

**PART I** ADMINISTRATION OF THE GOVERNMENT**TITLE IX** TAXATION**CHAPTER 63** TAXATION OF CORPORATIONS**Section 31H** Definitions; state low-income housing tax credit; eligibility; allocation; recapture

Section 31H. (a) For the purposes of this section, unless the context clearly requires otherwise, the following words shall have the following meanings:-

"Commissioner", the commissioner of the department of revenue.

"Compliance period", the period of 15 taxable years beginning with the first taxable year the Massachusetts low-income housing tax credit is claimed.

"Department", the department of housing and community development, or its successor agency.

"Eligibility statement", a statement authorized and issued by the department certifying that a given project is a qualified Massachusetts project. The department, in consultation with the commissioner, shall promulgate regulations establishing criteria upon which the eligibility statements shall be issued. The eligibility statement shall specify the maximum annual amount of the Massachusetts low-income housing tax credit authorized. The department shall only authorize the tax credits to qualified Massachusetts projects which are placed in service on or after January 1, 2001.

"Federal low-income housing tax credit", the federal tax credit as provided in Section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year.

"Low-income project", a qualified low-income housing project, as defined in section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year, which has restricted rents that do not exceed 30 per cent of the applicable imputed income limitation under said section 42 of said Code, for at least 40 per cent of its units occupied by persons or families having incomes of 60 per cent or less of the median income, or at least 20 per cent of the units occupied by persons or families having incomes of 50 per cent or less of the median income.

"Median income", the area median gross income as such term is used in section 42 of the 1986 Internal Revenue Code as amended and in effect for the taxable year, and which is determined by the federal department of housing and urban development guidelines and adjusted for family size.

"Qualified Massachusetts project", a qualified low-income housing project as that term is defined in section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year, which is located in the commonwealth, which meets the requirements of this section, and whose

owner enters into a regulatory agreement with the department enforceable by state and local agencies.

"Regulatory agreement", an agreement between the owner of the qualified Massachusetts project in the commonwealth and the department and recorded as an affordable housing restriction under chapter 184 with the registry of deeds in the county where the property is located that requires the qualified Massachusetts project to be operated in accordance with the requirements of this section for not less than 30 years from the expiration date of the compliance period. Such agreement may be subordinated to the lien of a bank or other institutional lender providing financing to the qualified Massachusetts project, upon the request of such bank or lender.

*[Definition of "Taxpayer" of subsection (a) effective until January 1, 2014. For text effective January 1, 2014, see below.]*

"Taxpayer", a corporation subject to an excise imposed by the provisions of this chapter, including, without limitations, section 2, sections 20 to 23, inclusive, section 29A, section 32, section 39 and section 52A.

*[Definition of "Taxpayer" of subsection (a) as amended by 2013, 46, Sec. 35 effective January 1, 2014 applicable as provided by 2013, 46, Sec. 84. For text effective until January 1, 2014, see above.]*

"Taxpayer", a corporation subject to an excise imposed by the provisions of this chapter, including, without limitations, section 2, sections 20 to 23, inclusive, section 29A, section 32 and section 39.

*[Paragraph (1) of subsection (b) effective until January 1, 2020. For text effective January 1, 2020, see below.]*

(b)(1) There shall be a Massachusetts low-income housing tax credit. The department may authorize annually under this section together with section 6I of chapter 62 the total sum of: (i) \$20,000,000; (ii) unused Massachusetts low-income housing tax credits, if any, for the preceding calendar years; and (iii) any Massachusetts low-income housing tax credits returned to the department by a qualified Massachusetts project.

*[Paragraph (1) of subsection (b) as amended by 2011, 142, Sec. 16 effective January 1, 2020. See 2011, 142, Sec. 100 as amended by 2013, 129, Sec. 14. For text effective until January 1, 2020, see above.]*

(b)(1) There shall be a Massachusetts low-income housing tax credit. The department may authorize annually under this section together with section 6I of chapter 62 the total sum of: (i) \$10,000,000; (ii) unused Massachusetts low-income housing tax credits, if any, for the preceding calendar years; and (iii) any Massachusetts low-income housing tax credits returned to the

department by a qualified Massachusetts project.

(2) Unless otherwise provided in this section or the context clearly requires otherwise, the department shall authorize, administer, determine eligibility for the Massachusetts low-income housing tax credit and allocate the credit in accordance with the standards and requirements as set forth in section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year; provided, however, that the combined federal and Massachusetts low-income housing tax credit shall be the least amount necessary to ensure financial feasibility.

(3) The department shall allocate the total available Massachusetts low-income housing tax credit among as many qualified Massachusetts projects as fiscally feasible, with the goal of increasing the commonwealth's stock of affordable housing units.

(c)(1) A taxpayer may be allowed a state tax credit with respect to a qualified Massachusetts project, provided that the department issues an eligibility statement for that qualified Massachusetts project; provided further, that no credit shall be authorized related to a project that receives state financial assistance authorized under section 7A of chapter 244 of the acts of 2002. This state tax credit shall be termed the Massachusetts low-income housing tax credit.

(2) The total Massachusetts low-income housing tax credit available to a qualified Massachusetts project shall be authorized and allocated by the department, or its successor agency, based on the qualified Massachusetts project's need for the credit for economic feasibility.

(3) The Massachusetts low-income housing tax credit shall be taken against the taxes imposed under this chapter, claimed equally for five years, subtracted from the amount of state tax otherwise due for each taxable period and shall not be refundable. 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 five subsequent taxable years.

(4) All or any portion of Massachusetts tax credits issued in accordance with the provisions of this section may be allocated to parties who are eligible under the provisions of paragraph (1) of subsection (c). An owner of a qualified Massachusetts project shall certify to the commissioner the amount of credit allocated to such owner. The owner of the qualified Massachusetts project shall provide to the commissioner appropriate information so that the low-income housing tax credit can be properly allocated.

(5) In the event that recapture of Massachusetts low-income housing tax credits is required pursuant to paragraph (1) or (2) of subsection (d), any statement submitted to the commissioner as provided in subsection (c) shall include the proportion of the state credit required to be recaptured, the identity of each taxpayer subject to the recapture and the amount of credit previously allocated to such taxpayer.

(6)(i) A state tax credit allowed under this section shall not be denied to the taxpayer with respect to any qualified Massachusetts 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 Massachusetts project after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (ii).

(ii) 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 five year period ending on the date of the sale pursuant to subparagraph (i), and all federal, state and local taxes attributable to such sale.

(7) The director of the department, in consultation with the commissioner, shall promulgate regulations necessary to administer the provisions of this paragraph.

(d)(1) The owner of a qualified Massachusetts project eligible for the Massachusetts low-income housing tax credit shall submit, at the time of filing the project owner's state tax return, a copy of the eligibility statement issued by the department with respect to such qualified Massachusetts project. In the case of failure to attach the eligibility statement, a credit under this section shall not be allowed with respect to such qualified Massachusetts project for that year until the copy is provided to the department of revenue.

(2) 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 Massachusetts project is required to be recaptured, the Massachusetts low-income housing tax credit authorized by this section with respect to such qualified Massachusetts project shall also be recaptured. The state recapture amount shall be equal to the amount of the state 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.

(e) 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 section through the promulgation of regulations.

(f)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to parties who are eligible under the provisions of paragraph (1) of subsection (c).

(2) An owner or transferee desiring to make a transfer, sale or assignment as described in paragraph (1) of subsection (f) shall submit to the commissioner a statement which describes the

amount of Massachusetts low-income housing tax credit for which such transfer, sale or assignment of Massachusetts low-income housing tax credit is eligible. The owner shall provide to the commissioner appropriate information so that the low-income housing tax credit can be properly allocated.

(3) In the event that recapture of Massachusetts low-income housing tax credits is required pursuant to paragraph (1) or (2) of subsection (d), any statement submitted to the commissioner as provided in paragraph (2) of subsection (f) shall include the proportion of the Massachusetts low-income housing tax credit required to be recaptured, the identity of each transferee subject to recapture and the amount of credit previously transferred to such transferee.

(4) The commissioner, in consultation with the department, shall promulgate regulations necessary for the administration of the provisions of this subsection.

(g) The department, in consultation with the commissioner, shall monitor and oversee compliance with the Massachusetts low-income housing tax credit program and may promulgate regulations requiring the filing of additional documentation deemed necessary to determine continuing eligibility for the Massachusetts low-income housing tax credit. The department or the commissioner shall report specific occurrences of noncompliance to appropriate state, federal and local authorities.

(h) Except for unused credits carried forward pursuant to paragraph (3) of subsection (c) of section 6I of chapter 62 and paragraph (3) of subsection (c) of this section, and except for credits claimed under regulations promulgated by the department consistent with the special rule set forth in paragraph (2) of subsection (f) of section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year, a qualified Massachusetts project shall not be eligible for any Massachusetts low-income housing tax credits for more than 11 taxable years.

(i) The department may provide that upon application for state tax credits issued by the department, such taxpayer may elect to receive such state tax credit in the form of a loan generated by transferring the credit to the department or its designee on terms specified by the department in accordance with its qualified allocation plan. Neither a direct tax refund nor a loan received as the result of the transfer of the credit shall be considered taxable income under this chapter.

(j) The department may pursue methods of enhancing the efficiency of the Massachusetts low-income housing tax credit program including but not limited to; pursuing opinions from the United States department of treasury's internal revenue service in the form of general counsel memoranda, private letter rulings and other notices, rulings or guidelines and reviewing other state low income housing tax programs which utilize 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.