

1 **INDIVIDUAL AND CORPORATE INCOME TAX**

2 **CREDITS FOR LOW-INCOME HOUSING**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David M. Jones**

6 AN ACT RELATING TO REVENUE AND TAXATION; MODIFYING THE CORPORATE
7 AND INDIVIDUAL LOW-INCOME HOUSING TAX CREDITS; MAKING TECHNICAL
8 CHANGES; AND PROVIDING AN EFFECTIVE DATE.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **59-7-607**, as last amended by Chapter 134, Laws of Utah 1997

12 **59-10-129**, as last amended by Chapter 134, Laws of Utah 1997

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

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

15 **59-7-607. Utah low-income housing tax credit.**

16 (1) As used in this section:

17 (a) "Agency" means the Utah Housing Finance Agency.

18 (b) "Allocation certificate" means:

19 (i) the certificate prescribed by the tax commission and issued by the agency to ~~[the]~~ each
20 taxpayer that specifies the percentage of the annual federal low-income housing tax credit that
21 ~~[the]~~ each taxpayer may take as an annual credit against state income tax; or

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

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

25 ~~[(c)]~~ (d) "Federal low-income housing tax credit" means the credit under Section 42,
26 Internal Revenue Code.

27 ~~[(d)]~~ (e) "Housing sponsor" means a corporation in the case of a C corporation, a

28 partnership in the case of a partnership, a corporation in the case of an S corporation, or a limited
29 liability company in the case of a limited liability company.

30 [(e)] (f) "Qualified allocation plan" means the qualified allocation plan adopted by the
31 agency pursuant to Section 42(m), Internal Revenue Code.

32 (g) "Special low-income housing tax credit certificate" means a certificate:

33 (i) prescribed by the tax commission;

34 (ii) that a housing sponsor issues to a taxpayer; and

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

37 [(f)] (h) "Taxpayer" means the person entitled to the tax credit provided under this section
38 which is the corporation in the case of a C corporation, the partners in the case of a partnership,
39 the shareholders in the case of an S corporation, and the members in the case of a limited liability
40 company.

41 (2) (a) For tax years beginning on or after January 1, 1995, there is allowed, a
42 nonrefundable tax credit against taxes otherwise due under this chapter or Chapter 8, for taxpayers
43 issued an allocation certificate.

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

45 (i) federal low-income housing tax credit to which the taxpayer is entitled during that year
46 multiplied by the percentage specified in an allocation certificate issued by the agency; or

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

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

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

51 (A) a housing sponsor issues for a building; and

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

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

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

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

57 [(e)] (d) (i) The aggregate annual tax credit which the agency may allocate in each of
58 calendar years 1995 through 2000 pursuant to this section and Section 59-10-129 shall be an

59 amount equal to 12.5 cents multiplied by the population of Utah for which taxpayers may take each
60 year during the ten-year credit period under Section 42, Internal Revenue Code.

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

63 (3) (a) By October 1, 1994, the agency shall determine criteria and procedures for
64 allocating the credit under this section and Section 59-10-129 and incorporate the criteria and
65 procedures into the agency's qualified allocation plan.

66 (b) The agency shall create the criteria under Subsection (3)(a) based on:

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

69 [(b)] (ii) the level of area median income being served by the development;

70 [(c)] (iii) the need for the credit for the economic feasibility of the development; and

71 [(d)] (iv) the extended period for which the development commits to remain as affordable
72 housing.

73 (4) (a) Any housing sponsor that has received an allocation of the federal low-income
74 housing tax credit and any applicant for an allocation of the federal low-income housing credit may
75 apply to the agency for a credit under this section.

76 (b) The agency may not require fees for applications of the credit under this section in
77 addition to those fees required for applications for the federal low-income housing credit.

78 (5) (a) The agency shall determine the amount of the credit to allocate to a qualifying
79 housing sponsor in accordance with the qualified allocation plan of the agency.

80 (b) (i) The agency shall allocate the credit to housing sponsors by issuing an allocation
81 certificate to qualifying housing sponsors.

82 (ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed
83 percentage of the federal low-income credit as determined by the agency.

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

86 (6) If a partnership, an S corporation, or a limited liability company qualifies for the credit
87 provided in this section as a housing sponsor, it shall provide a copy of the allocation certificate
88 to the taxpayers of the entity.

89 (7) A taxpayer shall attach a copy of the allocation certificate to any return upon which a

90 credit is claimed under this section.

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

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

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

99 (9) (a) Any credits returned to the agency in any year may be reallocated within the same
100 time period as provided in Section 42, Internal Revenue Code.

101 (b) Credits that are unallocated by the agency in any year may be carried over for allocation
102 in the subsequent year.

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

106 (b) Carryover credits under Subsection (10)(a) shall be applied against the tax before the
107 application of the credits earned in the current year and on a first-earned first-used basis.

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

109 (12) The agency shall provide an annual report to the Revenue and Taxation Interim
110 Committee which shall include at least:

111 (a) the purpose and effectiveness of the exemption; and

112 (b) the benefits of the exemption to the state.

113 (13) The tax commission may, in consultation with the agency, promulgate rules to
114 implement this section and Section 59-10-129.

115 Section 2. Section **59-10-129** is amended to read:

116 **59-10-129. Utah low-income housing tax credit.**

117 (1) As used in this section:

118 (a) "Agency" means the Utah Housing Finance Agency.

119 (b) "Allocation certificate" means:

120 (i) the certificate prescribed by the tax commission and issued by the agency to [the] each

121 taxpayer that specifies the percentage of the annual federal low-income housing tax credit that
122 [the] each taxpayer may take as an annual credit against state income tax; or

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

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

126 [(e)] (d) "Federal low-income housing tax credit" means the credit under Section 42,
127 Internal Revenue Code.

128 [(d)] (e) "Housing sponsor" means a corporation in the case of a C corporation, a
129 partnership in the case of a partnership, a corporation in the case of an S corporation, or a limited
130 liability company in the case of a limited liability company.

131 [(e)] (f) "Qualified allocation plan" means the qualified allocation plan adopted by the
132 agency pursuant to Section 42(m), Internal Revenue Code.

133 (g) "Special low-income housing tax credit certificate" means a certificate:

134 (i) prescribed by the tax commission;

135 (ii) that a housing sponsor issues to a taxpayer; and

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

138 [(f)] (h) "Taxpayer" means the person entitled to the tax credit provided under this section
139 which is the corporation in the case of a C corporation, the partners in the case of a partnership,
140 the shareholders in the case of an S corporation, and the members in the case of a limited liability
141 company.

142 (2) (a) For tax years beginning on or after January 1, 1995, there is allowed, a
143 nonrefundable tax credit against taxes otherwise due under this chapter for taxpayers issued an
144 allocation certificate.

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

146 (i) federal low-income housing tax credit to which the taxpayer is entitled during that year
147 multiplied by the percentage specified in an allocation certificate issued by the agency; or

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

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

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

152 (A) a housing sponsor issues for a building; and

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

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

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

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

158 ~~[(c)]~~ (d) (i) The aggregate annual tax credit which the agency may allocate in each of
159 calendar years 1995 through 2000 pursuant to this section and Section 59-7-607 shall be an amount
160 equal to 12.5 cents multiplied by the population of Utah for which taxpayers may take each year
161 during the ten-year credit period under Section 42, Internal Revenue Code.

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

164 (3) (a) By October 1, 1994, the agency shall determine criteria and procedures for
165 allocating the credit under this section and Section 59-7-607 and incorporate the criteria and
166 procedures into the agency's qualified allocation plan.

167 (b) The agency shall create the criteria under Subsection (3)(a) based on:

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

170 ~~[(b)]~~ (ii) the level of area median income being served by the development;

171 ~~[(c)]~~ (iii) the need for the credit for the economic feasibility of the development; and

172 ~~[(d)]~~ (iv) the extended period for which the development commits to remain as affordable
173 housing.

174 (4) (a) Any housing sponsor that has received an allocation of the federal low-income
175 housing tax credit and any applicant for an allocation of the federal low-income housing credit may
176 apply to the agency for a credit under this section.

177 (b) The agency may not require fees for applications of the credit under this section in
178 addition to those fees required for applications for the federal low-income housing credit.

179 (5) (a) The agency shall determine the amount of the credit to allocate to a qualifying
180 housing sponsor in accordance with the qualified allocation plan of the agency.

181 (b) (i) The agency shall allocate the credit to housing sponsors by issuing an allocation
182 certificate to qualifying housing sponsors.

183 (ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed
184 percentage of the federal low-income credit as determined by the agency.

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

187 (6) If a partnership, an S corporation, or a limited liability company qualifies for the credit
188 provided in this section as a housing sponsor, it shall provide a copy of the allocation certificate
189 to the taxpayers of the entity.

190 (7) A taxpayer shall attach a copy of the allocation certificate to any return upon which a
191 credit is claimed under this section.

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

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

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

200 (9) (a) Any credits returned to the agency in any year may be reallocated within the same
201 time period as provided in Section 42, Internal Revenue Code.

202 (b) Credits that are unallocated by the agency in any year may be carried over for allocation
203 in the subsequent year.

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

207 (b) Carryover credits under Subsection (10)(a) shall be applied against the tax before the
208 application of the credits earned in the current year and on a first-earned first-used basis.

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

210 (12) The agency shall provide an annual report to the Revenue and Taxation Interim
211 Committee which shall include at least:

212 (a) the purpose and effectiveness of the exemption; and

213 (b) the benefits of the exemption to the state.

214 Section 3. **Effective date.**

215 This act takes effect for taxable years beginning on or after January 1, 2000.

Legislative Review Note
as of 2-15-99 4:23 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel