

Effective 5/1/2024

Superseded 5/6/2026

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

(1) As used in this section:

- (a) "Allocation certificate" means a certificate in a form prescribed by the commission and issued by the corporation to a housing sponsor that specifies the aggregate amount of the tax credit awarded under this section to a qualified development and includes:
 - (i) the aggregate annual amount of the tax credit awarded that may be claimed by one or more qualified taxpayers; and
 - (ii) the credit period over which the tax credit may be claimed by one or more qualified taxpayers.
- (b) "Building" means a qualified low-income building as defined in Section 42(c), Internal Revenue Code.
- (c) "Corporation" means the Utah Housing Corporation created in Section 63H-8-201.
- (d) Except as provided in Subsection (5)(c), "credit period" means the same as that term is defined in Section 42(f)(1), Internal Revenue Code.
- (e) "Designated reporter" means, as selected by a housing sponsor, the housing sponsor or one of the housing sponsor's direct or indirect partners, members, or shareholders that will provide information to the commission regarding the allocation of tax credits under this section.
- (f) "Federal low-income housing tax credit" means the federal tax credit described in Section 42, Internal Revenue Code.
- (g) "Housing sponsor" means an entity that owns a qualified development.
- (h) "Pass-through entity" means the same as that term is defined in Section 59-10-1402.
- (i)
 - (i) Subject to Subsection (1)(i)(ii), "pass-through entity taxpayer" means the same as that term is defined in Section 59-10-1402.
 - (ii) The determination of whether a pass-through entity taxpayer is considered a partner, member, or shareholder of a pass-through entity shall be made in accordance with applicable state law governing the pass-through entity.
- (j) "Qualified allocation plan" means a qualified allocation plan adopted by the corporation in accordance with Section 42(m), Internal Revenue Code.
- (k) "Qualified development" means a "qualified low-income housing project":
 - (i) as defined in Section 42(g)(1), Internal Revenue Code; and
 - (ii) that is located in the state.
- (l)
 - (i) "Qualified taxpayer" means a person that:
 - (A) owns a direct interest or an indirect interest, through one or more pass-through entities, in a qualified development; and
 - (B) meets the requirements to claim a tax credit under this section.
 - (ii) "Qualified taxpayer" includes a pass-through entity taxpayer to which a tax credit under this section is passed through by a pass-through entity.

(2)

- (a) A qualified taxpayer may claim a nonrefundable tax credit under this section against taxes otherwise due under this chapter, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, or Chapter 9, Taxation of Admitted Insurers.
- (b) The tax credit shall be in an amount equal to the tax credit amount specified on the allocation certificate that the corporation issues to a housing sponsor under this section.

- (c)
 - (i) For a calendar year beginning on or before December 31, 2016, the aggregate annual tax credit that the corporation may allocate for each year of the credit period pursuant to this section and Section 59-10-1010 is an amount equal to the product of:
 - (A) 12.5 cents; and
 - (B) the population of Utah.
 - (ii) For a calendar year beginning on or after January 1, 2017, but beginning on or before December 31, 2022, the aggregate annual tax credit that the corporation may allocate for each year of the credit period pursuant to this section and Section 59-10-1010 is an amount equal to the product of:
 - (A) 34.5 cents; and
 - (B) the population of Utah.
 - (iii) For a calendar year beginning on or after January 1, 2023, but beginning on or before December 31, 2028, the aggregate annual tax credit that the corporation may allocate for each year of the credit period pursuant to this section and Section 59-10-1010 is \$10,000,000.
 - (iv) For a calendar year beginning on or after January 1, 2024, in addition to the amount of annual tax credits available for allocation as described in Subsections (2)(c)(i) through (2)(c)(iii), the corporation shall have the following tax credit amounts available for allocation:
 - (A) any tax credits allocated in a calendar year that are subsequently returned to the corporation or recaptured by the corporation may be allocated in the following year, except no tax credits under this Subsection (2)(c)(iv) shall be allocated after December 31, 2028; and
 - (B) if the actual amount of tax credits allocated in a calendar year to qualified developments is less than the total amount of credits available to be allocated to qualified developments, the balance of the credits but no more than 15% of the total amount of credits available for allocation to qualified developments may be allocated by the corporation to qualified developments in the following calendar year, except no tax credits under this Subsection (2)(c)(iv) shall be allocated after December 31, 2028.
 - (v) For a calendar year beginning on or after January 1, 2029, the aggregate annual tax credit that the corporation may allocate for each year of the credit period pursuant to this section and Section 59-10-1010 is the amount described in Subsection (2)(c)(ii).
 - (vi) For purposes of this Subsection (2)(c), the population of Utah shall be determined in accordance with Section 146(j), Internal Revenue Code.
- (d)
 - (i) Subject to Subsection (2)(d)(ii), a qualified taxpayer that is a pass-through entity may allocate a tax credit under this section to one or more of the pass-through entity's pass-through entity taxpayers in any manner agreed upon, regardless of whether:
 - (A) the pass-through entity taxpayer is eligible to claim any portion of a federal low-income housing tax credit for the qualified development;
 - (B) the allocation of the tax credit has substantial economic effect within the meaning of Section 704(b), Internal Revenue Code; or
 - (C) the pass-through entity taxpayer is considered a partner for federal income tax purposes.
 - (ii) With respect to a tax year, a qualified taxpayer that is a pass-through entity taxpayer may claim a tax credit allocated to the qualified taxpayer by a pass-through entity under Subsection (2)(d)(i) so long as the qualified taxpayer's ownership interest in the pass-through entity is:
 - (A) acquired on or before December 31 of the tax year to which the tax credit relates; and

- (B) reflected in the report required in Subsection (6)(b) for the tax year to which the tax credit relates.
- (e) If a qualified taxpayer that is a pass-through entity taxpayer assigns to another taxpayer the pass-through entity taxpayer's ownership interest in a pass-through entity, including the pass-through entity taxpayer's interest in the tax credit associated with the ownership interest, the assignee shall be considered a qualified taxpayer and may claim the tax credit so long as the assignee's ownership interest in the pass-through entity is:
 - (i) acquired on or before December 31 of the tax year to which the tax credit relates; and
 - (ii) reflected in the report required in Subsection (6)(b) for the tax year to which the tax credit relates.
- (3)
 - (a) The corporation shall determine criteria and procedures for allocating the tax credit under this section and Section 59-10-1010 and incorporate the criteria and procedures into the corporation's qualified allocation plan.
 - (b) The 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 a qualified development;
 - (ii) the level of area median income being served by a qualified development;
 - (iii) the need for the tax credit for the economic feasibility of a qualified development; and
 - (iv) the extended period for which a qualified development commits to remain as affordable housing.
- (4) Any housing sponsor may apply to the corporation for a tax credit allocation under this section.
- (5)
 - (a)
 - (i) The corporation shall determine the amount of the tax credit to allocate to a qualified development in accordance with the qualified allocation plan.
 - (ii)
 - (A) Before the allocation certificate is issued to the housing sponsor, the corporation shall send to the housing sponsor written notice of the corporation's preliminary determination of the tax credit amount to be allocated to the qualified development.
 - (B) The notice described in Subsection (5)(a)(ii)(A) shall specify the corporation's preliminary determination of the tax credit amount to be allocated to the qualified development for each year of the credit period and state that allocation of the tax credit is contingent upon the issuance of an allocation certificate.
 - (iii) Upon approving a final cost certification in accordance with the qualified allocation plan, the corporation shall issue an allocation certificate to the housing sponsor as evidence of the allocation.
 - (iv) The amount of the tax credit specified in an allocation certificate may not exceed 100% of the federal low-income housing tax credit awarded to a qualified development.
 - (b)
 - (i) Notwithstanding Subsection (5)(a), if a housing sponsor applies to the corporation for a tax credit under this section and an allocation certificate is not yet issued, a qualified taxpayer may claim a tax credit based upon the corporation's preliminary determination of the tax credit amount as stated in the notice under Subsection (5)(a)(ii).
 - (ii) Upon issuance of the allocation certificate to the housing sponsor, a qualified taxpayer that claims a tax credit under this Subsection (5)(b) shall file an amended tax return to adjust the tax credit amount if the amount previously claimed by the qualified taxpayer is different than the amount specified in the allocation certificate.

- (c) The amount of tax credit that may be claimed in the first year of the credit period may not be reduced as a result of the calculation in Section 42(f)(2), Internal Revenue Code.
 - (d) On or before January 31 of each year, the corporation shall provide to the commission in a form prescribed by the commission a report that describes each allocation certificate that the corporation issued during the previous calendar year.
- (6)
- (a) A housing sponsor shall provide to the commission identification of the housing sponsor's designated reporter.
 - (b) For each tax year in which a tax credit is claimed under this section, the designated reporter shall provide to the commission in a form prescribed by the commission:
 - (i) a list of each qualified taxpayer that has been allocated a portion of the tax credit awarded in the allocation certificate for that tax year;
 - (ii) the amount of tax credit that has been allocated to each qualified taxpayer described in Subsection (6)(b)(i) for that tax year; and
 - (iii) any other information, as prescribed by the commission, to demonstrate that the aggregate annual amount of tax credits allocated to all qualified taxpayers for that tax year does not exceed the aggregate annual tax credit amount specified in the allocation certificate.
- (7)
- (a) All elections made by a housing sponsor pursuant to Section 42, Internal Revenue Code, shall apply to this section.
 - (b)
 - (i) If a qualified development is required to recapture a portion of any federal low-income housing tax credit, then each qualified taxpayer that has been allocated a portion of a tax credit under this section shall also be required to recapture a portion of the tax credit under 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 tax credit amount subject to recapture.
 - (iii) The designated reporter shall identify each qualified taxpayer that is required to recapture a portion of any state tax credit as described in this Subsection (7)(b).
- (8)
- (a) Any tax credits returned to the 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 corporation in any year may be carried over for allocation in subsequent years.
- (9)
- (a) If a tax credit is not claimed by a qualified taxpayer in the year in which it is earned because the tax credit is more than the tax owed by the qualified taxpayer, the tax credit may be carried back three years or may be carried forward five years as a credit against the tax.
 - (b) Carryover tax credits under Subsection (9)(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.
- (10) Any tax credit taken in this section may be subject to an annual audit by the commission.
- (11) The corporation shall annually provide an electronic report to the Revenue and Taxation Interim Committee that includes:
- (a) the purpose and effectiveness of the tax credits;
 - (b) any recommendations for legislative changes to the aggregate tax credit amount that the corporation is authorized to allocate each year under Subsection (2)(c); and

(c) the benefits of the tax credits to the state.

(12) The commission may, in consultation with the corporation, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

(13)

(a) Beginning in 2026, and every three years thereafter, the Revenue and Taxation Interim Committee shall conduct a review of the aggregate tax credit amount that the corporation is authorized to allocate and has allocated each year under Subsection (2)(c).

(b) In a review under this Subsection (13), the Revenue and Taxation Interim Committee shall:

- (i) study any recommendations provided by the corporation under Subsection (11)(b); and
- (ii) if the Revenue and Taxation Interim Committee decides to recommend legislative action to the Legislature, prepare legislation for consideration by the Legislature in the next general session.