

Rhode Island's Fiscal Year 2024 Budget Creates New State Low-Income Housing Tax Credit Program

Description

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On June 16, 2023, Governor McKee signed the Rhode Island fiscal year 2024 budget that was passed by the General Assembly. The budget includes a new statewide Low-Income Housing Tax Credit ("LIHTC") program to foster the availability of affordable housing in Rhode Island that will be administered by the Rhode Island Department of Housing. The tax credits are available to developers based on a competitive selection process, which will require an application to the Department of Housing. The State will fund up to an aggregate amount not to exceed \$30 million in any fiscal year for this program. The LIHTCs are available to entities having an ownership interest (directly or through pass-through entities) in a "qualified Rhode Island project", which is defined to mean any (i) qualified low-income housing project under Section 42 of the Internal Revenue Code (as amended and in effect for the particular taxable year), (ii) which is located in Rhode Island, and (iii) where the owner has entered into a tax credit agreement with the Department of Housing.

The legislation requires the projects receiving LIHTCs to record an affordable housing restriction in the land evidence records of the city or town where the project is located, requiring the project to be operated in accordance with the statute for at least thirty years after the initial fifteen year "compliance period," which begins to run in the taxable year in which the project is completed. This will effectively require projects to be used as low-income housing for at least forty-five years.

The tax credits are to be authorized, determined and allocated by the RI Department of Housing based on the "project's need for the credit for economic feasibility". LIHTC will be issued in five equal annual increments and may be carried forward for up to four years if the annual increments exceed the taxpayer's tax liability. The credits are redeemable—subject to annual appropriation—in whole or in part for 90% of the value of the credit, and the credits may be freely transferred, sold or assigned to other eligible taxpayers. Notably, the statute makes explicit that taxpayers receiving other tax credits under state law, such as the state historic and Rebuild RI credits, are still eligible for the LIHTC.

The statute also provides for the recapture of the tax credits if a federal low-income housing tax credit with respect to the project is also recaptured under federal law. The recapture of the state tax credit will be in the same proportion as the federal recapture (calculated by dividing the amount recaptured by the total credit received).

Rules and regulations will be forthcoming from the Department of Housing, in consultation with the Rhode Island Division of Taxation, to provide additional guidance for the program. Currently, there is a five-year sunset contained in the statute, and no credits will be authorized after June 30, 2028, unless this sunset is extended.

For more information on Rhode Island's new low-income housing tax credit program, please connect with tax credit attorneys, [Amy Oakley](#) and [David DiSegna](#). [Partridge Snow & Hahn LLP](#) is available to answer questions about the program. For additional information and resources, visit the firm's [Commercial and Real Estate Finance](#) page.

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