HOUSE BILL No. 2569

By Representatives Proctor, Arnberger, Baker, Barker, Blex, Collins, Concannon, Croft, Ellis, French, Hoheisel, T. Johnson, Neelly, Wasinger and Waymaster

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AN ACT concerning taxation; relating to income and privilege tax; credits; establishing an older structures tax credit; amending the historic structures tax credit; amending K.S.A. 79-32,211 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. K.S.A. 79-32,211, and amendments thereto, and sections 1 and 2, and amendments thereto, shall be known as and may be cited as the historic Kansas act.

New Sec. 2. (a) For all taxable years commencing after December 31, 2021, there shall be allowed a tax credit against the income, privilege or premium tax liability imposed upon a taxpayer pursuant to the Kansas income tax act, the privilege tax imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premiums tax and privilege fees imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, in an amount equal to 10% of qualified expenditures incurred for the restoration and preservation of a qualified structure. An additional tax credit of 10% of the qualified expenditures may be allowed for the installation of fire suppression materials or equipment by a qualified taxpayer. The total amount of such expenditures for each such qualified expenditure shall be at least equal $2,000 but shall not exceed $1,000,000. If the amount of such tax credit exceeds the qualified taxpayer's income, privilege or premium tax liability for the year in which the rehabilitation was begun, such excess amount may be carried over for deduction from such taxpayer's income, privilege or premium tax liability in the next succeeding year or years until the total amount of the credit has been deducted from tax liability, except that no such credit shall be carried over for deduction after the 10th taxable year succeeding the taxable year in which the rehabilitation plan was placed in service.

(b) Any bank, savings and loan association, savings bank or credit union shall pay taxes on 25% of the interest earned on loans to qualified taxpayers used for expenditures for the restoration and preservation of qualified structures or for the installation of fire suppression materials or equipment.

(c) As used in this section:

(1) "Qualified expenditures" means the costs and expenses incurred by a qualified taxpayer in the restoration and preservation of a qualified structure that is at least 50 years old;

(2) "qualified structure" means any building, whether or not income producing, that includes residential, commercial and agricultural buildings; and

(3) "qualified taxpayer" means the owner of the qualified structure.

(d) If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company, or as the corporation, partnership or limited liability company mutually agree as provided in the bylaws or other executed agreement. Credits granted to a partnership, a limited liability company taxed as a partnership or other multiple owners of property shall be passed through to the partners, members or owners respectively pro rata or pursuant to an executed agreement among the partners, members or owners documenting any alternate distribution method.

(e) Any person, hereinafter designated the assignor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to subsection (a). The taxpayer acquiring credits, hereinafter designated the assignee, may use the amount of the acquired credits to offset up to 100% of the assignee's income, privilege or premium tax liability for either the taxable year in which the qualified expenditures were made. Unused credit amounts claimed by the assignee may be carried forward for up to five years, except that all such amounts shall be claimed within 10 years following the tax year in which the qualified expenditures were made. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement.

(f) No person claiming a tax credit under this section may claim a tax credit for the same structure under K.S.A. 79-32,211, and amendments thereto.

Sec. 3. K.S.A. 79-32,211 is hereby amended to read as follows: 79-32,211. (a) For all taxable years commencing after December 31, 2006, there shall be allowed a tax credit against the income, privilege or premium tax liability imposed upon a taxpayer pursuant to the Kansas income tax act, the privilege tax imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto,* or the premiums tax and privilege fees imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, in an amount equal to*:*

(1) 25% of qualified expenditures incurred in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan by a qualified taxpayer~~ if the total amount of such expenditures equal $5,000 or more~~;~~ or in~~

(2) 30% of the qualified expenditures incurred in the restoration and preservation of a qualified historic structure located in a city with a population between 9,500 and 50,000; and

(3) 40% of the qualified expenditures incurred in the restoration and preservation of a qualified historic structure located in a city with a population of less than 9,500.

In addition, an amount equal to 30% of qualified expenditures incurred in the restoration and preservation of a qualified historic structure which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code and which is not income producing pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of such expenditures equals $5,000 or more.~~ In no event shall the total amount of credits allowed under this section exceed $3,750,000 for fiscal year 2010.~~

(b) If the amount of such tax credit exceeds the qualified taxpayer's income, privilege or premium tax liability for the year in which the qualified rehabilitation plan was placed in service, as defined by section 47(b)(1) of the federal internal revenue code and federal regulation section 1.48-12(f)(2), such excess amount may be carried over for deduction from such taxpayer's income, privilege or premium tax liability in the next succeeding year or years until the total amount of the credit has been deducted from tax liability, except that no such credit shall be carried over for deduction after the 10^{th} taxable year succeeding the taxable year in which the qualified rehabilitation plan was placed in service.

~~(b)~~*(c)* As used in this section, unless the context clearly indicates otherwise:

(1) "Qualified expenditures" means the costs and expenses incurred by a qualified taxpayer in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan which are defined as a qualified rehabilitation expenditure by section 47(c)(2) of the federal internal revenue code;

(2) "qualified historic structure" means any building, whether or not income producing, which is defined as a certified historic structure by section 47(c)(3) of the federal internal revenue code, is individually listed on the register of Kansas historic places, or is located and contributes to a

district listed on the register of Kansas historic places;

(3) "qualified rehabilitation plan" means a project which is approved by the cultural resources division of the state historical society, or by a local government certified by the division to so approve, as being consistent with the standards for rehabilitation and guidelines for rehabilitation of historic buildings as adopted by the federal secretary of interior and in effect on the effective date of this act. The society shall adopt rules and regulations providing application and approval procedures necessary to effectively and efficiently provide compliance with this act, and may collect fees in order to defray its approval costs in accordance with rules and regulations adopted therefor; and

(4) "qualified taxpayer" means the owner of the qualified historic structure or any other person who may qualify for the federal rehabilitation credit allowed by section 47 of the federal internal revenue code.

If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company, or as the corporation, partnership or limited liability company mutually agree as provided in the bylaws or other executed agreement. Credits granted to a partnership, a limited liability company taxed as a partnership or other multiple owners of property shall be passed through to the partners, members or owners respectively pro rata or pursuant to an executed agreement among the partners, members or owners documenting any alternate distribution method.

~~(c)~~*(d)* Any person, hereinafter designated the assignor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to subsection (a). The taxpayer acquiring credits, hereinafter designated the assignee, may use the amount of the acquired credits to offset up to 100% of ~~its~~ *such assignee's* income, privilege or premiums tax liability for either the taxable year in which the qualified rehabilitation plan was first placed into service or the taxable year in which such acquisition was made. Unused credit amounts claimed by the assignee may be carried forward for up to five years, except that all such amounts shall be claimed within 10 years following the tax year in which the qualified rehabilitation plan was first placed into service. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the cultural resources division of the state historical society in writing within 90 calendar days following the effective date of the transfer and shall provide any information as may be required by such division to administer and carry out the provisions of this section. The amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the excess of the value of such credit over the amount paid by the assignee for such credit shall be taxable as income of the assignee.

Sec. 4. K.S.A. 79-32,211 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.