

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1631

By: Marlatt

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5
6 AS INTRODUCED

7 An Act relating to tax credits; defining terms;
8 providing tax credit for certain taxpayers under
9 specified circumstances; setting amount of credit
10 subject to specified limits; limiting total credits
11 issued; providing for carry forward or carry back of
12 unused credits; requiring certain documents to be
13 submitted; providing for recapture of credits under
14 specified circumstances; providing for exclusion from
15 taxable income under specified circumstances;
16 authorizing unused credits to be transferred and
17 providing related procedures; authorizing Oklahoma
18 Housing Finance Agency and Oklahoma Tax Commission to
19 require documentation; providing for codification;
20 and providing an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 2357.403 of Title 68, unless
24 there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Eligibility statement" means a statement authorized and
issued by the Oklahoma Housing Finance Agency certifying that a
given project qualifies for the low-income housing tax credit
authorized by this section. The Housing Finance Agency shall

1 promulgate rules establishing criteria upon which the eligibility
2 statements will be issued. The eligibility statement shall specify
3 the amount of the low-income housing tax credit allowed. The
4 Housing Finance Agency shall only authorize the tax credits to
5 qualified projects which begin after January 1, 2013;

6 2. "Federal low-income housing tax credit" means the federal
7 tax credit as provided in Section 42 of the 1986 Internal Revenue
8 Code, as amended;

9 3. "Low-income project" means a housing project which has
10 restricted rents that do not exceed thirty percent (30%) of median
11 income for at least forty percent (40%) of its units occupied by
12 persons of families having incomes of sixty percent (60%) or less of
13 the median income, or at least twenty percent (20%) of the units
14 occupied by persons or families having incomes of fifty percent
15 (50%) or less of the median income;

16 4. "Median income" means those incomes which are determined by
17 the federal Department of Housing and Urban Development guidelines
18 and adjusted for family size;

19 5. "Qualified Oklahoma project" means a qualified low-income
20 building as that term is defined in Section 42 of the 1986 Internal
21 Revenue Code, as amended, which is located in Oklahoma;

22 6. "Taxpayer" means a person, firm or corporation subject to
23 the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes
24 or an insurance company subject to the tax imposed by Section 624 of

1 Title 36 of the Oklahoma Statutes or other financial institution
2 subject to the tax imposed by Section 2370 of Title 68 of the
3 Oklahoma Statutes.

4 B. 1. A taxpayer owning an interest in a qualified Oklahoma
5 project shall, subject to the limitations provided under the
6 provisions of paragraph 3 of this subsection, be allowed a state tax
7 credit, whether or not allowed a federal tax credit, if the Oklahoma
8 Housing Finance Agency issues an eligibility statement for that
9 project.

10 2. For qualified Oklahoma projects placed in service after
11 January 1, 2013, the credit available to a project shall be equal to
12 an amount the Housing Finance Agency determines is necessary to
13 ensure the feasibility of the project, up to an amount equal to the
14 federal low-income housing tax credit for a qualified Oklahoma
15 project, for a federal tax period, and such amount shall be
16 subtracted from the amount of state tax otherwise due for the same
17 tax period.

18 3. No more than Six Million Dollars (\$6,000,000.00) in tax
19 credits shall be allowed by the Oklahoma Tax Commission each fiscal
20 year for projects financed through tax-exempt bond issuance.

21 4. The credit authorized by this section shall not be used to
22 reduce the tax liability of the taxpayer to less than zero (0).

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1 5. Any credit claimed, but not used in a taxable year, may be
2 carried back to each of the three (3) prior taxable years or may be
3 carried forward to each of the three (3) subsequent taxable years.

4 C. The owner of a qualified Oklahoma project eligible for the
5 credit authorized by this section shall submit, at the time of
6 filing the tax return with the Oklahoma Tax Commission, an
7 eligibility statement from the Oklahoma Housing Finance Agency. In
8 the case of failure to attach the eligibility statement, no credit
9 under this section shall be allowed with respect to such project for
10 that year until required documents are provided to the Oklahoma Tax
11 Commission.

12 D. If under Section 42 of the 1986 Internal Revenue Code, as
13 amended, a portion of any federal low-income housing credits taken
14 on a low-income project is required to be recaptured only during the
15 first ten years after a project is placed in service, the taxpayer
16 claiming state credits with respect to such project shall also be
17 required to recapture a portion of any state credits authorized by
18 this section. The state recapture amount shall be equal to the
19 proportion of the state credit claimed by the taxpayer that equals
20 the proportion the federal recapture amount bears to the original
21 federal low-income housing credit amount subject to recapture.

22 E. A taxpayer shall be allowed to exclude from taxable income a
23 portion of the capital gain, as calculated under the Internal
24 Revenue Code of 1986, as amended, that results from the sale of a

1 low-income project subsidized by the federal Department of Housing
2 and Urban Development to a nonprofit or governmental organization,
3 agreeing to preserve or increase the low-income occupancy of the
4 project. For those owners whose low-income project has at least
5 forty percent (40%) of its units occupied by persons or families
6 having incomes of sixty percent (60%) or less of the median income,
7 the exclusion shall equal twenty-five percent (25%) of the capital
8 gain.

9 F. The credits allowed pursuant to this section but not used
10 shall be freely transferrable by written agreement to subsequent
11 transferees at any time during the five (5) years following the year
12 of qualification. Any eligible transferee shall be any taxpayer
13 subject to the tax imposed by Section 2355 of Title 68 of the
14 Oklahoma Statutes or an insurance company subject to the tax imposed
15 by Section 624 of Title 36 of the Oklahoma Statutes or other
16 financial institution subject to the tax imposed by Section 2370 of
17 Title 68 of the Oklahoma Statutes. The person originally allowed
18 the credit and the subsequent transferee shall jointly file a copy
19 of the written credit transfer agreement with the Tax Commission
20 within thirty (30) days of the transfer. The written agreement
21 shall contain the name, address and taxpayer identification number
22 of the parties to the transfer, the amount of credit being
23 transferred, the year the credit was originally allowed to the
24 transferring person and the tax year or years for which the credit

1 may be claimed. The Tax Commission may promulgate rules to permit
2 verification of the validity and timeliness of a tax credit claimed
3 upon a tax return pursuant to this subsection but shall not
4 promulgate any rules which unduly restrict or hinder the transfers
5 of such tax credit.

6 G. The Oklahoma Housing Finance Agency or the Oklahoma Tax
7 Commission may require the filing of additional documentation
8 necessary to determine the accuracy of a tax preference claimed
9 pursuant to this section.

10 SECTION 2. This act shall become effective January 1, 2013.

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