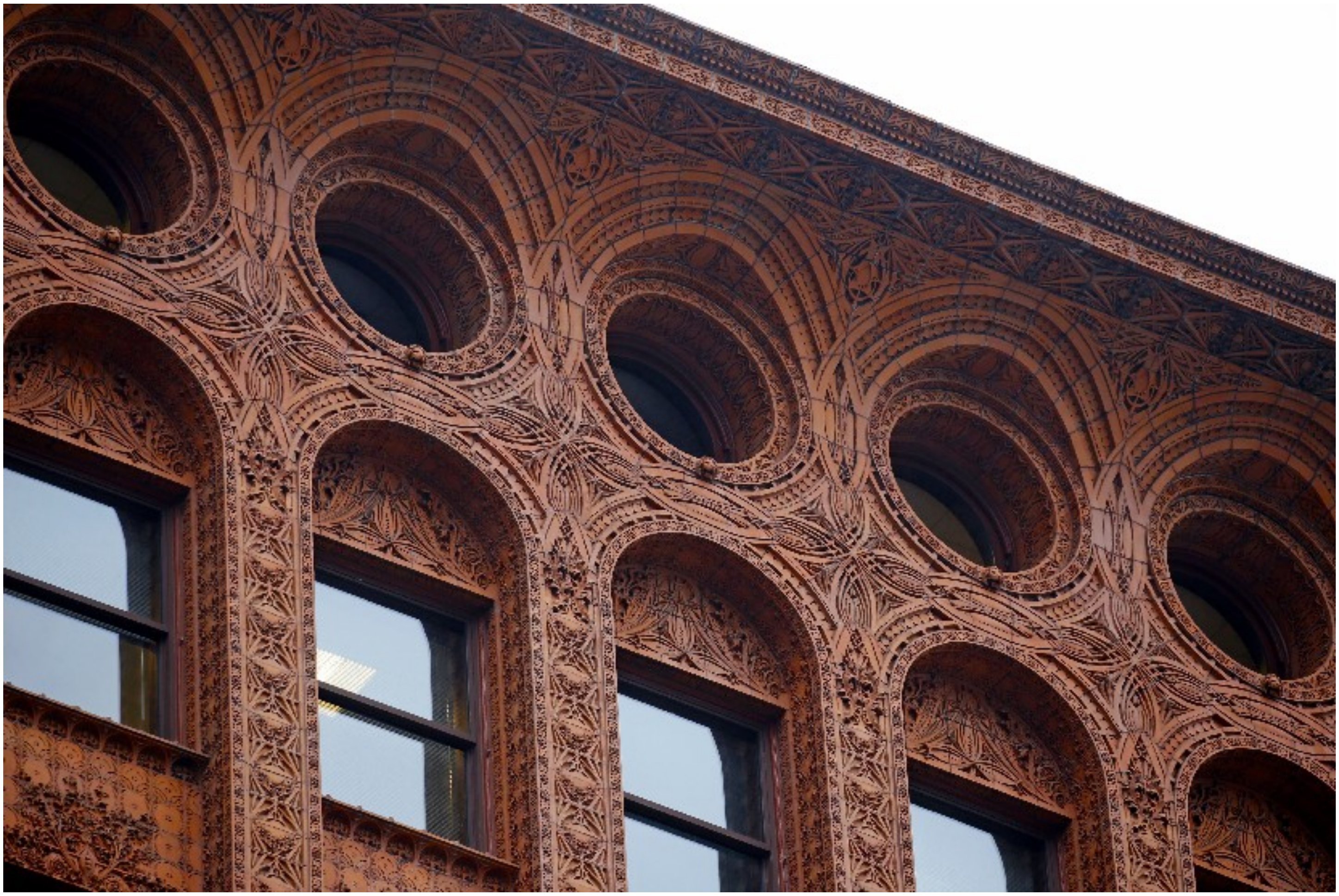
Modified historic tax credit, other development breaks survive in tax bill

***By Jerry Zremski** | The Buffalo News | Published December 17, 2017*



Historic tax credits have been used to renovate many buildings in Buffalo, including the Guaranty Building. (Robert Kirkham/Buffalo News)

WASHINGTON – The historic rehabilitation tax credit – the spark behind the renovation of dozens of buildings in Buffalo in recent years – and several other key tax breaks for development survived in the final version of a tax reform bill likely to pass Congress this week.

The historic tax credit, the New Markets tax credit and some key bond financing tax breaks all had been set to be eliminated in the House version of the bill, prompting near-panic among developers who thought the legislation could halt Buffalo's renaissance in its tracks.

Now, all those development tools remain – although the historic tax credit won't be quite as lucrative as it was in the past, and school districts will lose a key method for cheaply refinancing their debt.
But compared to what could have happened, "I think it's all good news," said Steven J. Weiss, a partner in the Cannon Heyman and Weiss law firm in Buffalo who specializes in helping developers use tax credits.

The restoration of the historic tax credit is particularly important to Buffalo and many rebounding older cities. In Buffalo alone, that tax credit helped restore 70 historic buildings in recent years. That $500 million in development included such prominent projects as the Hotel Lafayette, the Guaranty Building and the H.H.

Richardson Complex.

The historic tax credit would change in one big way, though, under the new tax bill. The benefits of the tax break for fixing up historic properties would now have to be spread over five years, rather than being taken up front in the first year of a project's development.

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Developers and tax experts said that change will trim the immediate cost benefit of the tax break, meaning that some marginal projects may not get done. But overall, developers see the historic tax credit remaining as the last essential piece in the financing of many deals.

"Although in modified form, it will remain the most effective tool in the world to attract private capital into historic buildings," Donovan Rypkema, president of Heritage Strategies International, a consulting firm that works on historic properties, said on Facebook.

Still, by spreading the historic tax break over five years, Congress is about to make the incentive less useful, said Buffalo developer Rocco Termini, who has utilized the tax credit on 15 redevelopment projects.
"Some projects are going to be very difficult to do," Termini said, simply because developers will no longer be able to take the entirety of the tax break up front.

That's particularly true because the state's historic credit matches the federal one, so it, too, will be spread over five years starting next year. Termini said there's talk of expanding the state historic tax credit to 25 percent, which would help mitigate the slowdown of the federal benefit.

Ironically, the tax reform bill could actually prompt a rush in historic redevelopments over the next two years, even though the benefit for them is being cut in the long term, Termini added. That's because the tax bill includes a grandfather clause that allows properties purchased by the end of this year to be rehabilitated by the end of 2019 under the old, more lucrative tax rules.

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By Jerry Zremski:
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A similar rush could occur for developers hoping to cash in on the New Markets Tax Credit, which offers developers a tax break of up to 39 percent for building in poor neighborhoods. That credit is set to expire at the end of 2019, but Termini said he thinks it may well be extended just because it's so popular with many federal lawmakers looking to complete big projects in their districts.

"It's always been a temporary credit, but there's always pressure to extend it," he said.
The New Markets credit is used far less often than the historic tax credit, but it usually is key to funding large projects in developing neighborhoods. For example, Roswell Park used the New Markets credit to help finance the Scott Bieler Clinical Sciences Center, its first new tower in decades.

Once thought to be in more jeopardy than the historic credit, the New Markets credit lucked out by not being wiped out immediately in the tax bill.

"By having it not eliminated, it can possibly come up for renewal," Weiss noted.

The final tax bill also retains the 4 percent tax credit for the development of low-income housing projects, as well as a tool that's used to fund everything from low-income housing to public infrastructure projects: private activity bonds.

The original House tax bill would have ended the tax-exempt status of those funding tools, and Weiss said the impact of that move would have been vast.

"They're used to finance roads, airports, sewers," he said. "They're what most municipalities rely on to fund infrastructure projects."

The final tax bill does include one change that's expected to lead to huge new costs for school districts and municipalities. It ends the use of tax-free advance refunding bonds, which for years have allowed public entities to refinance their debt at lower rates.

A Citigroup report last month indicated just how devastating that change will be, noting that it would cost the Buffalo Public Schools an additional $12.2 million over the next few years.
A strong critic of the tax legislation, Rep. Brian Higgins of Buffalo, said that's just one of the bill's many bad provisions.

"Anything that's going to have a negative impact on the school system is going to have a negative impact on local taxpayers," said Higgins, a Democrat who says the tax bill largely benefits companies by cutting the corporate tax rate from 35 percent to 21 percent.

But Rep. Tom Reed, a Corning Republican who, like Higgins, fought for the restoration of the historic tax credit, stressed that the final tax bill is far better for developers and municipalities than earlier versions of the bill would have been.

"We did not secure 100 percent of what we wanted," said Reed. "But we kept most of the tools in the toolbox so that economic development projects can go forward."