

# FYI – For Your Information

## Low-Income Housing Income Tax Credit

For tax years beginning on or after January 1, 2001 an income tax credit is available for owners of qualified low-income housing developments that receive a credit allocation from CHFA before December 31, 2002. [§39-22-2102, C.R.S.]

### COMPUTATION OF THE CREDIT

The credit is allocated by the Colorado Housing and Finance Authority (CHFA). The credit will not exceed 30% of the qualified basis of the development and will be allocated only to the extent necessary for the financial feasibility of the development. All credits must be allocated by CHFA by December 31, 2002. A copy of the Colorado State Low Income Housing Tax Credit Allocation Certificate that is issued by CHFA must be attached to the Colorado income tax return that claims the credit.

### CLAIMING THE CREDIT

The credit that is allocated will be claimed over a period of four tax years beginning with the tax year in which the qualified development is placed in service. If a qualified development is comprised of more than one building, the development is deemed to have been put in service in the taxable year during which the last building is placed in service.

**Example:** A \$5,000 credit is allocated in 2001 and the development is placed in service in 2002. The taxpayer may claim a \$5,000 credit in 2002, 2003, 2004 and 2005 for a total credit of \$20,000.

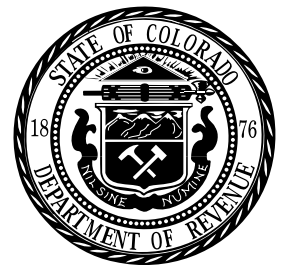
The low-income housing credit is claimed in each year of the credit period, which is the four-year period starting with the year

the development is placed in service. The owners of the development during each of those four years must claim the allocated credit (25% of the overall credit) each year. If the credit claimed by any owner exceeds their tax liability, then that taxpayer can carry the excess credit forward to future tax returns through 2012. That excess credit cannot be sold, transferred, reassigned or claimed by another taxpayer at any time.

If the ownership changes during years two through four, then the credit for each of those years will be claimed by the taxpayers that own the development during the applicable year. If a new owner is added in year five, no credit can be allocated to that taxpayer even if prior or current owners have a credit carryforward from earlier tax years.

### S-CORPORATIONS, PARTNERSHIPS AND SIMILAR PASS-THROUGH ENTITIES

A credit claimed by a pass-through entity can be allocated among its shareholders/partners in any manner agreed upon by such persons. To receive any or all of the tax credit allocated to the pass-through entity, a partner/shareholder must be a member of the entity during the tax year for which the tax credit is claimed. This requirement extends to any partner/shareholder of pass-through entities that receive a credit by virtue of ownership of a share in the entity that owns the project. The Colorado State Low Income Housing Tax Credit Allocation Certificate shall be filed with the Colorado Partnership or S Corporation return of income (Form 106) together with a schedule detailing how the



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credit is allocated. Each shareholder/partner must attach a copy of the Allocation Certificate and the allocation schedule to their Colorado income tax return. Once the partners or shareholders claim the credits on their respective income tax returns, the allocation cannot be amended for that tax year.

**RECAPTURE OF THE CREDIT**

This credit is designed to allow a fifteen-year credit to be claimed in an accelerated manner during the first four years of the compliance period. Therefore, a portion of the low-income housing credit may have to be recaptured if, on the last day of any of the first fifteen taxable years from when the development was placed in service, the amount of the qualified basis of the qualified development is less than the amount of the qualified basis used to compute the original credit amount.

Three possible scenarios exist that can generate a recapture event.

- 1) The project falls out of compliance and no longer qualifies as a qualified low-income housing project (as specified in Section 42 of the Internal Revenue Code), or
- 2) The qualifying basis of the project permanently decreases to a level less than the qualifying basis used to compute the original amount of the credit, but not to a level that disqualifies the project as a qualified low-income housing project under federal law, or
- 3) The qualifying basis of the project temporarily decreases to a level less than the qualifying basis used to compute the original amount of the credit.

**Project falls out of compliance**

A credit is not allowed for the year in which the recapture event occurs. In addition, the owner is required to recapture the entire amount of the accelerated credit that was claimed on prior year tax returns. This recapture amount is reported on a tax return for the year in which the recapture event

occurred. This amount is computed by multiplying the amount of credit claimed in prior years times the fraction in the table below.

If the recapture event occurs in:	The recapture fraction is:
Years 2 through 5 . . . . .	11/15
Year 6 . . . . .	10/15
Year 7 . . . . .	9/15
Year 8 . . . . .	8/15
Year 9 . . . . .	7/15
Year 10 . . . . .	6/15
Year 11 . . . . .	5/15
Year 12 . . . . .	4/15
Year 13 . . . . .	3/15
Year 14 . . . . .	2/15
Year 15 . . . . .	1/15

**Basis permanently decreases**

If the basis in the property permanently decreases below the basis under which the property was initially approved for the credit, but the property still qualifies as a qualified low-income housing project, then the recapture will be the fraction listed in the table above times that portion of the credit allocable to the reduction in the basis.

**Basis temporarily decreases**

If the basis in the property temporarily decreases below the basis under which the property was initially approved for the credit, then the credit for that year will be reduced by the appropriate amount and that amount will be recaptured to the extent claimed in a prior year.

**Example 1:** *In 2001, ABC Corporation qualified for a credit of \$25,000 per year for four years. The \$100,000 in credits is claimed on the 2001 – 2004 tax returns in full. In 2006 the project falls out of compliance and no longer qualifies as a low-income housing project. The recapture is computed as follows:  $\$100,000 \times 10 / 15 = \$66,667$*

**Example 2:** *Assume the same facts as in example 1 except the taxpayer only claimed \$80,000 of the credit against taxes on prior returns and the \$20,000 excess was carried forward to 2006. The carry forward credit is lost and the recapture is computed as follows:  $(\$100,000 \times 10 / 15) - \$20,000 = \$46,667$*

**Example 3:** *In 2002, DEF Corporation qualified for a credit of \$20,000 per year for four years. However, in 2010, the qualified basis of the development decreased to a level 30% below the qualified basis upon which the credit was originally based. The project is still considered a qualified low-income housing project under federal rules. The credits claimed on Form 112 in the first seven years totaled \$80,000. The recapture to be reported on Form 112 in 2010 is:  $(\$80,000 \times 30\%) \times 7 / 15 = \$11,200$*

**Example 4:** *Assume the same facts as in example 3 except that the decrease in basis in year 9 was a one year occurrence and the project returns to full compliance in 2011. The recapture is computed as follows:  $(\$80,000 \times 30\%) \times 1 / 15 = \$1,600$*

### **Special recapture rules**

Because a qualified taxpayer is defined as a person or entity that “owns an interest in a qualified development,” owners who sell their interest during the compliance period are no longer “qualified taxpayers” and their credit is subject to recapture.

Where any recapture of credit is created by the sale of the property interest by the original owner, the liability for payment of the recapture tax can be tolled when the taxpayer that claimed the tax credit executes and signs a waiver of the statute of limitations for assessment of the recapture tax for the tax year that recapture would be due, extending the

period of assessment of the recapture tax until one year after the expiration of the credit compliance period. [Regulation 39-22-2103(1)]

If a carryover of an unused credit exists at the time a recapture event occurs, the carryover credit will be reduced prior to any recapture of tax.

If a credit claimed by a pass-through entity is required to be recaptured, that entity must submit a report to the Fairshare section of the Department of Revenue. The report must include the proportion of the credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of the credit previously allocated to such taxpayer.

### **DEFINITIONS**

*Compliance period* – The period of fifteen years beginning with the first taxable year of the credit period.

*Qualified basis* – The portion of the building used for low-income tenants during the year as determined by Section 42 of the Internal Revenue Code.

*Qualified low-income housing development* – A qualified low-income housing project as defined in Section 42 of the Internal Revenue Code, that is located in Colorado and is eligible for a federal low-income housing tax credit whether or not a federal credit is actually allocated. The development must be subject to a recorded restrictive covenant requiring it to be maintained and operated as a qualified development for a period of fifteen taxable years, or such longer period agreed to between CHFA and the owner of the property.

### **INSURANCE PREMIUM TAXES**

The low-income housing credits allocated by CHFA are applicable to either Income Tax or Insurance Premiums tax, but not both. The credit may be applied to reduce the Insurance Premium Tax paid by any entity that is not liable for Colorado Income Tax. Please contact the Colorado Division of Insurance for information on this use of the tax credit against Insurance Premium Tax.

## **COMMON QUESTIONS**

*When must the developer of a qualified development transfer the project to a pass-through entity in order for the pass-through entity to receive the Colorado low-income housing income tax credit?*

The transfer to a partnership, LLP, S Corporation or other pass-through entity must take place prior to the end of the tax year during which the development is placed in service. The law specifies that the owner of the project receives the tax credit for each year during the four-year credit period, which begins with the taxable year when the qualified development is placed in service.

## **FURTHER INFORMATION**

FYIs, commonly used forms and additional tax information are available on the Web at [www.taxcolorado.com](http://www.taxcolorado.com)

For additional income tax information visit the "Tax Information Index" at [www.taxcolorado.com](http://www.taxcolorado.com)

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