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NOTICE 23-08

KANSAS AFFORDABLE HOUSING TAX CREDIT ACT

(SEPTEMBER 6, 2023)

During the 2022 Legislative Session House Bill 2237 was passed and signed into law. New Sections 1 – 6 of the Bill, now K.S.A. 2022 Supp. 79-32,304 through 79-32,309, create the Kansas Affordable Housing Tax Credit Act. The act provides a tax credit for a qualified low-income housing project.

Definitions

K.S.A. 2022 Supp. 79-32,305 defines several terms. Specifically, K.S.A. 2022 Supp. 79-32,305(c) through (l) includes these definitions:

(c) "credit" means the Kansas affordable housing tax credit allowed pursuant to this act;

(d) "credit period" means the credit period as defined in section 42(f)(1) of the federal internal revenue code;

(e) "director" means the director of taxation pursuant to K.S.A. 75-5102, and amendments thereto;

(f) "federal tax credit" means the federal low-income housing tax credit provided by section 42 of the federal internal revenue code;

(g) "KHRC" means the Kansas housing resources corporation, a not-for-profit subsidiary of the Kansas development finance authority incorporated pursuant to K.S.A. 74-8904(v), and amendments thereto;

(h) "pass-through entity" means any: (1) Limited liability company; (2) limited partnership; or (3) limited liability partnership;

(i) "pass-through certification" means a certification provided to the director by any pass-through entity allocating a credit to its partners or members, certifying the amount of credit to be allocated to each partner or member of such pass-through entity;

(j) "qualified allocation plan" means the qualified allocation plan adopted by the KHRC pursuant to section 42(m) of the federal internal revenue code;

(k) "qualified development" means a "qualified low-income housing project," as that term is defined in section 42 of the federal internal revenue code that is located in Kansas and is determined by the KHRC to be eligible for a federal tax credit whether or not a federal tax credit is allocated with respect to such qualified development; and

(l) "qualified taxpayer" means an individual, a person, firm, corporation, or other entity that owns an interest, direct or indirect, in a qualified development and is subject to the taxes imposed by the Kansas income tax act, the privilege taxes imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premium taxes imposed pursuant to K.S.A. 40-252, and amendments thereto.

Tax Credit

K.S.A. 2022 Supp. 79-32,306 creates, for all taxable years commencing after December 31, 2022, 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 will be for each qualified development for each year of the credit period, in an amount equal to the federal tax credit allocated or allowed by the Kansas Housing Resources Corporation to such qualified development. The bill does not allow a reduction in the credit allowable in the first year of the credit period due to the calculation in Section 42(f)(2) of the Internal Revenue Code.

The Kansas Housing Resources Corporation will be required to issue an allocation certificate to an owner of a qualified development receiving a credit under the Affordable Housing Tax Credit Act, to be issued simultaneously with issuance of federal form 8609, related to federal tax credits.

The bill requires all allocations to be made pursuant to the qualified allocation plan.

Pass-through Entities

K.S.A. 2022 Supp. 79-32,306(d) allows pass-through entities that are owners of a qualified development and receiving a tax credit under the Affordable Housing Tax Credit Act to allocate the credit among its partners or members in any manner agreed upon, regardless of whether:

- Any such person is allocated or allowed any portion of any federal tax credit with respect to the qualified project;

- Allocation of the credit under the terms of the agreement has substantial economic effect within the meaning of Section 704(b) of the federal Internal Revenue Code; or

- Any such person is deemed a partner for federal income tax purposes, if the partner or member would be considered a partner or member under applicable state law governing such entity and has been admitted as a partner or member on or prior to the date for filing the qualified taxpayer's tax return, including any amendments to such tax return, with respect to the year of the credit.

The tax credit may be allocated through any number of pass-through tiers and entities, none of which would be considered a transfer.

Any pass-through entity allocating a credit to its partners or members is required to attach a pass-through certification to its annual tax return. Each partner or member is allowed to claim or further allocate such amount pursuant to any restrictions in the Affordable Housing Tax Credit Act.

Each qualified development owner and qualified taxpayer receiving a tax credit or portion of such credit will be required to file with their state income, privilege, or premium tax return a copy of the allocation certificate issued by Kansas Housing Resources Corporation and a copy of any pass-through certification as prescribed by the Director of Taxation.

For additional information regarding pass-through entities, see Notice 22-16 SALT Parity Act.

Credits Carried Forward

K.S.A. 2022 Supp. 79-32,306(g) allows any credit amount in excess of the qualified taxpayer's tax liability to be carried forward as a credit against their subsequent year tax liability for up to 11 tax years following the tax year in which the allocation was made. The tax credit is applied first to the earliest years possible. Any unused tax credit amount will not be refunded to the taxpayer.

Eligibility Determination

K.S.A. 2022 Supp. 79-32,306(h) requires the KHRC to determine eligibility for a tax credit, and to allocate credits in accordance with Section 42 of the federal Internal Revenue Code. The bill requires any combination of federal tax credits and Affordable Housing Tax Credit Act tax credits to be the least amount necessary to ensure the qualified development's financial feasibility.

Credits Subject to Recapture

K.S.A. 2022 Supp. 79-32,307 requires the recapture of a portion of any credits authorized under the Affordable Housing Tax Credit Act if a portion of any federal tax credits taken on a qualified development is recaptured or otherwise disallowed. The percentage of Affordable Housing Tax Credit Act credits to be recaptured will be equal to the percentage of federal credits subject to recapture or otherwise disallowed.

The recapture or disallowance of credits will increase the tax liability of the qualified taxpayer who claimed the credits and shall be included on the tax return of the qualified taxpayer submitted for the taxable year in which the recapture or disallowance event is identified.

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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