

1 **LOW-INCOME HOUSING TAX CREDIT ALLOCATION**

2 **AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd Weiler**

6 House Sponsor: Rebecca P. Edwards

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to the Utah low-income housing tax credit.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ extends for an additional 10 years the formula for determining the aggregate annual
14 tax credit that the Utah Housing Corporation may allocate for the Utah low-income
15 housing tax credit.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-7-607**, as last amended by Laws of Utah 2006, Chapter 223

23 **59-10-1010**, as renumbered and amended by Laws of Utah 2006, Chapter 223

25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section **59-7-607** is amended to read:

27 **59-7-607. Utah low-income housing tax credit.**

28 (1) As used in this section:

29 (a) "Allocation certificate" means:

30 (i) the certificate prescribed by the commission and issued by the Utah Housing
31 Corporation to each taxpayer that specifies the percentage of the annual federal low-income
32 housing tax credit that each taxpayer may take as an annual credit against state income tax; or

33 (ii) a copy of the allocation certificate that the housing sponsor provides to the
34 taxpayer.

35 (b) "Building" means a qualified low-income building as defined in Section 42(c),
36 Internal Revenue Code.

37 (c) "Federal low-income housing tax credit" means the tax credit under Section 42,
38 Internal Revenue Code.

39 (d) "Housing sponsor" means a corporation in the case of a C corporation, a partnership
40 in the case of a partnership, a corporation in the case of an S corporation, or a limited liability
41 company in the case of a limited liability company.

42 (e) "Qualified allocation plan" means the qualified allocation plan adopted by the Utah
43 Housing Corporation pursuant to Section 42(m), Internal Revenue Code.

44 (f) "Special low-income housing tax credit certificate" means a certificate:

45 (i) prescribed by the commission;

46 (ii) that a housing sponsor issues to a taxpayer for a taxable year; and

47 (iii) that specifies the amount of tax credit a taxpayer may claim under this section if
48 the taxpayer meets the requirements of this section.

49 (g) "Taxpayer" means a person that is allowed a tax credit in accordance with this
50 section which is the corporation in the case of a C corporation, the partners in the case of a
51 partnership, the shareholders in the case of an S corporation, and the members in the case of a
52 limited liability company.

53 (2) (a) For taxable years beginning on or after January 1, 1995, there is allowed a
54 nonrefundable tax credit against taxes otherwise due under this chapter or Chapter 8, Gross
55 Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax
56 [~~Act~~], for taxpayers issued an allocation certificate.

57 (b) The tax credit shall be in an amount equal to the greater of the amount of:

58 (i) federal low-income housing tax credit to which the taxpayer is allowed during that
59 year multiplied by the percentage specified in an allocation certificate issued by the Utah
60 Housing Corporation; or

61 (ii) tax credit specified in the special low-income housing tax credit certificate that the
62 housing sponsor issues to the taxpayer as provided in Subsection (2)(c).

63 (c) For purposes of Subsection (2)(b)(ii), the tax credit is equal to the product of:

64 (i) the total amount of low-income housing tax credit under this section that:

65 (A) a housing sponsor is allowed for a building; and

66 (B) all of the taxpayers may claim with respect to the building if the taxpayers meet the
67 requirements of this section; and

68 (ii) the percentage of tax credit a taxpayer may claim:

69 (A) under this section if the taxpayer meets the requirements of this section; and

70 (B) as provided in the agreement between the taxpayer and the housing sponsor.

71 (d) (i) For the calendar year beginning on January 1, 1995, through the calendar year
72 beginning on January 1, ~~[2015]~~ 2025, the aggregate annual tax credit that the Utah Housing
73 Corporation may allocate for the credit period described in Section 42(f), Internal Revenue
74 Code, pursuant to this section and Section 59-10-1010 is an amount equal to the product of:

75 (A) 12.5 cents; and

76 (B) the population of Utah.

77 (ii) For purposes of this section, the population of Utah shall be determined in
78 accordance with Section 146(j), Internal Revenue Code.

79 (3) (a) ~~[By October 1, 1994, the]~~ The Utah Housing Corporation shall determine
80 criteria and procedures for allocating the tax credit under this section and Section 59-10-1010
81 and incorporate the criteria and procedures into the Utah Housing Corporation's qualified
82 allocation plan.

83 (b) The Utah Housing Corporation shall create the criteria under Subsection (3)(a)
84 based on:

85 (i) the number of affordable housing units to be created in Utah for low and moderate

86 income persons in the residential housing development of which the building is a part;
87 (ii) the level of area median income being served by the development;
88 (iii) the need for the tax credit for the economic feasibility of the development; and
89 (iv) the extended period for which the development commits to remain as affordable
90 housing.

91 (4) (a) The following may apply to the Utah Housing Corporation for a tax credit under
92 this section:

93 (i) any housing sponsor that has received an allocation of the federal low-income
94 housing tax credit; or

95 (ii) any applicant for an allocation of the federal low-income housing tax credit.

96 (b) The Utah Housing Corporation may not require fees for applications of the tax
97 credit under this section in addition to those fees required for applications for the federal
98 low-income housing tax credit.

99 (5) (a) The Utah Housing Corporation shall determine the amount of the tax credit to
100 allocate to a qualifying housing sponsor in accordance with the qualified allocation plan of the
101 Utah Housing Corporation.

102 (b) (i) The Utah Housing Corporation shall allocate the tax credit to housing sponsors
103 [by issuing] in the same manner that it allocates federal low-income housing credits and shall
104 issue an allocation certificate to qualifying housing sponsors as evidence of the allocation.

105 (ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed
106 percentage of the federal low-income housing tax credit as determined by the Utah Housing
107 Corporation.

108 (c) The percentage specified in an allocation certificate may not exceed 100% of the
109 federal low-income housing tax credit.

110 (6) A housing sponsor shall provide a copy of the allocation certificate to each taxpayer
111 that is issued a special low-income housing tax credit certificate.

112 (7) (a) A housing sponsor shall provide to the commission a list of:

113 (i) the taxpayers issued a special low-income housing tax credit certificate; and

114 (ii) for each taxpayer described in Subsection (7)(a)(i), the amount of tax credit listed
115 on the special low-income housing tax credit certificate.

116 (b) A housing sponsor shall provide the list required by Subsection (7)(a):

117 (i) to the commission;

118 (ii) on a form provided by the commission; and

119 (iii) with the housing sponsor's tax return for each taxable year for which the housing
120 sponsor issues a special low-income housing tax credit certificate described in this Subsection
121 (7).

122 (8) (a) All elections made by the taxpayer pursuant to Section 42, Internal Revenue
123 Code, shall apply to this section.

124 (b) (i) If a taxpayer is required to recapture a portion of any federal low-income
125 housing tax credit, the taxpayer shall also be required to recapture a portion of any state tax
126 credits authorized by this section.

127 (ii) The state recapture amount shall be equal to the percentage of the state tax credit
128 that equals the proportion the federal recapture amount bears to the original federal low-income
129 housing tax credit amount subject to recapture.

130 (9) (a) Any tax credits returned to the Utah Housing Corporation in any year may be
131 reallocated within the same time period as provided in Section 42, Internal Revenue Code.

132 (b) Tax credits that are unallocated by the Utah Housing Corporation in any year may
133 be carried over for allocation in ~~the~~ subsequent year years.

134 (10) (a) Amounts otherwise qualifying for the tax credit, but not allowable because the
135 tax credit exceeds the tax, may be carried back three years or may be carried forward five years
136 as a credit against the tax.

137 (b) Carryover tax credits under Subsection (10)(a) shall be applied against the tax:

138 (i) before the application of the tax credits earned in the current year; and

139 (ii) on a first-earned first-used basis.

140 (11) Any tax credit taken in this section may be subject to an annual audit by the
141 commission.

142 (12) The Utah Housing Corporation shall provide an annual report to the Revenue and
143 Taxation Interim Committee which shall include at least:

- 144 (a) the purpose and effectiveness of the tax credits; and
- 145 (b) the benefits of the tax credits to the state.

146 (13) The commission may, in consultation with the Utah Housing Corporation,
147 promulgate rules to implement this section.

148 Section 2. Section **59-10-1010** is amended to read:

149 **59-10-1010. Utah low-income housing tax credit.**

150 (1) As used in this section:

151 (a) "Allocation certificate" means:

- 152 (i) the certificate prescribed by the commission and issued by the Utah Housing
153 Corporation to each claimant, estate, or trust that specifies the percentage of the annual federal
154 low-income housing credit that each claimant, estate, or trust may take as an annual tax credit
155 against a tax imposed by this chapter; or

- 156 (ii) a copy of the allocation certificate that the housing sponsor provides to the
157 claimant, estate, or trust.

158 (b) "Building" means a qualified low-income building as defined in Section 42(c),
159 Internal Revenue Code.

160 (c) "Federal low-income housing credit" means the low-income housing credit under
161 Section 42, Internal Revenue Code.

162 (d) "Housing sponsor" means a corporation in the case of a C corporation, a partnership
163 in the case of a partnership, a corporation in the case of an S corporation, or a limited liability
164 company in the case of a limited liability company.

165 (e) "Qualified allocation plan" means the qualified allocation plan adopted by the Utah
166 Housing Corporation pursuant to Section 42(m), Internal Revenue Code.

167 (f) "Special low-income housing tax credit certificate" means a certificate:

- 168 (i) prescribed by the commission;

- 169 (ii) that a housing sponsor issues to a claimant, estate, or trust for a taxable year; and

170 (iii) that specifies the amount of a tax credit a claimant, estate, or trust may claim under
171 this section if the claimant, estate, or trust meets the requirements of this section.

172 (2) (a) For taxable years beginning on or after January 1, 1995, there is allowed a
173 nonrefundable tax credit against taxes otherwise due under this chapter for a claimant, estate,
174 or trust issued an allocation certificate.

175 (b) The tax credit shall be in an amount equal to the greater of the amount of:

176 (i) federal low-income housing credit to which the claimant, estate, or trust is allowed
177 during that year multiplied by the percentage specified in an allocation certificate issued by the
178 Utah Housing Corporation; or

179 (ii) tax credit specified in the special low-income housing tax credit certificate that the
180 housing sponsor issues to the claimant, estate, or trust as provided in Subsection (2)(c).

181 (c) For purposes of Subsection (2)(b)(ii), the tax credit is equal to the product of:

182 (i) the total amount of low-income housing tax credit under this section that:

183 (A) a housing sponsor is allowed for a building; and

184 (B) all of the claimants, estates, and trusts may claim with respect to the building if the
185 claimants, estates, and trusts meet the requirements of this section; and

186 (ii) the percentage of tax credit a claimant, estate, or trust may claim:

187 (A) under this section if the claimant, estate, or trust meets the requirements of this
188 section; and

189 (B) as provided in the agreement between the claimant, estate, or trust and the housing
190 sponsor.

191 (d) (i) For the calendar year beginning on January 1, 1995, through the calendar year
192 beginning on January 1, ~~2015~~ 2025, the aggregate annual tax credit that the Utah Housing
193 Corporation may allocate for the credit period described in Section 42(f), Internal Revenue
194 Code, pursuant to this section and Section [59-7-607](#) is an amount equal to the product of:

195 (A) 12.5 cents; and

196 (B) the population of Utah.

197 (ii) For purposes of this section, the population of Utah shall be determined in

198 accordance with Section 146(j), Internal Revenue Code.

199 (3) (a) [~~By October 1, 1994, the~~] The Utah Housing Corporation shall determine
200 criteria and procedures for allocating the tax credit under this section and Section 59-7-607 and
201 incorporate the criteria and procedures into the Utah Housing Corporation's qualified allocation
202 plan.

203 (b) The Utah Housing Corporation shall create the criteria under Subsection (3)(a)
204 based on:

205 (i) the number of affordable housing units to be created in Utah for low and moderate
206 income persons in the residential housing development of which the building is a part;

207 (ii) the level of area median income being served by the development;

208 (iii) the need for the tax credit for the economic feasibility of the development; and

209 (iv) the extended period for which the development commits to remain as affordable
210 housing.

211 (4) (a) The following may apply to the Utah Housing Corporation for a tax credit under
212 this section:

213 (i) any housing sponsor that is a claimant, estate, or trust if that housing sponsor has
214 received an allocation of the federal low-income housing credit; or

215 (ii) any applicant for an allocation of the federal low-income housing credit if that
216 applicant is a claimant, estate, or trust.

217 (b) The Utah Housing Corporation may not require fees for applications of the tax
218 credit under this section in addition to those fees required for applications for the federal
219 low-income housing credit.

220 (5) (a) The Utah Housing Corporation shall determine the amount of the tax credit to
221 allocate to a qualifying housing sponsor in accordance with the qualified allocation plan of the
222 Utah Housing Corporation.

223 (b) (i) The Utah Housing Corporation shall allocate the tax credit to housing sponsors
224 [~~by issuing~~] in the same manner that it allocates federal low-income housing credits and shall
225 issue an allocation certificate to qualifying housing sponsors as evidence of the allocation.

226 (ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed
227 percentage of the federal low-income housing credit as determined by the Utah Housing
228 Corporation.

229 (c) The percentage specified in an allocation certificate may not exceed 100% of the
230 federal low-income housing credit.

231 (6) A housing sponsor shall provide a copy of the allocation certificate to each
232 claimant, estate, or trust that is issued a special low-income housing tax credit certificate.

233 (7) (a) A housing sponsor shall provide to the commission a list of:

234 (i) the claimants, estates, and trusts issued a special low-income housing tax credit
235 certificate; and

236 (ii) for each claimant, estate, or trust described in Subsection (7)(a)(i), the amount of
237 tax credit listed on the special low-income housing tax credit certificate.

238 (b) A housing sponsor shall provide the list required by Subsection (7)(a):

239 (i) to the commission;

240 (ii) on a form provided by the commission; and

241 (iii) with the housing sponsor's tax return for each taxable year for which the housing
242 sponsor issues a special low-income housing tax credit certificate described in this Subsection
243 (7).

244 (8) (a) All elections made by the claimant, estate, or trust pursuant to Section 42,
245 Internal Revenue Code, shall apply to this section.

246 (b) (i) If a claimant, estate, or trust is required to recapture a portion of any federal
247 low-income housing credit, the claimant, estate, or trust shall also be required to recapture a
248 portion of any state tax credits authorized by this section.

249 (ii) The state recapture amount shall be equal to the percentage of the state tax credit
250 that equals the proportion the federal recapture amount bears to the original federal low-income
251 housing credit amount subject to recapture.

252 (9) (a) Any tax credits returned to the Utah Housing Corporation in any year may be
253 reallocated within the same time period as provided in Section 42, Internal Revenue Code.

254 (b) Tax credits that are unallocated by the Utah Housing Corporation in any year may
255 be carried over for allocation in [~~the~~] subsequent [~~year~~] years.

256 (10) (a) Amounts otherwise qualifying for the tax credit, but not allowable because the
257 tax credit exceeds the tax, may be carried back three years or may be carried forward five years
258 as a tax credit.

259 (b) Carryover tax credits under Subsection (10)(a) shall be applied against the tax:

260 (i) before the application of the tax credits earned in the current year; and

261 (ii) on a first-earned first-used basis.

262 (11) Any tax credit taken in this section may be subject to an annual audit by the
263 commission.

264 (12) The Utah Housing Corporation shall provide an annual report to the Revenue and
265 Taxation Interim Committee which shall include at least:

266 (a) the purpose and effectiveness of the tax credits; and

267 (b) the benefits of the tax credits to the state.

268 (13) The commission may, in consultation with the Utah Housing Corporation,
269 promulgate rules to implement this section.