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HOUSE BILL NO. 843

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 income tax; housing opportunity tax credits.*

Patron—Bloxom

Committee Referral Pending

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.

"Award" means the issuance by the Authority of a binding reservation or eligibility determination of housing opportunity tax credits to a qualified project during an award cycle, where such award shall be claimed over the tax credit period.

"Award cycle" means each fiscal year or other 12-month period designated by the Authority over which the Authority awards tax credits to eligible projects.

"Award cycle cap" means the sum of (i) \$150 million; (ii) the amount, if any, by which the award cycle cap prescribed by this article for the preceding award cycle exceeds the tax credits awarded by the Authority in that award cycle; and (iii) the amount of tax credits recaptured or otherwise disallowed under subsection E of § 58.1-439.30 in the preceding fiscal year.

"Credit period" means the 10-year 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 certifying that such project qualifies for the Virginia housing opportunity tax credit authorized by this article, and specifying the annual amount of housing opportunity tax credits that the owner of such qualified project may claim in each year of the credit period. The Authority shall issue an eligibility certificate to a qualified 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 allocation plan" means the same as such term is defined in § 42(m)(1)(B) of the Internal Revenue Code, as amended.

"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 taxpayer" means a taxpayer owning an interest, direct or indirect, through one or more pass-through entities, in a qualified 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 For award cycles beginning on and after January 1, 2021, but before July 1, 2025, the Authority, upon approving a federal low-income housing tax credit for a qualified project pursuant to the Authority's qualified allocation plan, shall award a housing opportunity tax credit under this article for the owner of the qualified project so long as doing so will not result in exceeding the award cycle

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59 *cap prescribed by subsection G. The housing opportunity tax credit award shall not be less than*
60 *one-half of the aggregate amount of the federal low-income housing tax credit approved for the*
61 *qualified project under the Authority's qualified allocation plan for all years of the project's credit*
62 *period. The Authority shall send written notice of the award to the owner of the qualified project. The*
63 *award notice shall state the aggregate amount of housing opportunity tax credit awarded for all 10*
64 *years of the project's credit period and stipulate that receipt of the tax credit is contingent upon*
65 *issuance of an eligibility certificate. Upon issuance of an eligibility certificate to the owner of a*
66 *qualified project, a housing opportunity tax credit shall be allowed for each such qualified project for*
67 *each year of the credit period, in an amount equal to the lesser of (i) the amount of federal low-income*
68 *housing tax credit allocated or allowed by the Authority to such qualified project, except that there shall*
69 *be no reduction in the tax credit allowable in the first year of the credit period due to the calculation in*
70 *26 U.S.C. § 42(f)(2), or (ii) one-tenth of the tax credit amount stated in the award notice.*

71 B. For taxable years beginning on and after January 1, 2021, ~~but before January 1, 2026,~~ a qualified
72 taxpayer may claim a housing opportunity tax credit against its Virginia tax liability prior to reduction
73 by any other credits allowed the taxpayer. The housing opportunity tax credit may be allocated by
74 pass-through entities to some or all of its partners, members, or shareholders in any manner agreed to by
75 such persons, regardless of whether or not any such person is allocated or allowed any portion of any
76 federal low-income housing tax credit with respect to the qualified project, whether or not the allocation
77 of the housing opportunity tax credit under the terms of the agreement has substantial economic effect
78 within the meaning of § 704(b) of the Internal Revenue Code, and whether or not any such person is
79 deemed a partner for federal income tax purposes as long as the partner or member would be considered
80 a partner or member as defined under applicable state law, and has been admitted as a partner or
81 member on or prior to the date for filing the qualified taxpayer's tax return, including any amendments
82 thereto, with respect to the year of the housing opportunity tax credit. Such pass-through entities or
83 qualified taxpayer may assign all or any part of its interest, including its interest in the tax credits, to
84 one or more pass-through entities or qualified taxpayers, and the qualified taxpayer shall be able to
85 claim the housing opportunity tax credit so long as its interest is acquired prior to the filing of its tax
86 return claiming the housing opportunity tax credit.

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

89 D. A qualified taxpayer claiming a housing opportunity tax credit shall submit a copy of the
90 eligibility certificate at the time of filing its tax return with the Department. If the owner of the qualified
91 project has applied to the Authority for the eligibility certificate but the Authority has not yet issued the
92 eligibility certificate at the time the qualified taxpayer files its original tax return claiming the housing
93 opportunity tax credit, the taxpayer may claim the housing opportunity tax credit based upon the amount
94 of tax credit set forth in the carryover allocation or 42(m) letter, as applicable, issued to the qualified
95 project and shall amend its tax return to include the eligibility certificate upon its receipt. If the amount
96 of tax credit in the eligibility certificate is different than the amount of tax credit previously claimed, the
97 taxpayer shall adjust the tax credit amount claimed on the amended tax return.

98 E. If under § 42 of the Internal Revenue Code, as amended, a portion of any federal low-income
99 housing credits taken on a qualified project is required to be recaptured or is otherwise disallowed
100 during the credit period, the taxpayer claiming housing opportunity tax credits with respect to such
101 project shall also be required to recapture a portion of any tax credits authorized by this article. The
102 percentage of housing opportunity tax credits subject to recapture shall be equal to the percentage of
103 federal low-income housing credits subject to recapture or otherwise disallowed during such period. Any
104 tax credits recaptured or disallowed shall increase the income tax liability of the qualified taxpayer who
105 claimed the tax credits in a like amount and shall be included on the tax return of the qualified taxpayer
106 submitted for the taxable year in which the recapture or disallowance event is identified.

107 F. The Authority shall administer the housing opportunity tax credit program and shall be authorized
108 to promulgate the regulations and guidelines necessary to implement and administer the provisions of
109 this article. Such regulations and guidelines may include the imposition of application, allocation,
110 certification, and monitoring fees designed to recoup the costs of the Authority in administering the
111 housing opportunity tax credit program. ~~The Authority may also promulgate regulations and guidelines~~
112 ~~in consultation with the Department to allow a qualified project to elect in its application to the~~
113 ~~Authority to sell all or any portion of its credits awarded pursuant to this article to one or more~~
114 ~~unrelated taxpayers. Regulations and guidelines regarding the sale of credits, if promulgated, shall not~~
115 ~~take effect prior to January 1, 2023, and shall not apply to credits awarded prior to January 1, 2023.~~

116 G. The total amount of tax credits ~~authorized credit awards made by the Authority~~ under this article
117 ~~in each award cycle shall not exceed \$15 million per calendar year the award cycle cap.~~