



## **Nebraska Affordable Housing Tax Credit Act Frequently Asked Questions February 23, 2017**

The Frequently Asked Questions (FAQs) below were developed by the Nebraska Investment Finance Authority (NIFA) with input from the Nebraska Department of Revenue (Department). The Department is posting these FAQs to assist NIFA in disseminating information regarding this tax credit.

This guidance document is advisory in nature but is binding on the agency until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

This guidance document may change with updated information or added examples. The Department recommends you do not print this document. Instead, [sign up for the subscription service](#) at [revenue.nebraska.gov](http://revenue.nebraska.gov) to get updates on your topics of interest.

The Nebraska Affordable Housing Tax Credit Act (LB 884; Neb. Rev. Stat. §77-2501 et seq.) (the "AHTC Act") creates a Nebraska state income tax credit (the "AHTC") for the development of affordable housing modeled after the federal low-income housing tax credit ("LIHTC") provided in Section 42 of the Internal Revenue Code (the "Code"). The Nebraska Investment Finance Authority ("NIFA") and the Nebraska Department of Revenue (the "Department of Revenue") are charged with the allocation and administration of the AHTC.

The following sets forth information with respect to several aspects of the AHTC Act and the administration of the AHTC.

### **What amount of AHTC Will Be Allocated in 2017?**

*All owners of qualifying developments (other than certain prior awards to CRANE projects) receiving an allocation of 9% LIHTC from NIFA in the 2017 Application Rounds will also receive an allocation of AHTC equal to no more than one hundred percent (100%) of the 9% LIHTC allocation. The total combined amount of LIHTC and AHTC allocated in connection with a qualifying development shall be determined by NIFA staff based upon underwriting of the development in order to meet the requirements of the Amended 2017 Qualified Allocation Plan and the Act.*

**NOTE:** The AHTC allocated in 2017 may only be claimed for taxable years beginning on and after January 1, 2019 (e.g., generally for returns filed in 2020 and thereafter) and only with respect to developments placed in service after January 1, 2018.

### **For How Many Years May the AHTC be Claimed?**

The AHTC may be claimed for a period of six (6) years, and specifically for the first six (6) years of the “credit period” as defined in Section 42 of the Code. For example, if an owner of a qualifying development receives an annual allocation of \$250,000 of LIHTC and an annual allocation of \$250,000 of AHTC, these credits would be available (subject to applicable provisions of the Code and the AHTC Act), as follows:

<u>Credit</u>	<u>Annual Amount</u>	<u>Credit Term</u>	<u>Total Amount of Credit</u>
LIHTC	\$250,000 annual allocation	10 years	\$2,500,000
AHTC	\$250,000 annual allocation	6 years	\$1,500,000

### **When May the AHTC First be Claimed?**

The AHTC may be claimed during the first six years of the “credit period” (as defined in Section 42 of the Code) applicable to the development subject to the following conditions:

- the qualified development must have been placed in service after January 1, 2018
- the AHTC may only be claimed for taxable years beginning on and after January 1, 2019 (e.g., generally for returns filed in 2020 and thereafter)

### **What is the Effect on the AHTC if A Development is Placed in Service in 2018 and an Election to Defer the Credit Period for the Federal LIHTC to 2019 is Not Made?**

If you claim the federal LIHTC in 2018 for the development, the credit period applicable to both the LIHTC and the AHTC will begin in 2018. Because the AHTC may not be claimed until the tax year beginning in 2019, you will not be entitled to the AHTC for tax year 2018. In this case, the AHTC will be available to be claimed for five (5) years, beginning with tax year 2019 and ending with tax year 2023. If the owner of the development elects to defer the start of the credit period for the LIHTC until 2019, the first year of the AHTC credit period will be 2019 ending with 2024.

### **What About “Stub” Years?**

Beginning with 2019, the first year the AHTC may be claimed, if a qualified development is not fully occupied for the entire first year of the credit period, the AHTC will be limited to the federal LIHTC amount allowed in the first year of the credit period. However, unlike the rules applicable to the LIHTC, the “disallowed AHTCs” in year one (1) of the credit period may not be claimed in year seven (7) of the credit period.

### **May an Interest in the AHTC be Transferred, Sold or Assigned Separate from the Ownership Interest in the Development?**

*An interest in the AHTC may **not** be sold or assigned separate from the ownership interest in the development. A “qualified taxpayer” (defined in the AHTC Act to mean a taxpayer owning an interest, direct or indirect, in a qualified project) may assign all or part of its ownership interest [in the development], including his or her interest in the AHTC. The interest in the AHTC may not be sold or assigned separately. For any year in which such interest is transferred, sold or assigned, the assignor shall file a written statement with his or her Nebraska tax return specifying the amount of the AHTC assigned and provide the Department of Revenue with the tax identification number of the new owner of the interest in the development.*

### **What Nebraska State Tax Liability May Be Offset with the AHTC?**

*The AHTC may be used to offset any Nebraska individual and corporate income taxes, any premium and related retaliatory taxes assessed to insurance providers, and any franchise taxes assessed to financial institutions.*

### **May AHTC Claimed but not Used in a Taxable Year be Carried Forward?**

*Yes; any AHTC claimed but not used in a taxable year may be carried forward. Currently, the AHTC Act does not specify the number of years the AHTC may be carried forward. Please refer to the Department of Revenue.*

### **Is the AHTC Subject to Recapture?**

*Yes. If any LIHTC is recaptured during the 6-year period over which the AHTC is claimed, a portion of the AHTC will also be recaptured.*

### **Questions????**

*Contact Teresa Kile, NIFA LIHTC Program Manager at (402) 434-3916 or [teresa.kile@nifa.org](mailto:teresa.kile@nifa.org). or Laura Maurstad, Attorney, at (402) 471-5924 or [laura.maurstad@nebraska.gov](mailto:laura.maurstad@nebraska.gov) at the Nebraska Department of Revenue.*