

Publications

D.C. Council Opens the Door for D.C. to Join 18 Other States Providing Low-Income Housing Tax Credits

Related Attorneys

Joseph B. Mann

Related Services

Real Estate

Tax and Economic Development
Incentives

Taxation

CLIENT ALERT | Summer 2020

On July 28, 2020, the Council of the District of Columbia unanimously passed the District of Columbia Low-Income Housing Tax Credit Clarification Amendment Act of 2020 (the Act) as a component of the Fiscal Year 2021 Budget Support Act of 2020 (B23-0760). The Act amends the Low-Income Housing Tax Credit Act of 2014 (the 2014 Act), which established a District of Columbia low-income housing tax credit (DC LIHTC) by, most importantly, making the DC LIHTC available as a matter of right to qualifying projects starting in the District of Columbia's 2022 fiscal year. The Act will now be sent to the Mayor for her consideration and is then subject to a 30 day Congressional review period prior to becoming effective.

The Act presents an opportunity to create a local low-income housing tax credit that can serve as an important gap filler for the development of affordable housing projects that utilize the federal low-income housing tax credit (Federal LIHTC).

Under the Act, a "qualifying project" that is eligible for either 4% or 9% Federal LIHTC after October 1, 2021 will also be eligible for DC LIHTC in an amount equal to 25% of the value of the Federal LIHTC received with respect to the qualifying project. The acquisition, new construction and rehabilitation of affordable housing qualify for DC LIHTC.

Similar to Federal LIHTC, DC LIHTC is claimed over a ten year period and may be carried forward ten years (but may not be carried back). DC LIHTC may be used to offset District of Columbia income, insurance premium and franchise taxes. Recapture of DC LIHTC piggybacks off of Federal LIHTC such that if Federal LIHTC is recaptured, a corresponding amount of DC LIHTC is recaptured.

Notably, the Act amends the 2014 Act to allow DC LIHTC to be either "certificated" or "allocated." By allowing DC LIHTC to be certificated, the Act permits DC LIHTC to be sold outright to an unrelated investor rather than requiring the investor to be a direct or indirect owner of the qualifying project. Alternatively, where a qualifying project is owned by a pass-through entity, that pass-through entity may allocate DC LIHTC to its owners, similar to the way that Federal LIHTC is allocated to

Federal LIHTC syndicators and investors. The flexibility to certificate or allocate DC LIHTC, hopefully will create a broader investor base and provide opportunities to structure a particular transaction in a manner that maximizes the proceeds available from DC LIHTC.

The Act establishes a floor price for the transfer, sale or assignment of DC LIHTC. The sale price per dollar of DC LIHTC must be equal to at least 80% of the per dollar price of the Federal LIHTC.

Contact your Vorys attorney with any questions.