

**EXTENSION OF UTAH LOW-INCOME
HOUSING TAX CREDITS**

2005 GENERAL SESSION
STATE OF UTAH

Sponsor: Stephen D. Clark

LONG TITLE

General Description:

This bill amends the Corporate Franchise and Income Taxes chapter and the Individual Income Tax Act relating to the Utah low-income housing tax credits.

Highlighted Provisions:

This bill:

▶ extends for a ten-year period the amount of aggregate annual tax credit for low-income housing that the Utah Housing Corporation may allocate under the corporate franchise and income taxes and the individual income tax.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-7-607, as last amended by Chapter 198, Laws of Utah 2003

59-10-129, as last amended by Chapter 198, Laws of Utah 2003

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

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

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, [~~2005~~] 2015, 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 59-10-129 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 Utah Housing Corporation shall determine criteria and
80 procedures for allocating the tax credit under this section and Section 59-10-129 and
81 incorporate the criteria and procedures into the Utah Housing Corporation's qualified allocation
82 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 an allocation certificate to qualifying housing sponsors.

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

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

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

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

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

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

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

116 (i) to the commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

148 **59-10-129. Utah low-income housing tax credit.**

149 (1) As used in this section:

150 (a) "Allocation certificate" means:

151 (i) the certificate prescribed by the commission and issued by the Utah Housing

152 Corporation to each taxpayer that specifies the percentage of the annual federal low-income
153 housing tax credit that each taxpayer may take as an annual credit against state income tax; or

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

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

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

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

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

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

166 (i) prescribed by the commission;

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

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

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

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

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

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

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

- 183 (c) For purposes of Subsection (2)(b)(ii), the tax credit is equal to the product of:
- 184 (i) the total amount of low-income housing tax credit under this section that:
- 185 (A) a housing sponsor is allowed for a building; and
- 186 (B) all of the taxpayers may claim with respect to the building if the taxpayers meet the
- 187 requirements of this section; and
- 188 (ii) the percentage of tax credit a taxpayer may claim:
- 189 (A) under this section if the taxpayer meets the requirements of this section; and
- 190 (B) as provided in the agreement between the taxpayer and the housing sponsor.
- 191 (d) (i) For the calendar year beginning on January 1, 1995, through the calendar year
- 192 beginning on January 1, [~~2005~~] 2015, 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 Utah Housing Corporation shall determine criteria and
- 200 procedures for allocating the tax credit under this section and Section 59-7-607 and incorporate
- 201 the criteria and procedures into the Utah Housing Corporation's qualified allocation plan.
- 202 (b) The Utah Housing Corporation shall create the criteria under Subsection (3)(a)
- 203 based on:
- 204 (i) the number of affordable housing units to be created in Utah for low and moderate
- 205 income persons in the residential housing development of which the building is a part;
- 206 (ii) the level of area median income being served by the development;
- 207 (iii) the need for the tax credit for the economic feasibility of the development; and
- 208 (iv) the extended period for which the development commits to remain as affordable
- 209 housing.
- 210 (4) (a) The following may apply to the Utah Housing Corporation for a tax credit under
- 211 this section:
- 212 (i) any housing sponsor that has received an allocation of the federal low-income
- 213 housing tax credit; or

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

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

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

221 (b) (i) The Utah Housing Corporation shall allocate the tax credit to housing sponsors
222 by issuing an allocation certificate to qualifying housing sponsors.

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

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

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

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

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

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

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

235 (i) to the commission;

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

237 (iii) with the housing sponsor's tax return for each taxable year for which the housing
238 sponsor issues a special low-income housing tax credit certificate described in this Subsection
239 (7).

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

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

245 (ii) The state recapture amount shall be equal to the percentage of the state tax credit
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247 housing tax credit amount subject to recapture.

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 12-13-04 7:13 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0170

Extension of Utah Low-Income Housing Tax Credits

15-Jan-05

3:48 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst