

2023 Regular Session

SENATE BILL NO. 221

BY SENATOR TALBOT

TAX/TAXATION. To provide an income tax credit for donations to support the development, construction, or rehabilitation of affordable housing. (8/1/23)

1 AN ACT

2 To enact R.S. 47:6043, relative to income tax credits; to authorize an income tax credit for
3 the development, construction, or rehabilitation of affordable housing; to provide for
4 the purpose of the program; to provide for definitions; to provide for an application
5 process and the allocation of credits by the Louisiana Housing Corporation; to
6 provide for application of the credits; to provide for the recovery and recapture of
7 credits; to authorize the promulgation of rules; to provide for applicability; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:6043 is hereby enacted to read as follows:

11 **§6043. Affordable Housing Tax Credit Program**

12 **A. Purpose. The legislature hereby finds and declares housing insecurity**
13 **and instability that results from the lack of affordable housing impacts people**
14 **and communities in countless ways, including harming people's physical and**
15 **mental health, limiting education outcomes, and restricting access to good jobs**
16 **and economic opportunity. Therefore, it is hereby declared that the purpose of**
17 **this Section is to encourage and attract investment for affordable housing**

1 projects within the state.

2 **B. Definitions. For purposes of this Section:**

3 **(1) "Administrative housing agency" means the Louisiana Housing**
4 **Corporation.**

5 **(2) "Affordable housing project" means a project consisting of homes**
6 **constructed for first-time homeowners earning thirty percent to eighty percent**
7 **of area median income as determined by the United States Department of**
8 **Housing and Urban Development or a rental project in which at least twenty-**
9 **five percent of the units have rents that do not exceed, on a monthly basis, the**
10 **maximum gross rent figures published by the administrative housing agency.**

11 **(3) "Donation" means money, securities, or immovable or moveable**
12 **property that is given to a not-for-profit sponsor that is used solely for costs**
13 **associated with either (i) purchasing, constructing, or rehabilitating an**
14 **affordable housing project in Louisiana; or (ii) technical assistance as defined**
15 **by this Section.**

16 **(4) "Donor" means an individual or entity, other than the federal**
17 **government, the state government, any local municipality or any agency, board,**
18 **commission, corporation, or authority of the federal government, the state**
19 **government or any local government making a donation.**

20 **(5) "General operating support" means any cost incurred by a sponsor**
21 **that is a part of its general program costs and is not limited to costs directly**
22 **incurred by the affordable housing project.**

23 **(6) "Geographical area" means the metropolitan area or parish**
24 **designated as an area by the federal Department of Housing and Urban**
25 **Development under Section 8 of the United States Housing Act of 1937, as**
26 **amended, for purposes of determining fair market rental rates.**

27 **(7) "Median income" means the incomes that are determined by the**
28 **federal Department of Housing and Urban Development guidelines and**
29 **adjusted for family size.**

1 (8) "Project" means an affordable housing project, general operating
2 support, or technical assistance.

3 (9) "Sponsor" means a not-for-profit organization that (i) is organized
4 as a not-for-profit organization under the laws of Louisiana or another state
5 and has as one of its purposes the development of affordable housing; or (ii) is
6 organized for the purpose of constructing or rehabilitating affordable housing
7 units and has been issued a ruling from the Internal Revenue Service of the
8 United States Department of the Treasury that the organization is exempt from
9 income taxation under provisions of the Internal Revenue Code.

10 (10) "Technical assistance" means any cost incurred by a sponsor for
11 project planning, assistance with applying for financing, or counseling services
12 provided to prospective homeowners.

13 C. Tax credit; specific projects.

14 (1) There shall be a credit against income tax for a donation to a sponsor
15 who has as a part of its purpose the development, construction, or rehabilitation
16 of affordable housing. The amount of the credit shall equal fifty percent of the
17 fair market value of the donation.

18 (2) The tax credit shall not be allowed for donations made with state or
19 federal funds, unless the state or federal funds are reported as taxable income
20 or are structured as repayable loans.

21 (3) The credit is earned in the year that the project for which the
22 donation was made is placed in service.

23 (4) The credit shall be allowed against the income tax for the taxable
24 period in which the credit is earned. If the tax credit allowed pursuant to this
25 Section exceeds the amount of such taxes due, then any unused credit may be
26 carried forward as a credit against subsequent tax liability for a period not to
27 exceed five years.

28 (5) The total amount of affordable housing credits allocated by the
29 administrative housing agency in any calendar year shall not exceed ten million

1 dollars irrespective of the year in which claimed. No more than one million
2 dollars shall be allocated for general operating support and technical assistance.

3 (6) In the event that the total amount of credits allocated in any calendar
4 year is less than ten million dollars, any residual amount of unused credits shall
5 carry forward for use in subsequent years and may be allocated in addition to
6 the ten million dollar limit for each year.

7 (7) Eligible projects shall maintain their affordable housing compliance
8 for a minimum of ten years or credits related to the project shall be subject to
9 recovery and recapture.

10 D. Application.

11 (1) A sponsor shall apply to the administrative housing agency for
12 approval of the project and allocation of credits.

13 (2) When reviewing an application for approval and allocation of credits,
14 the administrative housing agency shall consider all of the following:

15 (a) The financial feasibility of the project.

16 (b) The ability of the sponsor to successfully construct the project and
17 place it in service, taking into consideration the construction or other schedule
18 submitted with the application, the sponsor's experience in the development,
19 construction, or rehabilitation of housing, and the size and scope of the project.

20 (c) Evidence of site control, satisfactory to the administrative housing
21 agency, for the project, which shall include, but not be limited to, a purchase
22 contract, an option to purchase, or a letter of intent from a prospective donor
23 of real property.

24 (d) The need for affordable housing in the geographical area in which the
25 project will be located, based on census data, social surveys, published data, or
26 on-site inspections and the location of other projects for which the
27 administrative housing agency has allocated credits.

28 (e) The likelihood that the project will increase the quality and quantity
29 of housing stock and redevelop blighted areas.

1 **(f) The ability of the project to serve households with incomes less than**
2 **income levels for the geographical area in which the project will be located**
3 **established by the United States Department of Housing and Urban**
4 **Development for purposes of Section 8 of the United States Housing Act of 1937,**
5 **as amended.**

6 **(3) Upon approval of the application, the administrative housing agency**
7 **shall allocate a specific dollar value of tax credits for the project.**

8 **(a) Tax credits for general operating support or technical assistance shall**
9 **be included as part of an allocation of tax credits for a project.**

10 **(b) Tax credits for general operating support are limited to ten percent**
11 **of the total tax credit allocation for the related project.**

12 **E. Certification of tax credits.**

13 **(1) Upon completion of the project, the sponsor shall submit verification**
14 **that the donations were utilized for purposes eligible for the tax credit.**

15 **(2) The administrative housing agency shall certify credits to the donors.**

16 **(3) The administrative housing agency shall provide a copy of the**
17 **certification to the Department of Revenue.**

18 **F. Application of the credit.**

19 **(1)(a) All entities taxed as corporations for Louisiana income tax**
20 **purposes shall claim any credit allowed under this Section on their corporation**
21 **income tax return.**

22 **(b) Individuals, estates, and trusts shall claim any credit allowed under**
23 **this Section on their income tax returns.**

24 **(2) Entities not taxed as corporations shall claim any credit allowed**
25 **under this Section on the returns of the partners or members as follows:**

26 **(a) Corporate partners or members shall claim their share of the credit**
27 **on their corporate income tax returns.**

28 **(b) Individual partners or members shall claim their share of the credit**
29 **on their individual income tax returns.**

1 **(c) Partners or members that are estates or trusts shall claim their share**
2 **of the credit on their fiduciary income tax returns.**

3 **G. Recovery and recapture of credits by the Department of Revenue.**

4 **(1) Credits previously granted to a taxpayer may be recovered or**
5 **recaptured by the secretary of the Department of Revenue through any**
6 **collection remedy authorized by R.S. 47:1561.**

7 **(2) The only interest that may be assessed and collected on recovered or**
8 **recaptured credits is interest at a rate three percentage points above the rate**
9 **provided in R.S. 9:3500(B)(1), which shall be computed from the original due**
10 **date of the return on which the credit was taken.**

11 **H. The Louisiana Housing Corporation may promulgate such rules, in**
12 **accordance with the Administrative Procedure Act, as may be necessary to**
13 **implement the provisions of this Section.**

14 Section 2. The Act is applicable to taxable periods beginning on or after January 1,
15 2024.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Danielle B. Clapinski.

DIGEST

SB 221 Original

2023 Regular Session

Talbot

Proposed law authorizes a nonrefundable credit against income taxes for a donation to develop, construct, or rehabilitate "affordable housing projects".

Proposed law defines "affordable housing project" as a project consisting of homes constructed for first-time homeowners earning 30% to 80% of area median income as determined by the U.S. Department of Housing and Urban Development or a rental project in which at least 25% of the units have rents to that do not exceed, on a monthly basis, the maximum gross rent figures published by the administrative housing agency.

Proposed law provides that the credit is equal to 50% of the fair market value of the donation made to a sponsor. Provides that the credit is earned in the year in which the project for which the donation was made is placed in service.

Proposed law requires that the credit be allowed against the income tax for the taxable period in which the credit is earned. Further provides that if the tax credit allowed exceeds the amount of tax due, that any unused credit may be carried forward against subsequent income tax liability for a period not to exceed five years.

Proposed law requires the sponsor of a qualified project to submit an application to the administrative housing agency in order to qualify for the credit. Provides factors for the administrative housing agency to consider when reviewing applications for approval and

allocations.

Proposed law limits the total amount of credits to be allocated by the administrative housing agency to no more than \$10,000,000 in any calendar year. Further provides that no more than \$1,000,000 may be allocated for general operating support and technical assistance in any calendar year.

Proposed law requires the sponsor to submit verification that donations were utilized for purposes eligible for the credit. Requires the administrative housing agency to certify credits to the donors and provide a copy of the certification to the Department of Revenue.

Proposed law provides for allocation of the credit among partners, shareholders, members, or other constituent taxpayers of partnerships, limited liability companies, S corporations, and similar pass-through entities.

Proposed law provides for the recovery and recapture of credits by the Department of Revenue under certain circumstances. Further limits the amount of interest that may be assessed and collected on recovered or recaptured credits.

Proposed law authorizes the Louisiana Housing Corporation to promulgate rules to implement the tax credit program.

Applicable to taxable periods beginning on or after January 1, 2024.

Effective August 1, 2023.

(Enacts R.S. 47:6043)