



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5136/1
CMH:kjf

2017 ASSEMBLY BILL 869

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

Analysis by the Legislative Reference Bureau

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

5 **SECTION 1.** 71.07 (8b) of the statutes is created to read:
6 71.07 (8b) LOW-INCOME HOUSING CREDIT. (a) *Definitions.* In this subsection:
7 1. "Allocation certificate" means a statement issued by the authority certifying
8 that a qualified development is eligible for a credit under this subsection and
9 specifying the amount of the credit that the owners of the qualified development may
10 claim.

ASSEMBLY BILL 869**SECTION 1**

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

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

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

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

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

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

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

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

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

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

ASSEMBLY BILL 869**SECTION 1**

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

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

6 **SECTION 1m.** 71.08 (1) (intro.) of the statutes, as affected by 2017 Wisconsin Act
7 58, is amended to read:

8 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
9 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
10 ss. 71.07 (1), (2dx), (2dy), (3m), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w),
11 (3wm), (3y), (4k), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8b), (8r), (9e), (9m),
12 and (9r), 71.28 (1dx), (1dy), (2m), (3), (3n), (3t), (3w), (3wm), and (3y), 71.47 (1dx),
13 (1dy), (2m), (3), (3n), (3t), (3w), and (3y), 71.57 to 71.61, and 71.613 and subch. VIII
14 and payments to other states under s. 71.07 (7), is less than the tax under this
15 section, there is imposed on that natural person, married couple filing jointly, trust
16 or estate, instead of the tax under s. 71.02, an alternative minimum tax computed
17 as follows:

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

19 71.10 (4) (fb) Low-income housing credit under s. 71.07 (8b).

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

21 71.28 (8b) LOW-INCOME HOUSING CREDIT. (a) *Definitions.* In this subsection:

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

ASSEMBLY BILL 869

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

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

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

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

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

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

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

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

ASSEMBLY BILL 869**SECTION 3**

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

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

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

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

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

7 71.30 (3) (cs) Low-income housing credit under s. 71.28 (8b).

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

9 71.47 (8b) LOW-INCOME HOUSING CREDIT. (a) *Definitions.* In this subsection:

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

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

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

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

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

ASSEMBLY BILL 869**SECTION 5**

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

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

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

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

15 2. A partnership, limited liability company, or tax-option corporation may not
16 claim the credit under this subsection. The partners of a partnership, members of
17 a limited liability company, or shareholders in a tax-option corporation may claim
18 the credit under this subsection based on eligible costs incurred by the partnership,
19 limited liability company, or tax-option corporation. The partnership, limited
20 liability company, or tax-option corporation shall calculate the amount of the credit
21 that may be claimed by each partner, member, or shareholder and shall provide that
22 information to the partner, member, or shareholder. For shareholders of a tax-option
23 corporation, the credit may be allocated in proportion to the ownership interest of
24 each shareholder. Credits computed by a partnership or limited liability company
25 may be claimed in proportion to the ownership interests of the partners or members

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1 or allocated to partners or members as provided in a written agreement among the
2 partners or members that is entered into no later than the last day of the taxable year
3 of the partnership or limited liability company, for which the credit is claimed. Any
4 partner or member who claims the credit as allocated by a written agreement shall
5 provide a copy of the agreement with the tax return on which the credit is claimed.
6 A person claiming the credit as provided under this subdivision is solely responsible
7 for any tax liability arising from a dispute with the department of revenue related
8 to claiming the credit.

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

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

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

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

21 71.49 (1) (cs) Low-income housing credit under s. 71.47 (8b).

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

23 **76.639 Low-income housing credit. (1) DEFINITIONS.** In this section:

24 (a) "Allocation certificate" means a statement issued by the authority certifying
25 that a qualified development is eligible for a credit under this subsection and

ASSEMBLY BILL 869**SECTION 7**

1 specifying the amount of the credit that the owners of the qualified development may
2 claim.

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

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

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

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

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

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

20 **(2) FILING CLAIMS.** Subject to the limitations provided in this section and in s.
21 234.45, for taxable years beginning after December 31, 2017, a claimant may claim
22 as a credit against the fees imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.67 the
23 amount allocated to the claimant by the authority under s. 234.45 for each taxable
24 year within the credit period.

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

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

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

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

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

20 **76.67 (2)** If any domestic insurer is licensed to transact insurance business in
21 another state, this state may not require similar insurers domiciled in that other
22 state to pay taxes greater in the aggregate than the aggregate amount of taxes that
23 a domestic insurer is required to pay to that other state for the same year less the
24 credits under ss. 76.635, 76.636, 76.637, 76.638, and 76.655, except that the amount
25 imposed shall not be less than the total of the amounts due under ss. 76.65 (2) and

ASSEMBLY BILL 869**SECTION 8**

1 601.93 and, if the insurer is subject to s. 76.60, 0.375 percent of its gross premiums,
2 as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss.
3 76.635, 76.636, 76.637, 76.638, 76.639, and 76.655 against that total, and except that
4 the amount imposed shall not be less than the amount due under s. 601.93.

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

6 **234.45 Low-income housing tax credits. (1) DEFINITIONS.** In this section:

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

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

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

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

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

23 (f) "State tax credit" means a tax credit under s. 71.07 (8b), 71.28 (8b), 71.47
24 (8b), or 76.639.

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

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

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

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

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

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

23 **(4) ALLOCATION LIMITS.** In any calendar year, the aggregate amount of all state
24 tax credits for which the authority certifies persons in allocation certificates issued
25 under sub. (3) in that year may not exceed \$42,000,000, including all amounts each

ASSEMBLY BILL 869**SECTION 9**

1 person is eligible to claim for each year of the credit period, plus the total amount of
2 all unallocated state tax credits from previous calendar years and plus the total
3 amount of all previously allocated state tax credits that have been revoked or
4 cancelled or otherwise recovered by the authority.

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

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

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

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

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

23 (7) POLICIES AND PROCEDURES. The authority, in consultation with the
24 department of revenue, shall establish policies and procedures to administer this
25 section. The policies and procedures established under this subsection shall, to the

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1 extent practicable, incorporate the authority's policies and procedures for awarding
2 federal low-income housing credits under section 42 of the Internal Revenue Code.
3 The authority shall issue allocation certificates annually, on a rolling basis, based on
4 eligibility, as determined by the authority, except that the authority may develop a
5 competitive process to award allocation certificates as a part of its qualified
6 allocation plan.

7

(END)