

1 **CORPORATE FRANCHISE AND INCOME TAX**
2 **AND INDIVIDUAL INCOME TAX CREDITS**
3 **FOR LOW-INCOME HOUSING**

4 2000 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Afton B. Bradshaw**

7 AN ACT RELATING TO REVENUE AND TAXATION; EXTENDING THROUGH 2005 THE
8 UTAH HOUSING FINANCE AGENCY'S AUTHORITY TO ALLOCATE AN AGGREGATE
9 ANNUAL TAX CREDIT FOR LOW-INCOME HOUSING UNDER THE INDIVIDUAL
10 INCOME TAX AND CORPORATE FRANCHISE AND INCOME TAX; AND MAKING
11 TECHNICAL CHANGES.

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

13 AMENDS:

14 **59-7-607**, as last amended by Chapter 356, Laws of Utah 1999

15 **59-10-129**, as last amended by Chapter 356, Laws of Utah 1999

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

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

18 **59-7-607. Utah low-income housing tax credit.**

19 (1) As used in this section:

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

21 (b) "Allocation certificate" means:

22 (i) the certificate prescribed by the tax commission and issued by the agency to each
23 taxpayer that specifies the percentage of the annual federal low-income housing tax credit that each
24 taxpayer may take as an annual credit against state income tax; or

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

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

28 (d) "Federal low-income housing tax credit" means the credit under Section 42, Internal
29 Revenue Code.

30 (e) "Housing sponsor" means a corporation in the case of a C corporation, a partnership
31 in the case of a partnership, a corporation in the case of an S corporation, or a limited liability
32 company in the case of a limited liability company.

33 (f) "Qualified allocation plan" means the qualified allocation plan adopted by the agency
34 pursuant to Section 42(m), Internal Revenue Code.

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

36 (i) prescribed by the tax commission;

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

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

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

44 (2) (a) For [~~tax~~] taxable years beginning on or after January 1, 1995, there is allowed[;] a
45 nonrefundable tax credit against taxes otherwise due under this chapter or Chapter 8, for taxpayers
46 issued an allocation certificate.

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

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

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

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

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

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

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

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

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

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

60 (d) (i) [The] For the calendar year beginning on January 1, 1995, through the calendar year
61 beginning on January 1, 2005, the aggregate annual tax credit which the agency may allocate [in
62 each of calendar years 1995 through 2000] for the credit period described in Section 42(f), Internal
63 Revenue Code, pursuant to this section and Section 59-10-129 [shall be] is an amount equal to the
64 product of:

65 (A) 12.5 cents [~~multiplied by~~]; and

66 (B) the population of Utah [~~for which taxpayers may take each year during the ten-year~~
67 ~~credit period under Section 42, Internal Revenue Code~~].

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

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

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

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

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

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

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

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

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

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

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

89 (ii) The allocation certificate under Subsection (5)(b)(i) shall specify the allowed

90 percentage of the federal low-income credit as determined by the agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (13) The tax commission may, in consultation with the agency, promulgate rules to

121 implement this section and Section 59-10-129.

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

123 **59-10-129. Utah low-income housing tax credit.**

124 (1) As used in this section:

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

126 (b) "Allocation certificate" means:

127 (i) the certificate prescribed by the tax commission and issued by the agency to each

128 taxpayer that specifies the percentage of the annual federal low-income housing tax credit that each

129 taxpayer may take as an annual credit against state income tax; or

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

131 (c) "Building" means a qualified low-income building as defined in Section 42(c), Internal

132 Revenue Code.

133 (d) "Federal low-income housing tax credit" means the credit under Section 42, Internal

134 Revenue Code.

135 (e) "Housing sponsor" means a corporation in the case of a C corporation, a partnership

136 in the case of a partnership, a corporation in the case of an S corporation, or a limited liability

137 company in the case of a limited liability company.

138 (f) "Qualified allocation plan" means the qualified allocation plan adopted by the agency

139 pursuant to Section 42(m), Internal Revenue Code.

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

141 (i) prescribed by the tax commission;

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

143 (iii) that specifies the amount of a credit a taxpayer may claim under this section if the

144 taxpayer meets the requirements of this section.

145 (h) "Taxpayer" means the person entitled to the tax credit provided under this section

146 which is the corporation in the case of a C corporation, the partners in the case of a partnership,

147 the shareholders in the case of an S corporation, and the members in the case of a limited liability

148 company.

149 (2) (a) For [tax] taxable years beginning on or after January 1, 1995, there is allowed[;] a

150 nonrefundable tax credit against taxes otherwise due under this chapter for taxpayers issued an

151 allocation certificate.

- 152 (b) The credit shall be in an amount equal to the greater of the amount of:
153 (i) federal low-income housing tax credit to which the taxpayer is entitled during that year
154 multiplied by the percentage specified in an allocation certificate issued by the agency; or
155 (ii) credit specified in the special low-income housing tax credit certificate that the housing
156 sponsor issues to the taxpayer as provided in Subsection (2)(c).
- 157 (c) For purposes of Subsection (2)(b)(ii), the credit is equal to the product of:
158 (i) the total amount of low-income housing tax credit under this section that:
159 (A) a housing sponsor is allowed for a building; and
160 (B) all of the taxpayers may claim with respect to the building if the taxpayers meet the
161 requirements of this section; and
162 (ii) the percentage of credit a taxpayer may claim:
163 (A) under this section if the taxpayer meets the requirements of this section; and
164 (B) as provided in the agreement between the taxpayer and the housing sponsor.
- 165 (d) (i) [The] For the calendar year beginning on January 1, 1995, through the calendar year
166 beginning on January 1, 2005, the aggregate annual tax credit which the agency may allocate [in
167 each of calendar years 1995 through 2000] for the credit period described in Section 42(f), Internal
168 Revenue Code, pursuant to this section and Section 59-7-607 [shall be] is an amount equal to the
169 product of:
170 (A) 12.5 cents [multiplied by]; and
171 (B) the population of Utah [for which taxpayers may take each year during the ten-year
172 credit period under Section 42, Internal Revenue Code].
- 173 (ii) For purposes of this section, the population of Utah shall be determined in accordance
174 with Section 146(j), Internal Revenue Code.
- 175 (3) (a) By October 1, 1994, the agency shall determine criteria and procedures for
176 allocating the credit under this section and Section 59-7-607 and incorporate the criteria and
177 procedures into the agency's qualified allocation plan.
- 178 (b) The agency shall create the criteria under Subsection (3)(a) based on:
179 (i) the number of affordable housing units to be created in Utah for low and moderate
180 income persons in the residential housing development of which the building is a part;
181 (ii) the level of area median income being served by the development;
182 (iii) the need for the credit for the economic feasibility of the development; and

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

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

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

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

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

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

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

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

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

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

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

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

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

213 (b) Credits that are unallocated by the agency in any year may be carried over for allocation

214 in the subsequent year.

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

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

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

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

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

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

Legislative Review Note

as of 1-17-00 1:05 PM

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

Office of Legislative Research and General Counsel