 "(e) In order to obtain a credit against any state
24 tax due that is specified in this chapter, a taxpayer shall
25 file the tax credit certificate with the taxpayer's Alabama
26 state ~~income~~ tax return.

1 "(f) The department shall grant a tax credit against
2 any state tax due that is specified in this chapter to a
3 taxpayer holding the tax credit certificate issued under
4 subsection (d) or, in the case of a transferee, issued by the
5 department pursuant to Section 40-9F-4(e) against any tax due
6 under Chapters 16 and 18 in the amount stated on the tax
7 credit certificate. The department shall have the right to
8 audit and to reassess any credit improperly obtained by the
9 owner, in accordance with the Taxpayers' Bill of Rights and
10 the Uniform Revenue Procedures contained in Chapter 2A;
11 provided, however that only the owner initially awarded the
12 tax credit certificate, and not any subsequent transferee of
13 the tax credit certificate or person to whom tax credits have
14 been passed through pursuant to Section 40-9F-4(d), shall be
15 liable for any credit improperly obtained by the owner.

16 "(g) For processing the taxpayer's application for a
17 tax credit, the commission may impose reasonable application
18 fees of up to one percent of the qualified rehabilitation
19 expenses but not to exceed ten thousand dollars (\$10,000).

20 "(h) The commission shall, in consultation with the
21 department, report to the Legislature in the third year
22 following passage of this chapter, and annually thereafter, on
23 the overall economic activity, usage, and impact to the state
24 from the substantial rehabilitation of qualified structures
25 for which tax credits have been allowed.

26 "§40-9F-4.

1 "(a) The state portion of any ~~taxes~~ tax credit
2 against the tax imposed by Chapters 16 and 18, for the taxable
3 year in which the certified rehabilitation is placed in
4 service, shall be equal to 25 percent of the qualified
5 rehabilitation expenditures for certified historic structures,
6 and shall be 10 percent of the qualified rehabilitation
7 expenditures for qualified pre-1936 non-historic structures.
8 No tax credit claimed for any certified rehabilitation may
9 exceed five million dollars (\$5,000,000) for all allowable
10 property types except a certified historic residential
11 structure, and fifty thousand dollars (\$50,000) for a
12 certified historic residential structure.

13 "(b) The entire tax credit may be claimed by the
14 taxpayer in the taxable year in which the certified
15 rehabilitation is placed in service. Where the taxes owed by
16 the taxpayer are less than the tax credit, the taxpayer shall
17 not be entitled to claim a refund for the difference, but any
18 unused portion of the credit may be carried forward for up to
19 10 additional tax years.

20 "(c) ~~The~~ For the calendar years 2013, 2014, and
21 2015, the aggregate amount of all tax credits ~~in any tax year~~
22 that may be reserved in any one of such years by the
23 commission upon certification of rehabilitation plans under
24 subsection (c) of Section 40-9F-3 shall not exceed twenty
25 million dollars (\$20,000,000) plus any amount of previous
26 reservations of tax credits that were rescinded under
27 subsection (c) of Section 40-9F-3 during the tax year.

1 However, if all of the allowable tax credit amount for any tax
2 year is not requested and reserved, any unreserved tax credits
3 may be utilized by the commission in awarding tax credits in
4 subsequent years; provided, however, that in no event shall a
5 total of more than sixty million dollars (\$60,000,000) be
6 reserved by the commission during the period of May 15, 2013,
7 through May 16, 2016. For purposes of this chapter, "tax year"
8 shall mean the calendar year.

9 "(d) Tax credits granted to a partnership, a limited
10 liability company ~~taxed as a partnership~~ or multiple owners of
11 a property shall be passed through to the partners, members,
12 or owners (including any not-for-profit entity that is a
13 partner, member, or owner) respectively pro rata or pursuant
14 to an executed agreement among the partners, members, or
15 owners documenting an alternate distribution method without
16 regard to their sharing of other tax or economic attributes of
17 the entity. The tax credit certificate shall contain a section
18 to be completed by the owner that provides the percentage or
19 amount of credit that will be allocated to each partner,
20 member, or owner, and such completed certificate may be
21 provided to the department to transfer all or any portion of
22 the tax credits passed through to the partner, member, or
23 owner in accordance with subsection (e).

24 "(e) All or any portion of the tax credits under
25 this act shall be freely transferable and assignable, subject
26 to any notice and verification requirements to be determined
27 by the department, without the requirement of transferring any

1 ownership interest in the qualified structure or any interest
2 in the entity which owns the qualified structure. Any
3 transferee of the tax credits may use the amount of tax
4 credits transferred to offset any state tax due under Chapters
5 16 and 18 of Title 40 or the transferee may freely transfer
6 and assign all or any portion of the tax credits to any other
7 person or entity, including an entity that is exempt from
8 federal income taxation pursuant to Section 501(c) of the
9 Internal Revenue Code, as amended, and the other person or
10 entity may freely transfer and assign all or any portion of
11 the tax credits to any other person or entity. The tax credits
12 may be transferred, passed through, or assigned until the time
13 that the credit is claimed on a State of Alabama tax return by
14 any taxpayer. The department shall promulgate a form transfer
15 statement to be filed by the transferor with the department
16 prior to the purported transfer of any credit issued under
17 this chapter. The transfer statement form shall include the
18 name and federal taxpayer identification number of the
19 transferor and each transferee listed therein along with the
20 amount of the tax credit to be transferred to each transferee
21 listed on the form. The transfer statement form shall also
22 contain such other information as the department may from time
23 to time reasonably require. For each transfer, the transferor
24 shall file (1) a completed transfer statement form; (2) a copy
25 of the tax credit certificate issued by the commission or the
26 department, as applicable, documenting the amount of tax
27 credits which the transferor intends to transfer; (3) a copy

1 of the proposed written transfer agreement; and (4) a transfer
2 fee payable to the department in the amount of one thousand
3 dollars (\$1,000) per transferee listed on the transfer
4 statement form, not to exceed the sum of ten thousand dollars
5 (\$10,000). The transferor shall file with the department a
6 fully executed copy of the written transfer agreement with
7 each transferee within 30 days after the completed transfer.
8 Filing of the written transfer agreement with the department
9 shall perfect such transfer with respect to such transferee.
10 Within 30 days after the department's receipt of the fully
11 executed written transfer agreement, the department shall
12 issue a tax credit certificate to each transferee listed in
13 such agreement in the amount of the tax credit so transferred.
14 Such certificate shall be used by the transferee in claiming
15 the tax credit pursuant to Section 40-9F-3(e) and (f). The
16 department may promulgate such additional rules as are
17 necessary to permit verification of the ownership of the tax
18 credits but shall not promulgate any rules which unduly
19 restrict or hinder the transfer of the tax credits.

20 "§40-9F-5.

21 "(a) Recapture of any of the credit, and any
22 required adjustments to basis due to recapture, shall be
23 governed by Section 50 of the Internal Revenue Code; provided,
24 however, that only the owner initially awarded the tax credit
25 certificate, and not any subsequent transferee of the tax
26 credit certificate or person to whom tax credits have been

1 passed through pursuant to Section 40-9F-4(d), shall be liable
2 for any amount of the credit recaptured.

3 "(b) In the taxable year the certified
4 rehabilitation is placed in service for any structure for
5 which a tax credit has been issued, the commission shall
6 provide notice of the certified rehabilitation and a copy of
7 the appraisal provided by the owner to the taxing authority
8 responsible for the assessment of ad valorem taxes. Upon
9 notification, the taxing authority responsible for the
10 assessment of ad valorem taxes shall complete a new assessment
11 for the structure to be used in the assessment of ad valorem
12 taxes for the tax year in which the certified rehabilitation
13 was placed in service."

14 Section 2. The provisions of this act are severable.
15 If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 3. Except for the amendments made by this
19 act to Section 40-9F-4(e), Code of Alabama 1975, that shall
20 only apply to tax periods beginning on or after January 1,
21 2014, this act is only a clarification of existing law and
22 shall therefore be effective retroactively to May 15, 2013,
23 the effective date of Act 2013-241, 2013 Regular Session,
24 subject to its passage and approval by the Governor, or its
25 otherwise becoming law.