

## Tax Law Insights

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# South Carolina Housing Issues State Low Income Housing Tax Credit Policies

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South Carolina enacted a state low income housing tax credit on May 14, 2020. An overview of the credit, which mirrors the federal credit, can be found [here](#).

The South Carolina State Housing Finance and Development Authority (SC Housing) is required to issue an eligibility statement in order for a project to receive the state LIHTC. The eligibility statement also specifies the amount of the state LIHTC a project will receive. SC Housing has now issued a policy document to set forth the procedures to obtain an eligibility statement, which can be found [here](#).

The SC Housing policy sets forth general requirements for issuing an eligibility statement, the procedural process of issuing an eligibility statement, and the underwriting assumptions SC Housing will use to determine whether state LIHTC are necessary for a project.

Projects must comply with all of the following in order to claim the state LIHTC:

1. The project must qualify for the federal low-income housing tax credit.
2. All buildings must be placed in service after January 1, 2020 and before December 31, 2030.
3. Restricted units must be affordable (30% of income) for at least 40% of units occupied by households with income of 60% or less of median income or 20% of units occupied by households with incomes of 50% or less of the median income.
4. The project must provide a report to SC Housing detailing why the state LIHTC credit is necessary to undertake the project, or how the South Carolina tax credit will benefit the tenants (including, but not limited to, reduced rent). At this time there is no prescribed form and projects should submit a report and then SC Housing may follow up with questions.
5. Receive an eligibility statement from SC Housing.
6. Comply with any applicable SC Housing Bulletin(s) and decisions made during application review.

Procedurally, the award and receipt of the state LIHTC is a two-step process. Initially, SC Housing will issue a Preliminary Determination of Project Eligibility based on the report submitted by a project (described in 4. above), the necessity of the state LIHTC to undertake the project, and consideration of local support (the application for federal credits contains information related to local support and will apparently be used as the basis for evaluating local support). Once the project is placed in service SC Housing will issue an Eligibility Statement when it issues the IRS Form(s) 8609 for the federal LIHTC.

The standards for determining the necessity of the state LIHTC depend on whether the project will utilize tax-exempt bonds and 4% LIHTCs or 9% LIHTCs.

Projects using tax-exempt bonds and 4% LIHTCs are presumptively eligible for the state LIHTC regardless of when awarded. The project must still submit a report and pay an underwriting fee. SC Housing will ensure projects are not over-sourced.

For 9% LIHTC awards made in 2020, SC Housing will adjust the mix of sources for a project in order to spread the federal LIHTCs among more projects.

9% LIHTC projects that received an award before 2020 can still receive the state LIHTC if they have specific increases in hard construction costs and the deferred developer fee is at least 15% of the total. Projects that were originally underwritten with a deferred developer fee that exceeded 15% will apparently be eligible to request a state LIHTC to reduce the deferred developer fee to 15%.

9% LIHTC projects that received an award before 2020 can also receive the state LIHTC by submitting a report showing how the state LIHTC would benefit tenants (e.g. reduced rent or other benefits). SC Housing will not consider the following to be tenant benefits:

Funding reserve accounts

New or increased fees paid to parties with an interest in the project

Replacing below-market sources (e.g. HOME funds)

Replacing any reduction in equity invested for LIHTCs

Buying land for future phases of the project.

A 15% deferred developer fee will be utilized when underwriting the state LIHTC for tenant benefits.

SC Housing will determine the amount of equity used for state LIHTC underwriting based on project representations, commitment letters, and input from syndicators. Owners will be required to inform

SC Housing at least 15 days in advance of any state LIHTC equity closing if the amount will vary by more than 5% from the commitment letter.

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