

701—42.53(15) Workforce housing tax incentives program. A business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for individual income tax. The workforce housing tax incentives program replaced the eligible housing business enterprise zone program. An eligible business under the workforce housing tax incentives program must be approved by the economic development authority. The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48. The general assembly has mandated that the economic development authority and the department of revenue adopt rules to jointly administer Iowa Code sections 15.351 to 15.356. In general, the economic development authority is responsible for evaluating whether projects meet the requirements for a workforce housing tax incentives program while the department of revenue administers tax credit claims and transfers.

42.53(1) Definitions.

“Costs directly related” means the same as defined in rule 261—48.3(15).

“Qualifying new investment” means the same as defined in rule 261—48.3(15).

42.53(2) Workforce housing tax incentives. The economic development authority will allocate no more than \$20 million in tax incentives for this program for any fiscal year, \$5 million of which shall be reserved for allocation to qualified housing projects in small cities, as defined in Iowa Code section 15.352(10), that are registered on or after July 1, 2017. A housing business that has entered into an agreement with the economic development authority is eligible to receive the tax incentives described in the following paragraphs:

a. Sales tax refund. A housing business may claim a refund of the sales and use tax described in rule 701—12.19(15).

b. Investment tax credit.

(1) Computation of the credit. A housing business may claim a tax credit in an amount not to exceed 10 percent of the qualifying new investment in a housing project not located in a small city, or 20 percent of the qualifying new investment in a housing project located in a small city.

(2) Allocation of the tax credit to the individual owners of the entity or beneficiaries of an estate or trust. An individual may claim a tax credit if the housing business is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust.

(3) Refundability. Any tax credit in excess of the taxpayer’s liability for the tax year is not refundable.

(4) Carryforward. Any tax credit in excess of the taxpayer’s liability may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

42.53(3) Claiming the tax credit—information required. The taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer’s name, the taxpayer’s address, the taxpayer’s tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.53(5). The tax credit certificate must be included with the income tax return for the tax period in which the housing is ready for occupancy.

42.53(4) Basis adjustment. The increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the investment tax credit. For example, if a new housing project had qualifying new investment of \$1 million which resulted in a \$100,000 investment tax credit for Iowa tax purposes, the basis of the property for Iowa income tax purposes would be \$900,000.

42.53(5) Transfer of the credit.

a. Submission of transferred tax credit certificate to the department—information required. Tax credit certificates issued under an agreement entered into pursuant to subrule 42.53(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee’s name, tax identification

number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue. However, tax credit certificate amounts of less than the minimum amount established in rule by the economic development authority shall not be transferable.

b. Issuance of replacement certificate by the department. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.

c. Claiming the transferred tax credit. A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income, or franchise tax purposes.

d. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than the minimum amount established in rule by the economic development authority.

e. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in subparagraph 42.53(2)“b”(4) shall apply.

42.53(6) Repayment of benefits. If the housing business fails to maintain the requirements of Iowa Code section 15.353, the taxpayer may be required to repay all or a portion of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of Iowa Code section 15.353. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.*, Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code sections 15.354 and 15.355.

[ARC 1744C, IAB 11/26/14, effective 12/31/14; ARC 3837C, IAB 6/6/18, effective 7/11/18]