

# C.R.S. 39-22-2102

## Copy Citation

Current through all Laws passed during the 2018 Legislative Session and Ballot Measures  
Approved in the November 2018 General Election

### 39-22-2102. Credit against tax - affordable housing developments

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- (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, except for credits allocated in 2015 and 2016 for qualified developments that are located in a county that is designated by the qualified allocation plan as having been impacted by a natural disaster.
- (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 qualified taxpayers in any manner agreed to by such persons regardless of whether any such persons are deemed a partner for federal income tax purposes. The owner shall certify to the department the amount of credit allocated to each partner, shareholder, member, or other qualified taxpayer. Each partner, shareholder, member, or other qualified taxpayer admitted as a partner, shareholder, member, or other qualified taxpayer of the owner prior to the filing of a tax credit claiming the credit is 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, and is in accordance with the accessibility and adaptability requirements of the federal tax credits and Title VIII of the "Civil Rights Act of 1968", as amended by the "Fair Housing Amendments Act of 1988", 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 unless corrected within the time provided by sec. 42(h)(6)(J) of the internal revenue code as applicable to the covenant described in this subsection (4).
- (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 eleven tax

years following the tax year in which the allocation was made and must 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 period beginning January 1, 2015, and ending December 31, 2024, the authority may allocate a credit, the full amount of which may be claimed against the taxes imposed by this article 22 for each taxable year of the six-year credit period. The aggregate amount of all credits allocated by the authority in each calendar year of the period beginning January 1, 2015, and ending December 31, 2024, 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, except for credits allocated in 2015 and 2016 for qualified developments that are located in a county that is designated by the qualified allocation plan as having been impacted by a natural disaster;

(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.

## History

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### Source:

L. 2000: Entire part added, p. 876, § 1, effective August 2.L. 2014: (2)(d), (4), (6), IP(7), and (7)(a) amended, (HB 14-1017), ch. 277, p. 1125, § 4, effective May 29.L. 2016: (2)(d), IP(7), and (7)(a) amended, (HB 16-1465), ch. 243, p. 990, § 1, effective June 6.L. 2018: (3), (4), and IP(7) amended, (SB 18-007), ch. 228, p. 1439, § 2, effective May 22.