Tennessee's New Rural and Workforce Housing Tax Credit

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Tennessee is the next state to follow a national trend and enact its own state low-income housing tax credit (LIHTC) program. The Tennessee General Assembly recently created a state housing tax credit designed to incentivize the development of affordable housing, particularly in rural areas. The Tennessee Rural and Workforce Housing Act ("State LIHTC"), signed into law by Governor Bill Lee on May 21, 2024, would benefit projects qualifying for the federal LIHTC program.

Eligibility and Application Process

Affordable housing projects utilizing federal LIHTCs that are placed in service after January 1, 2026, will be the first affordable housing projects in Tennessee eligible to qualify for the State LIHTC. As of this writing, the exact amount of available State LIHTC remains unclear, as Tennessee's General Assembly must authorize the credit amount by joint resolution each year. Since Tennessee's legislative session has ended for the year, the amount of initial State LIHTC to be funded will not be determined until the General Assembly reconvenes in 2025. To be eligible for the State LIHTC, a project must receive an allocation of federal LIHTC from the Tennessee Housing Development Agency (the "Agency") and must obtain an "eligibility statement" from the Agency certifying that the project is eligible for the State LIHTC.

Eligible project owners will be required to submit an application for State LIHTCs to either the Department of Revenue or the Department of Commerce and Insurance, as applicable. The credit application must include the project owner's eligibility statement and the following additional information:

- A description of the project;
- The amount of federal LIHTC the project received;
- The direct partners or members involved in the qualified project and how the state credits will be allocated among

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these partners or members;

- Whether the project is located in an eligible rural area as designated by the U.S. Department of Agriculture; and
- The amount of State LIHTC being requested.

The Agency is required to allocate the State LIHTCs in accordance with its Qualified Allocation Plan; provided, however, that at least 50% of the annual credits must be allocated to projects located in an eligible rural area. The Agency, the Department of Revenue, and the Department of Insurance and Commerce are authorized to promulgate rules to effectuate the State LIHTC program beginning July 1, 2024.

Credit Description

Unlike the federal LIHTC, these state credits will be awarded in the year in which they are authorized, so there is no "credit period." The State LIHTC may be applied against state premium taxes, retaliatory taxes, franchise taxes, and excise taxes. The amount of state credits claimed in a given taxable year may not exceed a taxpayer's liability for that year, and any unused credits may be carried forward for up to 25 years. After January 1, 2026, State LIHTCs may be claimed beginning in the tax year the qualifying project receives its eligibility statement. Where a qualifying project receives its eligibility statement in a tax year following the tax year in which the project was placed in service, any State LIHTC attributable to tax years prior to the tax year in which the project receives its eligibility statement may be claimed in the tax year the Agency issued the eligibility statement. A recapture of federal LIHTC will result in the recapture of a proportional amount of state credits.

State LIHTCs may be apportioned among some or all of the direct partners or members of the project owner regardless of how the federal LIHTC is allocated. Direct partners or members that are pass-through entities may further apportion the credit independently of the federal LIHTC, allowing structuring flexibility for project owners.

Conclusion

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Developers should consult counsel to determine how or if their current or future projects could benefit from this new State LIHTC. Frost Brown Todd advises investors, developers and other key stakeholders on affordable housing transactions in states across the country. We stay at the forefront of all legislative efforts affecting the industry, and we are ready to assist clients with navigating the changing legislative environment.

For assistance with understanding how this new legislation may apply to your projects, please contact the authors or any attorney on Frost Brown Todd's Multifamily Housing industry team.

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