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NOTICE 23-07

KANSAS HOUSING INVESTOR TAX CREDIT ACT

(SEPTEMBER 6, 2023)

During the 2022 Legislative Session House Bill 2237 was passed and signed into law. New Sections 7 – 12 of the Bill, now K.S.A. 2022 Supp. 79-32,310 through 79-32,315, create the Kansas Housing Investor Tax Credit Act. K.S.A. 2022 Supp. 79-32,310(a) provides, "The purpose of the Kansas housing investor tax credit act is to bring housing investment dollars to communities that lack adequate housing. Development of suitable residential housing will complement economic development of rural and urban areas that lack adequate housing resources and enable such communities to attract businesses, employees and new residents."

Credit Program Established

K.S.A. 2022 Supp. 79-32,312(a) and (b) establish the Housing Investor Tax Credit program within the Kansas Housing Resources Corporation, to be administered by the Director of Housing. The Director is authorized to issue tax credits to qualified investors who make cash investments in qualified housing projects, and to project builders and developers. The Director is to determine and issue tax credits to the projects that are most likely to provide the greatest economic benefit to, and best meet the needs of, the community lacking adequate housing where the project is located. The Director is required to give priority to Kansas investors when issuing tax credits.

To be designated a qualified housing project, K.S.A. 2022 Supp. 79-32,312(c) requires the project builder or developer to apply to the Director of Housing on a form approved by the Director. K.S.A. 2022 Supp. 79-32,312(j) requires the Director to provide information regarding the qualified housing projects and qualified investors to the Secretary of Revenue.

Tax Credit

K.S.A. 2022 Supp. 79-32,313(a) creates, for tax year 2022 and all tax years thereafter, a tax credit to be claimed against: (1) Kansas income tax; (2) the privilege tax liability imposed upon any national banking association, state bank, trust company, or savings and loan company; or (3) the premium tax liability imposed upon an insurance company.

The tax credit shall be allowed to:

- A qualified investor for a cash investment in a qualified housing project that has been approved and issued a tax credit by the Director of Housing;

- A project builder or developer for a cash investment in a qualified housing project of the project builder or developer that has been approved and issued a tax credit by the Director of Housing.

To claim such tax credit, the qualified investor, or project builder or developer, must provide all information or documentation as required by the Secretary of Revenue by completing and submitting Schedule K-27 Kansas Housing Investor Credit. If the credit amount exceeds the taxpayer's tax liability in a taxable year, the remaining credit may be carried forward in the succeeding taxable years until the total credit amount is used, except that no credit may be claimed more than four taxable years after issuance, and any remaining credit will be forfeited.

Amount of Credit

K.S.A. 2022 Supp. 79-32,313(b) sets out how credits may be issued by the Director of Housing. The subsection provides:

> *(b) (1) Tax credits may be issued by the director for a qualified housing project as follows:*
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> *(A) For qualified housing projects located in a county with a population of not more than 8,000, in an amount not to exceed $35,000 per residential unit;*
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> *(B) for qualified housing projects located in a county with a population of more than 8,000 but not more than 25,000, in an amount not to exceed $32,000 per residential unit; and*
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> *(C) for all other qualified housing projects, in an amount not to exceed $30,000.*
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> *(2) A qualified housing project shall be limited to a total of 40 such residential units per year for both single-family and multi-family dwellings.*
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> *(3) Tax credits may be issued to a qualified investor in the amount of a cash investment of up to the total amount that may be issued by the director under this subsection for the qualified housing project, or as provided in the agreement required by K.S.A. 2022 Supp. 79-32,312, and amendments thereto. Project builders or developers may apply to the director each year for tax credits for additional units or phases of a project. Qualified investors may be issued tax credits for cash investments in multiple qualified housing projects. Project builders or developers may apply and be approved for multiple qualified housing projects in the same tax year.*
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> *(4) The aggregate amount of tax credits that may be issued under this section shall not exceed $13,000,000 each tax year, except that if the director issues an aggregate amount of tax credits in one tax year that is less than $13,000,000, then the director may carry forward the difference and issue such amount of tax credits in the immediately succeeding tax year in addition to the statutory amount that may be issued under this section. Of the aggregate amount of tax credits issued in one tax year, the director shall allocate:*
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> *(A) Not less than $2,500,000 in tax credits for qualified housing projects located in counties with a population of not more than 8,000;*
>
> *(B) not less than $2,500,000 in tax credits for qualified housing projects located in counties with a population of more than 8,000 but not more than 25,000; and*
>
> *(C) up to $8,000,000 in tax credits for qualified housing projects located in counties with a population of more than 25,000 but not more than 75,000.*

Transferability of Tax Credit

During the 2023 Legislative Session, Senate Bill 17 was passed and signed into law. Section 9 of the Bill amended K.S.A. 2022 Supp. 79-32,313(d), to provide a qualified investor who receives a tax credit under the Kansas Housing Investors Tax Credit Act may transfer such credit. All or a portion of such credit may be transferred by the qualified investor or any subsequent transferee to one or more persons whether or not such transferee is then a qualified investor and may be claimed as a credit against the transferee's Kansas tax liability in the same manner as the transferor, beginning in the year the credit is transferred. The credit may be carried forward in the succeeding taxable years until the total credit amount is used, except that no credit may be claimed more than four taxable years after issuance, and any remaining credit will be forfeited; it is not refundable. There is no limit on the number of times a credit or portion thereof can be transferred. The provisions regarding the transfer of credits apply to credits issued for tax year 2022 and all tax years thereafter.

The taxpayer claiming such credit will be responsible for providing documentation verifying the acquisition to the Secretary of Revenue. The transferor of the credit will be required to provide the Director of Housing and the Secretary of Revenue with the name, address, taxpayer identification number, and other information as required of each transfer recipient.

Loss of Credit

If the Director of Housing determines a project is not in substantial compliance with the Kansas Housing Investors Tax Credit Act or the project agreement, the Director must inform the project builder or developer in writing that the project will lose designation as a qualified housing project in 120 days from the date of mailing, unless the project is brought into compliance.

If the project is still non-compliant after the 120-day period, the Director must send a notice of loss of designation to the project builder or developer, the Secretary of Revenue, and all known qualified investors. Loss of designation will preclude the issuance of any additional tax credits for the project, and the Director is prohibited from approving any subsequent application for the project to be a qualified housing project. Upon loss of the designation as a qualified housing project, the project builder or developer will be required to repay any tax credits they have claimed.

Qualified investors other than the project builder or developer who have lawfully made a cash investment in a qualified and approved housing project will not have their tax credits disallowed solely due to the project losing its designation as a qualified housing project.

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.gov. If you have questions about this Notice, please contact:

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