NEWS

Virginia Historic Rehabilitation Tax Credits: a Legislative Update

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The Virginia Historic Rehabilitation Tax Credit ("HRTC") Program (Virginia Code § 58.1-339.2) has been a significant factor in the preservation of historic properties and the revitalization of urban centers across the Commonwealth. Developers can use this tax credit, equal to twenty-five percent (25%) of eligible rehabilitation expenses, against income taxes, insurance premium taxes or bank franchise taxes. When combined with the federal historic rehabilitation tax credit of twenty percent (20%), developers can claim a total tax credit of forty-five percent (45%) of eligible rehabilitation expenses.

A 2014 study conducted by the Virginia Commonwealth University Center for Urban and Regional Analysis found that the use of Virginia HRTCs contributed an estimated $3.9 billion to Virginia's economy during the inception of Virginia HRTCs in 1997 through 2013. The rehabilitation expenses, as well as the ripple-effect of placing over 2,000 otherwise vacant buildings into service, created more than 31,000 full and part-time jobs and generated an estimated $133 million in state and local tax revenues during that 17-year period.

Nevertheless, the HRTC program has undergone legislative scrutiny as part of an effort to curb a variety of Virginia tax credits. Opponents of the HRTC program claim that it cost the Commonwealth $98 million in tax revenue in 2015.

In December 2016, Governor McAuliffe included language in his proposed 2017 budget to cap the amount of HRTCs a taxpayer may claim in any single year at $5 million; however, the proposed budget allowed credits authorized in excess of the cap to be carried over for up to ten (10) years. Several bills were introduced to codify this cap, including House Bill 2460 and Senate Bill 1034, which passed their respective houses in February 2017. Both bills capped the amount of credit a taxpayer can claim each year through the HRTC program at $5 million, but the Senate bill included an amendment limiting the cap to the 2017 tax year. The House rejected the sunset provision, and both bills were sent to conference committee, which compromised on a two-year sunset provision (i.e., the $5 million cap will only be in effect for tax years 2017 and 2018, unless it is extended by subsequent legislation). The House and Senate approved the compromise, and the bills were signed into law by Governor McAuliffe on March 24, 2017.

Several industry groups pushed for the addition of the sunset provision to House Bill 2460/Senate Bill 1034, including Preservation Virginia, the Virginia Bankers Association, the Virginia Association of Realtors, and the Virginia Association for Commercial Real Estate. With the addition of the two-year provision, the legislature must revisit this issue in the future, allowing for time to conduct additional studies on the impact of the cap.

Two other bills seeking to end the HRTC program were introduced in the Senate. Senate Bill 1485 would have added a provision to sunset the Historic Rehabilitation Tax Credit program (and all other tax credits without sunset provisions) in 2022, and Senate Bill 1540 would have capped and phased out the credit completely by 2027. Both were referred to the Senate Finance Committee, where they were defeated.

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