

House Bill 405 (COMMITTEE SUBSTITUTE)

By: Representatives Martin of the 47th, Stephens of the 164th, Parrish of the 156th, and Fludd of the 66th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
2 income taxes, so as to change certain provisions regarding income tax credits for qualified
3 low-income buildings; to provide for related matters; to provide an effective date; to repeal
4 conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
8 is amended by revising Code Section 48-7-29.6, relating to income tax credits for qualified
9 low-income buildings, as follows:

10 "48-7-29.6.

11 (a) As used in this Code section, the term:

12 (1) 'Federal housing tax credit' means the federal tax credit as provided in Section 42 of
13 the Internal Revenue Code of 1986, as amended.

14 (2) 'Median income' means those incomes that are determined by the federal Department
15 of Housing and Urban Development guidelines and adjusted for family size.

16 (3) 'Project' means a housing project that has restricted rents that do not exceed 30
17 percent of median income for at least 40 percent of its units occupied by persons or
18 families having incomes of 60 percent or less of the median income, or at least 20 percent
19 of the units occupied by persons or families having incomes of 50 percent or less of the
20 median income.

21 (4) 'Qualified basis' means that portion of the tax basis of a qualified Georgia project
22 eligible for the federal housing tax credit, as that term is defined in Section 42 of the
23 Internal Revenue Code of 1986, as amended.

24 (5) 'Qualified Georgia project' means a qualified low-income building as that term is
25 defined in Section 42 of the Internal Revenue Code of 1986, as amended, that is located
26 in Georgia.

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1 (6) 'Qualified tax credit purchaser' means any person or entity who, under the applicable
 2 laws of the state of organization, is a shareholder in a corporation with respect to which
 3 a Subchapter 'S' election is allowed pursuant to subparagraph (b)(7)(B) of Code Section
 4 48-7-21, a partner in a partnership, or a member in a limited liability company that owns
 5 a direct or indirect (through one or more entities) interest in the qualified Georgia project
 6 with respect to which tax credits are purchased by such person or entity.

7 (b)(1) A state tax credit against the tax imposed by this article, to be termed the Georgia
 8 housing tax credit, shall be allowed with respect to each qualified Georgia project placed
 9 in service after January 1, 2001. The amount of such credit shall, when combined with
 10 the total amount of credits authorized under Code Section 33-1-18, in no event exceed
 11 an amount equal to the federal housing tax credit allowed with respect to such qualified
 12 Georgia project.

13 (2)(A) If under Section 42 of the Internal Revenue Code of 1986, as amended, a
 14 portion of any federal housing tax credit taken on a project is required to be recaptured
 15 as a result of a reduction in the qualified basis of such project, the taxpayer claiming
 16 any state tax credit with respect to such project shall also be required to recapture a
 17 portion of any state tax credit authorized by this Code section. The state recapture
 18 amount shall be equal to the proportion of the state tax credit claimed by the taxpayer
 19 that equals the proportion the federal recapture amount bears to the original federal
 20 housing tax credit amount subject to recapture.

21 (B) Notwithstanding subparagraph (A) of this paragraph, if any state tax credit claimed
 22 by a taxpayer was acquired by such taxpayer by transfer pursuant to paragraph (5) of
 23 this subsection, while the amount of the recapture required by this paragraph shall be
 24 determined by reference to the amount of the state tax credit claimed by such taxpayer,
 25 the original transferor of such credit and not the taxpayer that claimed such credit shall
 26 be required to recognize such recapture amount.

27 (C) The tax credit under this Code section shall not be subject to recapture if such
 28 recapture is due solely to the sale or transfer of any direct or indirect interest in such
 29 qualified Georgia project.

30 ~~(B)~~(D) In the event that recapture of any Georgia housing tax credit is required, any
 31 amended return submitted to the commissioner as provided in this Code section shall
 32 include the proportion of the state tax credit required to be recaptured, the identity of
 33 each taxpayer subject to the recapture, and the amount of tax credit previously allocated
 34 to such taxpayer.

35 (3) In no event shall the total amount of the tax credit under this Code section for a
 36 taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be

1 allowed to be carried forward to apply to the taxpayer's next three succeeding years' tax
2 liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

3 (4) The tax credit allowed under this Code section; and any recaptured tax credit; shall
4 be allocated among some or all of the partners, members, or shareholders of the entity
5 owning the project in any manner agreed to by such persons, whether or not such persons
6 are allocated or allowed any portion of the federal housing tax credit with respect to the
7 project.

8 (5) All or a portion of the tax credit allocated to any partner, member, or shareholder in
9 accordance with paragraph (4) of this subsection may be transferred or sold by such
10 allocatee at any time to any one or more qualified tax credit purchasers, and any such tax
11 credit acquired by a qualified tax credit purchaser may thereafter be transferred or sold
12 by any such qualified tax credit purchaser (or any subsequent transferee or purchaser) to
13 any one or more qualified tax credit purchasers.

14 (6) Any person allocating, transferring, or selling tax credits during any year shall file
15 a written notification with the department of all such allocations, transfers, or sales
16 occurring during the year. Such notification shall include the amount of tax credit
17 allocated, transferred, or sold; the name and tax identification number of the allocatee,
18 transferee, or purchaser; any information required under subparagraph (B) of paragraph
19 (2) of this subsection; and any other information required by the commissioner.

20 (c) The commissioner and the state department designated by the Governor as the state
21 housing credit agency for purposes of Section 42(h) of the Internal Revenue Code of 1986,
22 as amended, shall each be authorized to promulgate any rules and regulations necessary to
23 implement and administer this Code section."

24 SECTION 2.

25 This Act shall become effective upon its approval by the Governor or upon its becoming law
26 without such approval.

27 SECTION 3.

28 All laws and parts of laws in conflict with this Act are repealed.