

A.C.A. Tit. 26, Subtit. 5, Ch. 51, Subch. 17 Note

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Title 26 Taxation
Subtitle 5. State Taxes
Chapter 51 Income Taxes
Subchapter 17 -- Low Income Housing Tax Credit

A.C.A. Tit. 26, Subtit. 5, Ch. 51, Subch. 17 Note (2014)

26-51-1701. Definitions.

As used in this subchapter, unless the context clearly requires otherwise:

- (1) "Authority" means the Arkansas Development Finance Authority, or its successor agency;
- (2) "Director" means the Director of the Department of Finance and Administration;
- (3) "Eligibility statement" means a statement authorized and issued by the authority certifying that a given project qualifies for the Arkansas low income housing tax credit. The authority shall promulgate rules establishing criteria upon which the eligibility statements will be issued. The eligibility statement shall specify the amount of the Arkansas low income housing tax credit allowed;
- (4) "Federal low income housing tax credit" means the federal tax credit as provided in 26 U.S.C. § 42, as amended;
- (5) "Qualified project" means a qualified low income building as that term is defined in 26 U.S.C. § 42, as amended, which is located in Arkansas; and
- (6) "Taxpayer" means a person, firm or corporation subject to the state income tax imposed by provisions of §§ 26-51-101 -- 26-51-1510, or an insurance company paying an annual tax on its gross premium receipts in this state, or a financial institution paying income taxes to the State of Arkansas.

26-51-1702. Allowance and calculation of tax credit.

(a) A taxpayer owning an interest in a qualified project shall be allowed a state tax credit, to be termed the Arkansas low income housing tax credit, if the Arkansas Development Finance Authority issues an eligibility statement for that project. For any taxpayer which is, for state income tax purposes, taxed as a partnership or an S corporation, the tax credits allocated to the taxpayer shall be allocated to each partner, member or shareholder of the taxpayer in accordance with the provisions of the articles of incorporation, bylaws, partnership agreement, operating agreement or other agreement setting forth such allocation.

(b) The Arkansas low income housing tax credit available to a qualified project shall be calculated by multiplying an amount equal to the federal low income housing tax credit for a qualified project for a federal tax period, by twenty percent (20%) and such amount shall be subtracted from the amount of state income or premium tax otherwise due from the taxpayer for the same tax period.

(c) The Arkansas low income housing tax credit shall be taken against the state income or premium taxes due from the taxpayer. The credit authorized by this subchapter shall not be refundable. Any amount of credit that exceeds the tax due for a taxable year may be carried forward to any of the five (5) subsequent taxable years or carried forward to any of the five (5) subsequent taxable years.

(d) All or any portion of the Arkansas low income housing tax credits may be allocated to parties who are eligible under the provisions of subsection (a) of this section. An owner of a qualified project shall certify to the Director of the Department of Finance and Administration the amount of the Arkansas low income housing tax credit allocated to each taxpayer.

(e) In the event that recapture of Arkansas low income housing tax credits is required pursuant to § 26-51-1703(b) of this subchapter, any statement submitted to the director as provided in this section shall include the proportion of the Arkansas low income housing tax credit required to be recaptured, the identity of each taxpayer subject to the recapture and the amount of Arkansas low income housing tax credit previously allocated to such taxpayer.

(f) The total amount of tax credit granted under this subchapter shall not exceed two hundred fifty thousand dollars (\$250,000) in any taxable year.

(g) (1) A grant payment made under § 1602 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, is excluded from gross income if the grant payment is made in lieu of a federal low income housing tax credit.

(2) The grant recipient shall comply with the requirements of this subchapter in the same manner as if the grant recipient had received a federal low income housing tax credit.

26-51-1703. Eligibility statement.

(a) The owner of a qualified project eligible for the Arkansas low income housing tax credit shall

submit, at the time of filing the owner's income or gross premium tax return, an eligibility statement. In the case of failure to attach the eligibility statement, no Arkansas low income housing tax credit under this subchapter shall be allowed with respect to such project for that year until these copies are provided to the Department of Finance and Administration.

(b) If under 26 U.S.C. § 42, as amended, a portion of any federal low income housing tax credit taken with respect to a qualified project is required to be recaptured, the taxpayer claiming Arkansas low income housing tax credit with respect to such project shall also be required to recapture a portion of any Arkansas low income housing tax credit authorized by this subchapter. The state recapture amount shall be equal to the proportion of the Arkansas low income housing tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal low income housing credit claimed by the taxpayer.

26-51-1704. Sale, assignment, and transfer of tax credit allowed.

(a) All or any portion of Arkansas low income housing tax credit issued in accordance with the provisions of this subchapter may be transferred, sold or assigned but only in connection with the sale or transfer of the interest in the qualified project or in the taxpayer.

(b) An owner or transferee desiring to make a transfer, sale, or assignment as described in subsection (a) of this section shall submit to the Director of the Department of Finance and Administration a statement which describes the amount of Arkansas low income housing tax credit for which transfer, sale, or assignment of Arkansas low income housing tax credit is eligible. The owner shall provide to the director such information as is specified by the Department of Finance and Administration in regulations so that the Arkansas low income housing tax credit may be properly allocated.

(c) In the event that recapture of Arkansas low income housing tax credit is required pursuant to § 26-51-1703(b) of this subchapter, the statements submitted to the director as provided in this section shall include the proportion of the Arkansas low income housing tax credit required to be recaptured, the identity of each transferee subject to recapture, and the amount of Arkansas low income housing tax credit previously transferred to such transferee and such other information as is specified by the department in regulations.

26-51-1705. Rules and regulations.

The Director of the Department of Finance and Administration and the Arkansas Development Finance Authority shall promulgate rules and regulations necessary to administer the provisions of this subchapter. No rule or portion of a rule promulgated under the authority of this section shall become effective until it has been approved by the director in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.