

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 36-55.63 and 58.1-435 of the Code of Virginia, relating to the low-income housing credit.

[S 1054]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.63 and 58.1-435 of the Code of Virginia are amended and reenacted as follows:

§ 36-55.63. Low-income housing credit.

A. Any person shall be entitled to a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); or Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 for any five taxable years in which a federal low-income housing credit is allowed for low-income housing units placed in service on or after January 1, 1998, provided such person qualified for and claimed the low-income housing credit on the federal income tax return filed for the taxable year, and meets the qualifications established by the Board of Housing and Community Development for claiming such credit on the applicable Virginia tax return.

B. The Board of Housing and Community Development shall, *consistent with the provisions, terms, and conditions set forth under § 58.1-435*, issue regulations establishing the amount of the low-income housing credit allowable for the low-income housing credit provided under such section, the taxable year or years in which such credit may be taken by the taxpayer, and the terms and conditions for qualifying for such credit. The Virginia low-income housing credit amount shall be a percentage of the federal low-income tax credit claimed for the taxable year; however, the specific percentage shall be determined by the Board. If the low-income housing credit claimed on the person's federal tax return was calculated on a period of less than twelve months, the Board may nevertheless calculate the Virginia low-income housing credit amount on the basis of a twelve-month period for the taxable year.

C. The Department of Housing and Community Development shall administer the approval of low-income housing credits. *The As provided under § 58.1-435*, the total maximum amount of low-income housing credits which may be approved by the Board in any calendar year shall be \$500,000. Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board.

D. If any person qualifies in a taxable year for the Virginia low-income housing credit, and in a subsequent taxable year is subject to the credit recapture provisions for federal income tax purposes, such person shall similarly be subject to a credit recapture amount on the Virginia tax return for which the applicable Virginia low-income housing credit was applied or used. The Board shall promulgate regulations establishing the terms and conditions for computing the credit recapture amount for the applicable Virginia tax return.

E. To claim the credit authorized under this section, the taxpayer shall apply to the Department of Housing and Community Development to determine the credit amount allowable for the taxable year. The Department shall certify to the Department of Taxation or the State Corporation Commission, as applicable, that such person qualified for the Virginia low-income housing credit amount claimed on the applicable tax return for the taxable year. The taxpayer shall attach the certification form to the Virginia tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Housing and Community Development shall also provide the Department of Taxation or the State Corporation Commission, as applicable, with credit recapture amounts and any other information it may require relating to the credit claimed by the taxpayer.

§ 58.1-435. Low-income housing credit.

A. Any person shall be entitled to a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); or Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 in the amount certified to the Department or the State Corporation Commission, as applicable, pursuant to ~~§ 36-55.63 subsection F~~ for any five taxable years, as such years are determined by the Board of Housing and Community Development, in which a federal low-income housing credit is allowed for low-income housing units placed in service on or after January 1, 1998, provided such person qualified for and claimed the low-income housing credit on the federal income tax return filed for the taxable year, and meets the qualifications established by

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the Board for claiming such credit on the applicable Virginia tax return. Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board of Housing and Community Development.

B. Any person claiming a credit pursuant to subsection A shall be subject to recapture of the credit pursuant to § 36-55.63. Any credit recapture shall be assessed and collected in the same manner as a tax attributable to a change in federal taxable income within the meaning of § 58.1-311. The Board of Housing and Community Development shall issue regulations establishing the amount of the low-income housing credit allowable, the taxable year or years in which such credit may be taken by the taxpayer, and the terms and conditions for qualifying for such credit. The Virginia low-income housing credit amount shall be a percentage of the federal low-income tax credit claimed for the taxable year; however, the specific percentage shall be determined by the Board. If the low-income housing credit claimed on the person's federal tax return was calculated on a period of less than 12 months, the Board may nevertheless calculate the Virginia low-income housing credit amount on the basis of a 12-month period for the taxable year.

C. The Department of Housing and Community Development shall administer the approval of low-income housing credits. The total maximum amount of low-income housing credits which may be approved by the Board of Housing and Community Development in any calendar year shall be \$500,000. Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board.

D. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the Department of Housing and Community Development has certified the amount of such tax credit pursuant to § 36-55.63 subsection F. No credit shall be carried back to a preceding taxable year. If a taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. If any person qualifies in a taxable year for the Virginia low-income housing credit, and in a subsequent taxable year is subject to the credit recapture provisions for federal income tax purposes, such person shall similarly be subject to a credit recapture amount on the Virginia tax return for which the applicable Virginia low-income housing credit was applied or used. Any credit recapture shall be assessed and collected in the same manner as a tax attributable to a change in federal taxable income within the meaning of § 58.1-311. The Board of Housing and Community Development shall promulgate regulations establishing the terms and conditions for computing the credit recapture amount for the applicable Virginia tax return.

F. To claim the credit authorized under this section, the taxpayer shall apply to the Department of Housing and Community Development to determine the credit amount allowable for the taxable year. The Department shall certify to the Department of Taxation or the State Corporation Commission, as applicable, that such person qualified for the Virginia low-income housing credit amount claimed on the applicable tax return for the taxable year. The taxpayer shall attach the certification form to the Virginia tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Housing and Community Development shall also provide the Department of Taxation or the State Corporation Commission, as applicable, with credit recapture amounts and any other information it may require relating to the credit claimed by the taxpayer.

2. That the provisions of this act shall become effective for taxable years beginning on or after January 1, 2007.

3. That the provisions of this act shall in no way affect any low-income housing tax credit (or the potential credit recapture thereof) certified by the Department of Housing and Community Development to the Department of Taxation or the State Corporation Commission in taxable years beginning prior to January 1, 2007.

4. That the total combined amount of low-income housing tax credits which may be approved by the Board of Housing and Community Development in calendar year 2007 under §§ 36-55.63 and 58.1-435 of the Code of Virginia shall not exceed \$500,000.