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SENATE BILL NO. 47

Offered January 12, 2022

Prefiled December 29, 2021

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—Locke (By Request)

Referred to Committee on Finance and Appropriations

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 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. *For fiscal years beginning on and after January 1, 2021, but before January 1, 2026, the Authority, upon allocating a federal low-income housing tax credit and issuing a binding reservation or eligibility determination to a qualified project pursuant to the Authority's qualified allocation plan, shall reserve 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 fiscal year reservation cap prescribed by subsection G. The reserved tax credit shall not be less than one-half of the aggregate amount of the federal low-income housing tax credit allocated or allowed to the qualified project under the Authority's qualified allocation plan for all years of the project's credit period. The Authority shall send written notice of the reservation to the owner of the qualified project. The notice shall state the aggregate amount of housing opportunity tax credit reserved for all 10 years of the qualified project's credit period and stipulate that receipt of the tax credit is contingent upon issuance of an eligibility certificate. Upon issuance of an eligibility certificate to the owner of a qualified project, a housing opportunity tax credit shall be allowed for each qualified project for each year of the credit period, in an amount equal to the lesser of*

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59 (i) the amount of federal low-income housing tax credit allocated or allowed by the Authority to such
60 qualified project, except that there shall be no reduction in the tax credit allowable in the first year of
61 the credit period due to the calculation in 26 U.S.C. § 42(f)(2), or (ii) one-tenth of the reserved tax
62 credit amount stated in the reservation notice.

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

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

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

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

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

109 G. The total amount of tax credits ~~authorized reserved by the Authority~~ under this article in a fiscal
110 year shall not exceed ~~\$15~~ the sum of (i) \$150 million per calendar year; (ii) the amount, if any, by
111 which the tax credit allocation prescribed by this article for the preceding fiscal year exceeds the tax
112 credits reserved by the Authority in that year; and (iii) the amount of tax credits recaptured or
113 otherwise disallowed under subsection E in the preceding fiscal year.