

2023 -- S 0711

LC002297

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- REBUILD RHODE ISLAND
TAX CREDIT

Introduced By: Senator Ryan W. Pearson

Date Introduced: March 22, 2023

Referred To: Senate Finance

(Commerce)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-64.20-5 of the General Laws in Chapter 42-64.20 entitled
2 "Rebuild Rhode Island Tax Credit" is hereby amended to read as follows:

3 **42-64.20-5. Tax credits. [Effective January 1, 2023.]**

4 (a) An applicant meeting the requirements of this chapter may be allowed a credit as set
5 forth hereinafter against taxes imposed upon such person under applicable provisions of title 44 of
6 the general laws for a qualified development project.

7 (b) To be eligible as a qualified development project entitled to tax credits, an applicant's
8 chief executive officer or equivalent officer shall demonstrate to the commerce corporation, at the
9 time of application, that:

10 (1) The applicant has committed a capital investment or owner equity of not less than
11 twenty percent (20%) of the total project cost;

12 (2) There is a project financing gap in which after taking into account all available private
13 and public funding sources, the project is not likely to be accomplished by private enterprise
14 without the tax credits described in this chapter; and

15 (3) The project fulfills the state's policy and planning objectives and priorities in that:

16 (i) The applicant will, at the discretion of the commerce corporation, obtain a tax
17 stabilization agreement from the municipality in which the real estate project is located on such
18 terms as the commerce corporation deems acceptable;

1 (ii) It (A) Is a commercial development consisting of at least 25,000 square feet occupied
2 by at least one business employing at least 25 full-time employees after construction or such
3 additional full-time employees as the commerce corporation may determine; (B) Is a multi-family
4 residential development in a new, adaptive reuse, certified historic structure, or recognized
5 historical structure consisting of at least 20,000 square feet and having at least 20 residential units
6 in a hope community; or (C) Is a mixed-use development in a new, adaptive reuse, certified historic
7 structure, or recognized historical structure consisting of at least 25,000 square feet occupied by at
8 least one business, subject to further definition through rules and regulations promulgated by the
9 commerce corporation; and

10 (iii) Involves a total project cost of not less than \$5,000,000, except for a qualified
11 development project located in a hope community or redevelopment area designated under § 45-
12 32-4 in which event the commerce corporation shall have the discretion to modify the minimum
13 project cost requirement.

14 (4) For construction projects in excess of ten million dollars (\$10,000,000), all construction
15 workers shall be paid in accordance with the wages and benefits required pursuant to chapter 13 of
16 title 37 with all contractors and subcontractors required to file certified payrolls on a monthly basis
17 for all work completed in the preceding month on a uniform form prescribed by the director of
18 labor and training. Failure to follow the requirements pursuant to chapter 13 of title 37 shall
19 constitute a material violation and a material breach of the agreement with the state. The commerce
20 corporation, in consultation with the director of labor and training and the tax administrator, shall
21 promulgate such rules and regulations as are necessary to implement the enforcement of this
22 subsection.

23 (5) Subsection (b)(4) of this section shall not apply to any project that is the subject of an
24 application for tax credits under this chapter that is submitted to the commerce corporation before
25 January 1, 2023.

26 (c) The commerce corporation shall develop separate, streamlined application processes
27 for the issuance of rebuild RI tax credits for each of the following:

- 28 (1) Qualified development projects that involve certified historic structures;
- 29 (2) Qualified development projects that involve recognized historical structures;
- 30 (3) Qualified development projects that involve at least one manufacturer; and
- 31 (4) Qualified development projects that include affordable housing or workforce housing.

32 (d) Applications made for a historic structure or recognized historic structure tax credit
33 under chapter 33.6 of title 44 shall be considered for tax credits under this chapter. The division of
34 taxation, at the expense of the commerce corporation, shall provide communications from the

1 commerce corporation to those who have applied for and are in the queue awaiting the offer of tax
2 credits pursuant to chapter 33.6 of title 44 regarding their potential eligibility for the rebuild RI tax
3 credit program.

4 (e) Applicants (1) Who have received the notice referenced in subsection (d) above and
5 who may be eligible for a tax credit pursuant to chapter 33.6 of title 44, (2) Whose application
6 involves a certified historic structure or recognized historical structure, or (3) Whose project is
7 occupied by at least one manufacturer shall be exempt from the requirements of subsections
8 (b)(3)(ii) and (b)(3)(iii). The following procedure shall apply to such applicants:

9 (i) The division of taxation shall remain responsible for determining the eligibility of an
10 applicant for tax credits awarded under chapter 33.6 of title 44;

11 (ii) The commerce corporation shall retain sole authority for determining the eligibility of
12 an applicant for tax credits awarded under this chapter;

13 (iii) The commerce corporation shall not award in excess of fifteen percent (15%) of the
14 annual amount authorized in any fiscal year to applicants seeking tax credits pursuant to this
15 subsection (e); and

16 (iv) ~~No~~ Subject to subsection (b)(5) of this section, no tax credits shall be awarded under
17 this chapter unless the commerce corporation receives confirmation from the department of labor
18 and training that there has been compliance with the prevailing wage requirements set forth in
19 subsection (b)(4) of this section.

20 (f) Maximum project credit.

21 (1) For qualified development projects, the maximum tax credit allowed under this chapter
22 shall be the lesser of (i) Thirty percent (30%) of the total project cost; or (ii) The amount needed to
23 close a project financing gap (after taking into account all other private and public funding sources
24 available to the project), as determined by the commerce corporation.

25 (2) The credit allowed pursuant to this chapter, inclusive of any sales and use tax
26 exemptions allowed pursuant to this chapter, shall not exceed fifteen million dollars (\$15,000,000)
27 for any qualified development project under this chapter; except as provided in subsection (f)(3) of
28 this section; provided however, any qualified development project that exceeds the project cap upon
29 passage of this act shall be deemed not to exceed the cap, shall not be reduced, nor shall it be further
30 increased. No building or qualified development project to be completed in phases or in multiple
31 projects shall exceed the maximum project credit of fifteen million dollars (\$15,000,000) for all
32 phases or projects involved in the rehabilitation of the building. Provided, however, that for
33 purposes of this subsection and no more than once in a given fiscal year, the commerce corporation
34 may consider the development of land and buildings by a developer on the "I-195 land" as defined

1 in § 42-64.24-3(6) as a separate, qualified development project from a qualified development
2 project by a tenant or owner of a commercial condominium or similar legal interest including
3 leasehold improvement, fit out, and capital investment. Such qualified development project by a
4 tenant or owner of a commercial condominium or similar legal interest on the I-195 land may be
5 exempted from subsection (f)(1)(i) of this section.

6 (3) The credit allowed pursuant to this chapter, inclusive of any sales and use tax
7 exemptions allowed pursuant to this chapter, shall not exceed twenty-five million dollars
8 (\$25,000,000) for the project for which the I-195 redevelopment district was authorized to enter
9 into a purchase and sale agreement for parcels 42 and P4 on December 19, 2018, provided that
10 project is approved for credits pursuant to this chapter by the commerce corporation.

11 (g) Credits available under this chapter shall not exceed twenty percent (20%) of the project
12 cost, provided, however, that the applicant shall be eligible for additional tax credits of not more
13 than ten percent (10%) of the project cost, if the qualified development project meets any of the
14 following criteria or other additional criteria determined by the commerce corporation from time
15 to time in response to evolving economic or market conditions:

16 (1) The project includes adaptive reuse or development of a recognized historical structure;

17 (2) The project is undertaken by or for a targeted industry;

18 (3) The project is located in a transit-oriented development area;

19 (4) The project includes residential development of which at least twenty percent (20%) of
20 the residential units are designated as affordable housing or workforce housing;

21 (5) The project includes the adaptive reuse of property subject to the requirements of the
22 industrial property remediation and reuse act, § 23-19.14-1 et seq.; or

23 (6) The project includes commercial facilities constructed in accordance with the minimum
24 environmental and sustainability standards, as certified by the commerce corporation pursuant to
25 Leadership in Energy and Environmental Design or other equivalent standards.

26 (h) Maximum aggregate credits. The aggregate sum authorized pursuant to this chapter,
27 inclusive of any sales and use tax exemptions allowed pursuant to this chapter, shall not exceed
28 two hundred ten million dollars (\$210,000,000), excluding any tax credits allowed pursuant to
29 subsection (f)(3) of this section.

30 (i) Tax credits shall not be allowed under this chapter prior to the taxable year in which the
31 project is placed in service.

32 (j) The amount of a tax credit allowed under this chapter shall be allowable to the taxpayer
33 in up to five, annual increments; no more than thirty percent (30%) and no less than fifteen percent
34 (15%) of the total credits allowed to a taxpayer under this chapter may be allowable for any taxable

1 year.

2 (k) If the portion of the tax credit allowed under this chapter exceeds the taxpayer's total
3 tax liability for the year in which the relevant portion of the credit is allowed, the amount that
4 exceeds the taxpayer's tax liability may be carried forward for credit against the taxes imposed for
5 the succeeding four (4) years, or until the full credit is used, whichever occurs first. Credits allowed
6 to a partnership, a limited-liability company taxed as a partnership, or multiple owners of property
7 shall be passed through to the persons designated as partners, members, or owners respectively pro
8 rata or pursuant to an executed agreement among persons designated as partners, members, or
9 owners documenting an alternate distribution method without regard to their sharing of other tax
10 or economic attributes of such entity.

11 (l) The commerce corporation, in consultation with the division of taxation, shall establish,
12 by regulation, the process for the assignment, transfer, or conveyance of tax credits.

13 (m) For purposes of this chapter, any assignment or sales proceeds received by the taxpayer
14 for its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from
15 taxation under title 44. If a tax credit is subsequently revoked or adjusted, the seller's tax calculation
16 for the year of revocation or adjustment shall be increased by the total amount of the sales proceeds,
17 without proration, as a modification under chapter 30 of title 44. In the event that the seller is not a
18 natural person, the seller's tax calculation under chapter 11, 13, 14, or 17 of title 44, as applicable,
19 for the year of revocation, or adjustment, shall be increased by including the total amount of the
20 sales proceeds without proration.

21 (n) The tax credit allowed under this chapter may be used as a credit against corporate
22 income taxes imposed under chapter 11, 13, 14, or 17, of title 44, or may be used as a credit against
23 personal income taxes imposed under chapter 30 of title 44 for owners of pass-through entities such
24 as a partnership, a limited-liability company taxed as a partnership, or multiple owners of property.

25 (o) In the case of a corporation, this credit is only allowed against the tax of a corporation
26 included in a consolidated return that qualifies for the credit and not against the tax of other
27 corporations that may join in the filing of a consolidated tax return.

28 (p) Upon request of a taxpayer and subject to annual appropriation, the state shall redeem
29 this credit, in whole or in part, for ninety percent (90%) of the value of the tax credit. The division
30 of taxation, in consultation with the commerce corporation, shall establish by regulation a
31 redemption process for tax credits.

32 (q) Projects eligible to receive a tax credit under this chapter may, at the discretion of the
33 commerce corporation, be exempt from sales and use taxes imposed on the purchase of the
34 following classes of personal property only to the extent utilized directly and exclusively in the

1 project: (1) Furniture, fixtures, and equipment, except automobiles, trucks, or other motor vehicles;
2 or (2) Other materials, including construction materials and supplies, that are depreciable and have
3 a useful life of one year or more and are essential to the project.

4 (r) The commerce corporation shall promulgate rules and regulations for the administration
5 and certification of additional tax credit under subsection (g), including criteria for the eligibility,
6 evaluation, prioritization, and approval of projects that qualify for such additional tax credit.

7 (s) The commerce corporation shall not have any obligation to make any award or grant
8 any benefits under this chapter.

9 SECTION 2. Section 44-33.6-3 of the General Laws in Chapter 44-33.6 entitled "Historic
10 Preservation Tax Credits 2013" is hereby amended to read as follows:

11 **44-33.6-3. Tax credit. [Effective January 1, 2023.]**

12 (a) Subject to the maximum credit provisions set forth in subsections (c) and (d) below,
13 any person, firm, partnership, trust, estate, limited liability company, corporation (whether for
14 profit or nonprofit) or other business entity that incurs qualified rehabilitation expenditures for the
15 substantial rehabilitation of a certified historic structure, provided the rehabilitation meets standards
16 consistent with the standards of the Secretary of the United States Department of the Interior for
17 rehabilitation as certified by the commission and said person, firm, partnership, trust, estate, limited
18 liability company, corporation or other business entity is not a social club as defined in § 44-33.6-
19 2, shall be entitled to a credit against the taxes imposed on such person or entity pursuant to chapter
20 11, 12, 13, 14, 17, or 30 of this title in an amount equal to the following:

21 (1) Twenty percent (20%) of the qualified rehabilitation expenditures; or

22 (2) Twenty-five percent (25%) of the qualified rehabilitation expenditures provided that
23 either:

24 (i) At least twenty-five percent (25%) of the total rentable area of the certified historic
25 structure will be made available for a trade or business; or

26 (ii) The entire rentable area located on the first floor of the certified historic structure will
27 be made available for a trade or business.

28 (b) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in
29 which such certified historic structure or an identifiable portion of the structure is placed in service
30 provided that the substantial rehabilitation test is met for such year.

31 (c) Maximum project credit. The credit allowed pursuant to this chapter shall not exceed
32 five million dollars (\$5,000,000) for any certified rehabilitation project under this chapter. No
33 building to be completed in phases or in multiple projects shall exceed the maximum project credit
34 of five million dollars (\$5,000,000) for all phases or projects involved in the rehabilitation of such

1 building.

2 (d) Maximum aggregate credits. The aggregate credits authorized to be reserved pursuant
3 to this chapter shall not exceed sums estimated to be available in the historic preservation tax credit
4 trust fund pursuant to this chapter.

5 (e) Subject to the exception provided in subsection (g) of this section, if the amount of the
6 tax credit exceeds the taxpayer's total tax liability for the year in which the substantially
7 rehabilitated property is placed in service, the amount that exceeds the taxpayer's tax liability may
8 be carried forward for credit against the taxes imposed for the succeeding ten (10) years, or until
9 the full credit is used, whichever occurs first for the tax credits. Credits allowed to a partnership, a
10 limited liability company taxed as a partnership, or multiple owners of property shall be passed
11 through to the persons designated as partners, members, or owners respectively pro rata or pursuant
12 to an executed agreement among such persons designated as partners, members, or owners
13 documenting an alternate distribution method without regard to their sharing of other tax or
14 economic attributes of such entity. Credits may be allocated to partners, members, or owners that
15 are exempt from taxation under section 501(c)(3), section (c)(4) or section 501(c)(6) of the U.S.
16 Code and these partners, members, or owners must be treated as taxpayers for purposes of this
17 section.

18 (f) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for
19 the tax credits may assign, transfer, or convey the credits, in whole or in part, by sale or otherwise
20 to any individual or entity, including, but not limited to, condominium owners in the event the
21 certified historic structure is converted into condominiums and assignees of the credits that have
22 not claimed the tax credits in whole or part may assign, transfer, or convey the credits, in whole or
23 in part, by sale or otherwise to any individual or entity. The assignee of the tax credits may use
24 acquired credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
25 pursuant to chapter 11, 12, 13 (other than the tax imposed under § 44-13-13), 14, 17, or 30 of this
26 title. The assignee may apply the tax credit against taxes imposed on the assignee until the end of
27 the tenth calendar year after the year in which the substantially rehabilitated property is placed in
28 service or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may
29 claim the credit until the expiration of the fiscal year that ends within the tenth year after the year
30 in which the substantially rehabilitated property is placed in service. The assignor shall perfect the
31 transfer by notifying the state of Rhode Island division of taxation, in writing, within thirty (30)
32 calendar days following the effective date of the transfer and shall provide any information as may
33 be required by the division of taxation to administer and carry out the provisions of this section.

34 For purposes of this chapter, any assignment or sales proceeds received by the taxpayer for

1 its assignment or sale of the tax credits allowed pursuant to this section shall be exempt from this
2 title. If a tax credit is subsequently recaptured under this chapter, revoked, or adjusted, the seller's
3 tax calculation for the year of revocation, recapture, or adjustment shall be increased by the total
4 amount of the sales proceeds, without proration, as a modification under chapter 30 of this title. In
5 the event that the seller is not a natural person, the seller's tax calculation under chapter 11, 12, 13
6 (other than with respect to the tax imposed under § 44-13-13), 14, 17, or 30 of this title, as
7 applicable, for the year of revocation, recapture, or adjustment, shall be increased by including the
8 total amount of the sales proceeds without proration.

9 (g) Credits allowed to partners, members, or owners that are exempt from taxation under
10 section 501(c)(3), section (c)(4) or section 501(c)(6) of the U.S. Code, and only said credits, shall
11 be fully refundable.

12 (h) Substantial rehabilitation of property that either:

13 (1) Is exempt from real property tax;

14 (2) Is a social club; or

15 (3) Consists of a single-family home or a property that contains less than three (3)
16 residential apartments or condominiums shall be ineligible for the tax credits authorized under this
17 chapter; provided, however, a scattered site development with five (5) or more residential units in
18 the aggregate (which may include single-family homes) shall be eligible for tax credit. In the event
19 a certified historic structure undergoes a substantial rehabilitation pursuant to this chapter and
20 within twenty-four (24) months after issuance of a certificate of completed work the property
21 becomes exempt from real property tax, the taxpayer's tax for the year shall be increased by the
22 total amount of credit actually used against the tax.

23 (i) In the case of a corporation, this credit is only allowed against the tax of a corporation
24 included in a consolidated return that qualifies for the credit and not against the tax of other
25 corporations that may join in the filing of a consolidated tax return.

26 (j) For construction projects in excess of ten million dollars (\$10,000,000), all construction
27 workers shall be paid in accordance with the wages and benefits required pursuant to chapter 13 of
28 title 37 and all contractors and subcontractors shall file certified payrolls on a monthly basis for all
29 work completed in the preceding month on a uniform form prescribed by the director of labor and
30 training. Failure to follow the requirements pursuant to chapter 13 of title 37 shall constitute a
31 material violation and a material breach of the agreement with the state. The tax administrator, in
32 consultation with the director of labor and training, shall promulgate such rules and regulations as
33 are necessary to implement the enforcement of this subsection.

34 [\(k\) Subsection \(j\) of this section shall not apply to any project that is the subject of an](#)

1 application for tax credits under this chapter that is submitted to the division of taxation before
2 January 1, 2023.

3 ~~(k) No~~ (l) Subject to the exception provided in subsection (k) of this section, no tax credits
4 shall be awarded under this chapter unless the division of taxation receives confirmation from the
5 department of labor and training that there has been compliance with the prevailing wage
6 requirements set forth in subsection (j) of this section.

7 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- REBUILD RHODE ISLAND
TAX CREDIT

- 1 This act would provide that prevailing wage requirements for rebuild Rhode Island and
2 historic preservation tax credits do not apply to project applications submitted prior to January 1,
3 2023.
4 This act would take effect upon passage.

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