

CHAPTER 205

TAXATION

HOUSE BILL 00-1302

BY REPRESENTATIVES Kaufman, Bacon, Clarke, Coleman, Gagliardi, Gordon, Hagedorn, Keller, Lawrence, Leyba, Mace, Miller, Morrison, Plant, Saliman, Swenson, Tapia, Tate, Taylor, Tochtrop, Tupa, Veiga, Vigil, S. Williams, Windels, and Zimmerman;

also SENATORS Matsunaka, Blickensderfer, Dyer, Epps, Feeley, Hernandez, Linkhart, Martinez, Nichol, Pascoe, Phillips, Reeves, Rupert, Tanner, Tebedo, Thiebaut, and Weddig.

AN ACT

CONCERNING TAX INCENTIVES FOR OWNERS OF QUALIFIED LOW-INCOME HOUSING DEVELOPMENTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 21

COLORADO LOW-INCOME HOUSING TAX CREDIT

39-22-2101. Definitions. AS USED IN THIS PART 21, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ALLOCATION CERTIFICATE" MEANS A STATEMENT ISSUED BY THE AUTHORITY CERTIFYING THAT A GIVEN DEVELOPMENT QUALIFIES FOR THE CREDIT AND SPECIFYING THE AMOUNT OF THE CREDIT ALLOWED.

(2) "AUTHORITY" MEANS THE COLORADO HOUSING AND FINANCE AUTHORITY CREATED PURSUANT TO SECTION 29-4-704, C.R.S.

(3) "COMPLIANCE PERIOD" MEANS THE PERIOD OF FIFTEEN YEARS BEGINNING WITH THE FIRST TAXABLE YEAR OF THE CREDIT PERIOD.

(4) "CREDIT" MEANS THE COLORADO LOW-INCOME HOUSING TAX CREDIT ALLOWED PURSUANT TO SECTION 39-22-2102.

(5) "CREDIT PERIOD" MEANS THE PERIOD OF FOUR TAXABLE YEARS BEGINNING WITH THE TAXABLE YEAR IN WHICH A QUALIFIED DEVELOPMENT IS PLACED IN SERVICE. IF A QUALIFIED DEVELOPMENT IS COMPRISED OF MORE THAN ONE BUILDING, THE DEVELOPMENT SHALL BE DEEMED TO BE PLACED IN SERVICE IN THE TAXABLE YEAR DURING WHICH THE LAST BUILDING OF THE QUALIFIED DEVELOPMENT IS PLACED IN SERVICE.

(6) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF REVENUE.

(7) "FEDERAL TAX CREDIT" MEANS THE FEDERAL LOW-INCOME HOUSING TAX CREDIT PROVIDED BY SECTION 42 OF THE INTERNAL REVENUE CODE, BUT EXCLUDING THE CREDIT REFERRED TO IN SECTION 42 (h) (4) OF THE INTERNAL REVENUE CODE.

(8) "QUALIFIED ALLOCATION PLAN" MEANS THE QUALIFIED ALLOCATION PLAN ADOPTED BY THE AUTHORITY PURSUANT TO SECTION 42 (m) OF THE INTERNAL REVENUE CODE.

(9) "QUALIFIED BASIS" MEANS THE QUALIFIED BASIS OF THE DEVELOPMENT AS DETERMINED PURSUANT TO SECTION 42 OF THE INTERNAL REVENUE CODE.

(10) "QUALIFIED DEVELOPMENT" MEANS A "QUALIFIED LOW-INCOME HOUSING PROJECT", AS THAT TERM IS DEFINED IN SECTION 42 OF THE INTERNAL REVENUE CODE, THAT IS LOCATED IN COLORADO AND IS DETERMINED BY THE AUTHORITY TO BE ELIGIBLE FOR A FEDERAL TAX CREDIT WHETHER OR NOT A FEDERAL TAX CREDIT IS ALLOCATED WITH RESPECT TO SAID DEVELOPMENT.

(11) "QUALIFIED TAXPAYER" MEANS AN INDIVIDUAL, A PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT OWNS AN INTEREST IN A QUALIFIED DEVELOPMENT AND IS SUBJECT TO THE TAXES IMPOSED BY THIS ARTICLE.

39-22-2102. Credit against tax - low-income housing developments.

(1) FOR INCOME TAX YEARS DURING THE CREDIT PERIOD, THERE SHALL BE ALLOWED TO ANY QUALIFIED TAXPAYER A CREDIT WITH RESPECT TO THE INCOME TAXES IMPOSED BY THIS ARTICLE IN THE AMOUNT DETERMINED BY THE AUTHORITY PURSUANT TO THIS PART 21.

(2) THE AUTHORITY MAY ALLOCATE A CREDIT TO AN OWNER OF A QUALIFIED DEVELOPMENT BY ISSUING TO THE OWNER AN ALLOCATION CERTIFICATE. THE AUTHORITY MAY DETERMINE THE TIME AT WHICH SUCH ALLOCATION CERTIFICATE IS ISSUED. THE CREDIT SHALL BE IN AN AMOUNT DETERMINED BY THE AUTHORITY, SUBJECT TO THE FOLLOWING GUIDELINES:

(a) THE CREDIT SHALL BE NECESSARY FOR THE FINANCIAL FEASIBILITY OF SUCH DEVELOPMENT;

(b) IN NO EVENT SHALL A CREDIT EXCEED THIRTY PERCENT OF THE QUALIFIED BASIS OF THE QUALIFIED DEVELOPMENT;

(c) ALL ALLOCATIONS SHALL BE MADE PURSUANT TO THE QUALIFIED ALLOCATION PLAN; AND

(d) THE AGGREGATE SUM OF CREDITS ALLOCATED ANNUALLY SHALL NOT EXCEED THE LIMITS SET FORTH IN SUBSECTION (7) OF THIS SECTION.

(3) IF AN OWNER OF A QUALIFIED DEVELOPMENT RECEIVING AN ALLOCATION OF A CREDIT IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR SIMILAR PASS-THROUGH ENTITY, THE OWNER MAY ALLOCATE THE CREDIT AMONG ITS PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT TAXPAYERS IN ANY MANNER AGREED TO BY SUCH PERSONS. THE OWNER SHALL CERTIFY TO THE DEPARTMENT THE AMOUNT OF CREDIT ALLOCATED TO EACH CONSTITUENT TAXPAYER. EACH CONSTITUENT TAXPAYER SHALL BE ALLOWED TO CLAIM SUCH AMOUNT SUBJECT TO ANY RESTRICTIONS SET FORTH IN THIS PART 21.

(4) NO CREDIT SHALL BE ALLOCATED PURSUANT TO THIS PART 21 UNLESS THE QUALIFIED DEVELOPMENT IS THE SUBJECT OF A RECORDED RESTRICTIVE COVENANT REQUIRING THE DEVELOPMENT TO BE MAINTAINED AND OPERATED AS A QUALIFIED DEVELOPMENT FOR A PERIOD OF FIFTEEN TAXABLE YEARS, OR SUCH LONGER PERIOD AS MAY BE AGREED TO BETWEEN THE AUTHORITY AND THE OWNER, BEGINNING WITH THE FIRST TAXABLE YEAR OF THE CREDIT PERIOD.

(5) THE AUTHORITY SHALL NOT ALLOCATE A CREDIT PURSUANT TO THIS PART 21 UNLESS:

(a) THE DEVELOPER OF THE PROPOSED QUALIFIED DEVELOPMENT HAS CONDUCTED A PUBLIC HEARING IN THE COMMUNITY IN WHICH THE PROPOSED QUALIFIED DEVELOPMENT IS LOCATED CONCERNING THE PROJECT FOR WHICH THE ALLOCATION HAS BEEN APPLIED. AT SUCH HEARING, THE DEVELOPER OF THE PROPOSED QUALIFIED DEVELOPMENT SHALL SPECIFY THE TOTAL COST OF THE PROJECT, THE ESTIMATED PRESENT VALUE OF THE ALLOCATION, AND THE ESTIMATED TOTAL AMOUNT OF THE ALLOCATION. PUBLIC COMMENTS AND OTHER INFORMATION SHALL BE SOLICITED AT THE HEARING. THE HEARING SHALL BE RECORDED BY THE DEVELOPER OF THE PROPOSED QUALIFIED DEVELOPMENT AND THE DEVELOPER SHALL MAKE COPIES OF THE RECORDING AVAILABLE TO INTERESTED PARTIES. THE AUTHORITY SHALL CONSIDER ANY COMMENTS OR OTHER INFORMATION PROVIDED AT THE HEARING WHEN RANKING AN APPLICATION FOR A CREDIT PURSUANT TO THIS SECTION.

(b) THE AUTHORITY HAS OBTAINED A WRITTEN COMMITMENT APPROVED BY A PUBLIC VOTE OF THE GOVERNING BODY OF A LOCAL GOVERNMENT TO PROVIDE SOME MONETARY, IN-KIND, OR OTHER CONTRIBUTION BENEFITTING THE QUALIFIED DEVELOPMENT.

(6) THE ALLOCATED CREDIT AMOUNT MAY BE TAKEN AGAINST THE TAXES IMPOSED BY THIS ARTICLE FOR EACH TAXABLE YEAR OF THE CREDIT PERIOD. ANY AMOUNT OF CREDIT THAT EXCEEDS THE TAX DUE FOR A TAXABLE YEAR MAY BE CARRIED FORWARD AS A TAX CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY UP TO TAX YEAR 2012 AND SHALL BE APPLIED FIRST TO THE EARLIEST YEARS POSSIBLE. ANY AMOUNT OF THE CREDIT THAT IS NOT USED SHALL NOT BE REFUNDED TO THE TAXPAYER.

(7) DURING EACH CALENDAR YEAR OF THE TWO-YEAR PERIOD BEGINNING JANUARY 1, 2001, AND ENDING DECEMBER 31, 2002, THE AUTHORITY MAY ALLOCATE A CREDIT, THE FULL AMOUNT OF WHICH MAY BE CLAIMED AGAINST THE TAXES IMPOSED BY THIS ARTICLE FOR EACH TAXABLE YEAR OF THE FOUR-YEAR CREDIT PERIOD. THE AGGREGATE AMOUNT OF ALL CREDITS ALLOCATED BY THE AUTHORITY IN EACH CALENDAR YEAR OF THE TWO-YEAR PERIOD BEGINNING JANUARY 1, 2001, AND ENDING DECEMBER 31, 2002, SHALL NOT EXCEED THE AMOUNT OF:

(a) FIVE MILLION DOLLARS FOR CREDITS ALLOCATED PURSUANT TO SUBSECTION (1) OF THIS SECTION AND SECTION 39-22-2105 COMBINED;

(b) UNALLOCATED CREDITS, IF ANY, FOR THE PRECEDING CALENDAR YEARS; AND

(c) ANY CREDIT RECAPTURED OR OTHERWISE RETURNED TO THE AUTHORITY IN THE CALENDAR YEAR.

(8) UNLESS OTHERWISE PROVIDED IN THIS PART 21 OR THE CONTEXT CLEARLY REQUIRES OTHERWISE, THE AUTHORITY SHALL DETERMINE ELIGIBILITY FOR A CREDIT AND ALLOCATE CREDITS IN ACCORDANCE WITH THE STANDARDS AND REQUIREMENTS SET FORTH IN SECTION 42 OF THE INTERNAL REVENUE CODE; HOWEVER, ANY COMBINATION OF FEDERAL AND STATE CREDITS ALLOWED SHALL BE THE LEAST AMOUNT NECESSARY TO ENSURE THE FINANCIAL FEASIBILITY OF A QUALIFIED DEVELOPMENT.

39-22-2103. Recapture. (1) AS OF THE LAST DAY OF ANY TAXABLE YEAR DURING THE COMPLIANCE PERIOD, IF THE AMOUNT OF THE QUALIFIED BASIS OF A QUALIFIED DEVELOPMENT WITH RESPECT TO A TAXPAYER IS LESS THAN THE AMOUNT OF THE QUALIFIED BASIS AS OF THE LAST DAY OF THE PRIOR TAXABLE YEAR, THEN THE AMOUNT OF THE TAXPAYER'S STATE INCOME TAX LIABILITY FOR THAT TAXABLE YEAR SHALL BE INCREASED BY THE CREDIT RECAPTURE AMOUNT.

(2) FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION, THE CREDIT RECAPTURE AMOUNT IS AN AMOUNT EQUAL TO THE AGGREGATE DECREASE IN THE CREDIT ALLOWED TO THE TAXPAYER PURSUANT TO THIS PART 21 FOR ALL PRIOR TAXABLE YEARS THAT WOULD HAVE RESULTED IF THE ACCELERATED PORTION OF THE CREDIT ALLOWABLE BY REASON OF THIS PART 21 WERE NOT ALLOWED FOR ALL PRIOR TAXABLE YEARS WITH RESPECT TO THE REDUCED AMOUNT OF QUALIFIED BASIS DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(3) FOR PURPOSES OF SUBSECTION (2) OF THIS SECTION, THE ACCELERATED PORTION OF THE CREDIT FOR THE PRIOR TAXABLE YEARS WITH RESPECT TO ANY AMOUNT OF QUALIFIED BASIS IS THE DIFFERENCE BETWEEN:

(a) THE AGGREGATE CREDIT ALLOWED PURSUANT TO THIS PART 21, NOTWITHSTANDING THIS SUBSECTION (3), FOR THE YEARS WITH RESPECT TO SUCH QUALIFIED BASIS; AND

(b) THE AGGREGATE CREDIT THAT WOULD BE ALLOWABLE PURSUANT TO THIS PART 21 FOR SUCH YEARS WITH RESPECT TO THE QUALIFIED BASIS IF THE AGGREGATE CREDIT THAT WOULD HAVE BEEN ALLOWABLE, BUT FOR THIS SUBSECTION (3), FOR THE ENTIRE COMPLIANCE PERIOD WERE ALLOWABLE RATABLY OVER FIFTEEN YEARS.

(4) IN THE EVENT THAT RECAPTURE OF ANY CREDIT IS REQUIRED IN ANY TAX YEAR, THE RETURN SUBMITTED FOR THAT TAX YEAR TO THE DEPARTMENT SHALL INCLUDE THE PROPORTION OF CREDIT REQUIRED TO BE RECAPTURED, THE IDENTITY OF EACH TAXPAYER SUBJECT TO THE RECAPTURE, AND THE AMOUNT OF CREDIT PREVIOUSLY ALLOCATED TO SUCH TAXPAYER.

39-22-2104. Filing requirements. AN OWNER OF A QUALIFIED DEVELOPMENT TO WHICH A CREDIT HAS BEEN ALLOCATED AND EACH QUALIFIED TAXPAYER TO WHICH SUCH OWNER HAS ALLOCATED A PORTION OF SAID CREDIT, IF ANY, SHALL FILE WITH THEIR STATE INCOME TAX RETURN A COPY OF THE ALLOCATION CERTIFICATE ISSUED BY THE AUTHORITY WITH RESPECT TO SUCH DEVELOPMENT AND A COPY OF THE OWNER'S CERTIFICATION TO THE DEPARTMENT AS TO THE ALLOCATION OF THE CREDIT AMONG THE QUALIFIED TAXPAYERS HAVING OWNERSHIP INTERESTS IN SUCH DEVELOPMENT.

39-22-2105. Parallel credits - insurance premium taxes. (1) ANY TAXPAYER WHO IS SUBJECT TO THE TAX ON INSURANCE PREMIUMS ESTABLISHED BY SECTIONS 10-3-209, 10-5-111, AND 10-6-128, C.R.S., AND WHO IS THEREFORE EXEMPT FROM THE PAYMENT OF INCOME TAX AND WHO IS OTHERWISE ELIGIBLE TO CLAIM A CREDIT PURSUANT TO THIS PART 21 MAY CLAIM SUCH CREDIT AND CARRY SUCH CREDIT FORWARD AGAINST SUCH INSURANCE PREMIUM TAX TO THE SAME EXTENT AS THE TAXPAYER WOULD HAVE BEEN ABLE TO CLAIM OR CARRY FORWARD SUCH CREDIT OR REFUND AGAINST INCOME TAX. ALL OTHER PROVISIONS OF THIS PART 21 WITH RESPECT TO THE CREDIT, INCLUDING THE AMOUNT, ALLOCATION, AND RECAPTURE OF THE CREDIT AND THE YEARS FOR WHICH THE CREDIT MAY BE CLAIMED SHALL APPLY TO A CREDIT CLAIMED PURSUANT TO THIS SECTION.

(2) FOR PURPOSES OF ADMINISTERING THIS SECTION, ANY REFERENCE IN THIS ARTICLE TO "INCOME TAX YEAR" MEANS CALENDAR YEAR.

39-22-2106. Rules. THE AUTHORITY AND THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, IN CONSULTATION WITH EACH OTHER, SHALL PROMULGATE RULES NECESSARY FOR THEIR RESPECTIVE ADMINISTRATION OF THIS PART 21. RULES OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL BE PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S. RULES OF THE AUTHORITY SHALL BE ADOPTED PURSUANT TO SECTION 29-4-708, C.R.S.

39-22-2107. Compliance monitoring. THE AUTHORITY, IN CONSULTATION WITH THE DEPARTMENT, SHALL MONITOR AND OVERSEE COMPLIANCE WITH THE PROVISIONS OF THIS PART 21 AND SHALL REPORT SPECIFIC OCCURRENCES OF NONCOMPLIANCE TO THE DEPARTMENT.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 24, 2000

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.