

HOUSE BILL No. 2289

AN ACT concerning taxation; relating to the Kansas affordable housing tax credit act; discontinuing such credit for qualified developments receiving a 4% federal tax credit; limiting the aggregate amount of such credit and discontinuing such credit after qualified allocation plan year 2028; relating to the Kansas housing investor tax credit; providing for transferability of credits from the year that the credit was originally issued; amending K.S.A. 2024 Supp. 79-32,306 and 79-32,313 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2024 Supp. 79-32,306 is hereby amended to read as follows: 79-32,306. (a) For all taxable years commencing after December 31, 2022, *except as provided in subsection (i)*, there shall be allowed a credit against the income tax liability imposed pursuant to the Kansas income tax act, the privilege tax liability imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premium tax liability imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, for each qualified development for each year of the credit period, in an amount equal to the federal tax credit allocated or allowed by the KHRC to such qualified development, except that there shall be no reduction in the credit allowable in the first year of the credit period due to the calculation in section 42(f)(2) of the federal internal revenue code.

(b) The KHRC shall issue an allocation certificate to an owner of a qualified development to which a credit has been allocated. The KHRC shall issue an allocation certificate to the qualified development simultaneously with issuance of federal form 8609 with respect to the federal tax credits.

(c) All allocations shall be made pursuant to the qualified allocation plan.

(d) If an owner of a qualified development receiving an allocation of a credit is a pass-through entity, the owner may allocate the credit among its partners or members in any manner agreed to by such persons regardless of whether: (1) Any such person is allocated or allowed any portion of any federal tax credit with respect to the qualified project; (2) the allocation of the credit under the terms of the agreement has substantial economic effect within the meaning of section 704(b) of the federal internal revenue code; or (3) any such person is deemed a partner for federal income tax purposes, if the partner or member would be considered a partner or member under applicable state law governing such entity and has been admitted as a partner or member on or prior to the date for filing the qualified taxpayer's tax return, including any amendments to such tax return, with respect to the year of the credit. In the case of multiple tiers of pass-through entities, the credit may be so allocated through any number of pass-through entities in any manner agreed by the owners of such pass-through entities, none of which shall be considered a transfer. Any pass-through entity allocating a credit to its partners or members shall attach a pass-through certification to its tax return annually. Each partner or member shall be allowed to claim or further allocate such amount subject to any restrictions set forth in this act.

(e) An owner of a qualified development to which a credit has been allocated and each qualified taxpayer to which such owner has allocated a portion of such credit, if any, shall file with their state income, privilege or premium tax return a copy of the allocation certificate issued by the KHRC with respect to such qualified development and a copy of any pass-through certification, as prescribed by the director.

(f) No credit shall be allocated pursuant to this act unless the qualified development is the subject of a recorded restrictive covenant requiring the development to be maintained and operated as a qualified development and is in accordance with the accessibility and adaptability requirements of the federal tax credits and title VIII of the civil rights act of 1968, as amended by the fair housing amendments act

of 1988, for a period of 15 taxable years, or such longer period as may be agreed to between the KHRC and the owner of the qualified development, beginning with the first taxable year of the credit period.

(g) The allocated credit amount may be taken against the income, privilege or premium taxes imposed for each taxable year of the credit period. Any amount of credit that exceeds the income, privilege or premium tax liability of a qualified taxpayer for a taxable year may be carried forward as a credit against subsequent years' tax liability up to 11 tax years following the tax year in which the allocation was made and shall be applied first to the earliest years possible. Any amount of the credit that is not used shall not be refunded to the taxpayer.

(h) Unless otherwise provided in this act or the context or law requires otherwise, the KHRC shall determine eligibility for a credit and allocate credits in accordance with the standards and requirements set forth in section 42 of the federal internal revenue code. Any combination of federal tax credits and credits allowed pursuant to this act shall be the least amount necessary to ensure the financial feasibility of a qualified development.

(i) (1) Notwithstanding the foregoing provisions, the maximum amount of Kansas affordable housing tax credits awarded by the KHRC to all qualified developments for qualified allocation plan year 2025 shall not exceed \$25,000,000. Commencing with the qualified allocation plan adopted for 2026 and ending with the qualified allocation plan adopted for 2028, the maximum amount of Kansas affordable housing tax credits awarded by the KHRC to all qualified developments in each qualified allocation plan year shall not exceed \$8,800,000. On and after November 15, 2025, the KHRC shall not accept any application for, or award any additional allocation of, credit under this act to a qualified development receiving a 4% federal tax credit, which is defined as a qualified development financed by tax-exempt bonds as provided under section 42(h)(4) of the federal internal revenue code. The KHRC shall continue to award credit under this act to qualified developments receiving 9% federal tax credits in accordance with the provisions of this act for the 2026, 2027 and 2028 qualified allocation plans. A qualified development receiving a 4% federal tax credit awarded a credit allocation under this act by the KHRC on or before November 14, 2025, pursuant to the 2025 qualified allocation plan or any previous qualified allocation plan, shall continue to receive the awarded credit throughout the authorized credit period and any applicable carry forward period.

(2) Subsequent to awards for the 2028 qualified allocation plan, the KHRC shall not accept any application for, or award any additional allocation of, credit under this act in any amount to a qualified development. No credits under this act shall be allocated or awarded after the 2028 qualified allocation plan or after December 31, 2028. A qualified development receiving a 9% federal tax credit awarded a credit allocation under this act by the KHRC pursuant to the 2028 qualified allocation plan or any previous qualified allocation plan shall continue to receive the awarded credit throughout the authorized credit period and any applicable carry forward period.

Sec. 2. K.S.A. 2024 Supp. 79-32,313 is hereby amended to read as follows: 79-32,313. (a) (1) For tax year 2022 and all tax years thereafter, a credit against the income tax liability imposed pursuant to the Kansas income tax act, the privilege tax liability imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premium tax liability imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, shall be allowed to:

(A) A qualified investor for a cash investment in a qualified housing project that has been approved and issued a tax credit by the director. The tax credit may be claimed in its entirety in the taxable year the cash investment is made; and

(B) a project builder or developer of a qualified housing project

that has been approved and issued a tax credit by the director.

(2) To claim such tax credit, the qualified investor, project builder or developer or transferee shall provide all information or documentation in the form and manner required by the secretary of revenue. If the amount of the credit exceeds the taxpayer's tax liability in any one taxable year, the remaining portion of the credit may be carried forward in the succeeding taxable years until the total amount of the credit is used, except that no credit may be claimed after four taxable years next succeeding the taxable year that such credit was issued, and any remaining credit shall be forfeited. Any portion of the credit that is carried forward may be transferred pursuant to subsection (d) and claimed by the transferee in the same manner as the transferor.

(b) (1) Tax credits may be issued by the director for a qualified housing project as follows:

(A) For qualified housing projects located in a county with a population of not more than 8,000, in an amount *of* not to exceed \$35,000 per residential unit;

(B) for qualified housing projects located in a county with a population of more than 8,000 but not more than 25,000, in an amount *of* not to exceed \$32,000 per residential unit; and

(C) for all other qualified housing projects, in an amount *of* not to exceed \$30,000.

(2) A qualified housing project shall be limited to a total of 40 such residential units per year for both single-family and multi-family dwellings.

(3) Tax credits may be issued to a qualified investor in the amount of a cash investment of up to the total amount that may be issued by the director under this subsection for the qualified housing project, or as provided in the agreement required by K.S.A. 2024 Supp. 79-32,312, and amendments thereto. Project builders or developers may apply to the director each year for tax credits for additional units or phases of a project. Qualified investors may be issued tax credits for cash investments in multiple qualified housing projects. Project builders or developers may apply and be approved for multiple qualified housing projects in the same tax year.

(4) The aggregate amount of tax credits that may be issued under this section shall not exceed \$13,000,000 each tax year, except that if the director issues an aggregate amount of tax credits in one tax year that is less than \$13,000,000, then the director may carry forward the difference and issue such amount of tax credits in the immediately succeeding tax year in addition to the statutory amount that may be issued under this section. Of the aggregate amount of tax credits issued in one tax year, the director shall allocate:

(A) Not less than \$2,500,000 in tax credits for qualified housing projects located in counties with a population of not more than 8,000;

(B) not less than \$2,500,000 in tax credits for qualified housing projects located in counties with a population of more than 8,000 but not more than 25,000; and

(C) up to \$8,000,000 in tax credits for qualified housing projects located in counties with a population of more than 25,000 but not more than 75,000.

(c) A cash investment in a qualified housing project shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined by the director.

(d) Any qualified investor who receives a tax credit pursuant to this section shall be deemed to acquire an interest in the nature of a transferable credit limited to the amount of the credit issued to the qualified investor by the director. All or a portion of such credit may be transferred by the qualified investor or any subsequent transferee to one or more persons, whether or not such transferee is then a qualified investor, and ~~be claimed by the transferee as a credit against the transferee's Kansas tax liability in the same manner as the transferor beginning in the year the credit is transferred~~ *provided in subsection (a) beginning in the year the cash investment was originally made by the*

qualified investor. The credit may be carried forward as permitted by subsection (a). There shall be no limit on the number of times a credit or any portion thereof can be transferred. No person shall be entitled to a refund for any interest on such tax credit that may be created under this section. A credit acquired by transfer shall be subject to the limitations prescribed in this section. Any such transferee succeeds to all remaining rights and restrictions of the transferor with respect to the credit being transferred on the date of such transfer. Documentation of any credit acquired by transfer shall be provided by the taxpayer claiming such credit in the manner required by the secretary of revenue. The qualified investor or subsequent transferee transferring such credit shall provide the director and the secretary of revenue with the name, address and taxpayer identification number of each person to whom credits have been transferred and such other information as may be required by the director or the secretary of revenue. The provisions of this subsection shall apply to credits issued for tax year 2022 and all tax years thereafter.

(e) The secretary of revenue may adopt rules and regulations as necessary to implement and administer the provisions of this act.

(f) For purposes of calculating any tax due under K.S.A. 40-253, and amendments thereto, the credit allowed by this section shall be treated as a tax paid under K.S.A. 40-252, and amendments thereto.

(g) *The provisions of subsection (d), as amended by this act, shall apply retroactively to any credits issued for tax year 2022 and all tax years thereafter.*

Sec. 3. K.S.A. 2024 Supp. 79-32,306 and 79-32,313 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report_____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report_____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

