Tab 43 Affordable Housing Tax Credit (AHTC) – Program Guidelines

Introduction:

In 2021, the General Assembly of Pennsylvania established the Pennsylvania Housing Tax Credit ("PHTC") pursuant to Act 107 of 2020 ("Act 107") which amended the Tax Reform Code of 1971 by adding Article XIX-G, Pennsylvania Housing Tax Credit (PHTC). Pursuant to Act 107, the PHTC is to be administered by the Pennsylvania Housing Finance Agency ("PHFA" or "Agency"). The Agency is authorized to administer an annual allocation of state tax credits to qualified taxpayers for the development of affordable rental housing in the Commonwealth of Pennsylvania (the "Commonwealth").

Act 45 of 2025 (the "Act") further expanded the Commonwealth's commitment to affordable housing by establishing the Affordable Housing Tax Credit ("AHTC"), the Affordable Housing Tax Credit Program (the "AHTC Program"), and the Affordable Housing Tax Credit Program Fund (the "Fund" or the "AHTC Fund"). The credits that were previously identified for the PHTC program can now be used for the AHTC Program.

In accordance with the Act, the Agency is authorized to sell $10 million of state tax credits to qualified taxpayers for the purpose of establishing the Fund. Distributions from the Fund will be awarded to eligible projects, which include the construction, rehabilitation, or preservation of qualified low-income developments.

Purpose:

The AHTC was established to encourage the development, rehabilitation and preservation of qualified low-income rental housing projects in the Commonwealth. PHFA shall administer the tax credit as provided herein and in accordance with the Act, as may be amended.

Eligibility and Administration:

PHFA is authorized to sell the AHTC through directed or negotiated sale to any qualified taxpayer. A qualified taxpayer is any natural person, business firm, corporation, business trust, limited liability company, partnership, limited liability partnership, association or any other form of legal business entity that is subject to a tax imposed by Article III, IV, VI, VII, VIII, IX,XI, or XV of the Tax Reform Code of 1971, excluding tax withheld by an employer under Article III.

The credit issued to a qualified taxpayer may be applied against any qualified tax liability. A qualified tax liability is any of the following taxes imposed by the Tax Reform Code of 1971:

- Article III: Personal Income Tax (excluding tax withheld by an employer)
- Article IV: Corporate Net Income Tax
- Article VI: Capital Stock and Franchise Tax
- Article VII: Bank and Trust Company Shares Tax
- Article VIII: Title Insurance Company Shares Tax
- Article IX: Insurance Premiums Tax
- Article XI: Gross Receipts Tax
- Article XV: Mutual Thrift Institutions Tax

In addition to criteria established in the bid solicitation, applicants seeking to purchase AHTCs must also:

1. Demonstrate compliance with all PHFA criteria as outlined in the bid solicitation, which includes, but is not limited to good standing with PHFA programs and financial viability (i.e., not bankrupt or under the protection of receivership). Upon receipt of the bid application, PHFA will perform its compliance check.

2. The applicant must be in compliance with the laws and regulations of the Commonwealth.

Upon receiving the bid packet from PHFA, the Pennsylvania Department of Revenue ("DOR") will perform the compliance check.

Application and Sale Process:

PHFA will develop specific bid criteria, an application, and an application submission timeframe. While specific instructions on bid application submission will be set forth on the Agency's website, the process will generally be as follows:

- Invitation for the bids to be submitted by eligible taxpayers is announced and application form is made available on the Agency website.
- All bid applications and required materials must be received by the Agency.

A preliminary draft template of the Application for Purchase of Tax Credits is included as Appendix A. Throughout the application submission process, PHFA may request and obtain additional information and supplemental details which may impact the bid process. In this regard, PHFA reserves the right to amend the bid process accordingly. This may include establishment of a minimum price per tax credit, a maximum amount per applicant, and other criteria. Under the provisions of the sale and in accordance with PHFA guidance, all qualified taxpayers seeking credits will be required to submit an irrevocable offer to PHFA. The Agency reserves the right to terminate, suspend, amend, or withdraw the bid solicitation and may reject all bids in the event it does not receive sufficient bids or in the event the bids result in a minimum raised of less than the established reserve.

In accordance with the Act, bids providing maximum benefit and return to the Commonwealth will be favored. Additional criteria to be used by PHFA in making awards may include the following: nature of proposed pay-in structure; limited third party fees and costs; geographic distribution; or distribution among different types of taxpayer entities.

Selection and Disbursement:

Provided that sufficient bids have been received, and contingent upon DOR review and approval of all compliance matters, tax credit awards are expected to be made within ninety (90) days of the close of the bidding period. Upon acceptance of an offer for the purchase of tax credits, PHFA shall provide written notification of approval, including the amount of tax credits to be allocated. Award recipients shall deposit a capital commitment equal to 100% of the total amount to be paid for the purchase of the credit with PHFA in accordance with instructions from PHFA (the capital commitment shall be deposited with the Agency within ninety (90) days from the date of approval). Upon receipt of payment, the award recipient will receive the corresponding tax credit certificate from PHFA.

Failure to deposit the required capital commitment or otherwise comply with Agency guidelines within the prescribed timeframe may result in the following:

- Withholding of the tax credit certificate;
- Commonwealth debarment, forfeiture, or liquidation of any pledged collateral;
- The recapture and reallocation of the credits;
- A penalty assessment equal to 10% of the unpaid capital contribution in addition to any costs and fees incurred by PHFA. If a penalty is assessed, such penalty shall be paid to PHFA within thirty (30) days after a written demand for payment is made.

A taxpayer that defaults on payment of the capital commitment may, after receipt of notice of penalty and upon Agency approval, avoid such penalty by transferring any tax credit allocation to another qualified taxpayer within thirty (30) days of the date that the capital contribution was due to PHFA, or the date specified in the default letter. Any transferee must comply with all guidance issued by PHFA regarding the credit and must tender the required capital contribution within thirty (30) days of the date of transfer.

Upon issuance of the tax credit, PHFA will provide a copy of the credit certificate and a credit reconciliation workbook to DOR in the format prescribed by DOR to upload the credit to the appropriate account and track credit utilization.

Claiming the Tax Credit:

A qualified taxpayer may claim a tax credit against any qualified tax liability of the qualified taxpayer upon presenting a tax credit certificate verified by PHFA to DOR. The tax credit certificate must be presented to both PHFA and DOR no later than the last day of the second calendar month of the calendar year in which the credit is available to claim the tax credit.

Guidelines for Tax Credit Use:

A tax credit received by DOR in a taxable year shall first be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the tax credit was issued before any carried over tax credits can be applied against any qualified tax liability.

- The taxpayer entity may carry over any unused tax credits for no more than the seven succeeding taxable years. Each year in which the credit is carried over, the amount of tax credit will be reduced by the cumulative amount that was used in the immediately preceding tax year.
- The tax credit may not be carried back and is not refundable.

Sale or Assignment:

The tax credit may be sold or assigned in whole or in part to another qualified taxpayer after receiving approval from PHFA, which consists of a tax compliance verification on the seller conducted by DOR and an evaluation by PHFA to ensure that the buyer is in good standing with PHFA criteria. Notification of the proposed sale or assignment of tax credits must be submitted at least sixty (60) days in advance of any sale or transfer, with all requisite information required by PHFA (including all information contained on the **APPLICATION FOR PURCHASE OF TAX CREDITS** and upon submission of documentation outlining all

costs and fees charged in the transaction). PHFA and DOR will review for compliance with all established criteria and will advise the proposed purchaser or assignee if the sale or transfer has been approved. Third party costs and fees may be limited in these transactions.

- A purchased or assigned tax credit may be applied to 100 percent (100%) of the tax liability of the purchaser or assignee.
- The purchaser or assignee shall claim the tax credit in the year in which the purchase or assignment is made and may not carryover, carryback, receive a refund, re-sell or re-assign the tax credit.
- Pass-through Entities:
    - Upon receipt of an award of tax credits, a pass-through entity may elect, in writing and upon PHFA and DOR approval, to transfer all or a portion of unused tax credits to shareholders, members or partners in proportion to the share of the entity's distributive income to which the particular shareholder, member or partner is entitled.
    - The transferred tax credit must be claimed in the taxable year in which the transfer is made and is not eligible for carryover, carry back, refund, sale or assignment.
    - Such tax credit may not be used for the same qualified expenditures by the shareholder, member or partner and the pass-through entity.

Annual Reporting Requirement:

AHTC recipients, purchasers or assignees shall file the Tax Credit and Tax Benefit Accountability Report within forty-five (45) days of filing an annual tax return, beginning the first year the tax credit or tax benefit is awarded and ending after the credit or benefit has been fully utilized. The report can be accessed at the following link: Tax Credit and Tax Benefit Accountability Report.

Fraud or Misrepresentation:

If a taxpayer engages in fraud or intentional misrepresentation of information required to be provided to PHFA or DOR, PHFA may:

1. Recapture all or a portion of the tax credit;
2. Deem the applicant or taxpayer ineligible for future tax credits;
3. Impose other penalties as specified in the relevant year's QAP;
4. Seek to implement any other remedy which may be available at law or in equity.

Selection of Project Applications/Developments to be funded by the AHTC Fund

Eligibility and Administration:

In accordance with the Act, proceeds of the AHTC Fund shall be used to support the development, rehabilitation and/or preservation of qualified low-income rental housing in the form of either a soft loan funding resource ("AHTC Loan") or a grant ("AHTC Grant" and together with the AHTC Loan "AHTC Funding"). The application and administrative review process for the Fund will be handled consistent with the procedures and process described in the qualified allocation plan ("QAP") for the federal 4% and 9% Low-Income Housing Tax Credit ("LIHTC") program. In addition, PHFA may incorporate AHTC Funding into the application for LIHTC resources, therefore maintaining a streamlined process for requesting supplemental funding for proposals also requesting the federal credits.

Accordingly, applicants seeking an award from the Fund must also demonstrate that the proposed qualified low-income housing project is eligible for an award of either 4% or 9% LIHTC and must obtain such LIHTC award. To the extent practicable, PHFA will administer the AHTC Fund using the same priorities for administration of LIHTC. The Agency will determine the amount of the award from the Fund to be provided to an applicant based on the merits of the qualified low-income housing project. The Agency will also determine if both 4% and 9% developments are eligible for the credit in any given year or if either the 4% or 9% program is eligible in the particular year.

Applicant Requirements:

Applicants seeking an award of AHTC Funding must meet the following criteria:

1. Be a single asset, single purpose Pennsylvania entity organized exclusively for the purpose of owning and operating the proposed project.

2. Be in good legal and fiscal standing with the Commonwealth and the Agency.

3. Applicants with existing affordable housing projects that are, or have been subject to, PHFA compliance monitoring by virtue of participation in LIHTC, PennHOMES, PHARE, or other Agency programs must be able to demonstrate a history of good standing with the Agency.

Eligible Projects:

To be considered for an award of AHTC Funding, the proposed project must meet certain requirements, some of which are described below. A full list of requirements may be obtained by referencing the PHFA Underwriting Application, Loan Program Guidelines, as may be updated and amended, which may be accessed at https://www.phfa.org/forms/multifamily_application_guidelines/guidelines/2025/2025-mpg-05.pdf.

1. Be located within the Commonwealth.

2. Be a building or buildings to be constructed, rehabilitated or preserved in a qualified low-income housing project, as defined at 26 USC § 42(g)(1).

3. Meet all requirements of the Internal Revenue Code and applicable federal laws relating to rental housing if utilizing Tax Credits, federal HOME Investment Partnerships Program, and/or tax-exempt financing.

4. Consist of twenty-five (25) or more units that are under common ownership, management, and financing as a single undertaking. (Preservation of property may be exempt from this unit minimum subject to Agency approval.)

5. Be suitable for occupancy and comply with all applicable federal, state, and local building and health codes.

6. Comply with Agency design standards, local code and accessibility standards, environmental due diligence, Multifamily Loan Program Guidelines, the Housing Finance Agency Act, and marketing and underwriting standards.

7. To the extent applicable, comply with Labor Standards, including state and/or Federal Prevailing Wage as applicable. See 24 CFR 92.354; Davis-Bacon Act (40 U.S.C. 3141; 3701); Contract Work Hours and Safety Standards Act (40 U.S.C.-3701); and 34 PA Code 9.101-9.112.

Review of AHTC Funding Applications:

1. PHFA will review applications submitted for AHTC Funding in accordance with Agency–underwriting procedures. The Agency reserves the right to request and obtain additional documentation and information as may be needed to verify compliance with AHTC guidelines or to otherwise aid in its evaluation of an application for funding.

2. PHFA will prioritize projects that include at least 10% of the housing units as affordable to households with incomes at or below 30% of the area median income (AMI).

3. The Agency reserves the right to amend the AHTC Funding application or the AHTC Funding application process, as may be needed to ensure the effective use and administration of the Fund, as determined by the Agency, in its sole discretion.

4. An award of AHTC Funding is, at all times, subject to the availability of funding.

AHTC Loans:

AHTC Loans will be offered as non-amortizing, zero percent interest loans and will be capped at $1,000,000 per qualified low-income housing project. In addition to the execution and recording of any required AHTC Loan documents, such as a mortgage securing the AHTC Loan, Project Owners will be required to record an agreement of restrictive covenants to evidence the affordability requirements of the AHTC Loan. The loan terms are as follows:

1. Loan Term: 40 years
2. Interest Rate: 0%
3. Repayment Term: Cashflow only
4. Affordability Requirements: The same as the federal LIHTC requirements for the development
5. Affordability Period: 35 years
6. Lien: a mortgage will be recorded to secure the Loan

Disbursement:

Following AHTC Loan closing, unless otherwise determined by the Agency, AHTC Loan proceeds will be disbursed to pay for approved costs through the PHFA-approved draw-down process in accordance with Agency disbursement procedures.

AHTC Grants:

AHTC Grants will be capped at $1,000,000 per qualified low-income housing project. In addition to the execution and recording of any required AHTC Grant documents, Project Owners will be required to record an agreement of restrictive covenants to evidence the affordability requirements of the AHTC Grant. The grant terms are as follows:

1. Affordability Requirements: The same as the Federal LIHTC requirements for the development
2. Affordability Period: 35 years
3. Lien: Funding documents will be recorded to ensure compliance with Affordability Requirements

Compliance:

PHFA will monitor Eligible Projects that receive an AHTC Loan or an AHTC Grant for compliance with AHTC Guidelines for the duration of the term of the funding. The Agency reserves the right to rescind an award of AHTC Funding, prior to issuance, AHTC Loan closing or AHTC Grant closing, for any reason including, but not limited to a determination that the Applicant or proposed project does not comply with AHTC Guidelines or a determination that any information submitted to the Agency in conjunction with an application for AHTC Funding, contains false or misleading information. Following AHTC Loan closing or AHTC Grant closing, events of noncompliance and default will be addressed in accordance with the AHTC Loan documents or AHTC Grant documents, as applicable.