
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1185 Session of
2018

INTRODUCED BY KILLION, MCGARRIGLE, ARGALL, BLAKE, BROWNE,
FONTANA, GORDNER, HUGHES, LEACH, VOGEL, VULAKOVICH AND
YUDICHAK, SEPTEMBER 19, 2018

REFERRED TO URBAN AFFAIRS AND HOUSING, SEPTEMBER 19, 2018

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

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Agency." The Pennsylvania Housing Finance Agency.

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

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

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

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

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

18 "Qualified low-income housing project." The term shall have
19 the same meaning as provided under section 42(g)(1) of the
20 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
21 42(g)(1)).

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

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

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

1 employer under Article III; and

2 (2) meets the criteria set forth in guidelines adopted
3 and promulgated by the agency in accordance with section
4 1904-G.

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

8 "Tax credit certificates." The document provided by the
9 agency evidencing the allocation of tax credits under section
10 1906-G.

11 "Taxable year." The term shall have the same meaning as
12 provided under section 441(b) of the Internal Revenue Code of
13 1986 (Public Law 99-514, 26 U.S.C. § 441(b)).

14 Section 1903-G. Pennsylvania Housing Tax Credit.

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

17 (1) \$10 million per fiscal year;

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

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

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

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

29 (d) Integration with the Federal housing tax credit.--The
30 agency shall, as much as practical and unless otherwise

1 indicated in this article, administer the tax credit using the
2 same guidelines, procedures and priorities that the agency uses
3 to administer the Federal housing tax credit.

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

9 Section 1904-G. Guidelines and procedures.

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

13 Section 1905-G. Reporting.

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

- 17 (1) Tax credits awarded.
18 (2) Eligible applicants receiving tax credits.
19 (3) The amount of tax credits issued to each recipient.

20 Section 1906-G. Tax credit certificate.

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

23 Section 1907-G. Claiming the credit.

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

1 requirements.

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

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

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

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

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

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

29 (d) No carryback or refund.--A qualified taxpayer may not
30 carry back or obtain a refund of all or any portion of an unused

1 tax credit granted to the qualified taxpayer under this article.

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

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

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

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

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

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

5 Section 1909-G. Recapture.

6 (a) Guidelines.--The department, in consultation with the
7 agency, shall establish guidelines that include procedures for
8 recapture of tax credits during the credit period that are
9 similar in structure and effect to events of noncompliance under
10 section 42 of the Internal Revenue Code of 1986 (Public Law 99-
11 514, 26 U.S.C. § 42). The guidelines shall provide for:

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

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

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

24 Section 1910-G. Eligible uses.

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

29 Section 1911-G. Fraud and misrepresentation.

30 If an eligible applicant or a qualified taxpayer engages in

1 fraud or intentional misrepresentation of information required
2 to be provided to the agency or the department under this
3 article or the agency's guidelines, the department may:

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

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

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

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