

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 1326

Short Title: Extend Low-Income Housing Credit Sunset.

(Public)

Sponsors: Senator Kerr.

Referred to: Finance.

May 26, 2004

A BILL TO BE ENTITLED
AN ACT TO EXTEND THE SUNSET ON THE LOW-INCOME HOUSING TAX
CREDITS AND TO MAKE A TECHNICAL CORRECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.45 reads as rewritten:

"§ 105-129.45. Sunset.

This Article is repealed effective January 1, ~~2006~~2010. The repeal applies to developments to which federal credits are allocated on or after January 1, ~~2006~~2010."

SECTION 2. G.S. 105-129.42 reads as rewritten:

"§ 105-129.42. Credit for low-income housing awarded a federal credit allocation on or after January 1, 2003.

(a) Definitions. – The following definitions apply in this section:

(1) Qualified Allocation Plan. – The plan governing the allocation of federal low-income housing tax credits for a particular year, as approved by the Governor after a public hearing and publication in the North Carolina Register.

(2) Qualified North Carolina low-income housing development. – A qualified low-income project or building that is allocated a federal tax credit under section 42(h)(1) of the Code and is described in subsection (c) of this section.

(3) Qualified residential unit. – A housing unit that meets the requirements of section 42 of the Code.

(b) Credit. – A taxpayer who is allocated a federal low-income housing tax credit under section 42 of the Code to construct or substantially rehabilitate a qualified North Carolina low-income housing development is allowed a credit equal to a percentage of the development's ~~eligible~~qualified basis, as determined pursuant to section 42(d) of the Code. For the purpose of this section, ~~eligible~~qualified basis is calculated based on the information contained in the carryover allocation and is not recalculated to reflect

subsequent increases or decreases. No credit is allowed for a development that uses tax-exempt bond financing.

(c) Developments and Amounts. – The following table sets out the housing developments that are qualified North Carolina low-income housing developments and are allowed a credit under this section. The table also sets out the percentage of the development's ~~eligible~~qualified basis for which a credit is allowed. The designation of a county or city as Low Income, Moderate Income, or High Income and determinations of affordability are made by the Housing Finance Agency in accordance with the Qualified Allocation Plan in effect as of the time the federal credit is allocated. A change in the income designation of a county or city after a federal credit is allocated does not affect the percentage of the developer's ~~eligible~~qualified basis for which a credit is allowed. The affordability requirements set out in the chart apply for the duration of the federal tax credit compliance period. If in any year a taxpayer fails to meet these affordability requirements, the credit is forfeited under subsection (h) of this section.

Type of Development	Percentage of Basis for Which Credit Is Allowed
Forty percent (40%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of area median income and the units are in a Low-Income county or city.	Thirty percent (30%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of the area median income and the units are in a Moderate-Income county or city.	Twenty percent (20%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is forty percent (40%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)
Twenty-five percent (25%) of the qualified residential units are affordable to households whose income is thirty percent (30%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)

(d) Election. – When a taxpayer to whom a federal low-income housing credit is allocated submits to the Housing Finance Agency a request to receive a carryover allocation for that credit, the taxpayer must elect a method for receiving the tax credit allowed by this section. A taxpayer may elect to receive the credit in the form of either a direct tax refund or a loan generated by transferring the credit to the Housing Finance

1 Agency. Neither a direct tax refund nor a loan received as the result of the transfer of
2 the credit is considered taxable income under this Chapter.

3 Under the direct tax refund method, a taxpayer elects to apply the credit allowed by
4 this section to the taxpayer's liability under Article 4 of this Chapter. If the credit
5 allowed by this section exceeds the amount of tax imposed by Article 4 for the taxable
6 year, reduced by the sum of all other credits allowable, the Secretary must refund the
7 excess. In computing the amount of tax against which multiple credits are allowed,
8 nonrefundable credits are subtracted before this credit. The provisions that apply to an
9 overpayment of tax apply to the refundable excess of a credit allowed under this section.

10 Under the loan method, a taxpayer elects to transfer the credit allowed by this
11 section to the Housing Finance Agency and receive a loan from that Agency for the
12 amount of the credit. The terms of the loan are specified by the Housing Finance
13 Agency in accordance with the Qualified Allocation Plan.

14 (e) Exception When No Carryover. – If a taxpayer does not submit to the
15 Housing Finance Agency a request to receive a carryover allocation, the taxpayer must
16 elect the method for receiving the credit allowed by this section when the taxpayer
17 submits to the Agency federal Form 8609. A taxpayer to whom this subsection applies
18 claims the credit for the taxable year in which the taxpayer submits federal Form 8609.

19 (f) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
20 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this
21 Article does not distribute the credit among any of its owners. The pass-through entity is
22 considered the taxpayer for purposes of claiming the credit allowed by this Article. If a
23 return filed by a pass-through entity indicates that the entity is paying tax on behalf of
24 the owners of the entity, the credit allowed under this Article does not affect the entity's
25 payment of tax on behalf of its owners.

26 (g) Return and Payment. – A taxpayer may claim the credit allowed by this
27 section on a return filed for the taxable year in which the taxpayer receives a carryover
28 allocation of a federal low-income housing credit. The return must state the name and
29 location of the qualified low-income housing development for which the credit is
30 claimed.

31 If a taxpayer chooses the loan method for receiving the credit allowed under this
32 section, the Secretary must transfer to the Housing Finance Agency the amount of credit
33 allowed the taxpayer. The Agency must loan the taxpayer the amount of the credit on
34 terms consistent with the Qualified Allocation Plan. The Housing Finance Agency is not
35 required to make a loan to a qualified North Carolina low-income housing development
36 until the Secretary transfers the credit amount to the Agency.

37 If the taxpayer chooses the direct tax refund method for receiving the credit allowed
38 under this section, the Secretary must transfer to the Housing Finance Agency the
39 refundable excess of the credit allowed the taxpayer. The Agency holds the refund due
40 the taxpayer in escrow, with no interest accruing to the taxpayer during the escrow
41 period. The Agency must release the refund to the taxpayer upon the occurrence of the
42 earlier of the following:

- 43 (1) The Agency determines that the taxpayer has complied with the
44 Qualified Allocation Plan and has completed at least fifty percent

(50%) of the activities included in the development's ~~eligible~~qualified basis.

(2) Within 30 days after the date the development is placed in service.

(h) Forfeiture. – A taxpayer that receives a credit under this section must immediately report any recapture event under section 42 of the Code to the Housing Finance Agency. If the taxpayer or any of its owners are required under section 42(j) of the Code to recapture all or part of a federal credit with respect to a qualified North Carolina low-income development, the taxpayer forfeits the corresponding part of the credit allowed under this section. This requirement does not apply in the following circumstances:

(1) When the recapture of part or all of the federal credit is the result of an event that occurs in the sixth or a subsequent calendar year after the calendar year in which the development was awarded a federal credit allocation.

(2) The taxpayer elected to transfer the credit allowed by this section to the Housing Finance Agency.

(i) Liability From Forfeiture. – A taxpayer that forfeits all or part of the credit allowed under this section is liable for all past taxes avoided and any refund claimed as a result of the credit plus interest at the rate established under G.S. 105-241.1(i). The interest is computed from the date the Secretary transferred the credit amount to the Housing Finance Agency. The past taxes, refund, and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the taxes, refund, and interest by the due date is subject to the penalties provided in G.S. 105-236."

SECTION 3. This act is effective when it becomes law.