Table of Contents

CHAPTER 1. GENERAL EXPLANATION AND BRIEF HISTORY OF THE LOW-INCOME HOUSING TAX CREDIT

§ 1:1 Overview
§ 1:2 Brief history
§ 1:3 —Prior law
§ 1:4 —Tax Reform Act of 1986
§ 1:5 —Technical corrections
§ 1:6 —Omnibus Budget Reconciliation Act of 1989
§ 1:7 —Omnibus Budget Reconciliation Act of 1990
§ 1:8 —Tax Extension Act of 1991
§ 1:9 —The Omnibus Budget Reconciliation Act of 1993
§ 1:10 —Public Law 106-554
§ 1:11 —How “permanent” is the LIHTC?
§ 1:12 —Significant events in 2001-2002
§ 1:13 Temporary LIHTC provisions providing for hurricane relief
§ 1:14 Congressional activity in 2008
§ 1:15 The Housing and Economic Recovery Act of 2008
§ 1:16 Emergency Economic Stabilization Act of 2008
§ 1:17 American Recovery and Reinvestment Act of 2009
§ 1:18 Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010
§ 1:19 American Taxpayer Relief Act of 2012
§ 1:20 Tax Increase Prevention Act of 2014
§ 1:21 Protecting Americans From Tax Hikes Act of 2015
§ 1:22 Tax Reform of Late 2017
§ 1:23 Consolidated Appropriations Act, 2018
§ 1:24 General economics

CHAPTER 2. TAXPAYERS WHO CAN USE THE CREDIT

§ 2:1 General rules
§ 2:2 Taxpayers with passive income
§ 2:3 Individual investors
§ 2:4 —How individual investors use the LIHTC
§ 2:5 ——General rental real estate exception
§ 2:6 ——Special LIHTC treatment
§ 2:7 ——Real estate trade or business exception
§ 2:8 ——Primary attractions for individual investors
§ 2:9 ——Additional tax on minors
§ 2:10 ——Real estate investment
§ 2:11 ——Senior housing
§ 2:12 Corporate investors
§ 2:13 ——How corporations use the LIHTC
§ 2:14 ——S corporations
§ 2:15 ——Personal service corporations
§ 2:16 ——Closely held C corporations
§ 2:17 ——Widely held corporations
§ 2:18 ———The consolidated method
§ 2:19 — — — The equity method
§ 2:20 — — — The cost method
§ 2:21 — — — Accounting for LIHTC Investments
§ 2:22 — — — Consolidation
§ 2:23 — — — Summary
§ 2:24 — — — Materiality
§ 2:25 — Primary attractions for corporate investors
§ 2:26 — — Helping satisfy local housing needs
§ 2:27 — — Public relations
§ 2:28 — — Community Reinvestment Act
§ 2:29 — — — Equity investments
§ 2:30 — — — Mollify political concerns
§ 2:31 — — Employee compensation
§ 2:32 — Corporate investor concerns
§ 2:33 — — Help lenders understand the LIHTC
§ 2:34 Tax-exempt entities
§ 2:35 — Unrelated business income tax
§ 2:36 — — Mechanics
§ 2:37 — — Interaction with the LIHTC
§ 2:38 — Plan asset regulations
§ 2:39 — — Equity versus debt
§ 2:40 — — Exceptions
§ 2:41 Estates and trusts
§ 2:42 Using intermediaries
§ 2:43 — LIHTC broker
§ 2:44 — Private sponsor
§ 2:45 — Public sponsor
§ 2:46 Nonprofit participation—General
§ 2:47 — Specific
§ 2:48 — Nonprofit safe harbor
§ 2:49 — Safe harbor guideline
§ 2:50 — Low-income occupancy percentage and the safe harbor guideline
§ 2:51 — Applying the guideline
§ 2:52 — Is your tax-exempt exempt from tax?
§ 2:53 IRS Guidance on Guarantees and Indemnifications

CHAPTER 3. TECHNICAL INCOME TAX ASPECTS OF THE CREDIT
§ 3:1 Technical overview
§ 3:2 Qualified low-income building
§ 3:3 — Qualified low-income housing development
§ 3:4 — — 20/50 test
§ 3:5 — — 40/60 test
§ 3:6 — — Special New York City test
§ 3:7 — — Average Income
§ 3:8 — — State specific agreement
§ 3:9 — — Residential rental property test
§ 3:10 — — — Tax-exempt bond financing regulations
§ 3:11 — — — Tenant equity contributions
§ 3:12 — — — Types of housing
§ 3:13 — — — Assisted living facilities
Table of Contents

§ 3:14 — Rent-restricted test
§ 3:15 — Limitation of 30 percent
§ 3:16 — Rent definitions
§ 3:17 — Gross rent—General
§ 3:18 — Gross rent floor
§ 3:19 — Exclusions
§ 3:20 — Utility allowances
§ 3:21 — Supplemental Security Income
§ 3:22 — Services/Meals
§ 3:23 — Tenant income
§ 3:24 — Area median gross income
§ 3:25 — Changes in tenant/area income
§ 3:26 — Exceptions to the rule: Understanding the significance of rebenchmarking HUD’s income limit data
§ 3:27 — Changes in tenant/area income—General rule
§ 3:28 — Deep rent skewing election
§ 3:29 — Section 8/LIHTC conflict
§ 3:30 — Vacant units
§ 3:31 — Time for satisfying the minimum set-aside requirement
§ 3:32 — Qualified low-income housing project—Scattered site developments
§ 3:33 — Qualified low-income housing development—Miscellaneous items
§ 3:34 — Election to exclude buildings
§ 3:35 — Students
§ 3:36 — Rights of First Refusal
§ 3:37 Qualified basis
§ 3:38 — Low-income occupancy percentage
§ 3:39 — Unit fraction (low-income units/total units)
§ 3:40 — Floor-space fraction (total floor space of low-income units/total floor space)
§ 3:41 — First year rule
§ 3:42 — Low-income unit
§ 3:43 — Rent-restricted
§ 3:44 — Income limitation
§ 3:45 — Nontransient occupancy
§ 3:46 — Suitable for occupancy
§ 3:47 — General public
§ 3:48 — Special rule—Four or fewer units
§ 3:49 — Factory-made housing
§ 3:50 — Special use rental housing
§ 3:51 — Manager’s unit
§ 3:52 — Community service facilities and community outreach facilities
§ 3:53 — Supportive services for homeless
§ 3:54 — Owner-occupied buildings
§ 3:55 — Difficult to develop areas/qualified census tracts/state housing credit agency designation
§ 3:56 — Difficult to develop areas/qualified census tracts—Qualified census tracts
§ 3:57 — Difficult development areas
§ 3:58 — Application of caps to qualified census tract and difficult development area determinations
§ 3:59 — Eligible basis
§ 3:60 — General rule
§ 3:111 — — Structural modifications
§ 3:112 — — Depreciation of buildings during rehabilitation period
§ 3:113 — — Other rules
§ 3:114 — — — Disproportionate standard units
§ 3:115 — — — Mixed commercial/residential use
§ 3:116 — — — — Community service facilities
§ 3:117 — — — — Home businesses
§ 3:118 — — — — Depreciation expense and debt discharge
§ 3:119 — — — — Federal grants and other loans
§ 3:120 — — — — IRC Section 167(k) depreciation—Pre TRA ’86
§ 3:121 — — — Tax credit application fees
§ 3:122 — Acquisition of building during compliance period
§ 3:123 — — After reservation but before allocation
§ 3:124 — — During construction but after allocation
§ 3:125 — — After construction completed and before lease-up
§ 3:126 — Placed in service definition
§ 3:127 — Credit period definition
§ 3:128 — — Increases in qualified basis
§ 3:129 — Credit percentage
§ 3:130 — Building type
§ 3:131 — — Federal subsidies—Pre-HERA
§ 3:132 — — — Post-HERA
§ 3:133 — — — HOME funds
§ 3:134 — Monthly credit percentage
§ 3:135 — Present value calculation
§ 3:136 — Determination of credit percentage
§ 3:137 — — Binding allocation/commitment
§ 3:138 — — Credit percentage election—Allocated credits
§ 3:139 — — — Tax-exempt bond financed buildings
§ 3:140 At-risk rules
§ 3:141 — Nonrecourse financing
§ 3:142 — Qualified commercial financing
§ 3:143 — Nonprofit lender exception
§ 3:144 — Deferred fees as financing
§ 3:145 LIHTC reporting requirements
§ 3:146 — Initial year
§ 3:147 Completing Form 8609—Question 8(b), multiple buildings
§ 3:148 LIHTC reporting requirements—Succeeding years
§ 3:149 — Housing agency reporting requirements
§ 3:150 — Special 1990 election
§ 3:151 — Reporting reductions in basis and recapture
§ 3:152 Prior termination and permanent extension of the LIHTC—Prior termination
§ 3:153 — Permanent extension
§ 3:154 — Tax credit expansion
§ 3:155 Allocation of credits to states
§ 3:156 — Credit exchange under the American Recovery and Reinvestment Act of 2009
§ 3:157 — — Grants or loans
§ 3:158 — Allocation cap based on population
§ 3:159 — Credit exchange under the American Recovery and Reinvestment Act of 2009—Amount and timing of subawards
§ 3:160 — Allocation cap based on population—Ten percent nonprofit set-aside

§ 3:161 — Credit exchange under the American Recovery and Reinvestment Act of 2009—Disaster area and GO Zone Credits

§ 3:162 — Allocation cap based on population—Allocation of the credit

§ 3:163 — Credit exchange under the American Recovery and Reinvestment Act of 2009—Eligible costs for exchange grant proceeds

§ 3:164 — — Good faith efforts

§ 3:165 — — Requirements for Non-LIHTC developments

§ 3:166 — — Recapture of exchange program grant proceeds

§ 3:167 — — Reporting and other requirements

§ 3:168 — Allocation by placed-in-service date

§ 3:169 — — Binding forward commitment

§ 3:170 — — Increase in qualified basis

§ 3:171 — Allocation by placed-in-service-date—Allocations with 10 percent of costs incurred

§ 3:172 — Allocation by placed-in-service date—Exception: Federal disaster areas

§ 3:173 — — Verification of ownership and basis by agency

§ 3:174 — — Credit allocation administration

§ 3:175 — Special bond financing allocation rules

§ 3:176 — State constitutional home rule subdivision

§ 3:177 — Credit amount allocation

§ 3:178 — Correction of errors

§ 3:179 — State LIHTC carryover

§ 3:180 — Credit allocation guidelines

§ 3:181 — — Determination of guidelines

§ 3:182 — — Disclosure of guidelines

§ 3:183 — — Thirty-year extended use

§ 3:184 — — Right of first refusal held by tenants

§ 3:185 — Monitoring compliance

§ 3:186 — — Recordkeeping and record retention provisions

§ 3:187 — — Certification and review provisions

§ 3:188 — — RHA-Financed Buildings

§ 3:189 — — Habitability review

§ 3:190 — — Notification of noncompliance provisions

§ 3:191 — — Delegation of authority

§ 3:192 — — Liability and effective date

§ 3:193 — Allocation plan—Intermediary costs

§ 3:194 — LIHTC investments in United States possessions and territories

§ 3:195 — — Depreciation of LIHTC Properties

§ 3:196 — Restrictions on use of the credits by a taxpayer

§ 3:197 — Restrictions on use—Passive activity rules

§ 3:198 — — Interaction with other credits

§ 3:199 — — General business credit rules

§ 3:200 — — Foreign tax credits

§ 3:201 — — Historic rehabilitation tax credits

§ 3:202 — — Disabled access tax credits

§ 3:203 — — Alternative minimum tax

§ 3:204 — — Special taxes

§ 3:205 — — Personal holding company tax

§ 3:206 — — Accumulated earnings tax

§ 3:207 — Consolidated corporate groups

§ 3:208 — Base Erosion and Anti-Abuse Tax
§ 3:259 — —Basis adjustments
§ 3:260 —Below-market loans
§ 3:261 —Tax-exempt bonds
§ 3:262 — —Private activity bonds
§ 3:263 — —Volume cap
§ 3:264 — —Arbitrage restrictions
§ 3:265 — —Miscellaneous
§ 3:266 —Estates and trusts
§ 3:267 —Charitable contribution of LIHTC property at end of compliance period
§ 3:268 — —Charitable contribution deduction calculation
§ 3:269 — —Allocation of basis calculation
§ 3:270 —Facade easements
§ 3:271 —Large partnership rules
§ 3:272 — —Changes to the recapture rules
§ 3:273 — —Changes in the technical termination rules
§ 3:274 — —Change in the due date for distributing schedule K-1s to partners for electing large partnerships
§ 3:275 LIHTC 2005 provisions for relief from hurricanes Katrina, Rita and Wilma
§ 3:276 LIHTC 2008 provisions for relief in the Midwestern disaster area and Hurricane Ike
§ 3:277 LIHTC 2012 and 2013 compliance relief from Hurricane Sandy and from various severe storms and flooding in Missouri, North Dakota, Alabama, Vermont, Pennsylvania, New York, Iowa, Colorado and Oklahoma
§ 3:278 TCAP funds under the American Recovery and Reinvestment Act of 2009
§ 3:279 Impact of tax reform on LIHTC program
§ 3:280 —Reduced corporate tax rate
§ 3:281 —Limitations on business interest deductions
§ 3:282 —Expansion of bonus depreciation
§ 3:283 —Changes to alternative depreciation system lives
§ 3:284 —Elimination of treatment of nonshareholder contributions to capital as nontaxable events
§ 3:285 —Elimination of technical termination rules for partnerships
§ 3:286 —Implementation of year of inclusion requirements for income recognition
§ 3:287 —Implementation of the base erosion and anti-abuse tax

CHAPTER 4. MARKET ANALYSIS AND THE APPRAISAL PROCESS FOR TAX CREDIT PROPERTIES
§ 4:1 Overview
§ 4:2 — Analyst qualifications
§ 4:3 —Types of reports
§ 4:4 — —Market study
§ 4:5 — —Appraisal
§ 4:6 Real estate appraisal uses—Securing financing
§ 4:7 —Tax credit allocation
§ 4:8 —Property taxes
§ 4:9 —Partnership valuations
§ 4:10 Valuations—A conceptual overview
§ 4:11 Components of the appraisal report
§ 4:12 —Regional, city and neighborhood descriptions
§ 4:13 —Market analysis
CHAPTER 5. MANAGING TAX CREDIT PROPERTIES

§ 5:1 General
§ 5:2 Property management
§ 5:3 —Minimum set-aside tests
§ 5:4 — —Multiple buildings
§ 5:5 — —20/50 test
§ 5:6 — —40/60 test
§ 5:7 — —Average Income test
§ 5:8 — —Monitoring
§ 5:9 — —Number of residential units in the development
§ 5:10 Income limits—Area median gross income (AMGI)
§ 5:11 —MTSP
§ 5:12 —National nonmetropolitan median gross income (NNMI)—Rural areas
§ 5:13 —How income limits are calculated
§ 5:14 —Household size
§ 5:15 Unborn Children
§ 5:16 Property management—Gross rent for the unit
§ 5:17 — —Rent floor election
§ 5:18 — —Combining USDA and LIHTC rent limits
§ 5:19 — —City sales tax paid by the tenant
§ 5:20 — —Renters insurance
§ 5:21 — —Utility allowance
§ 5:22 — — —Air conditioning
§ 5:23 — — —Tenant provided appliances
§ 5:24 — — —Approved methods
§ 5:25 — —Rental assistance payments
§ 5:26 — —Section 8 tenant rent greater than LIHTC rent
§ 5:27 — —Supportive services
§ 5:28 — —Charge for parking, garages, storage, etc.
§ 5:29 — —Parking charge flow chart
§ 5:30 — —Tenant income
§ 5:31 — — —Verification of Income and Assets
§ 5:32 — — —Certification
§ 5:33 — — —Tenant transfers
§ 5:34 — — —Income issues for rideshare drivers
§ 5:35 — — —Zero and sporadic income sources
§ 5:36 — — —Permanently unemployed vs. temporarily unemployed
§ 5:37 — — —Child support verifications
§ 5:38 — — —Gift income
§ 5:39 — — —Nonmonetary gift income
§ 5:40 — — —Foster care income
§ 5:41 — — —Rental real estate income
§ 5:42 — — —Tenants receiving cash payments (California only)
§ 5:43 — — —Distributions and withdrawals from retirement accounts
§ 5:44 — — —Annuities can be assets and income
§ 5:45 — — —Tenant receiving principal and interest payments on loan
§ 5:46 — —Waiver of Third Party verification—Assets less than $5,000
§ 5:47 Property Management—Assets Disposed of for Less Than Fair Market
Value
§ 5:48 Determining tenant income—Income from assets
§ 5:49 Property management—Changes in tenant income or area median gross
income—Next-available-unit rule
§ 5:50 — — —Stipulations in the lease
§ 5:51 — — —General policy for income recertifications for mixed-income
buildings
Table of Contents

§ 5:52 — — — Ability to evict tenants
§ 5:53 — — — Mixed-income buildings with same bedroom sizes
§ 5:54 — — — Mixed-income buildings with different bedroom sizes
§ 5:55 — — — Step-by-step procedures to comply with the next-available-unit rule
§ 5:56 — — — Deep rent skewing set-aside
§ 5:57 — — — Low-income occupancy test
§ 5:58 — — — Nontransient occupancy
§ 5:59 — — — Suitable for occupancy
§ 5:60 — — — HUD UPCS
§ 5:61 — — — General public
§ 5:62 — — — Assigning affordable units
§ 5:63 — — — Assigning units and tax credits
§ 5:64 — — — Assigning units and fair housing
§ 5:65 — — — Assigning units and bonds
§ 5:66 — — — Manager’s unit
§ 5:67 — — — Model units
§ 5:68 — — — Common areas
§ 5:69 — — — Community service facility
§ 5:70 — — — Vacant unit rule
§ 5:71 — — — Students
§ 5:72 — — — Acquisition/rehabilitation issues
§ 5:73 — — — Tenant income certification effective dates
§ 5:74 — — — Tax credits
§ 5:75 Property Management—Acquisition/rehabilitation issues—Rent restriction during the 120-day grace period
§ 5:76 Property management—Acquisition/rehabilitation issues—Income qualifying households before the beginning of the 10-year credit period
§ 5:77 — — — Testing for purposes of the next-available-unit rule
§ 5:78 — — — Testing for purposes of the next-available-unit rule-building definition
§ 5:79 IRS Form 8823 Guide
§ 5:80 — — — State issues
§ 5:81 Return of credits to state agency
§ 5:82 Acquisition/rehabilitation—First year qualified units
§ 5:83 Switching utility allowances
§ 5:84 Transient units
§ 5:85 Citizenship status
§ 5:86 Effect of Marital status on tenants
§ 5:87 Changes in household size
§ 5:88 Overcharging tenants
§ 5:89 Increasing sample size of tenant files
§ 5:90 Incomplete or imperfect documentation
§ 5:91 Various 120-day rules
§ 5:92 Correcting errors
§ 5:93 Entire development out of compliance
§ 5:94 Extended-Use Period
§ 5:95 Managing Resyndicated LIHTC Properties
§ 5:96 Eviction or “Termination of Tenancy”
§ 5:97 — — — Combining LIHTC and Section 8
§ 5:98 Critical Documents for LIHTC Property Managers

Appendices

Appendix A. Section 42
APPENDIX B. Treasury Regulations
APPENDIX C. Joint Committee Report on the LIHTC and General Explanation Report on the LIHTC
APPENDIX D. List of Internal Revenue Service Guidance on the LIHTC
APPENDIX E. Important IRS Guidance and HUD Announcements
APPENDIX F. Reference Material for the LIHTC
APPENDIX G. Internal Revenue Forms
APPENDIX H. List of Monthly Credit Percentages
APPENDIX I. Applicable Federal Rates (AFRs)
APPENDIX J. Table of Interest Rates for Tax Credit Recapture
APPENDIX K. List of State Tax Credit Allocation Authorities
APPENDIX L. NCSHA Recommended Practices and Sample Compliance Administrative Forms
APPENDIX M. Qualified Census Tracts and Difficult to Develop Areas
APPENDIX N. Tax Credit Utilization
APPENDIX O. Sample LIHTC Agreements and Letters
APPENDIX P. Due Diligence Checklist
APPENDIX Q. Examples of Noncompliance
APPENDIX R. Glossary
APPENDIX S. Table of Cases
APPENDIX T. Audit Technique

Table of Laws and Rules
Table of Cases
Index