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SENATE BILL DRS35246-MCf-150

Short Title: Low-Income Housing Tax Credits. (Public)

Sponsors: Senators J. Jackson, deViere, and Clark (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REENACT THE LOW-INCOME HOUSING TAX CREDITS.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Article 3E of Subchapter I of Chapter 105 of the General Statutes, with
5 the exception of G.S. 105-129.41, is reenacted as it existed immediately before its repeal and
6 reads as rewritten:

7 "Article 3E.

8 "Low-Income Housing Tax Credits.

9 **"§ 105-129.40. Scope and definitions.**

10 (a) Scope. – ~~G.S. 105-129.41 applies to buildings that are awarded a federal credit~~
11 ~~allocation before January 1, 2003.~~ G.S. 105-129.42 applies to buildings that are awarded a federal
12 credit allocation on or after January 1, 2003.

13 (b) Definitions. – The definitions in section 42 of the Code and the following definitions
14 apply in this Article:

15 (1) Housing Finance Agency. – The North Carolina Housing Finance Agency
16 established in G.S. 122A-4.

17 (2) Pass-through entity. – Defined in G.S. 105-228.90.

18 **"§ 105-129.42. Credit for low-income housing awarded a federal credit allocation on or**
19 **after January 1, 2003. allocation.**

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

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

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

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

30 (b) Credit. – A taxpayer who is allocated a federal low-income housing tax credit under
31 section 42 of the Code to construct or substantially rehabilitate a qualified North Carolina
32 low-income housing development is allowed a credit equal to a percentage of the development's
33 qualified basis, as determined pursuant to section 42 of the Code. For the purpose of this section,
34 qualified basis is calculated based on the information contained in the carryover allocation and
35 is not recalculated to reflect subsequent increases or decreases. No credit is allowed for a
36 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 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 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 Agency. Neither a direct tax refund nor a loan received as the result of the transfer of the credit is considered taxable income under this Chapter.

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

Under the loan method, a taxpayer elects to transfer the credit allowed by this section to the Housing Finance Agency and receive a loan from that Agency for the amount of the credit. The

1 terms of the loan are specified by the Housing Finance Agency in accordance with the Qualified
2 Allocation Plan.

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

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

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

19 If a taxpayer chooses the loan method for receiving the credit allowed under this section, the
20 Secretary must transfer to the Housing Finance Agency the amount of credit allowed the
21 taxpayer. The Agency must loan the taxpayer the amount of the credit on terms consistent with
22 the Qualified Allocation Plan. The Housing Finance Agency is not required to make a loan to a
23 qualified North Carolina low-income housing development until the Secretary transfers the credit
24 amount to the Agency.

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

30 (1) The Agency determines that the taxpayer has complied with the Qualified
31 Allocation Plan and has completed at least fifty percent (50%) of the activities
32 included in the development's qualified basis.

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

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

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

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

45 (i) Liability From Forfeiture. – A taxpayer that forfeits all or part of the credit allowed
46 under this section is liable for all past taxes avoided and any refund claimed as a result of the
47 credit plus interest at the rate established under G.S. 105-241.21. The interest is computed from
48 the date the Secretary transferred the credit amount to the Housing Finance Agency. The past
49 taxes, refund, and interest are due 30 days after the date the credit is forfeited. A taxpayer that
50 fails to pay the taxes, refund, and interest by the due date is subject to the penalties provided in
51 G.S. 105-236.

1 **"§ 105-129.43. Substantiation.**

2 A taxpayer allowed a credit under this Article must maintain and make available for
3 inspection any information or records required by the Secretary of Revenue or the Housing
4 Finance Agency. The burden of proving eligibility for a credit and the amount of the credit rests
5 upon the taxpayer.

6 **"§ 105-129.44. Report.**

7 The Department must include in the economic incentives report required by G.S. 105-256 the
8 following information itemized by taxpayer:

- 9 (1) The number of taxpayers that took the credit allowed in this Article.
- 10 (2) The location of each qualified North Carolina low-income building or housing
11 development for which a credit was taken.
- 12 (3) The total cost to the General Fund of the credits taken.

13 **"§ 105-129.45. Sunset.**

14 This Article is repealed effective January 1, ~~2015-2025~~. The repeal applies to developments
15 to which federal credits are allocated on or after January 1, ~~2015-2025~~."

16 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
17 2021.