

Article 2-A of Public Housing Law

New York Low Income Housing Tax Credit Program

NY CLS Pub Hous § 21

§ 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.

§ 22. Allowance of credit, amount and limitations

1. A taxpayer subject to tax under article nine-A, twenty-two, or thirty-three of the tax law which owns an interest in one or more eligible low-income buildings, or a transferee of such a taxpayer as described in subdivision eight of this section, 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. [Eff until April 1, 2019] Statewide limitation. The aggregate dollar amount of credit which the commissioner may allocate to eligible low-income buildings under this article shall be eighty-eight 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.

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.

8.

(a) A taxpayer allowed a credit pursuant to this article may transfer the credit, in whole or in part, to another person or entity, who shall be referred to as the transferee, without regard to how any federal low-income housing tax credit with respect to the low-income building may be allocated and notwithstanding that such other person or entity owns no interest in the eligible low-income building or in an entity with an ownership interest in the eligible low-income building. Transferees shall be entitled to apply transferred credit to a tax imposed under article nine-A, twenty-two or thirty-three of the tax law, provided all requirements for claiming the credit are met. A transferee may not transfer any credit, or portion thereof, acquired by transfer.

(b) A taxpayer allowed a credit pursuant to this article must enter into a transfer contract with the transferee. The transfer contract must specify

(i) the building identification numbers for all buildings in the project;

(ii) the date each building was placed into service;

(iii) the fifteen year compliance period for the project;

(iv) the schedule of years for which the transfer credit may be claimed and the amount of credit previously claimed;

(v) the amount of consideration received by the taxpayer for the transfer credit; and

(vi) the amount of credit being transferred.

(c) No transfer shall be effective unless the taxpayer allowed a credit pursuant to this article and seeking to transfer the credit files a transfer statement with the commissioner prior to the transfer and the commissioner approves such transfer. The transfer statement shall provide the name and federal identification numbers of the filing transferor and the taxpayer to whom the filing transferor transferred the credit, and the amount of credit transferred to each such person or entity. A copy of the transfer contract shall be attached to the transfer statement. The statement shall also contain such other information as the commissioner may require. After reviewing the transfer contract and the transfer statement, the commissioner shall approve or deny the transfer as provided in this subdivision. If the commissioner approves the transfer, the commissioner shall issue an approval statement that provides the name of the transferor and transferee, the amount of credit being transferred and such other information as the commissioner and the commissioner of taxation and finance deem necessary. A copy of the commissioner's approval statement must be attached to the transferee's tax return. If the commissioner denies the transfer, the commissioner shall provide the taxpayer a written determination for such denial. The commissioner, in consultation with the commissioner of taxation and finance, may establish such other procedures and standards deemed necessary for the transferability of the low-income housing credit.

(d) The commissioner shall forward copies of all transfer statements and attachments thereto and approval statements to the department of taxation and finance within thirty days after the transfer is approved by the commissioner.

§ 23. Project monitoring.

The commissioner shall establish such procedures deemed 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.

§ 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.

§ 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.

3. The allocation of the credit established by this article may be made without regard to and in a separate manner from any federal low-income housing credit that may be allocated with respect to an eligible low-income building.