

SENATE BILL No. 369

By Committee on Federal and State Affairs

1-21

1 AN ACT concerning taxation; relating to income, privilege and premium
2 taxes; establishing the Kansas affordable housing tax credit act;
3 providing a tax credit for qualified low-income housing projects.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. The provisions of sections 1 through 6, and amendments
7 thereto, shall be known and may be cited as the Kansas affordable housing
8 tax credit act.

9 Sec. 2. As used in sections 1 through 6, and amendments thereto:

10 (a) "Act" means the provisions of sections 1 through 6, and
11 amendments thereto;

12 (b) "allocation certificate" means a statement issued by the KHRC
13 certifying that a given development is eligible for the credit and specifying
14 the amount of the credit allowed;

15 (c) "compliance period" means the period of 15 years beginning with
16 the first taxable year of the credit period;

17 (d) "credit" means the Kansas affordable housing tax credit allowed
18 pursuant to this act;

19 (e) "credit period" means the credit period as defined in section 42(f)
20 (1) of the federal internal revenue code;

21 (f) "director" means the director of taxation pursuant to K.S.A. 75-
22 5102, and amendments thereto;

23 (g) "federal tax credit" means the federal low-income housing tax
24 credit provided by section 42 of the federal internal revenue code;

25 (h) "KHRC" means the Kansas housing resources corporation, a not-
26 for-profit subsidiary of the Kansas development finance authority
27 incorporated pursuant to K.S.A. 74-8904(v), and amendments thereto;

28 (i) "pass-through entity" means any: (1) Limited liability company;
29 (2) partnership; or (3) limited liability partnership;

30 (j) "pass-through certification" means a certification provided to the
31 director by any pass-through entity allocating a credit to its partners or
32 members, certifying the amount of credit to be allocated to each partner or
33 member of such pass-through entity;

34 (k) "qualified allocation plan" means the qualified allocation plan
35 adopted by the KHRC pursuant to section 42(m) of the federal internal
36 revenue code;

1 (l) "qualified basis" means the qualified basis of the development as
2 determined pursuant to section 42 of the federal internal revenue code;

3 (m) "qualified development" means a "qualified low-income housing
4 project," as that term is defined in section 42 of the federal internal
5 revenue code, and which is located in Kansas and is determined by the
6 KHRC to be eligible for a federal tax credit whether or not a federal tax
7 credit is allocated with respect to such qualified development; and

8 (n) "qualified taxpayer" means an individual, a person, firm,
9 corporation, or other entity that owns an interest, direct or indirect, in a
10 qualified development and is subject to the taxes imposed by the Kansas
11 income tax act, the privilege taxes imposed pursuant to article 11 of
12 chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or
13 the premium taxes imposed pursuant to K.S.A. 40-252, and amendments
14 thereto.

15 Sec. 3. (a) For all taxable years commencing after December 31,
16 2022, there shall be allowed a credit against the income tax liability
17 imposed pursuant to the Kansas income tax act, the privilege tax liability
18 imposed upon any national banking association, state bank, trust company
19 or savings and loan association pursuant to article 11 of chapter 79 of the
20 Kansas Statutes Annotated, and amendments thereto, or the premium tax
21 liability imposed upon an insurance company pursuant to K.S.A. 40-252,
22 and amendments thereto, for each qualified development for each year of
23 the credit period, in an amount equal to the federal tax credit allocated or
24 allowed by the KHRC to such qualified development, except that there
25 shall be no reduction in the credit allowable in the first year of the credit
26 period due to the calculation in section 42(f)(2) of the federal internal
27 revenue code.

28 (b) The KHRC shall issue an allocation certificate to an owner of a
29 qualified development. The KHRC shall issue an allocation certificate to
30 the qualified development simultaneously with issuance of federal form
31 8609 with respect to the federal tax credits.

32 (c) All allocations shall be made pursuant to the qualified allocation
33 plan.

34 (d) If an owner of a qualified development receiving an allocation of
35 a credit is a pass-through entity, the owner may allocate the credit among
36 its partners or members in any manner agreed to by such persons and, in
37 the case of multiple tiers of pass-through entities, the credit may be so
38 allocated through any number of pass-through entities in any manner
39 agreed by the owners of such pass-through entities, none of which shall be
40 considered a transfer. Any pass-through entity allocating a credit to its
41 partners or members shall attach a pass-through certification to its tax
42 return annually. Each partner or member shall be allowed to claim or
43 further allocate such amount subject to any restrictions set forth in this act.

1 (e) An owner of a qualified development to which a credit has been
2 allocated and each qualified taxpayer to which such owner has allocated a
3 portion of such credit, if any, shall file with their state income, privilege or
4 premium tax return a copy of the allocation certificate issued by the
5 KHRC with respect to such qualified development and a copy of any pass-
6 through certification, as prescribed by the director.

7 (f) No credit shall be allocated pursuant to this act unless the qualified
8 development is the subject of a recorded restrictive covenant requiring the
9 development to be maintained and operated as a qualified development
10 and is in accordance with the accessibility and adaptability requirements of
11 the federal tax credits and title VIII of the civil rights act of 1968, as
12 amended by the fair housing amendments act of 1988, for a period of 15
13 taxable years, or such longer period as may be agreed to between the
14 KHRC and the owner of the qualified development, beginning with the
15 first taxable year of the credit period.

16 (g) The allocated credit amount may be taken against the income,
17 privilege or premium taxes imposed for each taxable year of the credit
18 period. Any amount of credit that exceeds the income, privilege or
19 premium tax liability of a qualified taxpayer for a taxable year may be
20 carried forward as a credit against subsequent years' tax liability up to 11
21 tax years following the tax year in which the allocation was made and shall
22 be applied first to the earliest years possible. Any amount of the credit that
23 is not used shall not be refunded to the taxpayer.

24 (h) Unless otherwise provided in this act or the context or law
25 requires otherwise, the KHRC shall determine eligibility for a credit and
26 allocate credits in accordance with the standards and requirements set forth
27 in section 42 of the federal internal revenue code. Any combination of
28 federal tax credits and credits allowed pursuant to this act shall be the least
29 amount necessary to ensure the financial feasibility of a qualified
30 development.

31 Sec. 4. If, under section 42 of the federal internal revenue code, a
32 portion of any federal tax credit taken on a qualified development is
33 required to be recaptured or is otherwise disallowed during the credit
34 period, the qualified taxpayer that claimed the credit pursuant to this act
35 with respect to such qualified development shall also be required to
36 recapture a portion of any credits authorized by this act. The percentage of
37 credits subject to recapture shall be equal to the percentage of federal tax
38 credits subject to recapture or otherwise disallowed during such period.
39 Any credits recaptured or disallowed shall increase the tax liability of the
40 qualified taxpayer who claimed the credits and shall be included on the tax
41 return of the qualified taxpayer submitted for the taxable year in which the
42 recapture or disallowance event is identified.

43 Sec. 5. The KHRC and the director, in consultation with each other,

1 shall promulgate rules and regulations necessary for their respective
2 administration of this act.

3 Sec. 6. (a) The KHRC, in consultation with the director, shall monitor
4 and oversee compliance with the provisions of this act and shall report
5 specific occurrences of noncompliance to the director.

6 (b) For each allocation year, the KHRC shall submit a written report
7 to the legislature on or before December 31 of each year and make such
8 report available to the public. The report shall:

9 (1) Specify the number of qualified developments that have been
10 allocated credits during the allocation year and the total number of units
11 supported by each development;

12 (2) describe each qualified development that has been allocated
13 credits including, without limitation, the geographic location of the
14 development, the household type and any specific demographic
15 information available about residents intended to be served by the
16 development, the income levels intended to be served by the development,
17 and the rents or set-asides authorized for each development; and

18 (3) provide housing market and demographic information that
19 demonstrates how the qualified developments supported by the credits are
20 addressing the need for affordable housing within the communities they
21 are intended to serve as well as information about any remaining
22 disparities in the affordability of housing within those communities.

23 Sec. 7. This act shall take effect and be in force from and after its
24 publication in the statute book.