

By: Alvarado

S.B. No. 2814

AN ACT

relating to a franchise or insurance premium tax credit for certain housing developments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. TAX CREDIT FOR CERTAIN HOUSING DEVELOPMENTS

Sec. 171.551. DEFINITIONS. In this subchapter:

(1) "Allocation certificate" means a statement issued by the department certifying that a qualified development qualifies for credits under this subchapter and Chapter 233, Insurance Code, specifying the ~~total amount of the credits awarded in connection with the qualified development for the credit period, and specifying the~~ annual amount of credit that may be claimed each year during the credit period for each building that is part of the qualified development.

(2) "Credit" means the low-income housing development tax credit authorized by this subchapter.

(3) "Credit period" means, with respect to a building that is part of a qualified development, the period of 10 tax years beginning with the tax year in which the building is placed in service.

(4) "Department" means the Texas Department of Housing and Community Affairs.

(5) "Development" has the meaning assigned by Section

1 [2306.6702](#), Government Code.

2 (6) "Federal tax credit" means the federal low-income
3 housing credit created by Section 42, Internal Revenue Code.

4 (7) "Qualified basis" means the qualified basis of a
5 qualified development, as determined under Section 42, Internal
6 Revenue Code.

7 (8) "Qualified development" means a development in
8 this state:

9 (A) for which the department awards or allocates
10 a federal tax credit through the issuance of a carryover allocation
11 agreement or determination notice;

12 (B) that has not had an allocation of federal tax
13 credits terminated by or at the direction of the department;

14 (C) that is the subject of a recorded restrictive
15 covenant requiring the development to be maintained and operated as
16 a qualified development that has not been terminated and is not
17 subject to termination through any process other than the natural
18 expiration of the covenant's extended use period;

19 (D) that meets all applicable requirements of the
20 qualified allocation plan, as defined by Section [2306.6702](#),
21 Government Code; and

22 (E) for the duration of the extended use period
23 established in the land use restriction agreement, as defined by
24 Section [2306.6702](#)(a)(9), Government Code, is in compliance with:

25 (i) all accessibility and adaptability
26 requirements for a federal tax credit; and

27 (ii) Title VIII of the Civil Rights Act of

1968 (42 U.S.C. Section 3601 et seq.).

(9) "State housing credit ceiling" means \$25 million of annual credits each award year.

Sec. 171.552. ENTITLEMENT TO CREDIT. A taxable entity is entitled to an annual credit against the taxes imposed under this chapter in the amount and under the limitations provided by this subchapter if the taxable entity owns a direct or indirect interest in a qualified development.

Sec. 171.553. APPLICATION FOR AND ISSUANCE OF ALLOCATION CERTIFICATE. (a) A taxable entity or an entity subject to state premium tax liability as defined by Section 233.0001, Insurance Code, must apply to the department for an allocation certificate in connection with a development in which the taxable entity or other entity owns an interest. The application must be submitted to the department along with the application for an allocation of federal tax credits in a manner prescribed by the department.

(b) The department shall issue an allocation certificate if:

(1) the department approves the application submitted under Subsection (a);

(2) the development meets the requirements to be a qualified development; and

(3) the department awards an amount of credit to the development under Section 171.554.

Sec. 171.554. AMOUNT OF CREDITS; METHOD OF AWARD. (a) The department shall in the manner provided by this section determine the total amount of annual credits under this subchapter and

Chapter 233, Insurance Code, awarded for each year of the credit period in connection with a qualified development and indicate the amount of the annual credits awarded on the allocation certificate.

(b) The amount of annual credit awarded in connection with a qualified development ~~over~~ allowed each year of the credit period must be the minimum amount necessary for the financial feasibility of the qualified development, subject to the limitations of this section.

(c) The amount of annual credits awarded in connection with a qualified development allowed each year of ~~over~~ the credit period may not exceed the total amount of the annual federal tax credit awarded to the owner or owners of the qualified development allowed each year of ~~over~~ the 10-year federal tax credit period.

(d) The manner in which the department awards the amount of credits must be consistent with criteria established by the department.

(e) The total amount of annual credits awarded ~~for a~~ each award year in connection with all qualified developments financed through tax exempt bonds may not exceed the sum of:

(1) 50 percent of the state housing credit ceiling for the year;

(2) any portion of the state housing credit ceiling for the preceding year that could have been awarded for qualified developments financed through tax exempt bonds but was not awarded; and

(3) any credits recaptured or otherwise returned to the department in the year that were originally awarded in

1 connection with a qualified development financed through tax exempt
2 bonds.

3 (f) The total amount of annual credits awarded ~~for a~~ each
4 award year in connection with all qualified developments not
5 financed through tax exempt bonds may not exceed the sum of:

6 (1) 50 percent of the state housing credit ceiling for
7 the year;

8 (2) any portion of the state housing credit ceiling
9 for the preceding year that could have been awarded for qualified
10 developments not financed through tax exempt bonds but was not
11 awarded; and

12 (3) any credits recaptured or otherwise returned to
13 the department in the year that were originally awarded in
14 connection with a qualified development not financed through tax
15 exempt bonds.

16 (g) The department shall, in the qualified allocation plan,
17 determine the priorities and criteria for awarding annual credits
18 during award years in which the amount of credits applied for
19 exceeds the maximum amount that may be awarded under this section.

20 Sec. 171.555. APPORTIONMENT OF CREDIT. The direct or
21 indirect owners of a qualified development who intend to claim a
22 credit under this subchapter or Chapter 233, Insurance Code, may by
23 agreement determine the portion of the ~~total amount of credits~~
24 ~~awarded under Section 171.554~~ annual credit that each owner is
25 entitled to claim for any year during the credit period. If the
26 owners do not agree, the department shall determine the portion
27 each owner is entitled to claim based on each owner's ownership

1 interest in the qualified development.

2 Sec. 171.556. LENGTH OF CREDIT; LIMITATION. (a) Any
3 taxable entity entitled to a credit under this subchapter shall
4 claim its portion of the annual credit ~~in equal installments for~~
5 each year ~~during each year~~ of the credit period.

6 (b) The total credit claimed under this subchapter for a
7 report, including any carry forward or backward under Section
8 [171.557](#), may not exceed the amount of tax due for the report after
9 any other applicable credit.

10 Sec. 171.557. CARRY FORWARD OR BACKWARD. (a) If a taxable
11 entity is eligible for a credit that exceeds the limitations under
12 Section [171.556](#), the taxable entity may carry the unused credit
13 back for not more than three tax years or forward for not more than
14 10 consecutive reports following the tax year in which the
15 allocation certificate was issued. A credit carryforward from a
16 previous report is considered to be used before the current year
17 installment. A credit carried back to a previous report is
18 considered to be used after any other franchise tax credit is
19 applied to that report.

20 (b) A credit that is not used may not be refunded.

21 (c) The allocation of a credit in accordance with Section
22 [171.559](#) does not extend the period for which a credit may be carried
23 forward and does not increase the total amount of the credit that
24 may be claimed.

25 (d) An entity may not carry back a credit under this
26 subchapter to a tax year for which the report was originally due
27 before January 1, 2026.

1 Sec. 171.558. RECAPTURE. (a) If a qualified development is
2 subject to the recapture of a portion of the federal tax credit
3 awarded or allocated to the development, then each taxable entity
4 or entity subject to state premium tax liability as defined by
5 Section 233.0001, Insurance Code, that has claimed or is entitled
6 to claim a portion of the credit under this subchapter is also
7 subject to the recapture of a portion of the credit under this
8 subchapter.

9 (b) The amount of credit under this subchapter that is
10 subject to recapture under this section is the same percentage of
11 the amount originally awarded or allocated as the percentage of the
12 amount of the federal tax credit originally awarded or allocated
13 that is subject to recapture under federal law. The recapture of a
14 credit under this section is not subject to a statute of limitations
15 provided by Chapter 111.

16 (c) The owners of a qualified development that is awarded or
17 allocated a credit under this subchapter or a representative of
18 those owners shall identify each taxable entity and each entity
19 subject to state premium tax liability as defined by Section
20 233.0001, Insurance Code, that is subject to recapture of the
21 credit under this section.

22 (d) Not later than the 30th day after the date any owner of a
23 qualified development receives notice that a federal tax credit
24 awarded or allocated to the development is subject to recapture,
25 the owners of the development or a representative of those owners
26 shall report to the comptroller:

27 (1) the amount of federal tax credit originally

1 awarded or allocated to the development;

2 (2) the amount of federal tax credit that is subject to
3 recapture and the percentage of the amount originally awarded or
4 allocated which that amount represents; and

5 (3) each entity identified under Subsection (c).

6 Sec. 171.559. ALLOCATION OF CREDIT. (a) If a taxable
7 entity receiving a credit under this subchapter is a partnership,
8 limited liability company, S corporation, or similar pass-through
9 entity, the taxable entity may allocate the credit to its partners,
10 shareholders, members, or other constituent taxable entities in any
11 manner agreed to by those entities, regardless of the size of the
12 person's ownership interest. This section does not prohibit a
13 partner, member, or shareholder from holding an investment
14 consisting only of a credit awarded under this subchapter or a
15 federal tax credit.

16 (b) A taxable entity that makes an allocation under this
17 section shall certify to the comptroller the amount of credit
18 allocated to each constituent taxable entity or shall notify the
19 comptroller that it has delegated the duty of certification to one
20 constituent taxable entity that shall provide the notification to
21 the comptroller. Each constituent taxable entity is entitled to
22 claim the allocated amount subject to any restrictions prescribed
23 by this subchapter.

24 (c) An allocation under this section is not a transfer for
25 purposes of state law.

26 Sec. 171.560. FILING REQUIREMENTS AFTER ALLOCATION. A
27 taxable entity that allocates a portion of the credit under Section

1 171.559, and each taxable entity to which a portion was allocated,
2 shall file with the taxable entity's report a copy of the
3 certification or notice required by Section 171.559(b).

4 Sec. 171.561. APPLICATION FOR CREDIT. (a) A taxable entity
5 must apply for a credit under this subchapter on or with the tax
6 report for which the credit is claimed and submit with the
7 application a copy of the allocation certificate issued in
8 connection with the qualified development and any other information
9 required by the comptroller.

10 (b) The comptroller shall adopt a form for the application
11 for the credit. A taxable entity must use the form to apply for the
12 credit.

13 Sec. 171.562. RULES; PROCEDURES. The department and
14 comptroller, in consultation with each other, shall adopt rules and
15 procedures to implement, administer, and enforce this subchapter.

16 Sec. 171.563. COMPLIANCE MONITORING. (a) The department
17 shall monitor compliance with this subchapter in the same manner as
18 the department monitors compliance with the federal tax credit
19 program.

20 (b) The department shall report any instances of
21 noncompliance with this subchapter to the comptroller.

22 Sec. 171.564. INCLUSION OF INFORMATION IN LOW INCOME
23 HOUSING PLAN. The department shall include in the low income
24 housing plan under Section 2306.0721, Government Code, information
25 relating to the performance of the credit during the previous
26 calendar year. The information must:

27 (1) specify the number of qualified developments for

1 which allocation certificates were issued during the year and the
2 total number of units supported by the developments;

3 (2) describe each qualified development for which an
4 allocation certificate was issued during the year, including:

5 (A) location;

6 (B) household type;

7 (C) available demographic information for the
8 residents intended to be served by the development;

9 (D) the income levels intended to be served by
10 the development; and

11 (E) the rents or set-asides authorized for the
12 development;

13 (3) include housing market and demographic
14 information to demonstrate how the qualified developments,
15 supported by the tax credits under this subchapter and Chapter 233,
16 Insurance Code, are addressing the need for affordable housing in
17 their communities; and

18 (4) analyze any remaining disparities in the
19 affordability of housing within those communities.

20 Sec. 171.565. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS.

21 (a) After December 31, 2029, the department may not:

22 (1) reserve an amount of credit under this subchapter
23 for a qualified development for the purpose of issuing an
24 allocation certificate for the development at a later date; or

25 (2) issue an allocation certificate for a qualified
26 development unless, on or before December 31, 2029, the department
27 reserved an amount of credit under this subchapter for the

development for the purpose of issuing an allocation certificate at a later date if the requirements for issuance of the certificate are met.

(b) On or after January 1, 2030:

(1) the department may issue an allocation certificate for which an amount of credit was reserved under Subsection (a)(2); and

(2) an entity may claim a credit on a tax report as provided by this subchapter or Chapter 233, Insurance Code, in connection with a qualified development for which the department issued an allocation certificate or reserved an amount of credit before January 1, 2030.

Sec. 171.566. PRIORITY ALLOCATION FOR CERTAIN QUALIFIED DEVELOPMENTS. (a) This section applies only to a qualified development:

(1) that received an allocation of federal tax credits under the qualified allocation plan issued by the department for 2021 or 2022;

(2) the owners or developers of which have owned the land necessary for the development since at least December 31, 2022;

(3) that is not financed through tax exempt bonds; and

(4) that the department determines requires an allocation of credit under this subchapter to secure the financial feasibility of the qualified development after considering any federal tax credit.

(b) Notwithstanding Sections 171.554(e) and (f) and subject

1 to Subsection (e) of this section, for the first year the department
2 issues allocation certificates or reserves credit amounts for the
3 purpose of issuing allocation certificates, the department shall
4 use \$5 million of the state housing credit ceiling to award credits
5 to qualified developments to which this section applies.

6 (c) The owners of a qualified development to which this
7 section applies who intend to apply for an allocation of credit
8 under this section, or a representative of those owners, must
9 notify the department of that intent before the deadline for the
10 qualified development to be placed in service. If the owners or
11 their representative provide the notice required by this
12 subsection, the deadline for the qualified development to be placed
13 in service is extended until:

14 (1) the deadline set by the department for submitting
15 an application for an allocation under this section; or

16 (2) if an application for an allocation under this
17 section is submitted before the deadline set by the department, the
18 date the department issues a decision on the application.

19 (d) An applicant for an allocation of credit under this
20 section must submit to the department:

21 (1) documents proving that the owners or developers of
22 the qualified development meet the land ownership requirement under
23 Subsection (a)(2);

24 (2) a financial analysis demonstrating that the
25 allocation is necessary to secure the financial feasibility of the
26 development as required by Subsection (a)(4); and

27 (3) any other documentation required by the department

1 to demonstrate that the qualified development meets the
2 requirements provided by Subsection (a).

3 (e) If the amount of state credits reserved under this
4 section is not fully allocated to qualified developments to which
5 this section applies, the department shall allocate the remaining
6 portion to qualified developments to which this section does not
7 apply.

8 (f) The department shall, in the qualified allocation plan,
9 determine the priorities and criteria for awarding credits under
10 this section if the amount of credits applied for exceeds the
11 maximum amount that may be awarded under this section.

12 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
13 by adding Chapter 233 to read as follows:

14 CHAPTER 233. CREDIT AGAINST CERTAIN TAXES FOR CERTAIN HOUSING
15 DEVELOPMENTS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 233.0001. DEFINITIONS. In this chapter:

18 (1) "Allocation certificate," "credit," and
19 "qualified development" have the meanings assigned by Section
20 171.551, Tax Code.

21 (2) "State premium tax liability" means any tax
22 liability incurred by an entity under Chapter 221, 222, 223, or 224.

23 SUBCHAPTER B. CREDIT

24 Sec. 233.0051. CREDIT. (a) An entity is eligible for a
25 credit against the entity's state premium tax liability in the
26 amount and under the limitations provided by this chapter if the
27 entity owns a direct or indirect interest in a qualified

1 development.

2 (b) An entity that claims a credit under this chapter is not
3 required to pay any additional retaliatory tax under Chapter 281 as
4 a result of claiming the credit.

5 Sec. 233.0052. LENGTH OF CREDIT; LIMITATIONS. (a) The
6 entity shall claim the annual credit in the manner provided by
7 Section 171.556, Tax Code.

8 (b) The total credit claimed under this chapter for a
9 report, including any carry forward or backward described by
10 Subsection (c), may not exceed the amount of the entity's state
11 premium tax liability due for the report after any other applicable
12 credit.

13 (c) The entity may carry a surplus credit forward or
14 backward as provided by Section 171.557, Tax Code.

15 Sec. 233.0053. APPLICATION FOR CREDIT. (a) An entity must
16 apply for a credit under this chapter on or with the tax report for
17 the tax year for which the credit is claimed and submit with the
18 application a copy of the allocation certificate issued in
19 connection with the qualified development and any other information
20 required by Subchapter K, Chapter 171, Tax Code.

21 (b) The comptroller shall adopt a form for the application
22 for the credit. An entity must use this form in applying for the
23 credit.

24 Sec. 233.0054. RULES; PROCEDURES. The comptroller and the
25 Texas Department of Housing and Community Affairs, in consultation
26 with each other, shall adopt rules and procedures to implement,
27 administer, and enforce this chapter.

1 Sec. 233.0055. APPLICABLE PROVISIONS. The provisions of
2 Subchapter K, Chapter 171, Tax Code, relating to recapture,
3 allocation of credit, apportionment of credit, length of credit,
4 filing requirements after allocation, and compliance monitoring
5 apply to the credit authorized by this chapter.

6 SUBCHAPTER C. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS

7 Sec. 233.0101. EXPIRATION OF ALLOCATION AUTHORITY; USE OF
8 ALLOCATED CREDITS. (a) The authority of the Texas Department of
9 Housing and Community Affairs to reserve credit amounts and issue
10 allocation certificates for purposes of Subchapter K, Chapter 171,
11 Tax Code, and this chapter expires as provided by Section
12 171.565(a), Tax Code.

13 (b) An entity may claim a credit under this chapter on a tax
14 report as provided by Section 171.565(b), Tax Code.

15 SECTION 3. (a) The Texas Department of Housing and
16 Community Affairs may begin reserving credit amounts for the
17 purpose of issuing allocation certificates under Subchapter K,
18 Chapter 171, Tax Code, as added by this Act, in an open cycle
19 beginning on January 1, 2024.

20 (b) Except as provided by Subsection (c) of this section,
21 Subchapter K, Chapter 171, Tax Code, as added by this Act, and
22 Chapter 233, Insurance Code, as added by this Act, apply only to a
23 tax report originally due on or after January 1, 2026, and before
24 January 1, 2036.

25 (c) The expiration of the authority to allocate credits
26 under Subchapter K, Chapter 171, Tax Code, as added by this Act, in
27 accordance with Section 171.565, Tax Code, as added by this Act,

1 does not affect the carryforward of a credit under:

2 (1) Section 171.557, Tax Code, as added by this Act; or

3 (2) Section 233.0052(c), Insurance Code, as added by
4 this Act.

5 SECTION 4. This Act takes effect January 1, 2026.