
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 962 Session of
2020

INTRODUCED BY HUGHES, FONTANA, FARNESE, KEARNEY, COSTA,
BREWSTER, HAYWOOD, STREET AND MUTH, MAY 11, 2020

REFERRED TO FINANCE, MAY 11, 2020

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," providing for Pennsylvania Housing Tax Credit.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
14 the Tax Reform Code of 1971, is amended by adding an article to
15 read:

16 ARTICLE XIX-G

17 PENNSYLVANIA HOUSING TAX CREDIT

18 Section 1901-G. Scope of article.

19 This article establishes the Pennsylvania Housing Tax Credit.

20 Section 1902-G. Definitions.

21 The following words and phrases when used in this article

22 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Agency." The Pennsylvania Housing Finance Agency.

3 "Credit period." A five-year period that begins with the
4 taxable year in which the qualified low-income housing project
5 is eligible to claim the credit under section 1907-G or, at the
6 irrevocable election of the eligible applicant, the next
7 succeeding taxable year.

8 "Department." The Department of Revenue of the Commonwealth.

9 "Eligible applicant." An applicant that meets the agency's
10 applicant criteria for Federal housing tax credits.

11 "Federal housing tax credit." The Federal tax credit created
12 under section 42 of the Internal Revenue Code of 1986 (Public
13 Law 99-514, 26 U.S.C. § 42).

14 "Qualified allocation plan." The agency's plan for
15 allocation of Federal housing tax credits developed under 26
16 C.F.R. § 1.42-17 (relating to qualified allocation plan).

17 "Qualified low-income housing project." The term shall have
18 the same meaning as provided under section 42(g)(1) of the
19 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
20 42(g)(1)).

21 "Qualified tax liability." The tax liability imposed on a
22 taxpayer under Article III, IV, VI, VII, VIII, IX, XI or XV,
23 excluding any tax withheld by an employer under Article III.

24 "Qualified taxpayer." An individual, business firm,
25 corporation, business trust, limited liability company,
26 partnership, limited liability partnership, association or any
27 other form of legal business entity that:

28 (1) is subject to a tax imposed under Article III, IV,
29 VI, VII, VIII, IX, XI or XV, excluding any tax withheld by an
30 employer under Article III; and

1 (2) meets the criteria set forth in guidelines adopted
2 and promulgated by the agency in accordance with section
3 1904-G.

4 "Tax credit." An amount made available to qualified
5 taxpayers to offset against qualified tax liability as
6 authorized and allocated under this article.

7 "Tax credit certificates." The document provided by the
8 agency evidencing the allocation of tax credits under section
9 1906-G.

10 "Taxable year." The term shall have the same meaning as
11 provided under section 441(b) of the Internal Revenue Code of
12 1986 (Public Law 99-514, 26 U.S.C. § 441(b)).

13 Section 1903-G. Pennsylvania Housing Tax Credit.

14 (a) Tax credit authority.--The agency may allocate tax
15 credits in an amount not to exceed the sum of:

16 (1) \$50 million per fiscal year;

17 (2) unused and unallocated tax credits for the preceding
18 fiscal years; and

19 (3) tax credits returned to the agency for the preceding
20 fiscal years.

21 (b) Application.--An eligible applicant may apply to the
22 agency for tax credits for a qualified low-income housing
23 project.

24 (c) Selection.--The agency shall review applications
25 submitted for tax credits and, in accordance with this article
26 and the procedures established by the agency, shall select and
27 shall conditionally award tax credits to eligible applicants.

28 (d) Integration with the Federal housing tax credit.--The
29 agency shall, as much as practical and unless otherwise
30 indicated in this article, administer the tax credit using the

1 same guidelines, procedures and priorities that the agency uses
2 to administer the Federal housing tax credit.

3 (e) Income targeting.--The agency shall allocate tax credits
4 in a manner that the agency, at the time of allocation,
5 reasonably believes will result in at least 10% of the tax
6 credits being used to provide housing units targeting households
7 with incomes at or below 30% of area median income.

8 Section 1904-G. Guidelines and procedures.

9 The agency shall adopt guidelines and procedures for the tax
10 credit in conjunction with the qualified allocation plan and
11 administrative guidelines.

12 Section 1905-G. Reporting.

13 The agency shall annually publish a report on the tax credit
14 allocations on the agency's publicly accessible Internet
15 website. The report shall include:

16 (1) Tax credits awarded.

17 (2) Eligible applicants receiving tax credits.

18 (3) The amount of tax credits issued to each recipient.

19 Section 1906-G. Tax credit certificate.

20 The agency shall issue tax credit certificates in a form
21 determined by the agency in consultation with the department.

22 Section 1907-G. Claiming the credit.

23 (a) General rule.--On presentation to the department, a
24 qualified taxpayer may claim a dollar for dollar tax credit
25 against the qualified tax liability of the qualified taxpayer if
26 a tax credit certificate, issued by the agency after a
27 determination by the agency that the qualified low-income
28 housing project for which the tax credit was allocated, has
29 fully certified its costs and is in compliance with agency
30 requirements.

1 (b) Exception.--The agency shall only issue the
2 certification under subsection (a) for the first year that the
3 qualified taxpayer claims the tax credit.

4 (c) Time period.--Presentation under subsection (a) shall be
5 made within the time specified by the guidelines issued by the
6 agency in consultation with the department.

7 Section 1908-G. Carryover, sale and assignment.

8 (a) General rule.--The department, in consultation with the
9 agency, shall establish guidelines that include procedures for
10 the carryover, sale and assignment of credits.

11 (b) Application.--A tax credit certification presented to
12 the department in accordance with section 1907-G shall first be
13 applied against the qualified taxpayer's qualified tax liability
14 for the current taxable year as of the date on which the tax
15 credit certification was presented and before any carryover is
16 applied against the qualified tax liability.

17 (c) Carryover.--If a qualified taxpayer cannot use the
18 entire amount of the tax credit for the taxable year in which it
19 is first claimed, the excess may be carried over to subsequent
20 taxable years. Each time a tax credit is carried-over to a
21 succeeding taxable year, the tax credit shall be reduced by the
22 amount that was used as a credit during the immediately
23 preceding taxable year. In no event shall tax credits provided
24 by this article be carried over and applied to succeeding
25 taxable years more than five taxable years following the first
26 taxable year for which the qualified taxpayer claimed the
27 credit.

28 (d) No carryback or refund.--A qualified taxpayer may not
29 carry back or obtain a refund of all or any portion of an unused
30 tax credit granted to the qualified taxpayer under this article.

1 (e) Sale or assignment.--A qualified taxpayer, on
2 application and approval by the department, in consultation with
3 the agency and in conformance with department and agency
4 guidelines, may sell or assign, in whole or in part, a tax
5 credit granted to the qualified taxpayer under this article. No
6 relation to the eligible applicant is required of a purchaser or
7 assignee of tax credits under this article.

8 (f) Purchasers and assignees.--The purchaser or assignee of
9 all or a portion of a tax credit obtained under subsection (e)
10 must be a qualified taxpayer and must, unless determined to be a
11 pass-through entity distribution under subsection (g),
12 immediately claim the credit in the taxable year in which the
13 purchase or assignment is made. The purchaser or assignee may
14 not carryover, carryback or obtain a refund for the tax credit.
15 The purchaser or assignee shall notify the department and the
16 agency of the purchase or assignment of the tax credit in
17 compliance with procedures specified by the department.

18 (g) Pass-through entity distributions.--The department shall
19 establish guidelines that include procedures and limitations for
20 pass-through entity distributions of tax credits. Subject to the
21 provisions of section 1909-G, the guidelines shall include, but
22 not be limited to, provisions allowing the allocation of the tax
23 credit to the following in order to assign the tax credit to a
24 qualified taxpayer who wishes to claim the tax credit:

- 25 (1) A partner or member.
26 (2) The parent organizations of any partner or member.
27 (3) Any successive parent organization.

28 (h) Tax credit allocation.--The distribution under
29 subsection (g) may be allocated in any manner provided by the
30 partnership agreement or other agreement governing the

1 operations of an eligible applicant. Tax credits allocated under
2 this subsection may, in accordance with subsection (e) and
3 agency guidelines, be sold or assigned.

4 Section 1909-G. Recapture.

5 (a) Guidelines.--The department, in consultation with the
6 agency, shall establish guidelines that include procedures for
7 recapture of tax credits during the credit period that are
8 similar in structure and effect to events of noncompliance under
9 section 42 of the Internal Revenue Code of 1986 (Public Law 99-
10 514, 26 U.S.C. § 42). The guidelines shall provide for:

11 (1) An affirmative duty to notify the agency and the
12 department of any recapture of Federal housing tax credits
13 within 60 days of the Federal recapture during the five-year
14 credit period.

15 (2) The mechanism and formula that the tax credit may be
16 recaptured over the remaining credit period.

17 (b) Failure to notify agency and department of Federal
18 recapture.--A qualified taxpayer receiving tax credits under
19 this section that fails to give timely notice to the agency and
20 the department of Federal housing tax credit recapture shall be
21 subject to debarment of future tax credits and Federal housing
22 tax credits.

23 Section 1910-G. Eligible uses.

24 The use of any money generated in connection with the sale,
25 assignment or pass-through of tax credits under this article
26 shall be limited to the uses allowed under the Federal housing
27 tax credit set forth in guidelines issued by the agency.

28 Section 1911-G. Fraud and misrepresentation.

29 If an eligible applicant or a qualified taxpayer engages in
30 fraud or intentional misrepresentation of information required

1 to be provided to the agency or the department under this
2 article or the agency's guidelines, the department may:

3 (1) Recapture all or a portion of the tax credit.

4 (2) Debar the applicant or qualified taxpayer from
5 future tax credits and Federal housing tax credit
6 opportunities.

7 (3) Impose other penalties as specified in the agency's
8 guidelines.

9 Section 2. This act shall take effect in 60 days.