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SENATE BILL NO. 458

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 36-55.63 and 58.1-435 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, relating to income tax credits for certain landlords participating in a housing choice voucher program.

Patron—McEachin

Referred to Committee on Finance

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 and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03 as follows:

§ 36-55.63. Low-income housing credit.

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 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. However, the Board shall not approve any low-income housing credits after June 30, 2010.

The Department of Housing and Community Development shall administer the approval of low-income housing credits. 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.

§ 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 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 the Board for claiming such credit on the applicable Virginia tax return.

B. 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. However, the Board shall not approve any low-income housing credits after June 30, 2010. 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 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

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59 have a carryover provision, and then any credit that is carried forward from a preceding taxable year,
60 prior to the utilization of any credit allowed pursuant to this section.

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

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

78 § 58.1-439.12:03. *Tax credit for participating landlords.*

79 A. *As used in this section, unless the context clearly shows otherwise, the term or phrase:*

80 "*Dwelling unit*" means an individual housing unit in an apartment building, an individual housing
81 unit in multifamily residential housing, a single-family residence, or any similar individual housing unit.

82 "*Eligible housing area*" means the Richmond Metropolitan Statistical area.

83 "*Housing authority*" means a housing authority created under Article 1 (§ 36-1 et seq.) of Chapter 1
84 of Title 36 of this Code or other government agency that is authorized by the United States government
85 under the United States Housing Act of 1937 (42 U.S.C. § 1437 et seq.) to administer a housing choice
86 voucher program, or the authorized agent of such a housing authority that is authorized to act upon
87 that authority's behalf. The term shall also include the Virginia Housing Development Authority.

88 "*Housing choice voucher*" means tenant-based assistance by a housing authority pursuant to 42
89 U.S.C. § 1437f et seq.

90 "*Participating landlord*" means any person engaged in the business of the rental of dwelling units
91 who is (i) subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) and (ii)
92 performing obligations under a contract with a housing authority relating to the rental of qualified
93 housing units.

94 "*Qualified housing unit*" means a dwelling unit that is located in an eligible housing area for which
95 a portion of the rent is paid by a housing authority, which payment is pursuant to a housing choice
96 voucher program.

97 B. For taxable years beginning on or after January 1, 2010, a participating landlord renting a
98 qualified housing unit shall be eligible for a credit against the tax levied pursuant to § 58.1-320 or
99 58.1-400 in an amount equal to 10 percent of the fair market value of the rent for the unit, computed
100 for that portion of the taxable year in which the unit was rented by such landlord to a tenant
101 participating in a housing choice voucher program. The Department of Housing and Community
102 Development shall administer and issue the tax credit under this section. If (i) the same parcel of real
103 property contains four or more dwelling units and (ii) the total number of qualified housing units on the
104 parcel in the relevant taxable year exceeds 25 percent of the total dwelling units on the parcel, then the
105 tax credit under this section shall apply only to a limited number of qualified housing units with regard
106 to such parcel of real property, with the limited number being equal to 25 percent of the total dwelling
107 units on such parcel of real property in the taxable year.

108 C. The Department of Housing and Community Development shall issue tax credits under this section
109 on a fiscal year basis. The maximum amount of tax credits that may be issued under this section in each
110 fiscal year shall be \$400,000.

111 D. Participating landlords shall apply to the Department of Housing and Community Development
112 for tax credits under this section. The Department of Housing and Community Development shall
113 determine the credit amount allowable to the participating landlord for the taxable year and shall also
114 determine the fair market value of the rent for the qualified housing unit taking into consideration (i)
115 comparable dwelling units on the same parcel of property or, if none, comparable dwelling units in the
116 same market area, and (ii) market values during the period in which the unit was rented to the tenant
117 participating in a housing choice voucher program. In issuing tax credits under this section, the
118 Department of Housing and Community Development shall provide a written certification to the
119 participating landlord, which certification shall report the amount of the tax credit approved by the
120 Department. The participating landlord shall attach the certification to the applicable income tax return.

121 E. The Board of Housing and Community Development shall establish and issue guidelines for
122 purposes of implementing the provisions of this section. The guidelines shall provide for the allocation
123 of tax credits among participating landlords requesting credits. The guidelines shall be exempt from the
124 Administrative Process Act (§ 2.2-4000et seq.).

125 F. In no case shall the amount of credit taken by a participating landlord for any taxable year
126 exceed the total amount of tax imposed by this chapter for the taxable year. If the amount of credit
127 issued by the Department of Housing and Community Development for a taxable year exceeds the
128 landlord's tax liability imposed by this chapter for such taxable year, then the amount that exceeds the
129 tax liability may be carried over for credit against the income taxes of the participating landlord in the
130 next five taxable years or until the total amount of the tax credit issued has been taken, whichever is
131 sooner. Credits granted to a partnership, limited liability company, or electing small business
132 corporation (S corporation) shall be allocated to the individual partners, members, or shareholders,
133 respectively, in proportion to their ownership or interest in such business entities.

134 G. No person shall be allowed a tax credit under § 58.1-339.9 and this section for the rental of the
135 same dwelling unit in a taxable year.

136 **2. That the General Assembly hereby appropriates an additional \$100,000 from the general fund to**
137 **the Department of Housing and Community Development in each of the 2010 - 2011 and 2011 -**
138 **2012 fiscal years for funding of the Department's estimated fiscal impact from administering tax**
139 **credits pursuant to § 58.1-439.12:03 of the Code of Virginia. Such amount is hereby appropriated**
140 **by the General Assembly to the Department for one additional full-time equivalent, general fund**
141 **position (salary and benefits). The appropriation pursuant to this enactment shall be in addition to**
142 **all other appropriations provided to the Department in the general appropriation act. The**
143 **Director of the Department of Planning and Budget is hereby directed to allot such moneys for the**
144 **purposes set forth in this enactment.**