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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Hoops and Pavliga

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SUMMARY

- Authorizes a nonrefundable state tax credit that piggybacks on the federal low-income housing tax credit (LIHTC) for affordable housing projects.
- Allows the Director of the Ohio Housing Finance Agency (OHFA) to reserve a state tax credit for any project in Ohio that receives a federal LIHTC allocation, as long as the project is located in Ohio and begins renting units between 2022 and 2027.
- Generally limits the amount of state credits that may be reserved in a fiscal year to $500 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year.
- Allows the Director of the OHFA to determine the amount of state credit reserved for a qualified project so long as the reserved amount is no more than necessary to ensure the financial feasibility of the project.
- Specifies that, like the federal LIHTC, the state credit is claimed over a ten-year credit period starting no sooner than the year in which the qualified project is placed in service.
- Stipulates that the annual credit amount equals the lesser of one-tenth of the state credit amount reserved for the project or the amount of the federal LIHTC for the first year of the credit period, adjusted as described in the bill.
- Allows any direct or indirect investor in the affordable housing project to claim the Ohio credit regardless of whether the investor is eligible to claim the federal LIHTC.
- Allows the credit to be claimed by any number of eligible investors, against different taxes, and over multiple calendar years, tax years, taxable years, or tax periods, so long as the total credit claimed does not exceed the amount specified on the eligibility certificate.

- Allows eligible investors in a qualified project to claim an advance credit after the project is placed in service but before the Director issues an eligibility certificate so long as the investors reconcile any difference between the advance credit amount and the actual credit amount through an amended tax return or report.
- Requires, for any federal LIHTC that is clawed back or disallowed for a particular project, a proportional amount of Ohio credit be clawed back or otherwise disallowed.

DETAILED ANALYSIS

Introduction

The bill authorizes a business tax credit that piggybacks an existing federal income tax credit for the construction or rehabilitation of affordable rental housing. Like the federal low-income housing tax credit (LIHTC), the credit authorized by the bill is claimed in equal amounts over a ten-year credit period that begins no sooner than the year in which the project is placed in service, i.e., the building is made available to tenants. Subject to certain limitations, the amount of the state credit is determined by the Director of the Ohio Housing Finance Agency (OHFA). The credit may be claimed by any direct or indirect investor in the project, or any equity owners of such an investor, against the income tax, financial institutions tax, or the state's taxes on foreign and domestic insurance companies. The credit is nonrefundable, but may be claimed up to five years after the applicable year of the credit period. The total amount of state credits reserved by the Director is generally limited to $500 million per fiscal year, and the Director is prohibited from reserving credits after January 1, 2028.

Federal low-income housing tax credit

The federal LIHTC is a federal income tax credit that offsets a portion of a developer's construction costs in exchange for reserving a certain number of rent-restricted units for lower-income households in a new or rehabilitated facility. The federal government assigns a credit allotment to each state or territory based on population. State housing agencies then award the credits to private developers through a competitive application process. In Ohio, the federal LIHTC is administered by the OHFA. State housing agencies are required to develop a plan, known as a qualified allocation plan (QAP), to evaluate and award tax credits to projects that satisfy federal requirements.[1]

To receive a federal LIHTC, developers must apply to the OHFA before undertaking a project. If the project preliminarily qualifies for credit, based on federal criteria and the state's QAP, the OHFA may set aside (or "allocate") a credit for that project. Receipt of the credit is contingent upon completion of the project and placing it in service, generally within two years

[1] For more information about Ohio's qualified allocation plan, see the OHFA 2022-2023 Qualified Allocation Plan (PDF), which may be accessed by conducting a keyword search for "Qualified Allocation Plan" on the OHFA's website: ohiohome.org.

of allocation. In practice, developers typically sell the rights to claim federal LIHTCs upon receiving an allocation to secure up-front financing necessary to undertake the project.

There are two types of federal LIHTCs: (1) a larger credit, sometimes called the "9% credit," that subsidizes approximately 70% of the developer's qualified basis in the project (determined based on the developer's nonland investments in the project and the percentage of the building reserved for affordable housing), and (2) a smaller credit, sometimes called the "4% credit," that subsidizes approximately 30% of the developer's qualified basis. The 9% credit is competitively awarded, and generally reserved for new construction, while the 4% credit is available to any project that utilizes a threshold percentage of federally tax-exempt bond financing, including rehabilitation projects. Both credits are claimed in equal amounts over a ten-year credit period, beginning when the project is placed in service.[2]

Ohio low-income housing tax credit

Any project that is allocated a federal LIHTC may also qualify for the Ohio LIHTC authorized by the bill, as long as the project is located in Ohio and placed into service at any time on or after January 1, 2022, but before January 2, 2028 (referred to in the bill as a "qualified project"). The Ohio LIHTC may be claimed against the income tax, financial institutions tax, or the state's taxes on foreign and domestic insurance companies.[3]

Reserved credit

Developers do not need to separately apply for the Ohio LIHTC. Instead, the Director of the OHFA may reserve a state credit for any qualified project when allocating a federal LIHTC to that project. When reserving a state credit, the Director must send written notice of reservation to each of the qualified project's owners. The notice must include the aggregate amount of the state credit reserved for all years of the qualified project's ten-year credit period and state that the receipt of the state credit is contingent upon issuance of an eligibility certificate.

The amount of state credit reserved for any particular qualified project is determined by the Director, but in no case may the reserved credit, combined with the allocated federal credit, exceed the amount necessary to ensure the financial feasibility of the project. The bill does not define what is meant by financial feasibility.

The bill prohibits the Director from reserving a state LIHTC for any project after January 1, 2028.[4]

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[2] 26 United States Code 42; Congressional Research Service, An Introduction to the Low-Income Housing Tax Credit (PDF), which may be accessed by conducting a keyword search for "An Introduction to the Low-Income Housing Tax Credit" on the Congressional Research Service's website: crsreports.congress.gov.

[3] R.C. 175.16(A)(3) and (F)(1).

[4] R.C. 175.16(A)(3), (B), (F)(1) and (3), 5725.98, 5726.98, 5729.98, and 5747.98.

Awarded credit

After the qualified project is placed into service and the Director of the OHFA approves the final cost certification or otherwise determines the owner's qualified basis, the Director must issue an eligibility certificate to each owner of the project. The certificate must state the amount of the credit that may be claimed for each year of the ten-year credit period, which is the lesser of:

- The amount of the federal credit that would be awarded for the first year of the credit period absent a first-year reduction required by federal law;
- One tenth of the reserved credit amount stated in the notice reserving the state LIHTC.

This provision effectively caps the amount of a state LIHTC at the amount of the corresponding federal credit.

The eligibility certificate must also state the years that comprise the credit period, each of the qualified project's owners, the date it is issued, a unique identifying number, and any other information the Director of OHFA requires by rule.[5]

Credit limit

The total amount of credits reserved for all qualified projects in any fiscal year generally may not exceed $500 million. For purposes of the calculation, the credit reserved for each qualified project is the aggregate amount of credits reserved for the project's full ten-year credit period.

However, if the amount of credits reserved in any year is less than the credit limit for that year, the difference may be carried forward and added to the credit limit for the following year. Additionally, any amount of credits recaptured, clawed back, or otherwise disallowed may be added to the credit limit for the following year.[6]

Claiming the credit

The bill allows the eligible investors in a qualified project to claim the state LIHTC against the state income tax, financial institutions tax, or insurance company premiums taxes. An eligible investor is the owner of a qualified project or any other person that owns or owned a direct interest, or an indirect interest through one or more pass-through entities, in the qualified project at any time prior to claiming the tax credit.

In cases where an eligible investor is a pass-through entity, the bill allows the equity owners (i.e., the members, partners, or shareholders, depending on the type of business) of the entity to claim the state LIHTC. Under continuing law, a pass-through entity is a business organization (e.g., a corporation, partnership, or limited liability company) for which income is passed-through to the business's owners for tax purposes.

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[5] R.C. 175.16(A)(11), (D), and (E).

[6] R.C. 175.16(C).

The credit must be claimed for a calendar year, tax year, taxable year, or tax period (depending on the tax it is claimed against) that includes all or part of the year of the credit period to which the credit it is attributed, or any of the five following years. The bill does not specify how the credit amount is divided amongst eligible investors, and their equity owners, nor does it require those investors and owners to notify the Tax Commissioner, Superintendent of Insurance, or the Director of the OHFA of how the credit will be divided. The credit may be applied against more than one tax over more than one calendar year, tax year, taxable year, or tax period. The total credits claimed in connection with the applicable year of the project's credit period must not, however, exceed the amount stated on the eligibility certificate.

The bill specifies that the state LIHTC may be allocated among equity owners of a pass-through entity even if that allocation would be disallowed for the federal LIHTC, as long as the person claiming the state credit is considered an equity owner under state law and acquired the ownership interest before claiming the credit. Interests in eligible investors that are pass-through entities, including interests in the state LIHTC, may be assigned to other eligible investors or equity owners, who may claim the credits as long as the interest is acquired before the tax return claiming the credits is filed. Distinguishing the allocation of the state LIHTC from the federal LIHTC in this manner is likely superfluous. The federal allocation rules do not apply to the state LIHTC unless expressly ratified by state law.[7]

Advance credit

For instances in which a project is placed in service before an eligibility certificate is issued, the bill provides a mechanism that allows the project's eligible investors to claim an advance credit based on the notice of reservation. The advance credit available for the applicable credit period is one tenth of the reserved amount, stated in the notice of reservation (see "**Reserved credit**," above). If, after the eligibility certificate is issued, the actual annual credit amount is different than advance credit amount (see "**Awarded credit**," above), the eligible investors must reconcile the difference by filing an amended tax return or report.[8]

Clawback

Federal law allows for the recapture of federal LIHTCs. Under the bill, if any portion of the federal LIHTC allocated to a qualified project is recaptured, the Director of OHFA must recapture a proportionate amount of the state credit allocated to the same project. The director does so by certifying the name of each owner of the qualified project to the Tax Commissioner and Superintendent of Insurance, who must then determine the taxpayers that claimed the credit, the taxes against which it was claimed, and the amount to be recaptured. Any assessment made in connection with the recapture must be made within a year of the Director's certification.[9]

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[7] R.C. 175.16(F)(1), (2), and (5).

[8] R.C. 175.16(F)(3).

[9] R.C. 175.16(G).

Rules

The bill requires the Director of OHFA to adopt rules, in consultation with the Tax Commissioner and Superintendent of Insurance, necessary to administer the credit.[10]

HISTORY

Action	Date
Introduced	02-07-22

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[10] R.C. 175.16(H).