

State of Wisconsin



2017 Assembly Bill 869

Date of enactment: **March 28, 2018**

Date of publication*: **March 29, 2018**

2017 WISCONSIN ACT 176

AN ACT *to amend* 71.08 (1) (intro.) and 76.67 (2); and *to create* 71.07 (8b), 71.10 (4) (fb), 71.28 (8b), 71.30 (3) (cs), 71.47 (8b), 71.49 (1) (cs), 76.639 and 234.45 of the statutes; **relating to:** an income and franchise tax credit for the development of low-income housing.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.07 (8b) of the statutes is created to read:

71.07 (8b) LOW-INCOME HOUSING CREDIT. (a) *Definitions.* In this subsection:

1. "Allocation certificate" means a statement issued by the authority certifying that a qualified development is eligible for a credit under this subsection and specifying the amount of the credit that the owners of the qualified development may claim.

2. "Authority" means the Wisconsin Housing and Economic Development Authority.

3. "Claimant" means a person who has an ownership interest in a qualified development and who files a claim under this subsection.

4. "Compliance period" means the 15-year period beginning with the first taxable year of the credit period.

5. "Credit period" means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this subdivision, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

6. "Qualified basis" means the qualified basis determined under section 42 (c) (1) of the Internal Revenue Code.

7. "Qualified development" means a qualified low-income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(b) *Filing claims.* Subject to the limitations provided in this subsection and in s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim as a credit against the taxes imposed under s. 71.02 or 71.08, up to the amount of the tax, the amount allocated to the claimant by the authority under s. 234.45 for each taxable year within the credit period.

(c) *Limitations.* 1. No person may claim the credit under par. (b) unless the claimant includes with the claimant's return a copy of the allocation certificate issued to the qualified development.

2. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection. The partners of a partnership, members of a limited liability company, or shareholders in a tax-option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, lim-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

ited liability company, or tax–option corporation. The partnership, limited liability company, or tax–option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to the partner, member, or shareholder. For shareholders of a tax–option corporation, the credit may be allocated in proportion to the ownership interest of each shareholder. Credits computed by a partnership or limited liability company may be claimed in proportion to the ownership interests of the partners or members or allocated to partners or members as provided in a written agreement among the partners or members that is entered into no later than the last day of the taxable year of the partnership or limited liability company, for which the credit is claimed. Any partner or member who claims the credit as allocated by a written agreement shall provide a copy of the agreement with the tax return on which the credit is claimed. A person claiming the credit as provided under this subdivision is solely responsible for any tax liability arising from a dispute with the department of revenue related to claiming the credit.

(d) *Recapture.* 1. As of the last day of any taxable year during the compliance period, if the amount of the qualified basis of a qualified development with respect to a claimant is less than the amount of the qualified basis as of the last day of the immediately preceding taxable year, the amount of the claimant’s tax liability under this subchapter shall be increased by the recapture amount determined by using the method under section 42 (j) of the Internal Revenue Code.

2. In the event that the recapture of any credit is required in any taxable year, the taxpayer shall include the recaptured proportion of the credit on the return submitted for the taxable year in which the recapture event is identified.

(e) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 1m. 71.08 (1) (intro.) of the statutes, as affected by 2017 Wisconsin Act 58, is amended to read:

71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married couple filing jointly, trust, or estate under s. 71.02, not considering the credits under ss. 71.07 (1), (2dx), (2dy), (3m), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (3wm), (3y), (4k), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8b), (8r), (9e), (9m), and (9r), 71.28 (1dx), (1dy), (2m), (3), (3n), (3t), (3w), (3wm), and (3y), 71.47 (1dx), (1dy), (2m), (3), (3n), (3t), (3w), and (3y), 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s. 71.07 (7), is less than the tax under this section, there is imposed on that natural person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax computed as follows:

SECTION 2. 71.10 (4) (fb) of the statutes is created to read:

71.10 (4) (fb) Low–income housing credit under s. 71.07 (8b).

SECTION 3. 71.28 (8b) of the statutes is created to read:

71.28 (8b) LOW–INCOME HOUSING CREDIT. (a) *Definitions.* In this subsection:

1. “Allocation certificate” means a statement issued by the authority certifying that a qualified development is eligible for a credit under this subsection and specifying the amount of the credit that the owners of the qualified development may claim.

2. “Authority” means the Wisconsin Housing and Economic Development Authority.

3. “Claimant” means a person who has an ownership interest in a qualified development and who files a claim under this subsection.

4. “Compliance period” means the 15–year period beginning with the first taxable year of the credit period.

5. “Credit period” means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this subdivision, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

6. “Qualified basis” means the qualified basis determined under section 42 (c) (1) of the Internal Revenue Code.

7. “Qualified development” means a qualified low–income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax–exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(b) *Filing claims.* Subject to the limitations provided in this subsection and in s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of the tax, the amount allocated to the claimant by the authority under s. 234.45 for each taxable year within the credit period.

(c) *Limitations.* 1. No person may claim the credit under par. (b) unless the claimant includes with the claimant’s return a copy of the allocation certificate issued to the qualified development.

2. A partnership, limited liability company, or tax–option corporation may not claim the credit under this subsection. The partners of a partnership, members of a limited liability company, or shareholders in a tax–option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, limited liability company, or tax–option corporation. The partnership, limited liability company, or tax–option corporation shall calculate the amount of the credit that may

be claimed by each partner, member, or shareholder and shall provide that information to the partner, member, or shareholder. For shareholders of a tax–option corporation, the credit may be allocated in proportion to the ownership interest of each shareholder. Credits computed by a partnership or limited liability company may be claimed in proportion to the ownership interests of the partners or members or allocated to partners or members as provided in a written agreement among the partners or members that is entered into no later than the last day of the taxable year of the partnership or limited liability company, for which the credit is claimed. Any partner or member who claims the credit as allocated by a written agreement shall provide a copy of the agreement with the tax return on which the credit is claimed. A person claiming the credit as provided under this subdivision is solely responsible for any tax liability arising from a dispute with the department of revenue related to claiming the credit.

(d) *Recapture*. 1. As of the last day of any taxable year during the compliance period, if the amount of the qualified basis of a qualified development with respect to a claimant is less than the amount of the qualified basis as of the last day of the immediately preceding taxable year, the amount of the claimant’s tax liability under this subchapter shall be increased by the recapture amount determined by using the method under section 42 (j) of the Internal Revenue Code.

2. In the event that the recapture of any credit is required in any taxable year, the taxpayer shall include the recaptured proportion of the credit on the return submitted for the taxable year in which the recapture event is identified.

(e) *Administration*. Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

SECTION 4. 71.30 (3) (cs) of the statutes is created to read:

71.30 (3) (cs) Low–income housing credit under s. 71.28 (8b).

SECTION 5. 71.47 (8b) of the statutes is created to read:

71.47 (8b) LOW–INCOME HOUSING CREDIT. (a) *Definitions*. In this subsection:

1. “Allocation certificate” means a statement issued by the authority certifying that a qualified development is eligible for a credit under this subsection and specifying the amount of the credit that the owners of the qualified development may claim.

2. “Authority” means the Wisconsin Housing and Economic Development Authority.

3. “Claimant” means a person who has an ownership interest in a qualified development and who files a claim under this subsection.

4. “Compliance period” means the 15–year period beginning with the first taxable year of the credit period.

5. “Credit period” means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this subdivision, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

6. “Qualified basis” means the qualified basis determined under section 42 (c) (1) of the Internal Revenue Code.

7. “Qualified development” means a qualified low–income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax–exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(b) *Filing claims*. Subject to the limitations provided in this subsection and in s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the tax, the amount allocated to the claimant by the authority under s. 234.45 for each taxable year within the credit period.

(c) *Limitations*. 1. No person may claim the credit under par. (b) unless the claimant includes with the claimant’s return a copy of the allocation certificate issued to the qualified development.

2. A partnership, limited liability company, or tax–option corporation may not claim the credit under this subsection. The partners of a partnership, members of a limited liability company, or shareholders in a tax–option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, limited liability company, or tax–option corporation. The partnership, limited liability company, or tax–option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to the partner, member, or shareholder. For shareholders of a tax–option corporation, the credit may be allocated in proportion to the ownership interest of each shareholder. Credits computed by a partnership or limited liability company may be claimed in proportion to the ownership interests of the partners or members or allocated to partners or members as provided in a written agreement among the partners or members that is entered into no later than the last day of the taxable year of the partnership or limited liability company, for which the credit is claimed. Any partner or member who claims the credit as allocated by a written agreement shall provide a copy of the agreement with the tax return on which the credit is claimed. A person claiming the credit as provided under this subdivision is solely responsible for any tax liability arising from a dispute with the department of revenue related to claiming the credit.

(d) *Recapture*. 1. As of the last day of any taxable year during the compliance period, if the amount of the

qualified basis of a qualified development with respect to a claimant is less than the amount of the qualified basis as of the last day of the immediately preceding taxable year, the amount of the claimant's tax liability under this subchapter shall be increased by the recapture amount determined by using the method under section 42 (j) of the Internal Revenue Code.

2. In the event that the recapture of any credit is required in any taxable year, the taxpayer shall include the recaptured proportion of the credit on the return submitted for the taxable year in which the recapture event is identified.

(e) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 6. 71.49 (1) (cs) of the statutes is created to read:

71.49 (1) (cs) Low-income housing credit under s. 71.47 (8b).

SECTION 7. 76.639 of the statutes is created to read:

76.639 Low-income housing credit. (1) DEFINITIONS. In this section:

(a) "Allocation certificate" means a statement issued by the authority certifying that a qualified development is eligible for a credit under this subsection and specifying the amount of the credit that the owners of the qualified development may claim.

(b) "Authority" means the Wisconsin Housing and Economic Development Authority.

(c) "Claimant" means an insurer who has an ownership interest in a qualified development and who files a claim under this section.

(d) "Compliance period" means the 15-year period beginning with the first taxable year of the credit period.

(e) "Credit period" means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this paragraph, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

(f) "Qualified basis" means the qualified basis determined under section 42 (c) (1) of the Internal Revenue Code.

(g) "Qualified development" means a qualified low-income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(2) **FILING CLAIMS.** Subject to the limitations provided in this section and in s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim as a credit against the fees imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.67 the amount allocated to the claimant by the authority under s. 234.45 for each taxable year within the credit period.

(3) **LIMITATIONS.** No insurer may claim the credit under sub. (2) unless the claimant includes with the claimant's return a copy of the allocation certificate issued to the qualified development.

(4) **RECAPTURE.** (a) As of the last day of any taxable year during the compliance period, if the amount of the qualified basis of a qualified development with respect to a claimant is less than the amount of the qualified basis as of the last day of the immediately preceding taxable year, the amount of the claimant's tax liability under s. 76.60, 76.63, 76.65, 76.66, or 76.67 shall be increased by the recapture amount determined by using the method under section 42 (j) of the Internal Revenue Code.

(b) In the event that the recapture of any credit is required in any taxable year, the taxpayer shall include the recaptured proportion of the credit on the return submitted for the taxable year in which the recapture event is identified.

(5) **CARRY-FORWARD.** If the credit under sub. (2) is not entirely offset against the fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance may be carried forward and credited against those fees for the following 15 years to the extent that it is not offset by those fees otherwise due in all the years between the year in which the expense was made and the year in which the carry-forward credit is claimed.

SECTION 8. 76.67 (2) of the statutes is amended to read:

76.67 (2) If any domestic insurer is licensed to transact insurance business in another state, this state may not require similar insurers domiciled in that other state to pay taxes greater in the aggregate than the aggregate amount of taxes that a domestic insurer is required to pay to that other state for the same year less the credits under ss. 76.635, 76.636, 76.637, 76.638, and 76.655, except that the amount imposed shall not be less than the total of the amounts due under ss. 76.65 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375 percent of its gross premiums, as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss. 76.635, 76.636, 76.637, 76.638, 76.639, and 76.655 against that total, and except that the amount imposed shall not be less than the amount due under s. 601.93.

SECTION 9. 234.45 of the statutes is created to read:

234.45 Low-income housing tax credits. (1) DEFINITIONS. In this section:

(a) "Allocation certificate" means a statement issued by the authority certifying that a qualified development is eligible for a state tax credit and specifying the amount of the credit that the owners of the qualified development may claim.

(b) "Compliance period" means the 15-year period beginning with the first taxable year of the credit period.

(c) "Credit period" means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this

paragraph, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

(d) “Qualified allocation plan” means the qualified allocation plan adopted by the authority pursuant to section 42 (m) of the Internal Revenue Code.

(e) “Qualified development” means a qualified low-income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(f) “State tax credit” means a tax credit under s. 71.07 (8b), 71.28 (8b), 71.47 (8b), or 76.639.

(2) ESTABLISHMENT OF PROGRAM. The authority shall establish a program to certify persons to claim state tax credits under this section.

(3) CERTIFICATION. The authority may certify a person to claim a state tax credit in an amount determined by the authority by issuing the person an allocation certificate for the qualified development that is eligible for the state tax credit. The allocation certificate shall state the amount the authority determines the person is eligible to claim for each year of the credit period. The authority may issue an allocation certificate under this subsection only if all of the following conditions are satisfied:

(a) The allocation certificate is issued to a person who has an ownership interest in the qualified development.

(b) The state tax credit is necessary for the financial feasibility of the qualified development.

(c) The qualified development is the subject of a recorded restrictive covenant requiring that, for the compliance period or for a longer period agreed to by the authority and the owner of the qualified development, the development shall be maintained and operated as a qualified development and shall be in compliance with Title VIII of the federal Civil Rights Act of 1968, as amended.

(d) The allocation certificate is issued in accordance with the authority’s qualified allocation plan. If practicable, the authority shall begin issuing allocation certificates in conjunction with the authority’s implementation of its 2018 qualified allocation plan as if the state tax credits were included in that plan.

(4) ALLOCATION LIMITS. In any calendar year, the aggregate amount of all state tax credits for which the authority certifies persons in allocation certificates

issued under sub. (3) in that year may not exceed \$42,000,000, including all amounts each person is eligible to claim for each year of the credit period, plus the total amount of all unallocated state tax credits from previous calendar years and plus the total amount of all previously allocated state tax credits that have been revoked or cancelled or otherwise recovered by the authority.

(5) PREFERENCE FOR SMALLER MUNICIPALITIES. In issuing allocation certificates under sub. (3), the authority shall give preference to qualified developments located in a city, village, or town with a population of fewer than 150,000.

(6) REPORT. No later than December 31 of each year, the authority shall submit a report to the legislature under s. 13.172 (2) that includes all of the following:

(a) A statement of the number of qualified developments for which the authority issued allocation certificates that year.

(b) A description of each qualified development for which the authority issued an allocation certificate that year, including the geographic location of the development, the household type and any specific demographic information available concerning the residents intended to be served by the development, the income levels of residents intended to be served by the development, and the rents or set-asides authorized for each development.

(c) An analysis of housing market and demographic information that shows how the qualified developments for which the authority has issued allocation certificates at any time are addressing the need for affordable housing within the communities those developments are intended to serve and an analysis of any remaining disparities in the affordability of housing within those communities.

(7) POLICIES AND PROCEDURES. The authority, in consultation with the department of revenue, shall establish policies and procedures to administer this section. The policies and procedures established under this subsection shall, to the extent practicable, incorporate the authority’s policies and procedures for awarding federal low-income housing credits under section 42 of the Internal Revenue Code. The authority shall issue allocation certificates annually, on a rolling basis, based on eligibility, as determined by the authority, except that the authority may develop a competitive process to award allocation certificates as a part of its qualified allocation plan.