

PUBLIC HOUSING LAW
ARTICLE 2-A. NEW YORK STATE LOW INCOME HOUSING TAX CREDIT PROGRAM

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NY CLS Pub Hous Article 2-A Note (2012)

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HISTORY:

Add, L 2000, ch 63, § 1 (Part CC), eff May 15, 2000.

SECTION 21. DEFINITIONS

- 22. ALLOWANCE OF CREDIT, AMOUNT AND LIMITATIONS
- 23. PROJECT MONITORING
- 24. CREDIT RECAPTURE
- 25. REGULATIONS, COORDINATION WITH FEDERAL LOW-INCOME HOUSING CREDIT PROVISIONS

§ 21. Definitions

1. (a) "Applicable percentage" means the appropriate percentage (depending on whether a building is new, existing, or federally subsidized) prescribed by the secretary of the treasury for purposes of section 42 of the internal revenue code for the month which is the earlier of

- (i) the month in which the eligible low-income building is placed in service, or
- (ii) at the election of the taxpayer,

(A) the month in which the taxpayer and the commissioner enter into an agreement with respect to such building (which is binding on the commissioner, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(B) in the case of any building to which subsection (h)(4)(B) of such section 42 applies, the month in which the tax-exempt obligations are issued.

(b) A month may be elected under subparagraph (ii) of paragraph (a) of this subdivision only if the election is made not later than the fifth day after the close of such month. Such election, once made, shall be irrevocable.

(c) If, as of the close of any taxable year in the credit period, the qualified basis of an eligible low-income building exceeds such basis as of the close of the first year of the credit period, the applicable percentage which shall apply to such excess shall be two-thirds of the applicable percentage originally ascribed to such building.

2. "Compliance period" means, with respect to any building, the period of fifteen taxable years beginning with the first taxable year of the credit period with respect to such building.

3. "Credit period" means, with respect to any eligible low-income building, the period of ten taxable years beginning with

- (a) the taxable year in which the building is placed in service, or

(b) at the election of the taxpayer, the succeeding taxable year, but only if the building is an eligible low-income building as of the close of the first year of such period. The election under paragraph (b) of this subdivision, once made, shall be irrevocable.

4. "Eligibility statement" means a statement issued by the commissioner certifying that a building is an eligible low-income building. Such statement shall set forth the taxable year in which such building is placed in service, the dollar amount of low-income housing credit allocated by the commissioner to such building as provided in subdivision five of

section twenty-two of this article, the applicable percentage and maximum qualified basis with respect to such building taken into account in determining such dollar amount, sufficient information to identify each such building and the taxpayer or taxpayers with respect to each such building, and such other information as the commissioner, in consultation with the commissioner of taxation and finance, shall prescribe. Such statement shall be first issued following the close of the first taxable year in the credit period, and thereafter, to the extent required by the commissioner of taxation and finance, following the close of each taxable year of the compliance period.

5. "Eligible low-income building" means a building located in this state which either

(a) is a qualified low-income building as defined in section 42(c) of the internal revenue code, or

(b) would be a qualified low-income building under such section if the 20-50 test specified in subsection (g)(1) of such section were disregarded and the 40-60 test specified in such subsection (requiring that at least forty percent of residential units be both rent-restricted and occupied by individuals whose income is sixty percent or less of area median gross income) were a 40-90 test.

6. "Qualified basis" of an eligible low-income building means the qualified basis of such building determined under section 42(c) of the internal revenue code, or which would be determined under such section if the 40-90 test specified in paragraph (b) of subdivision five of this section applied under such section 42 to determine if such building were part of a qualified low-income housing project.

7. References in this article to section 42 of the internal revenue code shall mean such section as amended from time to time.

HISTORY:

Add, L 2000, ch 63, § 1 (Part CC), eff May 15, 2000.

NOTES:

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Rental Subsidies

§ 22. Allowance of credit, amount and limitations

1. A taxpayer subject to tax under article nine-A, twenty-two, thirty-two or thirty-three of the tax law which owns an interest in one or more eligible low-income buildings shall be allowed a credit against such tax for the amount of low-income housing credit allocated by the commissioner to each such building. Except as provided in subdivision two of this section, the credit amount so allocated shall be allowed as a credit against the tax for the ten taxable years in the credit period.

2. Adjustment of first-year credit allowed in eleventh year. The credit allowable for the first taxable year of the credit period with respect to any building shall be adjusted using the rules of section 42(f)(2) of the internal revenue code (relating to first-year adjustment of qualified basis by the weighted average of low-income to total residential units), and any reduction in first-year credit by reason of such adjustment shall be allowable for the first taxable year following the credit period.

3. Amount of credit. Except as provided in subdivisions four and five of this section, the amount of low-income housing credit shall be the applicable percentage of the qualified basis of each eligible low-income building.

4. Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be [fig 1] thirty-two million dollars. The limitation provided by this subdivision applies only to allocation of the aggregate dollar amount of credit by the commissioner, and does not apply to allowance to a taxpayer of the credit with respect to an eligible low-income building for each year of the credit period.

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5. Building limitation. The dollar amount of credit allocated to any building shall not exceed the amount the commissioner determines is necessary for the financial feasibility of the project and the viability of the building as an eligible low-income building throughout the credit period. In allocating a dollar amount of credit to any building, the commissioner shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this article with respect to such building. The applicable percentage and the maximum qualified basis with respect to a building shall not exceed the amounts determined in subdivisions one and six, respectively, of section twenty-one of this article.

6. Long-term commitment to low-income housing required. No credit shall be allowed under this article with respect to a building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year. For purposes of this subdivision, the term "extended low-income housing commitment" means an agreement between the taxpayer and the commissioner substantially similar to the agreement specified in section 42(h)(6)(B) of the internal revenue code.

7. Credit to successor owner. If a credit is allowed under subdivision one of this section with respect to an eligible low-income building and such building (or an interest therein) is sold during the credit period, the credit for the period after the sale which would have been allowable under such subdivision one to the prior owner had the building not been sold shall be allowable to the new owner. Credit for the year of sale shall be allocated between the parties on the basis of the number of days during such year that the building or interest was held by each.

HISTORY:

Add, L 2000, ch 63, § 1 (Part CC), eff May 15, 2000; amd, L 2002, ch 85, § 1 (Part M), L 2004, ch 60, § 1 (Part B), L 2005, ch 61, § 1 (Part F), eff April 12, 2005, L 2006, ch 62 as re-passed by the Legislature over the Governor's veto, § 1 (Part P), eff April 28, 2006, L 2007, ch 60, § 1 (Part M), eff April 9, 2007, L 2008, ch 57, § 1 (Part XX-1), eff April 23, 2008, L 2009, ch 57, § 1 (Part J-1), eff April 7, 2009, L 2010, ch 57, § 1 (Part P), eff Aug 11, 2010, L 2011, ch 61, § 1 (Part F), eff March 31, 2011.

NOTES:

Amendment Notes

2011. Chapter 62, § 1 (Part F) amended:

Sub 4, by deleting at fig 1 "twenty-eight" and adding the matter in italics.

§ 23. Project monitoring

The commissioner shall establish such procedures as he deems necessary for monitoring compliance of an eligible low-income building with the provisions of this article, and for notifying the commissioner of taxation and finance of any such noncompliance of which he becomes aware.

HISTORY:

Add, L 2000, ch 63, § 1 (Part CC), eff May 15, 2000.

§ 24. Credit recapture

If, as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than the amount of such basis as of the close of the preceding taxable year, the credit under this article may be recaptured as provided in section eighteen of the tax law.

HISTORY:

Add, L 2000, ch 63, § 1 (Part CC), eff May 15, 2000.

NOTES:

§ 25. Regulations, coordination with federal low-income housing credit provisions

1. The commissioner shall promulgate rules and regulations necessary to administer the provisions of this act.
2. The provisions of section 42 of the internal revenue code shall apply to the credit under this article, provided however, to the extent such provisions are inconsistent with this article, the provisions of this article shall control.

HISTORY:

Add, L 2000, ch 63, § 1 (Part CC), eff May 15, 2000.

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