

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE



February 14, 2023

OTR TAX NOTICE 2023 - 02

**TRANSFER REQUIREMENTS FOR DISTRICT OF COLUMBIA LOW-INCOME
HOUSING TAX CREDIT**

The District of Columbia low-income housing tax credit (“D.C. LIHTC”) was established under D.C. Code § 47-4801 *et seq.*, (the “Act”). The credit is available for “qualified projects” located in the District. D.C. Code § 47-4802. This notice will address the transfer requirements set forth in D.C. Code § 47-4803.

A “qualified project” means “a rental housing development in the District” that, after October 1, 2021, “receives an allocation of federal low-income housing tax credits under IRC § 42(h)(1) or (4)” or a commitment to “extend low-income housing... pursuant to IRC § 42(h)(6)(B) between the owner... and the Department executed on or after October 1, 2021.” D.C. Code § 47-4801(8).

For the purposes of D.C. Code § 47-4801(8) the term “Department” is the “Department of Housing and Community Development, or its successor agency.” D.C. Code § 47-4801(2).

D.C. Code § 47-4803 sets forth the eligibility requirements to receive the D.C. low-income housing tax credits:

- (a) An owner of a qualified project may receive a District of Columbia low-income housing tax credit
 - With respect to that qualified project; and
 - In an amount up to 25% of the value of the federal low-income housing tax credit received with respect to the qualified project.
- (b) If the owner of a qualified project transfers, sells, or assigns a District of Columbia low-income housing tax credit to another taxpayer... the... tax credit shall not be taken... against taxes imposed under [Title 47] unless the owner has filed with the Department... an affidavit certifying:
 - The owner of the qualified project received as consideration for transferring, selling, or assigning the... tax credit, an amount that exceeds the lesser of \$0.70 per \$1.00... or 80% of the per dollar sale price for a federal low-income housing tax credit associated with the qualified project...; and
 - The value received by the owner of the qualified project was used to ensure the financial feasibility of the qualified project.
- (c) The District of Columbia's low-income housing tax credit may

- Be claimed against taxes imposed under Chapter 18 of [Title 47] or § 47-2608(a)(1);
 - May be claimed equally for ten years, subtracted from the tax otherwise due for each taxable period and shall not be refundable; and
 - If the credits are claimed against taxes imposed, any amount of the credits that exceeds the tax due for the taxable period may be carried forward to any of the ten remaining subsequent taxable years.
- (d) All or any portion of the... tax credits
- May be transferred, sold, assigned, or allocated to parties who are eligible; and
 - Any owner of a qualified project shall certify to the Chief Financial Officer the amount of credits allocated to the owner. The owner of the qualified project shall provide to the Chief Financial Officer appropriate information so that the low-income housing tax credit can be properly allocated.

D.C. Code § 47-4806 sets forth the requirements for an owner to transfer, sell, assign or otherwise allocate the tax credits to a subsequent taxpayer.

- (a)(1) All or any portion of the credits... may be transferred, sold, or assigned to another taxpayer.
- There is no limit on the number of transactions for the transfer, sale, or assignment of all or part of the total credits authorized; and
 - All transfers, sales, assignments, and allocations are subject to the maximum credit allowable to a particular qualified project.
- (a)(2) A tax credit earned or purchased by, or transferred or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders... in accordance with any agreement among the partners, members, or shareholders in accordance with the provision of any agreement among the partners, members, or shareholders and without regarding to the ownership interest... in the qualified project.
- A partner, member, or shareholder to whom the tax credit is allocated may further allocate all or part of the allocated credit provided in (a)(2);
 - Transfer, sell, or assign the allocated credit as provided in paragraph [(a)] (1); or
 - There is no limit on the total number of allocations of the tax credit, however all transfer, sales, assignments, and allocations are subject to the maximum credit allowable to a qualified project.
- (b) An owner, transferee, purchaser, assignee, or taxpayer to whom a tax credit is allocated:
- Pursuant to subsection (a)(2)... desiring to make a transfer, sale, assignment, or allocation... shall submit to the Chief Financial Officer and the Commissioner a statement that describes the amount of [the tax credit] for which such transfer, sale, assignment, or allocation... is eligible.
 - Pursuant to subsection (a)(2)... the tax credit, as applicable, shall provide to the Chief Financial Officer and the Commissioner appropriate information so that the... tax credit can be properly allocated.

The owner of the tax credits may transfer, sell, assign, or allocate some or all of the tax credits to parties eligible pursuant to D.C. Code § 47-4803. D.C. Code § 47-4806(a)(1). The owner is not limited on the number of transactions to transfer, sell, assign or otherwise allocate the tax credit to subsequent holders, so long as the number of tax credits transferred, sold, assigned or allocated does not exceed the maximum given for the qualifying project. D.C. Code §§ 47-4803(d) and 47-4806(a).

The D.C. Code mandates that for any transfer, sale, assignment, or allocation to be valid, the transferee must certify to the CFO that the qualifying owner received consideration in an amount that exceeds the lesser of \$0.70 per \$1.00 or 80% of the per dollar sale price for the analogous federal credit. Further, the value received by the owner for such transfer, sale, assignment, or allocation was used to ensure financial feasibility of the qualified project. D.C. Code § 47-4803(b).

An owner who makes a transfer to another unrelated party shall submit to the CFO and Commissioner a statement that the recipient of the transfer, sale, assignment, or allocation is eligible, and shall provide to the CFO and Commissioner appropriate information so that the tax credit may be properly allocated. D.C. Code § 47-4806(b).

Therefore, if a company meets the eligibility requirements for the credits, any subsequent transfer, sale, assignment, or allocation must be made to an eligible entity or taxpayer for the appropriate price enumerated within the Code, then the subsequent holder would be able to use the credits against taxes levied on income under Title 47 of the D.C. Code.

Below is an example of a transaction that would meet the requirements of D.C. Code § 47-4803:

- Example:

Owner A, LLC (“Owner A”) is the owner of an affordable housing project located in Washington, D.C., which is eligible for federal low-income housing tax credits under IRC § 42.

Owner A has received confirmation from the District of Columbia Department of Housing and Community Development (“DHCD”) that the project meets the definition of “qualified project” as defined in D.C. Code § 47-4801.

In order to obtain funds for the development and operation of the project, owner intends to allocate the credits to General Partner A, LLC (“General Partner A”), a District of Columbia limited liability company, its general partner, which entity intends to allocate the credits to Nonprofit A, LLC (“Nonprofit A”), a District of Columbia nonprofit corporation. Owner A also intends to admit Federal Equity A, LLC (“Federal Equity A”), which entity will contribute funds to Owner A in exchange for a 99.99% interest in owner, including the right to be allocated 99.99% of the federal credits.

General Partner A will agree to consummate a nonrecourse loan to owner in the approximate aggregate amount of \$5,000,000 pursuant to the terms of the loan agreement between the Owner A and General Partner A. The proceeds of the loan will at least equal the minimum consideration of \$0.70 per credit. The loan will bear no interest, is payable from cash flow generated by the project, and will be due and payable in full no earlier than the termination of the restrictive use period under IRC § 42 as such period may be extended as required by DHCD. General Partner A will fund the loan, at least in part, from the proceeds of the sale of the credits to the State Credit Syndicator A, LLC (“State Credit Syndicator A”), as defined below.

Simultaneously, General Partner A will sell its interest in the credits to an affiliate of State Credit Syndicator A. State Credit Syndicator A will pay the purchase price in installments, intended to be, but not necessarily, on the same schedule, with the contributions being made by the Owner A Federal Equity, LLC. Upon receipt of the proceeds from State Credit Syndicator, General Partner A will advance 100% of the proceeds of the sale to the Owner A with no deductions or holdbacks of any kind.

General Partner A will pay a commercially reasonable fee to State Credit Syndicator for services performed in connection with the purchase and transfer of the credits. Net of the fee, the purchase price for the credits paid by the State Credit Syndicator A to General Partner A, after taking into account timing and other adjustments to purchase price under the purchase agreement between General Partner A and the State Credit Syndicator A, may or may not be \$0.70 or more per credit. General Partner A, however, will be required to lend to the owner an amount at least equal to \$0.70 per allocated credit. As necessary, General Partner A will use funds from other sources to allow it to make the full amount of the Loan and pay fees to the State Credit Syndicator A. State Credit Syndicator A, may further transfer the credits to another taxpayer that will ultimately claim the credits.

Based on the above facts, if Owner A meets the eligibility requirements for the credits, any subsequent transfer, sale, assignment, or allocation must be made to an eligible entity or taxpayer for the appropriate price enumerated within the Code, then the subsequent holder would be able to utilize the credits.

For additional questions, please contact the Office of General Counsel at (202) 442-6500.