

NO. 74. AN ACT RELATING TO AFFORDABLE HOUSING TAX CREDITS.

(H.331)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 32 V.S.A. § 5930u is amended to read:

§ 5930u. TAX CREDIT FOR AFFORDABLE HOUSING

(a) As used in this section:

(1) “Affordable housing project” or “project” means a project identified in 26 U.S.C. § 42(g).

(2) “Affordable housing tax credits” means the tax credit provided by this subchapter.

(3) “Allocating agency” means the Vermont housing finance agency.

(4) “Committee” means the joint committee on tax credits consisting of five members; a representative from the department of housing and community affairs, the Vermont housing and conservation board, the Vermont housing finance agency, the Vermont state housing authority, and the office of the governor.

(5) “Credit certificate” means a certificate issued by the allocating agency to a taxpayer that specifies the amount of affordable housing tax credits that can be applied against the taxpayer’s individual or corporate income tax or franchise tax as provided in this subchapter.

~~(5)~~(6) “Eligible applicant” means any municipality, private sector developer, department of state government as defined in 10 V.S.A. § 6302(a),

nonprofit organization qualifying under Section 501(c)(3) of the Internal Revenue Code, or cooperative housing organization, the purpose of which is the creation and retention of affordable housing for lower income Vermonters, and the bylaws that require that housing to be maintained as affordable housing for lower income Vermonters on a perpetual basis.

~~(6) “Eligible basis” means the eligible basis of an affordable housing project as defined in 26 U.S.C. § 42(e)(1).~~

(7) “Eligible cash contribution” means an amount of cash contributed to the owner, developer, or sponsor of an affordable housing project and determined by the allocating agency as eligible for affordable housing tax credits.

~~(7)(8)~~ “Section 42 credits” means tax credit provided by 26 U.S.C. §§ 38 and 42.

(b) Affordable housing credit allocation.

(1) Prior to the placement of an affordable housing project in service, the owner, or a person having the right to acquire ownership of a building, may apply to the committee for an allocation of affordable housing tax credits under this section. The committee shall advise the allocating agency on an affordable housing tax credit application based upon published priorities and criteria. The allocating agency shall issue a letter of approval if it finds that the applicant meets the priorities, criteria, and other provisions of subdivision (2) of this subsection. The burden of proof shall be on the applicant.

(2) Upon receipt of a completed application, an allocation of affordable housing tax credits with respect to a project under this section shall be granted to an applicant, provided the applicant demonstrates to the satisfaction of the committee all of the following:

(A) The owner of the project has received from the allocating agency a binding commitment for, a reservation or allocation of, an out-of-cap determination letter for, Section 42 credits;

(B) The project has received community support.

(c) Amount of credit. ~~Except as limited by subsection (f) of this section, the owner of a project to which affordable housing tax credits have been allocated~~ A taxpayer who makes an eligible cash contribution shall be entitled to claim against the taxpayer's individual income, corporate, or franchise tax a credit in an amount ~~equal to 25 percent of the qualified basis of the project specified on the taxpayer's credit certificate.~~

(d) Availability of credit. Affordable housing tax credits allocated with respect to a project shall be available to the ~~owner~~ taxpayer in each of five consecutive tax years, beginning with the tax year in which the ~~affordable housing project is placed in service~~ eligible cash contribution is made.

(e) Claim for credit. A taxpayer claiming affordable housing tax credits shall submit with each return on which such credit is claimed a copy of the allocating agency's credit allocation ~~and a copy of the federal income tax return claiming the Section 42 credit~~ to the affordable housing project and the

taxpayer's credit certificate. Any unused affordable housing tax credit may be carried forward to reduce the taxpayer's tax liability for no more than 14 succeeding tax years, following the first year the affordable housing tax credit is allowed.

(f) ~~Limitations. No affordable housing tax credits shall be allowed for any expenditure with respect to which the taxpayer does not use the straight line method of depreciation under 26 U.S.C. § 168 over a recovery period of at least 27.5 years.~~

(g) In any calendar year, the ~~state board~~ allocating agency shall not award a total amount of tax credits to all applicants under this subchapter in excess of \$150,000.00.

Approved: February 10, 2004