

Chapter 48. District of Columbia Low-Income Housing Tax Credit

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§ 47-4801. Definitions.

NOTE: This section has been amended by emergency legislation with identical permanent legislation that will become effective in January, 2022.

For the purposes of this chapter, the term:

(1) “Administrative costs” means the costs of the Department to administer, manage, and monitor the Low-Income Housing Tax Credit Program, including personnel costs.

(1A) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking.

(2) “Department” means the Department of Housing and Community Development, or its successor agency.

(3) “Developer” means a person or entity that proposes to cause the acquisition, rehabilitation, or construction of affordable housing using tax credits provided under the District of Columbia’s Low-Income Housing Tax Credit Program.

(4) “Director” means the Director of the Department.

(5) “District of Columbia low-income housing tax credit” means the tax credit established by [§ 47-4802](#) pursuant to the Low-Income Housing Tax Credit Program.

(6) “Federal low-income housing tax credit” means a tax credit claimed pursuant to section 42 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 42) (“1986 Internal Revenue Code”).

(7) [Repealed].

(8) "Qualified project" means a rental housing development in the District that receives an allocation of federal low-income housing tax credits under 26 U.S.C. § 42(h)(1) or (4) after October 1, 2021, and with respect to which an extended low-income housing commitment pursuant to 26 U.S.C. § 42(h)(6)(B) between the owner of the rental housing development and the Department is executed on or after October 1, 2021.

(9) "User fee" means a fee charged by the Department to a developer in connection with the District of Columbia's Low-Income Housing Tax Credit Program, including application, reservation, allocation, and monitoring fees.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990; Dec. 3, 2020, D.C. Law 23-149, § 7202\(b\), 67 DCR 10493; Aug. 23, 2021, D.C. Act 24-159, § 2212\(a\), 68 DCR 008602.\)](#)

Emergency Legislation

For temporary (90 days) addition of this chapter, see § 7152 of the Fiscal Year 2015 Budget Support Emergency Act of 2014 (D.C. Act 20-377, July 14, 2014, 61 DCR 7598, 20 STAT 3696).

For temporary (90 days) addition of this chapter, see § 7142 of the Fiscal Year 2015 Budget Support Congressional Review Emergency Act of 2014 (D.C. Act 20-449, October 10, 2014, 61 DCR 10915, 20 STAT 4188).

For temporary (90 days) addition of this chapter, see § 7142 of the Fiscal Year 2015 Budget Support Second Congressional Review Emergency Act of 2014 (D.C. Act 20-566, January 9, 2015, 62 DCR 884, 21 STAT 541).

For temporary (90 days) amendment of this section, see § 2(b) of the ABLE Program Trust Establishment Emergency Act of 2015 (D.C. Act 21-161, Oct. 19, 2015, 62 DCR 13725).

§ 47-4802. Credit established.

(a) There is established a District of Columbia low-income housing tax credit.

(b) [Repealed].

(c) [Repealed].

(d) Only qualified projects are eligible for a District of Columbia low-income housing tax credit.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990; Oct. 22, 2015, D.C. Law 21-36, § 7047, 62 DCR 10905; Oct. 8, 2016, D.C. Law 21-160, § 7132, 63 DCR 10775; Dec. 3, 2020, D.C. Law 23-149, § 7202\(c\), 67 DCR 10493.\)](#)

Effect of Amendments

The 2015 amendment by [D.C. Law 21-36](#) substituted “tax year 2016” for “tax year 2015” in (a)(2).

Emergency Legislation

For temporary (90 days) amendment of this section, see § 7017 of the Fiscal Year 2016 Budget Support Emergency Act of 2015 (D.C. Act 21-127, July 27, 2015, 62 DCR 10201).

§ 47-4803. Eligibility.

NOTE: This section has been amended by emergency legislation with identical permanent legislation that will become effective in January, 2022.

(a) An owner of a qualified project may receive a District of Columbia low-income housing tax credit with respect to that qualified project in an amount up to 25% of the value of the federal low-income housing tax credit received with respect to the qualified project.

(b)(1) If the owner of a qualified project transfers, sells, or assigns a District of Columbia low-income housing tax credit to another taxpayer, pursuant to [§ 47-4806](#), the District of Columbia low-income housing tax credit shall not be taken, pursuant to subsection (c) of this section, against taxes imposed under [this title](#) unless the owner has filed with the Department, in a form determined by the Department, an affidavit certifying that:

(A) The owner of the qualified project received, as consideration for transferring, selling, or assigning the District of Columbia low-income housing tax credit, an amount that exceeds the lesser of \$0.70 per \$1.00 in District of Columbia low-income housing tax credit or 80% of the per dollar sale price for a federal low-income housing tax credit associated with the qualified project that the owner has transferred, sold, or assigned; and

(B) The value received by the owner of the qualified project was used to ensure financial feasibility of the qualified project.

(2) The Department shall deliver to the Chief Financial Officer and the Commissioner an annual report certifying the ongoing eligibility of an eligible project to receive federal low-income housing tax credits.

(c)(1) The District of Columbia low-income housing tax credit may be claimed against taxes imposed under [Chapter 18 of this title](#) or [§ 47-2608\(a\)\(1\)](#).

(2) The District of Columbia low-income housing tax credit may be claimed equally for 10 years, subtracted from the tax otherwise due for each taxable period and shall not be refundable; provided, that the credit may not be taken against any tax that is dedicated in whole or in part to the Healthy DC and Health Care Expansion Fund established by [§ 31-3514.02](#).

(3) If the District of Columbia low-income housing tax credit is claimed against taxes imposed under [Chapter 18 of this title](#), any amount of the low-income housing tax credit that exceeds the tax due for a taxable year may be carried forward to any of the 10 remaining

subsequent taxable years for taxes imposed under [Chapter 18 of this title](#). If the District of Columbia low-income housing tax credit is claimed against taxes imposed under [§ 47-2608\(a\)\(1\)](#), any amount of the credit that exceeds the tax due for a taxable year may be carried forward to any of the 10 remaining subsequent taxable years for taxes imposed under [§ 47-2608\(a\)\(1\)](#).

(d)(1) All or any portion of District of Columbia tax credits issued in accordance with the provisions of this section may be transferred, sold, assigned, or allocated to parties who are eligible pursuant to [\[this chapter\]](#).

(2) An owner of a qualified project shall certify to the Chief Financial Officer the amount of credit allocated to the owner. The owner of the qualified project shall provide to the Chief Financial Officer appropriate information so that the low-income housing tax credit can be properly allocated.

(e) If the recapture of District of Columbia low-income housing tax credits is required pursuant to [§ 47-4804\(a\)](#) or (b), any statement submitted to the Chief Financial Officer and the Commissioner as provided in this section shall include the:

(1) Proportion of the District of Columbia credit required to be recaptured;

(2) Identity of each transferee, purchaser, assignee, or party to whom a credit is allocated; and

(3) Amount of credit previously allocated to such transferee, purchaser, assignee, or party to whom a credit is allocated.

(f)(1) A District of Columbia low-income housing tax credit allowed under this section shall not be denied with respect to any qualified project merely by reason of a right of first refusal held by the tenants, in cooperative form or otherwise, or resident management corporation of such building or by a qualified nonprofit organization, as defined in section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year, or government agency to purchase the qualified District of Columbia project after the close of the compliance period for a price which is not less than the minimum purchase price determined under paragraph (2) of this subsection.

(2) The minimum purchase price shall be an amount equal to the sum of the principal amount of outstanding indebtedness secured by the building, other than indebtedness incurred within the 5-year period ending on the date of the sale pursuant to paragraph (1) of this subsection, and all federal and District taxes attributable to the sale.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990; Dec. 3, 2020, D.C. Law 23-149, § 7202\(d\), 67 DCR 10493; Aug. 23, 2021, D.C. Act 24-159, § 2212\(b\), 68 DCR 008602.\)](#)

§ 47-4804. Recapture.

(a) The owner of a qualified project eligible for the District of Columbia low-income housing tax credit shall submit a copy of the eligibility statement issued by the Department with respect to the qualified project at the time of filing the return required to be filed by the owner pursuant

to [§ 47-1805.02](#). In the case of failure to attach the eligibility statement, a credit under this section shall not be allowed with respect to such qualified project for that year until the copy is provided to the Chief Financial Officer and the Commissioner.

(b) If under section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year, a portion of any federal low-income housing tax credits taken on a low-income qualified project is required to be recaptured, the District of Columbia low-income housing tax credit authorized by this chapter with respect to such qualified District of Columbia project shall also be recaptured by the Office of Chief Financial Officer or Commissioner of Insurance, Securities, and Banking. The District of Columbia recapture amount shall be equal to the amount of the District of Columbia low-income housing tax credits previously claimed times a fraction, the numerator of which shall be the amount of recaptured federal low-income housing tax credits and the denominator of which shall be the amount of federal low-income housing tax credits previously claimed.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990; Dec. 3, 2020, D.C. Law 23-149, § 7202\(e\), 67 DCR 10493.\)](#)

§ 47-4805. Additional filings.

The Chief Financial Officer, the Commissioner, or the Department may require the filing of additional documentation necessary to determine the eligibility or accuracy of a tax credit claimed under the provisions of this chapter through the promulgation of regulations.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990; Dec. 3, 2020, D.C. Law 23-149, § 7202\(f\), 67 DCR 10493.\)](#)

§ 47-4806. Transfer, sale, assignment, or allocation.

(a)(1) All or any portion of credits issued in accordance with the provisions of this section may be transferred, sold, or assigned to another taxpayer. There is no limit on the total number of transactions for the transfer, sale, or assignment of all or part of the total credit authorized under this section. Collectively, all transfers, sales, assignments, and allocations pursuant to paragraph (2) of this subsection are subject to the maximum credit allowable to a particular qualified project.

(2) A tax credit earned or purchased by, or transferred or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity in accordance with the provisions of any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the qualified project. A partner, member, or shareholder to whom a tax credit is allocated may further allocate all or part of the allocated credit as provided in this subsection or may transfer, sell, or assign the allocated credit as provided in paragraph (1) of this subsection. There is no limit on the total number of allocations of all or part of the total credit authorized under this section; however, collectively, all transfers, sales, assignments, and allocations, made pursuant to this subsection, are subject to the maximum credit allowable to a particular qualified project.

(b) An owner, transferee, purchaser, assignee, or taxpayer to whom a tax credit is allocated pursuant to subsection (a)(2) of this section, desiring to make a transfer, sale, assignment, or allocation pursuant to subsection (a)(2) of this section, shall submit to the Chief Financial Officer and the Commissioner a statement that describes the amount of District of Columbia low-income housing tax credit for which such transfer, sale, assignment, or allocation of District of Columbia low-income housing tax credit is eligible. The owner, transferor, seller, assignor, or taxpayer who is allocating, pursuant to subsection (a)(2) of this section, the tax credit, as applicable, shall provide to the Chief Financial Officer and the Commissioner appropriate information so that the low-income housing tax credit can be properly allocated.

(c) If the recapture of District of Columbia low-income housing tax credits is required pursuant to [§ 47-4804](#), any statement submitted to the Chief Financial Officer as required in subsection (b) of this section shall include the:

(1) Proportion of the District of Columbia low-income housing tax credit required to be recaptured;

(2) Identity of each transferee subject to recapture; and

(3) Amount of credit previously transferred, sold, assigned, or allocated to such transferee, purchaser, assignee, or taxpayer to whom a credit is allocated.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990; Dec. 3, 2020, D.C. Law 23-149, § 7202\(g\), 67 DCR 10493.\)](#)

§ 47-4807. Compliance.

(a) The Department, in consultation with the Chief Financial Officer and the Commissioner, shall monitor and oversee compliance with the District of Columbia's Low-Income Housing Tax Credit Program and may promulgate regulations requiring the filing of additional documentation considered necessary to determine continuing eligibility for the District of Columbia low-income housing tax credit.

(b) The Department, the Chief Financial Officer, or the Commissioner shall report specific occurrences of noncompliance to appropriate state, federal, and local authorities.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990; Dec. 3, 2020, D.C. Law 23-149, § 7202\(h\), 67 DCR 10493.\)](#)

§ 47-4808. Expiration of credits.

Except for unused credits carried forward pursuant to [§ 47-4803\(c\)](#) and for credits claimed under regulations promulgated by the Department consistent with the special rule set forth in section 42(f)(2) of the 1986 Internal Revenue Code , as amended and in effect for the taxable year, a qualified District of Columbia project shall not be eligible for any District of Columbia low-income housing tax credits for more than 11 taxable years.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990.\)](#)

§ 47-4809. Efficiency.

The Department may pursue methods of enhancing the efficiency of the District of Columbia low-income housing tax credit program, including,

(1) Pursuing opinions from the United States Department of Treasury’s Internal Revenue Service in the form of:

- (A) General Counsel memoranda;
- (B) Private letter rulings and other notices,;
- (C) Rulings; or
- (D) Guidelines; and

(2) Reviewing other state low-income housing tax programs that have an option for taxpayers to receive such tax credit in the form of a loan generated by transferring the credit to a designated state entity.

[\(Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990.\)](#)

§ 47-4810. Fees.

The Department may charge a user fee equal to up to 1% of the District of Columbia low-income housing tax credits awarded to a qualified project to pay for the administrative costs associated with the establishment of a District of Columbia low-income housing tax credit. The user fee shall be deposited into the Low-Income Housing Tax Credit Fund, as established in [§ 42-2853.02](#).

([Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990.](#))

Emergency Legislation

For temporary (90 days) addition of § 47-4811.01, concerning the ABLE Program Trust [see now [§ 47-4902](#)], see § 2(c) of the ABLE Program Trust Establishment Emergency Act of 2015 (D.C. Act 21-161, Oct. 19, 2015, 62 DCR 13725).

§ 47-4812. Rules.

- (a) The Mayor shall issue rules to implement the provisions of this chapter.
- (b) The Chief Financial Officer shall issue rules to implement [§ 47-4805](#).

([Feb. 26, 2015, D.C. Law 20-155, § 7142\(b\), 61 DCR 9990.](#))