

1-1 By: Hughes S.B. No. 1013
 1-2 (In the Senate - Filed February 17, 2023; March 3, 2023,
 1-3 read first time and referred to Committee on Finance;
 1-4 March 30, 2023, reported favorably by the following vote: Yeas 16,
 1-5 Nays 0; March 30, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22	X			
1-23	X			
1-24	X			

1-25 A BILL TO BE ENTITLED
 1-26 AN ACT

1-27 relating to the franchise and insurance premium tax credit for the
 1-28 certified rehabilitation of certified historic structures.

1-29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-30 SECTION 1. The heading to Subtitle F, Title 2, Tax Code, is
 1-31 amended to read as follows:

1-32 SUBTITLE F. FRANCHISE TAX; CREDITS

1-33 SECTION 2. Subchapter S, Chapter 171, Tax Code, is
 1-34 transferred to Subtitle F, Title 2, Tax Code, redesignated as
 1-35 Chapter 172, Tax Code, and amended to read as follows:

1-36 CHAPTER 172 [SUBCHAPTER S]. TAX CREDIT FOR CERTIFIED
 1-37 REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

1-38 Sec. 172.101 [171.901]. DEFINITIONS. (a) Terms used in
 1-39 this chapter and defined by Chapter 171 have the meanings assigned
 1-40 by Chapter 171.

1-41 (b) In this chapter [subchapter]:

1-42 (1) "Certified historic structure" means a property in
 1-43 this state that is:

1-44 (A) listed individually in the National Register
 1-45 of Historic Places;

1-46 (B) designated as a Recorded Texas Historic
 1-47 Landmark under Section 442.006, Government Code, or as a state
 1-48 archeological landmark under Chapter 191, Natural Resources Code;
 1-49 or

1-50 (C) certified by the commission as contributing
 1-51 to the historic significance of:

1-52 (i) a historic district listed in the
 1-53 National Register of Historic Places; or

1-54 (ii) a local district certified by the
 1-55 United States Department of the Interior in accordance with 36
 1-56 C.F.R. Section 67.9.

1-57 (2) "Certified rehabilitation" means the
 1-58 rehabilitation of a certified historic structure that the
 1-59 commission has certified as meeting the United States secretary of
 1-60 the interior's Standards for Rehabilitation as defined in 36 C.F.R.
 1-61 Section 67.7.

2-1 (3) "Commission" means the Texas Historical
2-2 Commission.

2-3 Sec. 172.102 [~~171.9015~~]. ELIGIBLE COSTS AND EXPENSES. (a)
2-4 Subject to Subsections (b) and (c), in this chapter [~~subchapter~~],
2-5 "eligible costs and expenses" means qualified rehabilitation
2-6 expenditures as defined by Section 47(c)(2), Internal Revenue Code.

2-7 (b) Except as provided by Subsection (c), the depreciation
2-8 and tax-exempt use provisions of Section 47(c)(2), Internal Revenue
2-9 Code, do not apply to costs and expenses incurred by an entity
2-10 exempted from the federal income tax under Section 501(a), Internal
2-11 Revenue Code [~~exempt from the tax imposed under this chapter by~~
2-12 ~~Section 171.063~~], and those costs and expenses are eligible costs
2-13 and expenses if the other provisions of Section 47(c)(2), Internal
2-14 Revenue Code, are satisfied.

2-15 (c) Expenditures by an entity described by Subsection (b) to
2-16 rehabilitate a structure that is leased to a tax-exempt entity in a
2-17 disqualified lease, as those terms are defined by Section 168(h),
2-18 Internal Revenue Code, are not eligible costs and expenses.

2-19 Sec. 172.103 [~~171.902~~]. ELIGIBILITY FOR CREDIT. An entity
2-20 is eligible to apply for a credit in the amount and under the
2-21 conditions and limitations provided by this chapter [~~subchapter~~]
2-22 against the taxes [~~tax~~] imposed under Chapter 171 of this code and,
2-23 as provided by Section 172.109(e), Chapters 221, 222, 223, and 224,
2-24 Insurance Code [~~this chapter~~].

2-25 Sec. 172.104 [~~171.903~~]. QUALIFICATION. An entity is
2-26 eligible for a credit for eligible costs and expenses incurred in
2-27 the certified rehabilitation of a certified historic structure as
2-28 provided by this chapter [~~subchapter~~] if:

2-29 (1) the rehabilitated certified historic structure is
2-30 placed in service on or after September 1, 2013;

2-31 (2) the entity has an ownership interest in the
2-32 certified historic structure in the year during which the structure
2-33 is placed in service after the rehabilitation; and

2-34 (3) the total amount of the eligible costs and
2-35 expenses incurred exceeds \$5,000.

2-36 Sec. 172.105 [~~171.904~~]. CERTIFICATION OF ELIGIBILITY. (a)
2-37 Before claiming, selling, or assigning a credit under this chapter
2-38 [~~subchapter~~], the entity that incurred the eligible costs and
2-39 expenses in the rehabilitation of a certified historic structure
2-40 must request from the commission a certificate of eligibility on
2-41 which the commission certifies that the work performed meets the
2-42 definition of a certified rehabilitation. The entity must include
2-43 with the entity's request:

2-44 (1) information on the property that is sufficient for
2-45 the commission to determine whether the property meets the
2-46 definition of a certified historic structure; and

2-47 (2) information on the rehabilitation, and
2-48 photographs before and after work is performed, sufficient for the
2-49 commission to determine whether the rehabilitation meets the United
2-50 States secretary of the interior's Standards for Rehabilitation as
2-51 defined in 36 C.F.R. Section 67.7.

2-52 (b) The commission shall issue a certificate of eligibility
2-53 to an entity that has incurred eligible costs and expenses as
2-54 provided by this chapter [~~subchapter~~]. The certificate must:

2-55 (1) confirm that:

2-56 (A) the property to which the eligible costs and
2-57 expenses relate is a certified historic structure; and

2-58 (B) the rehabilitation qualifies as a certified
2-59 rehabilitation; and

2-60 (2) specify the date the certified historic structure
2-61 was first placed in service after the rehabilitation.

2-62 (c) The entity must forward the certificate of eligibility
2-63 and the following documentation to the comptroller to claim the tax
2-64 credit:

2-65 (1) an audited cost report issued by a certified
2-66 public accountant, as defined by Section 901.002, Occupations Code,
2-67 that itemizes the eligible costs and expenses incurred in the
2-68 certified rehabilitation of the certified historic structure by the
2-69 entity;

3-1 (2) the date the certified historic structure was
 3-2 first placed in service after the rehabilitation and evidence of
 3-3 that placement in service; and

3-4 (3) an attestation of the total eligible costs and
 3-5 expenses incurred by the entity on the rehabilitation of the
 3-6 certified historic structure.

3-7 (d) For purposes of approving the tax credit under
 3-8 Subsection (c), the comptroller may rely on the audited cost report
 3-9 provided by the entity that requested the tax credit.

3-10 (e) An entity that sells or assigns a credit under this
 3-11 chapter [~~subchapter~~] to another entity shall provide a copy of the
 3-12 certificate of eligibility, together with the audited cost report,
 3-13 to the purchaser or assignee.

3-14 Sec. 172.106 [~~171.905~~]. AMOUNT OF CREDIT; LIMITATIONS.

3-15 (a) The total amount of the credit under this chapter [~~subchapter~~]
 3-16 with respect to the rehabilitation of a single certified historic
 3-17 structure that may be claimed may not exceed 25 percent of the total
 3-18 eligible costs and expenses incurred in the certified
 3-19 rehabilitation of the certified historic structure.

3-20 (b) The total credit claimed for a report, including the
 3-21 amount of any carryforward under Section 172.107 [~~171.906~~], may not
 3-22 exceed the amount of franchise tax due for the report after any
 3-23 other applicable tax credits.

3-24 (c) Eligible costs and expenses may only be counted once in
 3-25 determining the amount of the tax credit available, and more than
 3-26 one entity may not claim a credit for the same eligible costs and
 3-27 expenses.

3-28 Sec. 172.107 [~~171.906~~]. CARRYFORWARD. (a) If an entity is
 3-29 eligible for a credit that exceeds the limitation under Section
 3-30 172.106(b) [~~171.905(b)~~], the entity may carry the unused credit
 3-31 forward for not more than five consecutive reports.

3-32 (b) A carryforward is considered the remaining portion of a
 3-33 credit that cannot be claimed in the current year because of the
 3-34 limitation under Section 172.106(b) [~~171.905(b)~~].

3-35 Sec. 172.108 [~~171.907~~]. APPLICATION FOR CREDIT. (a) An
 3-36 entity must apply for a credit under this chapter [~~subchapter~~] on or
 3-37 with the report for the period for which the credit is claimed.

3-38 (b) An entity shall file with any report on which the credit
 3-39 is claimed a copy of the certificate of eligibility issued by the
 3-40 commission under Section 172.105 [~~171.904~~] and any other
 3-41 information required by the comptroller to sufficiently
 3-42 demonstrate that the entity is eligible for the credit.

3-43 (c) The burden of establishing eligibility for and the value
 3-44 of the credit is on the entity.

3-45 Sec. 172.109 [~~171.908~~]. SALE OR ASSIGNMENT OF CREDIT. (a)
 3-46 An entity that incurs eligible costs and expenses may sell or assign
 3-47 all or part of the credit that may be claimed for those costs and
 3-48 expenses to one or more entities, and any entity to which all or
 3-49 part of the credit is sold or assigned may sell or assign all or part
 3-50 of the credit to another entity. There is no limit on the total
 3-51 number of transactions for the sale or assignment of all or part of
 3-52 the total credit authorized under this chapter [~~subchapter~~],
 3-53 however, collectively all transfers are subject to the maximum
 3-54 total limits provided by Section 172.106 [~~171.905~~].

3-55 (b) An entity that sells or assigns a credit under this
 3-56 section and the entity to which the credit is sold or assigned shall
 3-57 jointly submit written notice of the sale or assignment to the
 3-58 comptroller on a form promulgated by the comptroller not later than
 3-59 the 30th day after the date of the sale or assignment. The notice
 3-60 must include:

3-61 (1) the date of the sale or assignment;
 3-62 (2) the amount of the credit sold or assigned;
 3-63 (3) the names and federal tax identification numbers
 3-64 of the entity that sold or assigned the credit or part of the credit
 3-65 and the entity to which the credit or part of the credit was sold or
 3-66 assigned; and

3-67 (4) the amount of the credit owned by the selling or
 3-68 assigning entity before the sale or assignment, and the amount the
 3-69 selling or assigning entity retained, if any, after the sale or

4-1 assignment.

4-2 (c) The sale or assignment of a credit in accordance with
4-3 this section does not extend the period for which a credit may be
4-4 carried forward and does not increase the total amount of the credit
4-5 that may be claimed. After an entity claims a credit for eligible
4-6 costs and expenses, another entity may not use the same costs and
4-7 expenses as the basis for claiming a credit.

4-8 (d) Notwithstanding the requirements of this chapter
4-9 [~~subchapter~~], a credit earned or purchased by, or assigned to, a
4-10 partnership, limited liability company, S corporation, or other
4-11 pass-through entity may be allocated to the partners, members, or
4-12 shareholders of that entity and claimed under this chapter
4-13 [~~subchapter~~] in accordance with the provisions of any agreement
4-14 among the partners, members, or shareholders and without regard to
4-15 the ownership interest of the partners, members, or shareholders in
4-16 the rehabilitated certified historic structure, provided that the
4-17 entity that claims the credit must be subject to the tax imposed
4-18 under Chapter 171 [~~this chapter~~].

4-19 (e) An entity that incurs eligible costs and expenses or to
4-20 which all or part of a credit is sold or assigned and that is subject
4-21 to a premium tax imposed under Chapter 221, 222, 223, or 224,
4-22 Insurance Code, may claim all or part of the credit against that
4-23 tax. The provisions of this chapter [~~subchapter~~], including
4-24 provisions relating to the total amount of the credit that may be
4-25 claimed for a report, the carryforward of the credit, and the sale
4-26 or assignment of the credit, apply with respect to a credit claimed
4-27 against a tax imposed under Chapter 221, 222, 223, or 224, Insurance
4-28 Code, to the same extent those provisions apply to a credit claimed
4-29 against the tax imposed under Chapter 171 of this code [~~this~~
4-30 ~~chapter~~]. An entity claiming all or part of a credit as authorized
4-31 by this subsection is not required to pay any additional
4-32 retaliatory tax levied under Chapter 281, Insurance Code, as a
4-33 result of claiming that credit.

4-34 Sec. 172.110 [~~171.909~~]. RULES. The commission and the
4-35 comptroller shall adopt rules necessary to implement this chapter
4-36 [~~subchapter~~].

4-37 SECTION 3. The changes in law made by this Act do not affect
4-38 the validity of a credit that accrued under Subchapter S, Chapter
4-39 171, Tax Code, before the effective date of this Act. The credit
4-40 continues in effect as a credit under Chapter 172, Tax Code, as
4-41 transferred, redesignated, and amended by this Act.

4-42 SECTION 4. This Act takes effect September 1, 2023.

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