Pennsylvania Housing Tax Credit
Program Guidelines
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Introduction:

The General Assembly of Pennsylvania established the Pennsylvania Housing Tax Credit ("PHTC") pursuant to Act 107 of 2020 (the "Act") which amended the Tax Reform Code of 1971 by adding Article XIX-G, Pennsylvania Housing Tax Credit (PHTC). The PHTC is legislated 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.

Purpose:

The PHTC was established to encourage the development of qualified low-income rental housing projects in the Commonwealth. PHFA shall administer the tax credit as provided below and in accordance with article XIX-G.

Eligibility:

PHFA is authorized to allocate PHTCs for the purpose of developing and/or preserving affordable rental housing. For purposes of allocating the PHTC, qualified low-income housing projects should also be eligible for and receive an award of either 4% or 9% federal Low-Income Housing Tax Credits (LIHTCs). PHFA will determine the amount of tax credits conditionally reserved to a taxpayer based on the merits of the qualified low-income housing project.

Tax credit awards will be capped at $1,500,000 per qualified low-income housing project.

PHFA will conditionally reserve tax credits in a manner that at the time of reservation, PHFA reasonably believes will result in at least 10% of the tax credits being used to provide housing units targeted at households with incomes at or below 30% of the area median income (AMI).

Administration:

Guidelines, Procedures, and Recapture:

The program guidelines and procedures will be used for the administration of the PHTC. The application and administrative review process for PHTC will be handled consistent with the procedures and process described in the qualified allocation plan (QAP) for the federal 4% and 9% LIHTC program. Additionally, to the extent possible, PHFA will administer the PHTC using the same priorities for administration of the federal LIHTC. PHFA will also use the same Recapture procedures and guidelines as the federal LIHTC (under section 42 of the Internal Revenue Code of 1986).

Fraud or Misrepresentation:

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

1. Recapture all or a portion of the tax credit.
2. Deem ineligible the applicant or taxpayer from future tax credits.
3. Impose other penalties as specified in the relevant year's QAP.

Administrative Fee:

PHFA will charge a taxpayer applying for a tax credit a fee of 5% of the tax credit awarded for the purposes of covering PHFA's administrative expenses to operate the program.

Application:

PHFA is authorized to award the PHTCs through an annual application process as follows:

1. PHFA may require such information on the application as necessary to verify compliance with Act 107 of 2020.
2. PHFA may use the same application format as the federal 9% and/or 4% LIHTC program. Additionally, PHFA may allow developers to submit one application for both the federal LIHTC and the PHTC at the same time.
3. Except as otherwise provided by law, before the tax credit may be awarded, the Department of Revenue of the Commonwealth must find that the taxpayer has filed all required State tax reports and returns for all applicable tax years and paid any balance of State tax due as determined at settlement or assessment by the Department of Revenue, unless the tax due is currently under appeal.

PHFA will incorporate PHTC into the application for LIHTC resources, therefore maintaining a streamlined process for requesting supplemental funding for proposals also requesting the federal credits. In addition, Appendix A is a Quick Reference Guide containing required action related to the request of PHTC resources.

Review of the Application by PHFA:

1. PHFA will review applications submitted for PHTCs in accordance with Agency procedures and conditionally reserve tax credits for qualified low-income housing projects.
2. PHTC will be conditionally reserved for successful LIHTC applicants based on need as determined during underwriting and in the order of priority for the preference and set-aside categories outlined in the QAP.
3. Investors in PHTCs are not required to also be the LIHTC investor or a member in the development's partnership agreement.
4. At the time of reservation, credits should be reserved to projects that will result in at least 10% of the tax credits being used to provide housing units targeting households with incomes at or below 30% AMI.

Tax Credit Certificate Issuance Requirements:

Upon notification that a project receiving a conditional reservation of tax credits have been completed, PHFA will determine compliance with this act.

- PHTC applicants with conditional credit reservations, shareholders, members, and partners of the PHTC applicant with the conditional credit reservation, must be in state tax compliance as determined by the Department of Revenue prior to the issuance of a tax credit certificate.

- State Tax Compliance requires the PHTC applicants with conditional credit reservations, shareholders, members, and partners of the PHTC applicant with conditional credit reservation to have filed all required state tax reports and returns for all applicable taxable years and paid any balance of state tax due as determined at settlement or assessment by the Department of Revenue, unless the tax due is under appeal at the time the finding was made by the Department of Revenue.

Following verification of compliance, PHFA will issue the tax credit certificates directly to the investor deemed to be in state tax compliance by the Department of Revenue, in an amount not to exceed 20% of the conditional reservation for each taxable year in the tax credit period.

Credit Utilization

A tax credit approved in accordance with these guidelines must first be applied against the taxpayer's own tax liability under Articles III (Personal Income Tax), IV (Corporate Net Income Tax), VII (Bank and Trust company Shares Tax), VIII (Title Insurance Companies Shares Tax), IX (Insurance Premiums Tax), XI (Gross Receipts Tax), or XV (Mutual Thrift Institutions Tax), excluding any tax withheld by an employer under Article III of the Tax Reform Code of 1971, for the taxable year during which the tax credit is approved.

The unpaid tax liability must be satisfied before any portion of the credit can be carried forward to satisfy the tax liabilities for future years or be sold or passed through. Prior year credits will be applied on a "first in first out" basis until all tax liabilities are satisfied. Restricted credits will be applied before any cash payments for the taxable year during which the tax credit is approved.

1. To claim the tax credit, a copy of the tax credit certificate and claim form must be provided to the PA Department of Revenue, Office of Economic Development.
2. The tax credit provided by this article may be carried over and applied to succeeding taxable years for not more than five taxable years following the first taxable year for which the credit was approved.
3. The tax credit may not be carried back or be used to obtain a refund.
4. Use of the credit may not exceed 50% of the qualified tax liability for the taxable year.
5. Pass-through entities may elect to pass through all or part of the credit to the shareholders, members, or partners.
    - The pro-rata share of credit for each shareholder, member or partner of a pass-through entity will be compared to the Department of Revenue's records regarding percentage of ownership as provided on the Partner/Member/Shareholder Directory of the pass-through entity's PA20S/PA-65. Credit use may not exceed 50% of the shareholder, member, or partner's qualified tax liability for the taxable year.
6. The taxpayer, upon application to and approval by the Department of Revenue may sell or

assign, in whole or in part, unused credits.

- The recipient may utilize the credits to offset up to 50 percent of its own tax liability for any qualified tax liability in the year of the sale approval or thereafter.
- At the time of the application for approval to sell or assign tax credits, the taxpayer selling or assigning the credits should be prepared to identify the specific tax credits to be sold or assigned (issue date, amounts, etc.), provide information identifying the buyer to the satisfaction of the Department of Revenue, and disclose the selling price of the tax credits being sold or assigned
- The date of receipt of the Sale/Assignment application form by the Department of Revenue will be used to determine the official date of approval for the sale or assignment of the tax credits. Faxed or emailed applications will be considered received on the date of the fax receipt or the date the email is sent.

7. Before an application to sell or assign tax credits will be approved;

    i. The Department of Revenue must find that the seller has filed all required state tax reports and returns for all applicable tax years and paid any balance of state tax due as determined at settlement, assessment, or determination by the Department of Revenue.

    ii. PHFA must conduct an evaluation to ensure that buyer is in good standing with PHFA criteria.

8. If a taxpayer selling tax credits is selling credits to more than one buyer, a separate application should be submitted to **the Department of Revenue** for approval to assign credits for each separate buyer of tax credits.

9. Tax credits may only be sold or assigned once. Once a sale or assignment is approved, it is final, and the seller's or assignor's right to claim the credit is terminated. Buyers may not resell or reassign tax credits.

10. The recipient of all or a portion of a tax credit shall immediately claim the credit in the taxable year in which the purchase or assignment is made, subject to the following:

    - The recipient may carry forward the credit for the remainder of the effective period of the credit until the expiration date on the original credit certificate issued to the taxpayer awarded PHTCs. The recipient may not carry back or obtain a refund of or sell or assign the tax credit.

Every domestic or foreign PA S corporation, partnership, or limited liability company classified as a partnership or S corporation for federal income tax purposes, must file a Form PA-20S/PA-65 Information Return.

Single member limited liability companies with an individual as the single member, must file a PA-40 Individual Tax Return. If the single member is a corporation or partnership the return of the owner (RCT-101 Corporate Tax Report or PA 20S/65 Information Return) must be filed.

For more information, please visit: revenue.pa.gov/GeneralTaxInformation

Reporting:

An annual report containing information for the prior fiscal year is due on or before October 1, 2022 and each October 1st thereafter. Successful PHTC recipients will be required to provide all information necessary for PHFA to complete the report and respond to questions received from the officials designated as recipients of the report.

Pennsylvania Housing Tax Credit (PHTC)

Quick Reference Guide

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State Housing Tax Credit Summary

Act 107 of 2020 amended the Tax Reform Code of 1971 by adding Article XIX-G, Pennsylvania Housing Tax Credit (PHTC), which is 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. There was a $10M allocation of PHTCs in 2021 and a $10M allocation in 2022.

The PHTC was established to encourage the development of qualified low-income rental housing projects in the Commonwealth. PHFA shall administer the tax credit as provided below and in accordance with article XIX-G. **For purposes of allocating the PHTC, qualified low-income housing projects should also be eligible for and receive an award of either 4% or 9% federal Low-Income Housing Tax Credits (LIHTCs).** PHFA will determine the amount of tax credits conditionally reserved to a taxpayer based on the merits of the qualified low-income housing project.

PHFA will conditionally reserve tax credits in a manner that at the time of reservation, **PHFA reasonably believes will result in at least 10% of the tax credits being used to provide housing units targeted at households with incomes at or below 30% of the area median income (AMI).**

Definitions:

1. **Credit Period**: A five-year period that begins with the taxable year in which a taxpayer is awarded a tax credit certificate in accordance with section 1903 -G.
2. **Qualified low-income housing project:** The term shall have the same meaning as provided under section 42(g)(1) of the Internal Revenue Code of 1986.
3. **Taxpayer:** An individual, business firm, corporation, business trust, limited liability company, partnership, limited liability partnership, association, or any other form of legal business entity.

Rules and Requirements:

1. The maximum state tax credit award for qualified low-income housing project is $1.5 M.
2. PHTC has a 5-year credit period with the total credit allocation being claimed in an amount not to exceed 20% for each year during the credit period. (For example, a $1M allocation would be claimed in increments of $200,000/year for 5 years.)
3. The PA Department of Revenue (DoR) is responsible for the review and determination of sale or assignment and pass-through of PHTCs.

Application Process / Procedures:

1. In 2022, developers must apply for the PHTC at the same time he/she submits the application for 9% or 4% federal Low Income Housing Tax Credits.

2. The developer must disclose his/her intent to apply for the PHTC during the Intent to Submit period.
3. In tab 2, the developer must check all programs for which he/she is applying (i.e.., federal 9% or 4% credits, Agency HOME funding, Housing Trust Fund, etc.). There will be a check box for the PHTC.
4. The developer must list the PHTC as a source in the capital budget in Tab 2.
5. Additionally, the developer must fully complete TAB 43 related specifically to the PHTC. A letter of intent from a PHTC investor must be included in TAB 43.
6. PHFA will review the request for PHTC during the review of the federal LIHTC application.
7. After receipt and full review of PHTC requests, the agency will determine initial eligibility and issue conditional reservations to successful applicants. In order to be awarded PHTCs, the application must also be awarded a reservation of 9% LIHTCs or must be considered for an allocation of volume cap and 4% credits. However, not all applicants who are awarded an allocation of federal LIHTCs, may be awarded an allocation of PHTCs.
8. **The Agency will make all PHTC awards in its best discretion and reserves the right to reject any application.**
9. Once a project is awarded a conditional reservation of PHTCs, constructed, and completed, the Agency must be notified of the completion of the qualitied low-income housing project. The agency will then verify compliance with the PHTC Act.
10. Following the verification, tax credit certificates will be issued. Credit certificates will be issued in an amount not to exceed 20% of the conditional reservation for each taxable year in the credit period.