

SENATE BILL

58TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2027

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; CREATING THE LOW-INCOME HOUSING
INVESTMENT INCOME TAX CREDIT AND THE LOW-INCOME HOUSING
INVESTMENT CORPORATE INCOME TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Income Tax Act is enacted
to read:

"[NEW MATERIAL] LOW-INCOME HOUSING INVESTMENT INCOME TAX
CREDIT.--

A. For taxable years beginning prior to January 1,
2037, except as provided in Subsection G of this section, a
taxpayer who qualifies for the federal tax credit provided in
26 U.S.C. 42, as that section may be amended or renumbered, and
who is not a dependent of another individual may claim a tax
credit in an amount equal to the amount of federal tax credit

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underscored material = new
[bracketed material] = delete

1 allowed per taxable year by 26 U.S.C. 42. The tax credit may
2 be claimed for six taxable years beginning in the taxable year
3 in which the housing project is placed in service and the
4 taxpayer has received a certificate of eligibility pursuant to
5 Subsection C of this section. The tax credit provided by this
6 section may be referred to as the "low-income housing
7 investment income tax credit".

8 B. To be eligible for the tax credit, a taxpayer
9 shall request and receive a conditional reservation of tax
10 credit from the authority. The taxpayer shall submit a
11 qualified allocation plan with the request to the authority for
12 a conditional reservation of tax credit. If the taxpayer meets
13 the qualifications pursuant to 26 U.S.C. 42, the authority
14 shall issue a conditional reservation letter to the taxpayer
15 stating the project's estimated annual conditional reserved tax
16 credit amount. The estimated conditional reserved tax credit
17 amount is not a guaranteed amount of tax credit. The amount of
18 tax credit shall be contingent on the authority's issuance of a
19 certificate of eligibility issued pursuant to Subsection C of
20 this section.

21 C. Within one calendar year of the date the housing
22 project is placed in service, the taxpayer shall apply for a
23 certificate of eligibility from the authority on forms and in
24 the manner prescribed by the authority. If the authority
25 determines that the taxpayer's housing project is eligible, a

1 dated certificate of eligibility shall be issued to the
2 taxpayer stating the amount of the tax credit that the taxpayer
3 may claim in each of the taxable years for which the tax credit
4 may be claimed by the taxpayer.

5 D. To receive the tax credit, a taxpayer shall
6 apply to the department on forms and in the manner prescribed
7 by the department. The application shall include a
8 certification made pursuant to Subsection C of this section. A
9 taxpayer who claims the affordable housing tax credit shall not
10 be eligible to claim the low-income housing investment income
11 tax credit.

12 E. The aggregate amount of low-income housing
13 investment income tax credits and low-income housing investment
14 corporate income tax credits that may be certified in a
15 calendar year is ten million dollars (\$10,000,000). Completed
16 applications shall be considered in the order received.
17 Applications for certification received after this limitation
18 has been met in a calendar year shall not be approved.
19 Multiple certificates of eligibility may be issued for the same
20 tax credit in an amount not to exceed the total certified value
21 of the tax credit.

22 F. A certificate of eligibility for the tax credit
23 may be sold, exchanged or otherwise transferred to another
24 taxpayer. The parties to such a transaction shall notify the
25 department of the sale, exchange or transfer within ten days of

1 the sale, exchange or transfer. The authority shall provide
2 the department appropriate information for certificates of
3 eligibility in a secure manner on regular intervals agreed upon
4 by both departments.

5 G. That portion of the tax credit that exceeds a
6 taxpayer's tax liability in the taxable year in which the tax
7 credit is claimed shall not be refunded to the taxpayer but may
8 be carried forward for the following six consecutive taxable
9 years until the amount of the tax credit is exhausted.

10 H. If the federal government increases the
11 taxpayer's federal tax by the tax credit recapture amount
12 pursuant to 26 U.S.C. 42(j), the department shall grant no
13 further tax credit to the taxpayer with respect to that housing
14 project. In addition, any amount of tax credit not claimed
15 against the taxpayer's income tax liability shall be
16 extinguished, and within thirty days after the one hundred
17 eightieth day of the cessation of meeting the requirements of
18 26 U.S.C. 42, the taxpayer shall pay the amount of any income
19 tax against which an approved tax credit was taken.

20 I. A taxpayer may be allocated the right to claim
21 the tax credit in proportion to the taxpayer's ownership
22 interest if the taxpayer owns an interest in a business entity
23 that is taxed for federal income tax purposes as a partnership
24 or limited liability company and the business entity has met
25 all requirements to be eligible for the tax credit. The total

1 tax credit claimed by all members of the partnership or limited
2 liability company shall not exceed the allowable tax credit
3 pursuant to this section.

4 J. A taxpayer allowed the tax credit pursuant to
5 this section shall report the amount of the tax credit to the
6 department in a manner required by that department.

7 K. The tax credit provided by this section shall be
8 included in the tax expenditure budget pursuant to Section
9 7-1-84 NMSA 1978, including the total annual aggregate cost of
10 the tax credit.

11 L. As used in this section:

12 (1) "authority" means the New Mexico mortgage
13 finance authority;

14 (2) "housing project" means a housing project
15 in New Mexico that has restricted rents that do not exceed:

16 (a) fifty percent of the area gross
17 median income for at least twenty percent of the residential
18 units, occupied by or to be occupied by people or families with
19 incomes of fifty percent or less of the area median gross
20 income; or

21 (b) sixty percent of the area gross
22 median income for at least forty percent of the residential
23 units, occupied or to be occupied by people or families with
24 incomes of sixty percent or less of the area median gross
25 income; and

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1 (3) "qualified allocation plan" means
2 "qualified allocation plan" as defined in 26 U.S.C. 42(m)(1)."

3 SECTION 2. A new section of the Corporate Income and
4 Franchise Tax Act is enacted to read:

5 "[NEW MATERIAL] LOW-INCOME HOUSING INVESTMENT CORPORATE
6 INCOME TAX CREDIT.--

7 A. For taxable years beginning prior to January 1,
8 2037, except as provided in Subsection G of this section, a
9 taxpayer who qualifies for the federal tax credit provided in
10 26 U.S.C. 42, as that section may be amended or renumbered, may
11 claim a tax credit against the taxpayer's tax liability imposed
12 pursuant to the Corporate Income and Franchise Tax Act in an
13 amount equal to the amount of federal tax credit allowed per
14 taxable year by 26 U.S.C. 42. The tax credit may be claimed
15 for six taxable years beginning in the taxable year in which
16 the housing project is placed in service and the taxpayer has
17 received a certificate of eligibility pursuant to Subsection C
18 of this section. The tax credit provided by this section may
19 be referred to as the "low-income housing investment corporate
20 income tax credit".

21 B. To be eligible for the tax credit, a taxpayer
22 shall request and receive a conditional reservation of tax
23 credit from the authority. The taxpayer shall submit a
24 qualified allocation plan with the request to the authority for
25 a conditional reservation of tax credit. If the taxpayer meets

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1 the qualifications pursuant to 26 U.S.C. 42, the authority
2 shall issue a conditional reservation letter to the taxpayer
3 stating the project's estimated annual conditional reserved tax
4 credit amount. The estimated conditional reserved tax credit
5 amount is not a guaranteed amount of credit. The amount of tax
6 credit shall be contingent on the authority's issuance of a
7 certificate of eligibility issued pursuant to Subsection C of
8 this section.

9 C. Within one calendar year of the date the housing
10 project is placed in service, the taxpayer shall apply for a
11 certificate of eligibility from the authority on forms and in
12 the manner prescribed by the authority. If the authority
13 determines that the taxpayer's housing project is eligible, a
14 dated certificate of eligibility shall be issued to the
15 taxpayer stating the amount of the tax credit that the taxpayer
16 may claim in each of the taxable years for which the tax credit
17 may be claimed by the taxpayer.

18 D. To receive the tax credit, a taxpayer shall
19 apply to the department on forms and in the manner prescribed
20 by the department. The application shall include a
21 certification made pursuant to Subsection C of this section. A
22 taxpayer who claims the affordable housing tax credit shall not
23 be eligible to claim the low-income housing investment
24 corporate income tax credit.

25 E. The aggregate amount of low-income housing

1 investment corporate income tax credits and low-income housing
2 investment income tax credits that may be certified in a
3 calendar year is ten million dollars (\$10,000,000). Completed
4 applications shall be considered in the order received.
5 Applications for certification received after this limitation
6 has been met in a calendar year shall not be approved.
7 Multiple certificates of eligibility may be issued for the same
8 tax credit in an amount not to exceed the total certified value
9 of the tax credit.

10 F. A certificate of eligibility for the tax credit
11 may be sold, exchanged or otherwise transferred to another
12 taxpayer. The parties to such a transaction shall notify the
13 department of the sale, exchange or transfer within ten days of
14 the sale, exchange or transfer. The authority shall provide
15 the department appropriate information for certificates of
16 eligibility in a secure manner on regular intervals agreed upon
17 by both departments.

18 G. That portion of the tax credit that exceeds a
19 taxpayer's corporate income tax liability in the taxable year
20 in which the tax credit is claimed shall not be refunded to the
21 taxpayer but may be carried forward for the following six
22 consecutive taxable years until the amount of the tax credit is
23 exhausted.

24 H. If the federal government increases the
25 taxpayer's federal tax by the tax credit recapture amount

1 pursuant to 26 U.S.C. 42(j), the department shall grant no
2 further tax credit to the taxpayer with respect to that housing
3 project. In addition, any amount of tax credit not claimed
4 against the taxpayer's corporate income tax liability shall be
5 extinguished, and within thirty days after the one hundred
6 eightieth day of the cessation of meeting the requirements of
7 26 U.S.C. 42, the taxpayer shall pay the amount of any
8 corporate income tax against which an approved tax credit was
9 taken.

10 I. A taxpayer allowed the tax credit pursuant to
11 this section shall report the amount of the tax credit to the
12 department in a manner required by that department.

13 J. The tax credit provided by this section shall be
14 included in the tax expenditure budget pursuant to Section
15 7-1-84 NMSA 1978, including the total annual aggregate cost of
16 the tax credit.

17 K. As used in this section:

18 (1) "authority" means the New Mexico mortgage
19 finance authority;

20 (2) "housing project" means a housing project
21 in New Mexico that has restricted rents that do not exceed:

22 (a) fifty percent of the area gross
23 median income for at least twenty percent of the residential
24 units, occupied by or to be occupied by people or families with
25 incomes of fifty percent or less of the area median gross

1 income; or

2 (b) sixty percent of the area gross
3 median income for at least forty percent of the residential
4 units, occupied or to be occupied by people or families with
5 incomes of sixty percent or less of the area median gross
6 income; and

7 (3) "qualified allocation plan" means
8 "qualified allocation plan" as defined in 26 U.S.C. 42(m)(1)."

9 SECTION 3. APPLICABILITY.--The provisions of this act
10 apply to taxable years beginning on or after January 1, 2027.

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