

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact § 58.1-439.30 of the Code of Virginia, relating to income tax; housing
3 opportunity tax credits.

4 [S 47]
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**
7 **1. That § 58.1-439.30 of the Code of Virginia is amended and reenacted as follows:**
8 **§ 58.1-439.30. Virginia housing opportunity tax credit.**

9 A. *Subject to the provisions of subsection H, a housing opportunity tax credit shall be allowed for*
10 *each qualified project for each year of the credit period, in an amount equal up to the amount of federal*
11 *low-income housing tax credit allocated or allowed by the Authority to such qualified project, except*
12 *that there shall be no reduction in the tax credit allowable in the first year of the credit period due to*
13 *the calculation in 26 U.S.C. § 42(f)(2). The credit shall be allowed ratably for each qualified project,*
14 *with one-tenth of the credit amount allowed annually for 10 years over the credit period, except that*
15 *there shall be a reduction in the tax credit allowable in the first year of the credit period due to the*
16 *calculation in 26 U.S.C. § 42(f)(2) and any reduction by reason of 26 U.S.C. § 42(f)(2) in the credit*
17 *allowable for the first taxable year of the credit period shall be allowable for the first taxable year*
18 *following the credit period.*

19 B. 1. For taxable years beginning on and after January 1, 2021, but before January 1, 2026, a
20 qualified taxpayer may claim a housing opportunity tax credit against its Virginia tax liability prior to
21 reduction by any other credits allowed the taxpayer. The housing opportunity tax credit may be allocated
22 by pass-through entities to some or all of its partners, members, or shareholders in any manner agreed to
23 by such persons, regardless of whether or not any such person is allocated or allowed any portion of any
24 federal low-income housing tax credit with respect to the qualified project, whether or not the allocation
25 of the housing opportunity tax credit under the terms of the agreement has substantial economic effect
26 within the meaning of § 704(b) of the Internal Revenue Code, and whether ~~or not~~ any such person is
27 deemed a partner for federal income tax purposes as long as the partner or member would be considered
28 a partner or member as defined under applicable state law, and has been admitted as a partner or
29 member on or prior to the date for filing the qualified taxpayer's tax return, including any amendments
30 thereto, with respect to the year of the housing opportunity tax credit. Such pass-through entities or
31 qualified taxpayer may assign all or any part of its interest, including its interest in the tax credits, to
32 one or more pass-through entities or qualified taxpayers, and the qualified taxpayer shall be able to
33 claim the housing opportunity tax credit so long as its interest is acquired prior to the filing of its tax
34 return claiming the housing opportunity tax credit.

35 2. *If a housing opportunity tax credit has been awarded according to the terms of subsection G prior*
36 *to January 1, 2026, such credit may continue to be claimed on a return for taxable years on and after*
37 *January 1, 2026, but only pursuant to the applicable credit period specified in § 58.1-439.29.*

38 C. The housing opportunity tax credit authorized by this article shall not be refundable. Any housing
39 opportunity tax credit not used in a taxable year may be carried forward *by a qualified taxpayer* for the
40 succeeding five years.

41 D. A qualified taxpayer claiming a housing opportunity tax credit shall submit a copy of the
42 eligibility certificate at the time of filing its tax return with the Department. If the owner of the qualified
43 project has applied to the Authority for the eligibility certificate but the Authority has not yet issued the
44 eligibility certificate at the time the qualified taxpayer files its original tax return claiming the housing
45 opportunity tax credit, the taxpayer may claim the housing opportunity tax credit based upon the amount
46 of tax credit set forth in the ~~carryover allocation or 42(m) letter, as applicable,~~ *award letter issued by*
47 *the Authority for the housing opportunity tax credit* issued to the qualified project and shall amend its
48 tax return to include the eligibility certificate upon its receipt. If the amount of tax credit in the
49 eligibility certificate is different than the amount of tax credit previously claimed, the taxpayer shall
50 adjust the tax credit amount claimed on the amended tax return.

51 E. If under § 42 of the Internal Revenue Code, as amended, a portion of any federal low-income
52 housing credits taken on a qualified project is required to be recaptured or is otherwise disallowed
53 during the credit period, the taxpayer claiming housing opportunity tax credits with respect to such
54 project shall also be required to recapture a portion of any tax credits authorized by this article. The
55 percentage of housing opportunity tax credits subject to recapture shall be equal to the percentage of
56 federal low-income housing credits subject to recapture or otherwise disallowed during such period. Any

57 tax credits recaptured or disallowed shall increase the income tax liability of the qualified taxpayer who
 58 claimed the tax credits in a like amount and shall be included on the tax return of the qualified taxpayer
 59 submitted for the taxable year in which the recapture or disallowance event is identified. *The balance of*
 60 *any tax credits recaptured or disallowed shall be allocated by the Authority for any qualified project in*
 61 *accordance with subsection G.*

62 F. The Authority shall administer the housing opportunity tax credit program and shall be authorized
 63 to promulgate the regulations and guidelines necessary to implement and administer the provisions of
 64 this article. Such regulations and guidelines may include the imposition of application, allocation,
 65 certification, and monitoring fees designed to recoup the costs of the Authority in administering the
 66 housing opportunity tax credit program. The Authority may also promulgate regulations and guidelines
 67 in consultation with the Department to allow a qualified project to elect in its application to the
 68 Authority to sell all or any portion of its credits awarded pursuant to this article to one or more
 69 unrelated taxpayers. Regulations and guidelines regarding the sale of credits, if promulgated, shall not
 70 take effect prior to January 1, 2023, and shall not apply to credits awarded prior to January 1, 2023.

71 G. 1. Any housing opportunity tax credit amounts authorized in a calendar year that are
 72 subsequently (i) canceled and returned to the Authority or (ii) recaptured or disallowed pursuant to
 73 subsection E may be awarded in the following calendar year, but no later than December 31, 2025. If
 74 the amount of housing opportunity tax credits authorized in a calendar year for qualified projects is less
 75 than the total amount of credits available for qualified projects under subdivision H 2, the balance of
 76 such credits, in an amount not greater than 15 percent of the amount of credits available for qualified
 77 projects under subdivision H 2, (a) shall be allocated by the Authority for any qualified project in the
 78 following calendar year, (b) shall not be allocated at any time after such following calendar year, and
 79 (c) shall be allocated no later than December 31, 2025.

80 2. Such housing opportunity tax credits issued pursuant to this subsection shall be allowed ratably,
 81 with one-tenth of the total amount of credits allowed annually for 10 years over the credit period,
 82 except that there shall be a reduction in the tax credit allowable in the first year of the credit period
 83 due to the calculation in 26 U.S.C. § 42(f)(2) and any reduction by reason of 26 U.S.C. § 42(f)(2) in the
 84 credit allowable for the first taxable year of the credit period shall be allowable for the first taxable
 85 year following the credit period.

86 H. 1. The total amount of housing opportunity tax credits authorized for qualified projects under this
 87 article shall not exceed \$15 million per for calendar year 2021.

88 2. For calendar years 2022 through 2025, the total amount of housing opportunity tax credits
 89 authorized for qualified projects under this article shall not exceed \$60 million per calendar year. Such
 90 credits issued each calendar year shall be allowed ratably, with one-tenth of the total amount of credits
 91 allowed annually for 10 years over the credit period, except that there shall be a reduction in the tax
 92 credit allowable in the first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2) and
 93 any reduction by reason of 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable year of the
 94 credit period shall be allowable for the first taxable year following the credit period.

95 3. Notwithstanding any other provision of law to the contrary, the aggregate amount of housing
 96 opportunity tax credits authorized for all qualified projects under this article shall not exceed \$255
 97 million across all calendar years.

98 **2. That notwithstanding any provision of law or regulation to the contrary, only housing**
 99 **opportunity tax credits awarded in calendar year 2021, up to a maximum of \$15 million total for**
 100 **all taxpayers in all taxable years, may be claimed pursuant to the provisions of § 58.1-439.30 of**
 101 **the Code of Virginia as set forth in Chapter 495 of the Acts of Assembly of 2021, Special Session**
 102 **I, prior to amendment by this act. Nothing in this enactment shall apply to § 58.1-439.30 of the**
 103 **Code of Virginia as amended by this act.**

104 **3. That the Virginia Housing Development Authority (the Authority) shall, upon request from the**
 105 **Chairs of the House Committee on Appropriations, the House Committee on Finance, and the**
 106 **Senate Committee on Finance and Appropriations, provide information, data, and any other**
 107 **requested advisement on the potential structure and cost of a separately authorized certificated**
 108 **Virginia housing opportunity tax credit program that would allow a qualified project to sell all or**
 109 **any portion of its Virginia housing opportunity tax credits, to one or more unrelated taxpayers**
 110 **based on findings in the report of the Department of Housing and Community Development and**
 111 **the Authority stakeholder advisory group submitted pursuant to Chapter 517 of the Acts of**
 112 **Assembly of 2020.**

113 **4. Of the \$60 million of Virginia housing opportunity tax credits authorized per calendar year**
 114 **from 2022 through 2025 for qualified projects by the Virginia Housing Development Authority**
 115 **(the Authority) pursuant to Article 13.4 (§ 58.1-439.29 et seq.) of Chapter 3 of Title 58.1 of the**
 116 **Code of Virginia, as amended by this act, \$20 million of such credits shall be first allocated**
 117 **exclusively for qualified projects located in a locality with a population no greater than 35,000 as**

118 determined by the most recent United States census. Such allocation of housing opportunity tax
119 credits shall constitute the minimum amount of such tax credits to be allocated for qualified
120 projects in such localities. However, if the amount of such tax credits requested for qualified
121 projects in such localities is less than the total amount of such credits available for qualified
122 projects in such localities, the balance of such credits shall be allocated for any qualified project,
123 regardless of location. In allocating or allowing such credits to qualified projects in such localities,
124 the Authority shall give equal consideration to qualified projects allocated or allowed a federal
125 low-income housing credit in an amount equal to the 10-year present value calculation of the
126 percentages prescribed under 26 U.S.C. §§ 42(b)(1)(B)(i) and (ii).

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