

CHAPTER 175

RULES AND REGULATIONS FOR THE VIRGINIA LOW-INCOME HOUSING TAX CREDIT

13 VAC 5-175-10. General requirements and application.

A. To qualify for the Virginia low-income housing tax credit, the applicant must qualify for and claim the federal low-income housing tax credit in accordance with 13 VAC 10-180-10 et seq., Rules and Regulations for Allocation of Low-Income Housing Tax Credits. The Virginia Housing Development Authority allocates the federal low-income housing tax credit in Virginia.

B. The Department of Housing and Community Development (the department) is designated to approve, allocate, and certify the use of the Virginia low-income housing tax credit. An application for certification to use the state tax credit must be filed with the department, on a form prescribed by the department. The application shall provide taxpayer identification, information regarding the housing unit or units for which a tax credit is sought, and information confirming the use/allocation of the federal low-income housing tax credit during the taxable year. The department may require ~~that any~~ additional information and documentation ~~be provided with the application~~. After reviewing ~~the application~~ all applications, the department shall notify ~~the each~~ applicant of the total Virginia low-income housing tax credit allocated for use by the applicant. The department shall ~~also~~ certify the total Virginia low-income housing tax credit allocated for use by ~~the~~ each approved applicant to the Department of Taxation or the State Corporation Commission.

13 VAC 5-175-20. Availability of Virginia low-income housing tax credit.

The Virginia low-income housing tax credit is available for qualified housing units placed in service on or after January 1, 1998, in accordance with §36-55.63 of the Code of Virginia. ~~A credit is available for up to five consecutive taxable years provided a federal low income housing tax credit is allowed and claimed during each of the five years for housing units located in Virginia. Because the state tax credit is a percentage of the federal tax credit claimed in any taxable year, no state tax credit amount will be allocated if a federal tax credit is not claimed by the applicant. The initial use of the state tax credit may be claimed on state income tax returns filed for calendar year 1999 or any fiscal taxable year ending on or after July 1, 1999. The state tax credit for each project is based on a percentage of the federal tax credit allowed and claimed for the project. Any portion of the amount allocated may be used during the first year of the allocation, if feasible, or may be carried forward and used in subsequent years in accordance with § 58.1-435 of the Code of Virginia. The amount of a state low-income housing tax credit that may be used for any project during any tax year shall not exceed the amount certified as feasible by the Virginia Housing Development Authority.~~

13 VAC 5-175-30. Amount and Allocation of the Virginia low-income housing tax credit.

The department shall allocate the Virginia low-income housing tax credit up to the maximum amount allowed during any calendar year as specified by §36-55.63 of the Code of Virginia. The department shall review each application, and, based on the application and other information available to the department, shall assign points to each project as follows:

1. Any project that qualifies as a “hard-to-develop” project as defined by the Virginia Housing Development Authority in the federal low-income housing tax credit application manual. (40 points)

2. Any project that is located within, or that if awarded a state low-income housing credit will locate within, a Virginia Enterprise Zone, a Virginia Housing Revitalization Zone or a “revitalization area” as defined by the Virginia Housing Development Authority, provided the development of low-income housing within such zones or areas was included as part of the application under the above-referenced community development programs. (40 points)

3. All other qualified low-income housing projects not qualifying for points in 1 or 2 above. (20 points)

4. Projects shall receive one bonus point for each residential unit reserved for households at or below 40% of area median income, as determined by the application for federal low-income housing tax credits (up to a maximum of 40 bonus points).

The state credit allocated may be used any time during the five consecutive year period beginning with the first year the federal low-income housing tax credit is claimed for the project.

The allowable amount of the Virginia low-income housing tax credit for any qualified applicant shall be the lesser of (i) 20% of the amount of the federal low-income housing tax credit allowed during the five year period or (ii) the amount certified as feasible by the Virginia Housing Development Authority. Upon assignment of points to all applications, the department shall rank the applications based on the number of points assigned. Those applications assigned more points will be ranked higher than those applications assigned fewer points. Applications with the highest rankings shall receive allocations up to the allowable amount prior to any allocations to lower ranking applicants.

Allocations will be made to projects up to the statutory maximum amount of tax credits allowed during the calendar year.

~~The allowable amount of the Virginia low income housing tax credit for any qualified applicant shall be the lesser of (i) 10%^{6C} of the amount claimed by the applicant on the federal tax return for the federal low income housing tax credit applicable to low income housing units placed in service in Virginia or (ii) the amount certified feasible by the Virginia Housing Development Authority. If applications for tax credit use exceed the maximum tax credit amount authorized during any year.~~In the event of a tie in the number of points assigned to two or more projects where a full allocation to each applicant with that point total would exceed the maximum tax credit amount authorized by statute during any calendar year, the department shall calculate a pro rata reduction of the amount of tax credit to be allocated to each approved applicant. This reduction shall be made to assure that the established maximum tax credit allocation is not exceeded. The pro rata reduction will not apply to or affect allocations to projects with a higher point total.

13 VAC 5-175-40. Recapture of Virginia low-income housing tax credit.

~~A. If any person qualifies for the Virginia low income housing tax credit and is subject to the credit recapture provisions for federal income tax purposes in a subsequent taxable year, the applicant shall, similarly, be subject to a credit recapture of the state tax credit amount on the Virginia income tax return.~~

~~B. The Virginia low-income housing tax credit is a percentage of the federal low-income housing tax credit allowed and claimed, in most cases 10%^{6C}. In certain circumstances the state tax credit will be less than 10%^{6C}, such as when a reduction is required because applications for tax credits statewide exceed the maximum allowable use of~~If any person claims the Virginia low-income housing tax credit or when certified feasible for less than 10%^{6C} by the Virginia

~~Housing Development Authority~~ and is subject to the credit recapture provisions for federal income tax purposes in a subsequent taxable year, the applicant shall, similarly, be subject to a recapture of the state tax credit amount claimed on the Virginia income tax return. The amount of the state tax credit to be recaptured shall be ~~10%~~ 6% percentage of the federal tax credit recaptured for Virginia low income housing units, or the percentage of the federal tax credit will be used in the calculation to calculate the amount of the state tax credit for the taxable year in which the ~~to be recaptured tax credit applies, whichever is less.~~ The total recaptured amount of the state tax credit shall be payable to the Virginia Department of Taxation or the State Corporation Commission during the taxable year in which the federal recapture is required.

I certify that this regulation is full, true, and correctly dated.

William C. Shelton, Director
Department of Housing and Community Development

Date: _____