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HOUSE BILL NO. 824

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 58.1-439.29 and 58.1-439.30 of the Code of Virginia, relating to housing opportunity tax credit; specialty populations.

Patron—Torian

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.29 and 58.1-439.30 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.29. Definitions.

As used in this article, unless the context requires a different meaning:

"Authority" means the Virginia Housing Development Authority, or its successor agency.

"Credit period" means the credit period as defined in § 42(f)(1) of the Internal Revenue Code, as amended.

"Eligibility certificate" means a certificate issued by the Authority to the owner of a qualified project or qualified specialty population project certifying that such project qualifies for the Virginia housing opportunity tax credit authorized by this article, and specifying the amount of housing opportunity tax credits that the owner of such qualified project or qualified specialty population project may claim in each year of the credit period. The Authority shall issue an eligibility certificate to a qualified project or qualified specialty population project upon the Authority's approval of a final cost certification that complies with the Authority's requirements.

"Federal low-income housing tax credit" means the federal tax credit as provided in § 42 of the Internal Revenue Code, as amended.

"Housing opportunity tax credit" or "tax credit" means the tax credit created by this article.

"Qualified project" means a qualified low-income building, as defined in § 42(c) of the Internal Revenue Code, as amended, that is located in Virginia, is placed in service on or after January 1, 2021, and is issued an eligibility certificate.

"Qualified specialty population project" means a qualified low-income building, as defined in § 42(c) of the Internal Revenue Code, as amended, that is located in Virginia, is placed in service on or after January 1, 2022, and is issued an eligibility certificate that creates housing for individuals who (i) have been issued an intellectual disability or developmental disability waiver, (ii) require behavioral health treatment or services, or (iii) require treatment or services for substance use and abuse recovery.

"Qualified taxpayer" means a taxpayer owning an interest, direct or indirect, through one or more pass-through entities, in a qualified project or qualified specialty population project at any time prior to filing a tax return claiming a housing opportunity tax credit.

"Taxpayer" means an individual, corporation, S corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, or nonprofit organization.

"Virginia tax liability" means the income taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of this chapter, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, and Article 2 (§ 58.1-2620 et seq.) of Chapter 26. An insurance company claiming a housing opportunity tax credit against the taxes, licenses, and other fees, fines, and penalties imposed by Article 1 of Chapter 25, including any retaliatory tax imposed on insurance companies by the Code of Virginia, shall not be required to pay any additional tax as a result of claiming the housing opportunity tax credit. The housing opportunity tax credit may fully offset any retaliatory tax imposed by the Code of Virginia.

§ 58.1-439.30. Tax credit.

A. A housing opportunity tax credit shall be allowed for each qualified project or qualified specialty population project for each year of the credit period, in an amount equal to the amount of federal low-income housing tax credit allocated or allowed by the Authority to such qualified project or qualified specialty population project, except that there shall be no reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2).

B. For taxable years beginning on and after January 1, 2021, but before January 1, 2026, a qualified taxpayer may claim a housing opportunity tax credit against its Virginia tax liability prior to reduction by any other credits allowed the taxpayer. The housing opportunity tax credit may be allocated by pass-through entities to some or all of its partners, members, or shareholders in any manner agreed to by

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59 such persons, regardless of whether or not any such person is allocated or allowed any portion of any
60 federal low-income housing tax credit with respect to the qualified project *or qualified specialty*
61 *population project*, whether or not the allocation of the housing opportunity tax credit under the terms of
62 the agreement has substantial economic effect within the meaning of § 704(b) of the Internal Revenue
63 Code, and whether or not any such person is deemed a partner for federal income tax purposes as long
64 as the partner or member would be considered a partner or member as defined under applicable state
65 law, and has been admitted as a partner or member on or prior to the date for filing the qualified
66 taxpayer's tax return, including any amendments thereto, with respect to the year of the housing
67 opportunity tax credit. Such pass-through entities or qualified taxpayer may assign all or any part of its
68 interest, including its interest in the tax credits, to one or more pass-through entities or qualified
69 taxpayers, and the qualified taxpayer shall be able to claim the housing opportunity tax credit so long as
70 its interest is acquired prior to the filing of its tax return claiming the housing opportunity tax credit.

71 C. The housing opportunity tax credit authorized by this article shall not be refundable. Any housing
72 opportunity tax credit not used in a taxable year may be carried forward for the succeeding five years.

73 D. A qualified taxpayer claiming a housing opportunity tax credit shall submit a copy of the
74 eligibility certificate at the time of filing its tax return with the Department. If the owner of the qualified
75 project *or qualified specialty population project* has applied to the Authority for the eligibility certificate
76 but the Authority has not yet issued the eligibility certificate at the time the qualified taxpayer files its
77 original tax return claiming the housing opportunity tax credit, the taxpayer may claim the housing
78 opportunity tax credit based upon the amount of tax credit set forth in the carryover allocation or 42(m)
79 letter, as applicable, issued to the qualified project *or qualified specialty population project* and shall
80 amend its tax return to include the eligibility certificate upon its receipt. If the amount of tax credit in
81 the eligibility certificate is different than the amount of tax credit previously claimed, the taxpayer shall
82 adjust the tax credit amount claimed on the amended tax return.

83 E. If under § 42 of the Internal Revenue Code, as amended, a portion of any federal low-income
84 housing credits taken on a qualified project *or qualified specialty population project* is required to be
85 recaptured or is otherwise disallowed during the credit period, the taxpayer claiming housing opportunity
86 tax credits with respect to such project shall also be required to recapture a portion of any tax credits
87 authorized by this article. The percentage of housing opportunity tax credits subject to recapture shall be
88 equal to the percentage of federal low-income housing credits subject to recapture or otherwise
89 disallowed during such period. Any tax credits recaptured or disallowed shall increase the income tax
90 liability of the qualified taxpayer who claimed the tax credits in a like amount and shall be included on
91 the tax return of the qualified taxpayer submitted for the taxable year in which the recapture or
92 disallowance event is identified.

93 F. The Authority shall administer the housing opportunity tax credit program and shall be authorized
94 to promulgate the regulations and guidelines necessary to implement and administer the provisions of
95 this article. Such regulations and guidelines may include the imposition of application, allocation,
96 certification, and monitoring fees designed to recoup the costs of the Authority in administering the
97 housing opportunity tax credit program. The Authority may also promulgate regulations and guidelines
98 in consultation with the Department to allow a qualified project *or qualified specialty population project*
99 to elect in its application to the Authority to sell all or any portion of its credits awarded pursuant to
100 this article to one or more unrelated taxpayers. Regulations and guidelines regarding the sale of credits,
101 if promulgated, shall not take effect prior to January 1, 2023, and shall not apply to credits awarded
102 prior to January 1, 2023.

103 G. The total amount of tax credits authorized under this article shall not exceed \$15 million per
104 calendar year *for qualified projects and shall not exceed \$2.5 million per calendar year for qualified*
105 *specialty population projects*.