



Ohio Revised Code

Section 175.16 State low-income housing tax credit.

Effective: October 3, 2023

Legislation: House Bill 33 - 135th General Assembly

(A) As used in this section:

- (1) "Federal credit" means the tax credit authorized under section 42 of the Internal Revenue Code.
- (2) "Credit period," "qualified low-income building," and "qualified basis" have the same meanings as in section 42 of the Internal Revenue Code.
- (3) "Qualified project" means a qualified low-income building that is located in Ohio, is placed in service on or after July 1, 2023, and for which the director reserves a tax credit under division (B) of this section before July 1, 2027.
- (4) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.
- (5) "Project owner" means a person holding a fee simple interest or a leasehold interest pursuant to a ground lease in the land on which a qualified project sits.
- (6) "Reserved credit amount" means the amount determined by the director and stipulated in the notice sent to each owner of a qualified project under division (B) of this section.
- (7) "Annual credit amount" means the amount computed by the director under division (D) of this section prior to issuing an eligibility certificate.
- (8) "Equity owner" means a direct or indirect owner of a project owner, provided the project owner is a pass-through entity, as determined under applicable state law governing such an entity.
- (9) "Person" has the same meaning as in section 5701.01 of the Revised Code.
- (10) "Eligibility certificate" means a certificate issued by the director to each owner of a qualified



project under division (D) of this section stating the amount of credit that may be claimed for each year of the credit period.

(11) "Qualified allocation plan" means the plan developed by the Ohio housing finance agency, as required under section 175.06 of the Revised Code, for evaluating and selecting projects for the federal credit pursuant to the mandates and requirements within section 42 of the Internal Revenue Code.

(12) "Internal Revenue Code" has the same meaning as in section 5747.01 of the Revised Code.

(13) "Designated reporter" means the project owner or one of the project owner's equity owners designated pursuant to division (I)(1) of this section.

(14) "Director" means the executive director of the Ohio housing finance agency.

(B) Except as otherwise provided by this division, the director, upon allocating a federal credit and issuing a binding reservation or letter of eligibility, pursuant to the Ohio housing finance agency's qualified allocation plan, for a qualified low-income building that is located in this state and placed in service on or after July 1, 2023, may reserve a tax credit under this section for the project owners so long as doing so will not result in exceeding the annual credit cap prescribed by division (C) of this section. The director shall not reserve a tax credit under this section after June 30, 2027.

The director shall send written notice of the reservation to each project owner. The notice shall state the aggregate credit amount reserved for all years of the qualified project's credit period and stipulate that receipt of the credit is contingent upon issuance of an eligibility certificate and filing the information described in division (I) of this section. Upon receipt of that notice, the owner shall provide the identity of the owner's designated reporter to the director.

The director shall determine the credit amount reserved for each qualified project. The reserved credit amount shall not exceed the amount necessary, when combined with the federal credit, to ensure the financial feasibility of the qualified project.

The director shall reserve credits in a manner that ensures that a qualified project is creating



additional housing units that would not have otherwise been created with other state, federal, or private financing. The director may assess application, processing, and reporting fees to cover the cost of administering the tax credit authorized under this section.

(C) The aggregate amount of credits reserved by the director under division (B) of this section in a fiscal year shall not exceed the sum of (1) one hundred million dollars, (2) the amount, if any, by which the credit cap prescribed by this division for the preceding fiscal year exceeds the credits reserved by the director in that year, and (3) the amount of tax credits recaptured or otherwise disallowed under division (G) of this section in the preceding fiscal year.

For the purpose of computing and determining compliance with the credit cap prescribed by this division, the credit amount reserved for the project owners of a qualified project is the full amount for all years of the qualified project's credit period.

(D) Immediately after approving the final cost certification for a qualified project for which a tax credit under this section is reserved, or upon otherwise determining the qualified basis of the qualified project and the date it was placed into service as required by section 42(m) of the Internal Revenue Code, the director shall compute the annual credit amount and issue an eligibility certificate to each project owner. The director shall send copies of all eligibility certificates issued each calendar year to the tax commissioner and the superintendent of insurance.

The annual credit amount shall equal the lesser of the following:

(1) The amount of the federal credit that would be awarded to the project owners for the first year of the credit period if not for the adjustment required under section 42(f)(2) of the Internal Revenue Code;

(2) One-tenth of the reserved credit amount stated in the notice issued under division (B) of this section.

(E) Each eligibility certificate shall state the annual credit amount, the years that comprise the credit period, the name, address, and taxpayer identification number of each project owner, each owner's designated reporter, the date the certificate is issued, a unique identifying number, and any additional



information prescribed by a rule adopted under division (H) of this section. A project owner, if the project owner is a pass-through entity, shall provide a copy of the eligibility certificate and any information described in division (I) of this section to each equity owner that has been allocated a credit under division (F)(2) of this section, if requested.

(F)(1) For each year of a qualified project's credit period, the project owner or an equity owner may claim a nonrefundable credit against the tax imposed by section 5725.18, 5726.02, 5729.03, 5729.06, or 5747.02 of the Revised Code equal to all or a portion of the annual credit amount stated on the eligibility certificate. The credit shall be claimed in the manner prescribed by section 5725.36, 5726.58, 5729.19, or 5747.83 of the Revised Code, as applicable.

(2) If a project owner is a pass-through entity, the annual credit amount for any year of a qualified project's credit period may be allocated by the project owner among one or more equity owners and may be applied by those equity owners against more than one tax, but the total credits claimed in connection with that year of the qualified project's credit period by all project owners and equity owners against all taxes shall not exceed the annual credit amount stated on the eligibility certificate.

(3) A project owner or equity owner may claim the credit authorized by this section after the date the qualified project is placed into service but not before the director issues the project owner an eligibility certificate under division (D) of this section and the applicable report required by division (I) of this section is filed by the designated reporter.

(4) A project owner or equity owner that claims a tax credit under division (F)(1) of this section shall submit a copy of the eligibility certificate with the project owner's or equity owner's tax return or report. Upon request of the tax commissioner or the superintendent of insurance, any project owner or equity owner claiming a tax credit under this section shall provide the commissioner or superintendent other documentation that may be necessary to verify that the project owner or equity owner is entitled to claim the credit.

(5) A project owner that is a pass-through entity may allocate the credit authorized by this section to its equity owners under division (F)(2) of this section in any manner agreed to by such persons regardless of whether such equity owners are eligible for an allocation of the federal credit, whether the allocation of the credit under the terms of the agreement has substantial economic effect within



the meaning of section 704(b) of the Internal Revenue Code, and whether any such person is deemed a partner of the project owner or equity owner for federal income tax purposes as long as the equity owner acquired its ownership interest prior to claiming the credit. The allocation shall be allowed without regard to any provision of the Internal Revenue Code, or regulation promulgated pursuant to it, that may be interpreted as contrary to the allocation, including, without limitation, the treatment of the allocation as a disguised sale.

An equity owner may assign all or any part of its interest in a qualified project, including its interest in the tax credits authorized by this section, to one or more other equity owners, and each assignee shall be able to claim the credit so long as its interest is acquired prior to the filing of its tax return or report or amended tax return or report claiming the credit and the assignee's ownership interest is identified in the report required by division (I) of this section.

(6) Nothing in this section or section 5725.36, 5726.58, 5729.19, or 5747.83 of the Revised Code allows the assignment or transfer of any carryforward of the credit authorized under this section once the annual credit amount is claimed.

(G) If any portion of the federal credit allocated to a qualified project is recaptured under section 42(j) of the Internal Revenue Code or is otherwise disallowed, the director shall recapture a proportionate amount of the tax credit claimed pursuant to this section in connection with the same qualified project.

If the director determines to recapture such a tax credit, the director shall certify the name of each project owner and the amount to be recaptured to the tax commissioner and to the superintendent of insurance. The commissioner or superintendent shall determine the taxpayer or taxpayers that claimed the credit, the tax against which the credit was claimed, and the amount to be recaptured and make an assessment against the taxpayer or taxpayers under Chapter 5725., 5726., 5729., or 5747. of the Revised Code, as applicable, for the amount of the tax credit to be recaptured. The time limitations on assessments under those chapters do not bar an assessment made under this division.

(H) The director, in consultation with the tax commissioner and superintendent of insurance, shall adopt any rules necessary to implement this section in accordance with Chapter 119. of the Revised Code.



(I)(1) For each calendar year, a designated reporter shall provide the tax commissioner and the superintendent of insurance, in the form prescribed by the tax commissioner in consultation with the superintendent of insurance, all of the following:

(a) The name, address, and taxpayer identification number of each project owner and equity owner that has been allocated a portion of the annual credit awarded on the eligibility certificate for that year;

(b) The amount of the annual credit allocated to each such project owner and equity owner for such year and the tax against which the credit will be claimed;

(c) The total of the amounts listed for each project owner and equity owner under division (I)(1)(b) of this section, demonstrating that the total does not exceed the amount listed on the eligibility certificate for that year.

(2) A designated reporter shall notify the tax commissioner and the superintendent of insurance of any changes to the information reported in division (I)(1) of this section in the time and manner prescribed by the commissioner and superintendent.

(3) No credit allocated under this section may be claimed by a project owner or equity owner for a year unless that owner and the amount of the credit allocated to that owner appear on the report required by division (I)(1) of this section for that year.