

Effective 5/10/2016

Superseded 5/9/2017

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

(1) As used in this section:

- (a) "Allocation certificate" means:
 - (i) the certificate prescribed by the commission and issued by the Utah Housing Corporation to each claimant, estate, or trust that specifies the percentage of the annual federal low-income housing credit that each claimant, estate, or trust may take as an annual tax credit against a tax imposed by this chapter; or
 - (ii) a copy of the allocation certificate that the housing sponsor provides to the claimant, estate, or trust.
- (b) "Building" means a qualified low-income building as defined in Section 42(c), Internal Revenue Code.
- (c) "Federal low-income housing credit" means the low-income housing credit under Section 42, Internal Revenue Code.
- (d) "Housing sponsor" means a corporation in the case of a C corporation, a partnership in the case of a partnership, a corporation in the case of an S corporation, or a limited liability company in the case of a limited liability company.
- (e) "Qualified allocation plan" means the qualified allocation plan adopted by the Utah Housing Corporation pursuant to Section 42(m), Internal Revenue Code.
- (f) "Special low-income housing tax credit certificate" means a certificate:
 - (i) prescribed by the commission;
 - (ii) that a housing sponsor issues to a claimant, estate, or trust for a taxable year; and
 - (iii) that specifies the amount of a tax credit a claimant, estate, or trust may claim under this section if the claimant, estate, or trust meets the requirements of this section.

(2)

- (a) For taxable years beginning on or after January 1, 1995, there is allowed a nonrefundable tax credit against taxes otherwise due under this chapter for a claimant, estate, or trust issued an allocation certificate.
- (b) The tax credit shall be in an amount equal to the greater of the amount of:
 - (i) federal low-income housing credit to which the claimant, estate, or trust is allowed during that year multiplied by the percentage specified in an allocation certificate issued by the Utah Housing Corporation; or
 - (ii) tax credit specified in the special low-income housing tax credit certificate that the housing sponsor issues to the claimant, estate, or trust as provided in Subsection (2)(c).
- (c) For purposes of Subsection (2)(b)(ii), the tax credit is equal to the product of:
 - (i) the total amount of low-income housing tax credit under this section that:
 - (A) a housing sponsor is allowed for a building; and
 - (B) all of the claimants, estates, and trusts may claim with respect to the building if the claimants, estates, and trusts meet the requirements of this section; and
 - (ii) the percentage of tax credit a claimant, estate, or trust may claim:
 - (A) under this section if the claimant, estate, or trust meets the requirements of this section; and
 - (B) as provided in the agreement between the claimant, estate, or trust and the housing sponsor.
- (d)
 - (i) For the calendar year beginning on January 1, 1995, through the calendar year beginning on January 1, 2025, the aggregate annual tax credit that the Utah Housing Corporation may

allocate for the credit period described in Section 42(f), Internal Revenue Code, pursuant to this section and Section 59-7-607 is an amount equal to the product of:

- (A) 12.5 cents; and
- (B) the population of Utah.

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

(3)

(a) The Utah Housing Corporation shall determine criteria and procedures for allocating the tax credit under this section and Section 59-7-607 and incorporate the criteria and procedures into the Utah Housing Corporation's qualified allocation plan.

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

- (i) the number of affordable housing units to be created in Utah for low and moderate income persons in the residential housing development of which the building is a part;
- (ii) the level of area median income being served by the development;
- (iii) the need for the tax credit for the economic feasibility of the development; and
- (iv) the extended period for which the development commits to remain as affordable housing.

(4)

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

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

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

(5)

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

(b)

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

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

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

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

(7)

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

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

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

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

(i) to the commission;

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

- (iii) with the housing sponsor's tax return for each taxable year for which the housing sponsor issues a special low-income housing tax credit certificate described in this Subsection (7).
- (8)
- (a) All elections made by the claimant, estate, or trust pursuant to Section 42, Internal Revenue Code, shall apply to this section.
 - (b)
 - (i) If a claimant, estate, or trust is required to recapture a portion of any federal low-income housing credit, the claimant, estate, or trust shall also be required to recapture a portion of any state tax credits authorized by this section.
 - (ii) The state recapture amount shall be equal to the percentage of the state tax credit that equals the proportion the federal recapture amount bears to the original federal low-income housing credit amount subject to recapture.
- (9)
- (a) Any tax credits returned to the Utah Housing Corporation in any year may be reallocated within the same time period as provided in Section 42, Internal Revenue Code.
 - (b) Tax credits that are unallocated by the Utah Housing Corporation in any year may be carried over for allocation in subsequent years.
- (10)
- (a) Amounts otherwise qualifying for the tax credit, but not allowable because the tax credit exceeds the tax, may be carried back three years or may be carried forward five years as a tax credit.
 - (b) Carryover tax credits under Subsection (10)(a) shall be applied against the tax:
 - (i) before the application of the tax credits earned in the current year; and
 - (ii) on a first-earned first-used basis.
- (11) Any tax credit taken in this section may be subject to an annual audit by the commission.
- (12) The Utah Housing Corporation shall annually provide an electronic report to the Revenue and Taxation Interim Committee which shall include at least:
- (a) the purpose and effectiveness of the tax credits; and
 - (b) the benefits of the tax credits to the state.
- (13) The commission may, in consultation with the Utah Housing Corporation, promulgate rules to implement this section.