

By: Senator(s) Doty, Blount, Butler, Jackson (11th), Branning, Norwood, Simmons (12th), Horhn, Witherspoon To: Finance

SENATE BILL NO. 2340
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 27-7-22.31, MISSISSIPPI CODE OF 1972,
2 WHICH AUTHORIZES AN INCOME TAX CREDIT FOR COSTS AND EXPENSES
3 INCURRED FOR THE REHABILITATION OF CERTAIN HISTORIC STRUCTURES, TO
4 PROVIDE THAT THE TAX CREDIT SHALL APPLY TO TAXPAYERS WHO HAVE BEEN
5 ISSUED A CERTIFICATE EVIDENCING THE ELIGIBLE CREDIT BEFORE
6 DECEMBER 31, 2021, OR WHO, BEFORE DECEMBER 31, 2021, HAVE RECEIVED
7 A DETERMINATION IN WRITING FROM THE MISSISSIPPI DEPARTMENT OF
8 ARCHIVES AND HISTORY THAT THE REHABILITATION IS CONSISTENT WITH
9 THE HISTORIC CHARACTER OF THE PROPERTY AND THAT THE PROPERTY MEETS
10 THE UNITED STATES SECRETARY OF THE INTERIOR'S STANDARDS FOR
11 REHABILITATION AND WHO ARE ISSUED A CERTIFICATE EVIDENCING THE
12 ELIGIBLE CREDIT ON OR AFTER DECEMBER 31, 2021; AND FOR RELATED
13 PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 **SECTION 1.** Section 27-7-22.31, Mississippi Code of 1972, is
16 amended as follows:

17 27-7-22.31. (1) As used in this section:

18 (a) "Certified historic structure" means a property
19 located in Mississippi that has been:

20 (i) Listed individually on the National Register
21 of Historic Places; or

22 (ii) Determined eligible for the National Register
23 of Historic Places by the Secretary of the United States



24 Department of the Interior and will be listed within thirty (30)
25 months of claiming the credit authorized by this section; or

26 (iii) Property designated a Mississippi Landmark
27 by the Department of Archives and History pursuant to Section
28 39-7-3 et seq.

29 (b) "Eligible property" means property located in
30 Mississippi and offered or used for residential or business
31 purposes; however, the term "eligible property" shall not include
32 a single-family dwelling unless:

33 (i) A certificate evidencing the eligible credit
34 has been issued to the taxpayer by the department prior to July 1,
35 2016, that applies to such dwelling; or

36 (ii) The dwelling is designated as a National
37 Historic Landmark under the National Historic Landmarks Program.

38 (c) "Structure in a certified historic district" means
39 a structure (and its structural components) located in Mississippi
40 which:

41 (i) Is listed in the National Register of Historic
42 Places; or

43 (ii) Has been determined eligible for the National
44 Register of Historic Places by the Secretary of the United States
45 Department of the Interior and will be listed within thirty (30)
46 months of claiming the credit authorized by this section; or

47 (iii) Is located in a registered historic district
48 listed on the National Register of Historic Places or located in a



49 potential district that has been determined eligible for the
50 National Register of Historic Places by the Secretary of the
51 United States Department of the Interior and will be listed within
52 thirty (30) months of claiming the credit authorized by this
53 section, and is certified by the Secretary of the United States
54 Department of the Interior as being of historic significance to
55 the district; or

56 (iv) Is certified by the Mississippi Department of
57 Archives and History as contributing to the historic significance
58 of:

59 1. A certified historic district listed on
60 the National Register of Historic Places; or

61 2. A potential district that has been
62 determined eligible for the National Register of Historic Places
63 by the Secretary of the United States Department of the Interior
64 and will be listed within thirty (30) months of claiming the
65 credit authorized by this section; or

66 3. A local district that has been certified
67 by the United States Department of the Interior.

68 (d) "Department" means the Department of Archives and
69 History.

70 (2) Any taxpayer incurring costs and expenses for the
71 rehabilitation of eligible property, which is a certified historic
72 structure or a structure in a certified historic district, shall
73 be entitled to a credit against the taxes imposed pursuant to this



74 chapter in an amount equal to twenty-five percent (25%) of the
75 total costs and expenses of rehabilitation incurred after January
76 1, 2006, which shall include, but not be limited to, qualified
77 rehabilitation expenditures as defined under Section 47(c)(2)(A)
78 of the Internal Revenue Code of 1986, as amended, and the related
79 regulations thereunder:

80 (a) If the costs and expenses associated with
81 rehabilitation exceed:

82 (i) Five Thousand Dollars (\$5,000.00) in the case
83 of an owner-occupied dwelling; or

84 (ii) Fifty percent (50%) of the total basis in the
85 property in the case of all other properties; and

86 (b) The rehabilitation is consistent with the standards
87 of the Secretary of the United States Department of the Interior
88 as determined by the department.

89 (3) Any taxpayer eligible for the credit authorized by this
90 section may claim the credit in phases if:

91 (a) There is a written set of architectural plans and
92 specifications for all phases of the rehabilitation (written plans
93 outlining and describing all phases of the rehabilitation shall be
94 accepted as written plans and specifications);

95 (b) The written set of architectural plans and
96 specifications are completed before the physical work on the
97 rehabilitation begins; and



98 (c) It can reasonably be expected that all phases of
99 the rehabilitation will be completed.

100 (4) (a) (i) If the amount of the tax credit established by
101 this section exceeds the total state income tax liability for the
102 year in which the rehabilitated property is placed in service, the
103 amount that exceeds the total state income tax liability may be
104 carried forward for the ten (10) succeeding tax years.

105 (ii) If the amount of the tax credit established
106 by this section exceeds Two Hundred Fifty Thousand Dollars
107 (\$250,000.00), the taxpayer may elect to claim a refund in the
108 amount of seventy-five percent (75%) of the excess credit in lieu
109 of the ten-year carryforward. The election must be made in the
110 year in which the rehabilitated property is placed in service.
111 Refunds will be paid in equal installments over a two-year period
112 and shall be made from current collections.

113 (iii) Refund requests shall be submitted to the
114 Department of Revenue on forms prescribed by the department.
115 Refunds shall be made from current tax collections.

116 (b) Not-for-profit entities, including, but not limited
117 to, nonprofit corporations organized under Section 79-11-101 et
118 seq. shall be ineligible for the credit authorized by this
119 section. Credits granted to a partnership, a limited liability
120 company taxed as a partnership or multiple owners of property
121 shall be passed through to the partners, members or owners on a
122 pro rata basis or pursuant to an executed agreement among the



123 partners, members or owners documenting an alternative
124 distribution method. Partners, members or other owners of a
125 pass-through entity are not eligible to elect a refund of excess
126 credit in lieu of a carryforward of the credit. However, a
127 partnership or limited liability company taxed as a partnership
128 may elect to claim a refund of excess credit at the entity level
129 on a form prescribed by the Department of Revenue. Additionally,
130 excess tax credits that are attributable to rehabilitated property
131 that was placed in service by a pass-through entity prior to
132 January 1, 2011, and that have previously been allocated to and
133 are held by another pass-through entity prior to January 1, 2011,
134 may be refunded to such other pass-through entity.

135 (5) (a) To claim the credit authorized pursuant to this
136 section, the taxpayer shall apply to the department which shall
137 determine the amount of eligible rehabilitation costs and expenses
138 and whether the rehabilitation is consistent with the standards of
139 the Secretary of the United States Department of the Interior.
140 The department shall issue a certificate evidencing the eligible
141 credit if the taxpayer is found to be eligible for the tax credit.
142 The taxpayer shall attach the certificate to all income tax
143 returns on which the credit is claimed. The department shall not
144 issue certificates evidencing the eligible credit which, when
145 combined with certificates of eligible credits issued prior to
146 July 1, 2016, will result in credits being awarded in excess of



147 Twelve Million Dollars (\$12,000,000.00) in any one (1) state
148 fiscal year.

149 (b) The aggregate amount of tax credits that may be
150 awarded under this section shall not exceed One Hundred Twenty
151 Million Dollars (\$120,000,000.00) and not more than Twelve Million
152 Dollars (\$12,000,000.00) may be awarded in any one (1) state
153 fiscal year. A taxpayer who was issued a certificate evidencing
154 the eligible credit by the department prior to July 1, 2016, but
155 who was unable to be awarded the credit due to the limit on the
156 aggregate amount of credits authorized under this section prior to
157 July 1, 2016:

158 (i) May be awarded the credit so long as the award
159 does not cause the aggregate amount of tax credits awarded to
160 exceed the amounts authorized in this paragraph; and

161 (ii) Shall be given priority for tax credits
162 awarded after July 1, 2016.

163 (6) (a) The credit received by a taxpayer pursuant to this
164 section is subject to recapture if:

165 (i) The property is one that has been determined
166 eligible for the National Register of Historic Places but is not
167 listed on the National Register of Historic Places within thirty
168 (30) months of claiming the credit authorized by this section;

169 (ii) The potential district in which the property
170 is located is not listed on the National Register of Historic



171 Places within thirty (30) months of claiming the credit authorized
172 by this section; or

173 (iii) The rehabilitation of the property for which
174 the credit was granted is abandoned.

175 (b) The taxpayer shall notify the department and the
176 Department of Revenue if any of the situations that subject the
177 credit to recapture occur.

178 (7) (a) The board of trustees of the department shall
179 establish fees to be charged for the services performed by the
180 department under this section and shall publish the fee schedule.
181 The fees contained in the schedule shall be in amounts reasonably
182 calculated to recover the costs incurred by the department for the
183 administration of this section. Any taxpayer desiring to
184 participate in the tax credits authorized by this section shall
185 pay the appropriate fee as contained in the fee schedule to the
186 department, which shall be used by the department, without
187 appropriation, to offset the administrative costs of the
188 department associated with its duties under this section.

189 (b) There is hereby created within the State Treasury a
190 special fund into which shall be deposited all the fees collected
191 by the department pursuant to this section. Money deposited into
192 the fund shall not lapse at the end of any fiscal year and
193 investment earnings on the proceeds in such special fund shall be
194 deposited into such fund. Money from the fund shall be disbursed
195 upon warrants issued by the State Fiscal Officer upon requisitions



196 signed by the executive director of the department to assist the
197 department in carrying out its duties under this section.

198 (8) This section shall only apply to taxpayers:

199 (a) Who have been issued a certificate evidencing the
200 eligible credit before December 31, * * * 2021; or

201 (b) Who, before December 31, * * * 2021, have received
202 a determination in writing from the Mississippi Department of
203 Archives and History, in accordance with the department's Historic
204 Preservation Certificate Application, Part 2, that the
205 rehabilitation is consistent with the historic character of the
206 property and that the property meets the United States Secretary
207 of the Interior's Standards for Rehabilitation, or will meet the
208 standards if certain specified conditions are met, and, who are
209 issued a certificate evidencing the eligible credit on or after
210 December 31, * * * 2021.

211 **SECTION 2.** This act shall take effect and be in force from
212 and after July 1, 2020.

