

760 CMR 54.00: MASSACHUSETTS LOW-INCOME HOUSING TAX CREDIT PROGRAM

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54.01: Scope, Purpose and Applicability

(1) 760 CMR 54.00 explains the calculation of the low-income housing tax credit established by M.G.L. c. 23B, § 3, M.G.L. c. 62, § 6I and M.G.L. c. 63, § 31H. The Department of Housing and Community Development may allocate, Massachusetts Low-income Housing Tax Credit in the amount set forth in M.G.L. c. 23B, § 3, M.G.L. c. 62, § 6I and M.G.L. c. 63, § 31H for projects that qualify for the federal low-income housing tax credit under § 42 of the Internal Revenue Code of 1986.

(2) Effective Date. 760 CMR 54.00 takes effect on September 30, 2011 and applies to tax years beginning on or after January 1, 2001. Amendments effectuated by St. 2016, c. 219, §§ 73 through 77 and 80 through 84 take effect October 6, 2017 and apply to tax years beginning on or after January 1, 2017. Amendments effectuated by St. 2018, c. 99, §§ 8, 9, 13 and 14, as amended by St. 2018, c. 162, § 1, take effect August 3, 2018, and apply to tax years beginning on or after January 1, 2019.

54.02: Definitions

For purposes of 760 CMR 54.00., the following terms have the following meanings, unless the context requires otherwise:

Act. M.G.L. c. 23B, § 3, M.G.L. c. 62, § 6I and M.G.L. c. 63, § 31H.

Allocation of Massachusetts Credit. The award by the Department of the authorized Massachusetts low-income housing tax credit among qualified Massachusetts projects.

Allotment. In the case of a qualified Massachusetts project owned by an unincorporated flow through entity, such as a partnership, limited liability company or joint venture, the share or portion of credit allocated to the qualified Massachusetts project that, consistent within and subject to 760 CMR 54.06, may be claimed by a taxpayer who is designated a member or partner of such entity or by a transferee of such member or partner.

Approved Donation Percentage. A percentage of a qualified donation's value approved by the department in connection with an allocation of donation LIHTC, not to exceed 50%; provided, however, that the department may increase the approved donation percentage to not more than 65% of the qualified donation's value if the department deems the increase to be necessary to the project's viability and determines that there is sufficient Massachusetts low-income housing tax credit available to permit such an increase, subject to 760 CMR 54.04(3).

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Authorization Ceiling.

- (a) for preservation LIHTC, \$5,000,000 until January 1, 2025, and, thereafter, such greater or lesser amount as may be specifically authorized by statute; and
- (b) for all other standard LIHTC and donation LIHTC, \$20,000,000 until January 1, 2025, and \$10,000,000 thereafter, or such greater or lesser amount as may be specifically authorized by statute.

Building Identification Number. The identification number assigned to each building in a qualified Massachusetts project by the Department.

Code. The Internal Revenue Code of 1986, as amended and in effect for the taxable year.

Commissioner. The Commissioner of Revenue.

Compliance Period. The period of 15 taxable years beginning with the first taxable year during which a qualified Massachusetts project first meets all of the requirements of 760 CMR 54.08.

Credit Period.

- (a) With respect to a standard LIHTC, the five-year period during which a qualified Massachusetts project is eligible for the standard LIHTC, beginning with the taxable year in which a project meets all of the requirements of 760 CMR 54.08 and ending five years later; and
- (b) with respect to a donation LIHTC, the taxable year in which the qualified donation is made to the DTC sponsor.

Department. The Department of Housing and Community Development.

Donation LIHTC or DTC. Massachusetts low-income housing tax credit allocated by the Department for a qualified donation.

DTC Sponsor. For purposes of the donation LIHTC, a nonprofit organization which:

- (a) has been issued a ruling from the United States Internal Revenue Service that the organization is exempt from income taxation pursuant to Internal Revenue Code § 501(c)(3);
- (b) has material control over the operations of a qualified Massachusetts project; and
- (c) either:
 - 1 is a certified Community Development Corporation as defined in M.G.L. c. 40H;
 - 2 is a certified Community Housing Development Organization pursuant to 24 CFR § 92.2; or
 - 3. is determined by the Department to have a history of successful development of affordable housing projects in the Commonwealth. The department may if it chooses:
 - a. Establish through guidance additional qualifications for DTC sponsors,
 - b. grant preference in the selection process to potential DTC sponsors who have been prequalified; or
 - c. limit submissions to such prequalified DTC sponsors; or
 - d. make its selection directly from an existing pool of prequalified DTC sponsors.

Eligibility Statement. A statement authorized and issued by the Department certifying that a given project is a qualified Massachusetts project and setting forth the annual amount of the Massachusetts low-income housing tax credit allocated to the project. The Department shall only allocate tax credit to qualified Massachusetts projects consisting of one or more buildings that are all placed in service on or after January 1, 2001.

Federal Carryover Allocation. Federal carryover allocation of a tax credit where a federal low-income housing tax credit is allocated under Internal Revenue Code § 42(h)(1)(E) or (F) prior to the calendar year in which the buildings comprising the project are placed in service.

Federal Low-income Housing Tax Credit. The federal tax credit as provided in Internal Revenue Code § 42.

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Low Income Project. A qualified low-income housing project, as defined in Internal Revenue Code § 42(g)(1), which has restricted rents that do not exceed 30% of the applicable imputed income limitation under Internal Revenue Code § 42, for:

- (a) at least 40% of its units occupied by persons or families having incomes of 60% or less of the median income;
- (b) at least 20% of its units occupied by persons or families having incomes of 50% or less of the median income; or
- (c) at least 40% of its units occupied by persons or families having incomes at designated imputed income limitations, so long as the average of the imputed income limitations does not exceed 60% of the area median income at restricted rent levels corresponding to the designated income limitations. The taxpayer shall designate the imputed income limitation of each unit taken into account under 760 CMR 54.02: Low Income Project(c). Without limitation, the Department may restrict the permitted number of designated income tiers or income levels.

760 CMR 54.02: Low Income Project(c) may only be used if approved by the Department, consistent with any Department administrative guidelines.

Massachusetts Low-income Housing Tax Credit. Massachusetts Low-income Housing Tax Credit shall include both donation LIHTC and standard LIHTC.

Material Control. With respect to a DTC sponsor receiving a qualified donation, will be satisfied if after receiving the qualified donation the DTC sponsor is the owner of the project, or holds a controlling interest in the entity that is the owner of the project, or is the managing general partner, or holds a controlling interest in the entity that is the managing general partner, of a limited partnership that is the owner of the project; or is the managing member, or holds a controlling interest in the entity that is the managing member, of the limited liability company that is the owner of the project. The department may, in its discretion, determine that material control exists under other circumstances on a case by case basis.

Median Income. The area median gross income as such term is used in Internal Revenue Code § 42, and which is determined under United States Department of Housing and Urban Development guidelines and adjusted for family size.

Placed in Service. This term shall have the same meaning as the term is given under Internal Revenue Code § 42 and 26 CFR § 1.42, *et seq.*

Preservation LIHTC. The Massachusetts low-income housing tax credit allocated by the Department for the preservation and improvement of existing state or federally-assisted housing, pursuant to M.G.L. c. 62, § 6I(b)(1) and M.G.L. c. 63, § 31H(b)(1).

Qualified Donation. An interest in real or personal property given to a DTC sponsor for the use of purchasing, constructing or rehabilitating a qualified Massachusetts project. If such interest in real or personal property is transferred to a DTC sponsor for consideration of less than its market value, the difference between the market value and the consideration paid, as determined by the department, shall constitute the amount of the qualified donation with respect to such property. Without limitation, property that may be donated includes fee and/or leasehold interests in real property, partnership interests in a limited partnership owning a qualified Massachusetts project, and membership interests in a limited liability company owning a qualified Massachusetts project.

Qualified Massachusetts Project. A low-income project located in the Commonwealth which meets the requirements of M.G.L. c. 23B, § 3, M.G.L. c. 62, § 6I and M.G.L. c. 63, § 31H and whose owner enters into a regulatory agreement.

Regulatory Agreement. An agreement between the owner of a qualified Massachusetts project and the Department recorded as an affordable housing restriction under M.G.L. c. 184 with the registry of deeds or the registry district of the land court in the county where the project is located that requires the project to be operated in accordance with the requirements of 760 CMR 54.00, and M.G.L. c. 23B, § 3, M.G.L. c. 62, § 6I and M.G.L. c. 63, § 31H for not less than 30 years from the expiration date of the compliance period. When a qualified donation is being made with respect to a qualified Massachusetts project, the regulatory agreement must be recorded prior to or concurrent with the qualified donation.

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Standard LIHTC. Massachusetts low-income housing tax credit other than donation LIHTC. Standard LIHTC shall include Preservation LIHTC.

Taxpayer. Any person, firm, or other entity subject to the personal income tax under the provisions of M.G.L. c. 62, or any corporation subject to an excise under the provisions of M.G.L. c. 63.

Value. With respect to a qualified donation, means the as-is, as-restricted value prior to the qualified donation, as determined by an independent appraisal commissioned by the department and paid for by the applicant for a donation LIHTC, and subject to such additional standards as may be issued by the department in guidance.

54.03: Amount of Credit Authorized

(1) Authorized Amount. The amount of Massachusetts low-income housing tax credit authorized to be allocated annually equals the sum of:

- (a) the authorization ceiling;
- (b) unused Massachusetts low-income housing tax credits, if any, for the preceding calendar years; and
- (c) Massachusetts low-income housing tax credits returned to the department by a Qualified Massachusetts Project.

(2) Effect of Donation LIHTC Allocation. For the purposes of counting an authorization of a donation LIHTC towards the total sum that the Department may authorize annually pursuant to M.G.L. c. 62, § 6I(b)(1) part (i) or M.G.L. c. 63, the Department and the Commissioner shall count any amount of donation LIHTC authorized to a taxpayer for a qualified donation as $\frac{1}{5}$ of the amount authorized for the qualified donation in the year in which the credit is claimed.

54.04: Eligible Projects

(1) Project Eligibility. Qualified Massachusetts projects for which the Department has issued an eligibility statement are eligible for an allocation of Massachusetts low-income housing tax credit.

(2) Special Eligibility for Preservation LIHTC. Only projects that will preserve and improve existing state or federally-assisted housing, pursuant to M.G.L. c. 62, § 6I(b)(1) and M.G.L. c. 63, § 31H(b)(1), are eligible for an allocation of Preservation LIHTC.

(3) Limitation on Amount of Donation LIHTC. The maximum donation LIHTC available to a taxpayer for a qualified donation shall be equal to the approved donation percentage of the qualified donation's value, as determined by the Department.

(4) Prioritization by the Department. From time to time, the Department shall amend or supplement its existing qualified allocation plan or its program guidelines, or both, to provide taxpayers guidance on how Massachusetts low-income housing tax credit will be allocated among competing projects. Such guidance shall adhere to the statutory requirements of providing the least amount of Massachusetts low-income housing tax credit necessary to ensure financial feasibility of selected projects while allocating the total available Massachusetts low-income housing tax credit among as many qualified Massachusetts projects as fiscally feasible. Subject to these statutory constraints, the Department may, in its discretion, provide guidance that

- (a) requires owners of projects with more than a designated dollar amount of federal credit to fund a portion of project equity from funds attributable to the Massachusetts low-income housing tax credit;
- (b) encourages owners of certain projects to raise equity primarily using the Massachusetts low-income housing tax credit while using a minimal amount of the so-called 9% federal low-income housing tax credit;
- (c) encourages the creation of projects funded through a combination of Massachusetts low-income housing tax credit and the so-called 4% federal low-income housing tax credit allowable to buildings financed with tax-exempt bonds;

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(d) limits the amount of Massachusetts low-income housing tax credit that may be provided in the form of donation LIHTC in any year; and

(e) encourages the creation of any other projects that the Department deems to be consistent with the statutory goal of increasing the overall number of low-income housing units.

(5) A project that receives state financial assistance authorized under St. 2002, c. 244, § 7 (Capital Improvements and Preservation Fund) is eligible to receive an allocation of Massachusetts low income housing tax credit.

54.05: Eligible Recipients

(1) Subject to 760 CMR 54.05(2), any person or entity (of whatever type) with an ownership interest in a qualified Massachusetts project is eligible to receive an allocation of Massachusetts standard LIHTC with respect to such project.

(2) Only a person or entity (of whatever type) with an ownership interest in a qualified Massachusetts project that preserves and improves existing state or federally-assisted housing, pursuant to M.G.L. c. 62, § 6I(b)(1) and M.G.L. c. 63, § 31H(b)(1), is eligible to receive an allocation of preservation LIHTC.

(3) Any person or entity (of whatever type) with an ownership interest in a qualified Massachusetts project that makes a qualified donation of all or a portion of the value of such project to an eligible DTC sponsor and demonstrates, to the satisfaction of the department that such donation qualifies for a Federal charitable deduction is eligible to receive an allocation of donation LIHTC with respect to such project.

NON-TEXT PAGE

54.06: Allotment of Credit Among Partners, etc.

Whenever an owner of a qualified Massachusetts project with respect to which Massachusetts low-income housing tax credit has been allocated is an unincorporated flow-through entity, such as a partnership, limited liability company or joint venture, the entity may allot the Massachusetts tax credit available to the entity among persons designated by it as partners or members in such amounts or proportions as they may agree in the organizational documents governing such entity, provided that the owner certifies to the Commissioner the amount of Massachusetts low-income housing tax credit allotted to each member or partner on a form designated by the Commissioner. The allotment of Massachusetts low-income housing tax credit need not follow or be consistent with the allocation, as the word is used in Section 704(b) of the Code, of other partnership items (e.g., income, loss, deduction or credit, including the federal low-income housing tax credit). Similarly, whenever Massachusetts low-income housing tax credit is allocated with respect to a qualified Massachusetts project that is owned through a joint tenancy or similar ownership arrangement, the owners of such project may allot the right to claim the Massachusetts low-income housing tax credit allocated with respect to such project among themselves in such amounts as they agree, without regard to their actual ownership interest in the project, provided that the owners certify to the Commissioner the amount of Massachusetts low-income housing tax credit allotted to each owner on a form designated by the Commissioner.

54.07: Transferability of Credit(1) Transferors, Transferees.

(a) Any taxpayer with an ownership interest in a qualified Massachusetts project with respect to which there has been allocated Massachusetts standard LIHTC and any taxpayer to whom the right to claim Massachusetts standard LIHTC has been allotted or transferred may transfer the right to claim unclaimed Massachusetts standard LIHTC to any other Massachusetts taxpayer without the necessity of transferring any ownership interest in the original project or any interest in the entity which owns the original project.

The transferor may transfer all or any portion of tax credits issued, sold, or assigned to parties who are eligible under the provisions of M.G.L. c. 62, § 6I(c)(1), and M.G.L. c. 63, § 31H(f)(1).

(b) Any taxpayer making a qualified donation with respect to a qualified Massachusetts project with respect to which there has been allocated Massachusetts donation LIHTC may transfer its right to claim donation LIHTC after the qualified donation has been made, and any taxpayer to whom the right to claim Massachusetts donation LIHTC has been allotted or transferred may transfer the right to claim unclaimed Massachusetts donation LIHTC to any other Massachusetts taxpayer without the necessity of any further transfer of ownership interest in the original project or in the taxpayer making the qualified donation.

(c) For treatment of carry forward credit with respect to both donation LIHTC and standard LIHTC, *see* 760 CMR 54.10.

(2) Transfer Contract Requirements. A taxpayer, owning an interest in a qualified Massachusetts project or to whom the right to claim Massachusetts low-income housing tax credit has been allotted or transferred, who transfers his, her or its credit such that credit may be claimed by a taxpayer without ownership in the project and without an interest in the entity that owns the project must enter into a transfer contract with the transferee. The transfer contract must specify the following:

- (a) Building Identification Numbers for all buildings in the project as of the date of transfer;
- (b) in the case of a standard LIHTC, the date each building in the project was placed in service, and in the case of a donation tax credit the date that the qualified donation was made;
- (c) the 15-year compliance period for the project;
- (d) in the case of a standard LIHTC, the schedule of years during which the credit may be claimed and the amount of credit previously claimed; and
- (e) the taxpayer or taxpayers that are responsible for paying recapture if recapture should occur.

The transferring party shall attach a copy of this contract to the transfer statement required under 760 CMR 54.13(4).

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(3) Transferred Eligibility to Claim Credit. Any taxpayer who is a transferee of the right to claim a Massachusetts low-income housing tax credit with respect to a qualified Massachusetts project may, provided all transfer requirements and all other requirements for claiming such credit are met, claim such credit notwithstanding the fact that the credit may initially have been allocated to a taxpayer paying a different income tax (*i.e.*, personal or corporate)

(4) Sale of Credit is Sale of Capital Asset. The sale of Massachusetts low-income housing tax credit will be treated as the sale of a capital asset under the Massachusetts personal income tax or the net income measure of the corporate excise.

(5) Examples. The following examples illustrate the application of 760 CMR 54.07:

(a) Example 1. If taxpayer X receives an allotment of Massachusetts low-income housing tax credit as a partner in a partnership that owns a qualified Massachusetts project, taxpayer X may transfer the Massachusetts low-income housing tax credit allotted to it to taxpayer Y, whether or not taxpayer Y is a partner in the partnership.

(b) Example 2. Credit is allocated with respect to a project owned by a limited liability company and allotted to individuals who are members in the company. One of the members may sell his or her credit to a corporation, whether or not such corporation is a member in the company.

54.08: Prerequisites to Claiming Credit

When Massachusetts standard LIHTC is allocated with respect to a qualified Massachusetts project, such credit may not be claimed by any taxpayer with respect to any building in such project unless and until:

- (1) all buildings in such project have been placed in service; and
- (2) the project has met the minimum set-aside and occupancy requirements of Section 42(g) of the Code.

Before the end of the first taxable year in which standard LIHTC is claimed, the taxpayer must record a regulatory agreement in a form prescribed by the department with respect to such project. In the case of a donation LIHTC, a regulatory agreement in a form prescribed by the department must be recorded at the time of the qualified donation.

54.09: Placed in Service Requirement; Time for Claiming Credit

(1) Placed in Service Requirement. All buildings in a project must generally be placed in service, or donated in the case of donation tax credits, in the year in which the allocation of Massachusetts low-income housing tax credit is made. Notwithstanding the foregoing sentence:

(a) with respect to a project that has an allocation of federal low-income housing tax credit, whenever such project qualifies for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the federal regulations thereunder, such project may continue to be a Qualified Massachusetts Project if the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of credit is made;

(b) with respect to a project for which the federal low-income housing tax credit is allowable by reason of Section 42(h)(4) of the Code applicable to buildings financed with tax exempt bonds, such project may continue to be a Qualified Massachusetts Project if, in the judgment of the Department, the project would otherwise meet all of the requirements for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the federal regulations thereunder and the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of credit is made; and

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(c) with respect to all projects that do not have an allocation of federal low-income tax credit and for which such credit is not allowable by reason of Section 42(h)(4) of the Code, such project may continue to be a Qualified Massachusetts Project if, in the judgment of the Department, the project would meet the standards and requirements for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the regulations thereunder, if, at the time of the allocation of the Massachusetts low-income tax credit, the project had, instead, been allocated a federal low-income tax credit, and the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of the Massachusetts low-income housing tax credit is made.

The Department shall provide a form of Massachusetts carryover allocation agreement for the Massachusetts low-income housing tax credit.

(2) Timing of Claiming Credit. Any taxpayer holding the right to claim Massachusetts standard LIHTC with respect to a Qualified Massachusetts Project may claim a *pro rata* portion of the annual amount of Massachusetts standard LIHTC allocated with respect to such project for the calendar year in which such project first meets the conditions described in 760 CMR 54.08, with proration based on the portion of such calendar year during which the project meets those conditions. Any amount of annual standard LIHTC deferred on account of proration may be claimed in the sixth tax year, assuming the project remains qualified.

(3) Early Credit Election. Notwithstanding the generally applicable timing for claiming Massachusetts standard LIHTC described in 760 CMR 54.09(2), an owner of a Qualified Massachusetts Project may elect to accelerate the time for claiming the credit. Provided that the project first meets the conditions described in 760 CMR 54.08, an owner of such Qualified Massachusetts Project may file a notice with the Commissioner in a form to be determined by the Commissioner that the owner has elected to accelerate the credit.

(4) Effect of Early Credit Election. When an owner of a qualified Massachusetts project receiving standard LIHTC makes an early credit election in the first year of the credit period and such project meets the requirements for making such an election, then notwithstanding 760 CMR 54.09(2), any taxpayer holding the right to claim Massachusetts low-income housing tax credit with respect to such project shall claim the taxpayer's share of the project's entire annual allocation of Massachusetts low-income housing tax credit for the taxable year in which such election is validly made, without proration or adjustment on account of the date during such year on which the project is placed in service or on which such election is made, subject to any other applicable limitations.

(5) Examples. The following examples illustrate the application of 760 CMR 54.09.

(a) Example 1. Assume \$100,000 of Massachusetts standard LIHTC is allocated with respect to a project in 2001. The project is owned by one individual who retains the right to claim such credit. No Massachusetts carryover allocation agreement under 760 CMR 54.09(1) has been entered into. The individual's tax year coincides with the calendar year. If the project meets the conditions described in 760 CMR 54.08 and is placed in service on October 1, 2001, then the individual holding the right to claim such credit may claim \$25,000 in Massachusetts low-income housing tax credit on his or her Massachusetts tax return for the year 2001 subject to any other applicable limitations. The individual would be expected to claim \$100,000 on his or her Massachusetts tax returns for each of the years 2002, 2003, 2004, and 2005, and to claim \$75,000 on his or her Massachusetts tax return for the year 2006, assuming the project remains qualified and the individual retains the right to claim all of the credit.

(b) Example 2. The same individual elects to take the early credit option instead of the *pro rata* approach. The individual may claim \$100,000 in Massachusetts low-income housing tax credit on his or her tax return for 2001, and \$100,000 per year for each of the subsequent four years.

(c) Example 3. The same individual has a tax year that runs from July 1st to June 30th. The individual elects to take the early credit option. The individual takes the \$100,000 credit available on October 1, 2001 in his or her tax year that ends on June 30, 2002 and \$100,000 per year for each of the taxpayer's subsequent four tax years.

54.10: Carryforward of Credit

- (1) Carryforward Period. Any amount of any Massachusetts low-income housing tax credit that exceeds the claimant's tax due may be carried forward to any of the five subsequent taxable years.
- (2) Transfer of Carryforward. A taxpayer who transfers an unclaimed portion of the credit pursuant to 760 CMR 54.07(1) may choose whether or not to include carryforward credit from prior years in the transfer.
- (3) Transferee Treated Like Original Owner. For the purpose of determining the carryforward period, the transferee shall be bound by the same schedule for claiming a credit as the taxpayer originally entitled to the credit as an owner of a qualified Massachusetts project, regardless of how often the credit has been transferred.

54.11: Limitations on Credit; Ordering of Credit

- (1) Limitations on Credit. The credit may not be applied to increase the maximum amount of credit allowed under M.G.L. c. 63, or to reduce the minimum corporate excise imposed under M.G.L. c. 63.
- (2) Ordering of Credit. The credit may be applied in combination with other credits allowed under M.G.L. c. 63 in any order. Similarly, the credit may be applied in combination with other credits allowed under M.G.L. c. 62 in any order.
- (3) Credit Nonrefundable. The credit is not refundable to the taxpayer.

54.12: Recapture

- (1) Recapture; Disallowance. Whenever an event or circumstance occurs with respect to a Qualified Massachusetts Project that results in any recapture of federal low-income housing tax credit or if, in the judgment of the Department, the project would meet the condition for recapture of federal low-income housing tax credit under Section 42(j) of the Code and the regulations thereunder, if, at the time of the allocation of the Massachusetts low-income tax credit, the project had, instead, been allocated a federal low-income tax credit, then any Massachusetts low-income housing tax credit claimed with respect to the project shall be subject to recapture in the amount described below, subject to the standards and requirements of Section 42(j) of the Code and the regulations thereunder, and any Massachusetts low-income housing tax credit allocated to such project and not yet claimed as of the date of the recapture event shall be disallowed. With respect to any recapture of standard LIHTC, notwithstanding any agreement between transferor and transferee, each taxpayer who has claimed any portion of the standard LIHTC allocated to the project in question shall be liable for payment of his, her or its respective recapture amount as specified in 760 CMR 54.12(3). In the case of a donation LIHTC, repayment of any recapture amount shall be the sole liability of the DTC sponsor.
- (2) Recapture Period. Massachusetts low-income housing tax credit allocated with respect to a project is subject to recapture (and disallowance to the extent not yet claimed) at any time during the 15-year compliance period.
- (3) Recapture Fraction.
 - (a) With respect to projects that have an allocation of federal low-income housing tax credits, a fraction in which the numerator is the amount of all federal low-income housing tax credit recaptured with respect to the project and the denominator is the amount of all federal low-income housing tax credit previously claimed with respect to the project.
 - (b) With respect to projects that do not have an allocation of federal low-income housing tax credit, a fraction calculated according to the standards and requirements of Section 42(j) of the Code, as if a federal low-income housing tax credit had been allocated to the project instead of a Massachusetts low-income housing tax credit.
- (4) Amount of Recapture. The amount of Massachusetts low-income housing tax credit to be recaptured from any taxpayer upon the occurrence of a recapture event equals the product of:

54.12: continued

- (a) the Massachusetts low-income housing tax credit claimed by such taxpayer prior to the recapture event times;
 - (b) the recapture fraction.
- (5) Timing of Recapture. The amount of recapture of the Massachusetts low-income housing tax credit shall be reported and shall be subject to tax in the taxable year during which the recapture event takes place.
- (6) Examples.
- (a) The following example illustrates the application of 760 CMR 54.12 to a recapture of standard LIHTC. Assume, the owner of a Qualified Massachusetts Project is a calendar year taxpayer. The annual credit amount allocated to the project is \$20,000. The project meets the requirements of 760 CMR 54.08 on October 1, 2001. Taxpayer makes an early credit election and takes a \$20,000 credit for tax year 2001. Taxpayer takes a second \$20,000 credit for tax year 2002. On April 1, 2003, the project goes out of compliance and becomes subject to federal recapture, or would become subject to federal recapture if federal credits had been awarded instead of state credits. No credit is available to taxpayer for tax years 2003, 2004 and 2005. The \$40,000 credit previously taken by the taxpayer is subject to recapture according to the formula in 760 CMR 54.12(4).
 - (b) The following example illustrates the application of 760 CMR 54.12 to a recapture of donation LIHTC. Assume, the owner of property to be donated to a DTC sponsor as a Qualified Donation is a calendar year taxpayer. The donation credit amount allocated to the project is \$100,000 (1/5 of which counts towards the annual sum that the Department is authorized to allocate annually). The taxpayer makes the qualified donation required under 760 CMR 54.05(b) on October 1, 2001 and takes a \$100,000 credit for tax year 2001. The project meets the requirements of 760 CMR 54.08 on October 1, 2002. On April 1, 2004, the project goes out of compliance and becomes subject to federal recapture, or would become subject to federal recapture if federal credits had been awarded instead of state credits. The entire \$100,000 credit previously taken by the taxpayer is subject to recapture from the sponsor according to the formula in 760 CMR 54.12(4).
- (7) 1/5 of the dollar amount of any Massachusetts low-income housing tax credit recaptured or forfeited shall be counted as part of the Massachusetts low-income housing tax credits returned to the department by a Qualified Massachusetts Project for purposes of 760 CMR 54.03(1)(c).

54.13: Reporting and Recordkeeping Requirements

- (1) Taxpayer Requirements. In order to claim the credit for standard LIHTC, a taxpayer must provide to the Commissioner the following:
- (a) eligibility statement as provided in 760 CMR 54.13(2);
 - (b) allotment certification, if applicable, as provided in 760 CMR 54.13(3);
 - (c) transfer statement, if applicable, as provided in 760 CMR 54.13(4) (with a copy of transfer contract, if applicable, as provided in 760 CMR 54.07(2)); and
 - (d) Massachusetts carryover allocation agreement, if applicable, as provided in 760 CMR 54.09(1).
- (2) Taxpayer Requirements – Donation LIHTC. In the case of Donation LIHTC, a taxpayer must provide to the Commissioner all of the items listed in 760 CMR 54.13(1) and, in addition, the following:
- (a) documentation to verify that the recipient of the qualified donation is a DTC sponsor, as that term is defined in M.G.L. c. 63, § 31H(a) and M.G.L. c. 62, § 6I(a).
 - (b) documentation to verify that the qualified donation did occur (*e.g.*, recorded deed, receipt/affidavit from DTC sponsor, *etc.*)

54.13: continued

(3) Eligibility Statement. The Department shall adopt a form of eligibility statement to be issued by the Department evidencing a Qualified Massachusetts Project's eligibility for Massachusetts low-income housing tax credit. Each taxpayer claiming any Massachusetts low-income housing tax credit with respect to a project shall file a copy of the eligibility statement with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed.

(4) Allotment Certification. The Commissioner, in consultation with the Department, shall provide a form of allotment certification to be filed by any unincorporated flow-through entity:

(a) that is the owner of a project with respect to which Massachusetts low-income housing tax credit has been allocated; or

(b) to which the right to claim a Massachusetts low-income housing tax credit has been allotted or transferred. The entity shall file such certification with the Commissioner following the close of the first taxable year in the credit period or the first taxable year the entity holds the right to claim credit, whichever is later. Such certification shall provide the name and federal taxpayer identification number of each taxpayer with an interest in the entity on the date the project met all of the requirements of 760 CMR 54.08, and shall also indicate the amount of Massachusetts low-income housing tax credit allotted to each such taxpayer. The certification shall also contain such other information as the Commissioner may from time to time require. Each taxpayer claiming any Massachusetts low-income housing tax credit by way of a flow-through entity shall file a copy of such certification with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed.

(5) Transfer Statement. The Commissioner, in consultation with the Department, shall promulgate a form of transfer statement to be filed by any person who transfers the right to claim Massachusetts low-income housing tax credit with respect to a Qualified Massachusetts Project. The transfer statement shall be required in addition to the transfer contract required in 760 CMR 54.07(2).

The transferor shall file a transfer statement with the Commissioner within 30 days after transfer. The transferor shall also provide a copy of such statement to the owner of the project with respect to which the transferred credit was allocated within 30 days after transfer. The transfer statement shall provide the name and federal taxpayer identification number of each taxpayer to whom the filing transferor transferred the right to claim any Massachusetts low-income housing tax credit with respect to the project and shall also indicate the amount of Massachusetts low-income housing tax credit, including any carry forward credit, transferred to each such person or entity. The statement shall also contain such other information as the Commissioner may from time to time require. A copy of the transfer contract, if required under 760 CMR 54.07(2), shall be attached to the transfer statement. Each taxpayer claiming any Massachusetts low-income housing tax credit shall file with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed copies of all transfer statements and transfer contracts necessary to enable the Commissioner to trace the claimed credit to the credit that was initially allocated with respect to the project. Each project owner shall file copies of all transfer statements and transfer contracts received regarding a project with such owner's annual Massachusetts tax or informational return.

(6) Record keeping Requirements. Owners of qualified Massachusetts projects and taxpayers that transfer or claim credit with respect to such projects shall be required to keep all records pertaining to credit until the expiration of the regulatory agreement; if a Massachusetts carryover allocation agreement is entered into with the Department under 760 CMR 54.09(1), the records must include a copy of the Massachusetts carryover allocation agreement and documents relevant thereto.

54.14: Application Process and Administrative Fees

(1) Application. Project applicants seeking an allocation of Massachusetts low-income housing tax credit shall include a request for such credit allocation in the same application to be filed with the Department through which such proponent requests an allocation of federal low-income housing tax credit. With respect to projects described in 760 CMR 54.09(1)(b), the request for Massachusetts low-income housing tax credit shall be made in the form of a letter to the Department accompanied by:

- (a) a copy of the applicant's submission to the agency providing the tax-exempt bond financing for the project; and
- (b) such additional information as would be included in an application to the Department for a federal low-income housing tax credit allocation. The Department shall issue guidance describing any additional information to be included with credit requests. The Department may require that the applicant provide analyses of alternative funding scenarios that allow the Department to evaluate the comparative efficiency of allocating varying levels of federal and Massachusetts low-income housing tax credit to such proposed project.

(2) Filing Fee. Each application seeking an allocation of Massachusetts low-income housing tax credit shall be accompanied by a filing fee set by the Department which shall be payable to the Commonwealth of Massachusetts.

(3) Opinion of Counsel. Prior to approval of a credit request, the applicant shall provide an opinion of tax counsel or other documentation satisfactory to the department to verify that the donor making the qualified donation will qualify for a Federal charitable deduction based on the fair market value of the qualified donation.

54.15: Reference to Federal Credit Rules

Unless otherwise provided in M.G.L. c. 23B, § 3, M.G.L. c. 62, § 6I and M.G.L. c. 63, § 31H or 760 CMR 54.00 or unless the context clearly requires otherwise, the Massachusetts low-income housing tax credit shall be administered and allocated in accordance with the standards and requirements applicable to the federal low-income housing tax credit as set forth in Internal Revenue Code § 42 and 26 CFR § 1.42, *et seq.* and with respect to the administration of the Massachusetts low-income housing tax credit, whenever the word "Secretary" appears in the Code and associated regulations, it shall be taken to mean the Undersecretary of the Department.

54.16: Authorization of Department to Take Further Actions

Nothing in 760 CMR 54.00 shall be deemed to limit the authority of the Department to take all actions deemed by the Department in its discretion to be consistent with the authority granted the Department under M.G.L. c. 23B, § 3, M.G.L. c. 62, § 6I and M.G.L. c. 63, § 31H.

REGULATORY AUTHORITY

760 CMR 54.00: M.G.L. c. 23B, §§ 3 and 6; M.G.L. c. 62, §§ 6I(a), (c)(7), (e), (f)(4), (g); M.G.L. c. 63, §§ 31H(a), (c)(7), (e), (f)(4) and (g).

NON-TEXT PAGE