ILLINOIS STATE BAR ASSOCIATION

JUNE 2022 VOL 65 NO. 12

Tax Trends

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

Co-Editors' Note

BY MARY ANN CONNELLY & STANLEY KAMINSKI

This edition of Tax Trends features the final note 2021-2022 year by Evan Schanerberger, chair of State and Local Taxation Section Council. Evan Schanerberger and the section council members again conducted business as usual in another very unusual year. Evan did an excellent job of leading our section council by being very proactive in bringing in new members, promoting the benefits of becoming active in the ISBA and SALT and engaging the members to become more involved. We wish him the best in his new job in Florida. Also included in this edition of Tax Trends is an article entitled "The New Affordable Housing Incentive Program," written by Lauren Elliot and Melissa Whitley. The article provides an informative synopsis of the requirements to qualify for the New Affordable Housing Incentive and other pertinent information.

After 28 years (Mary Ann Connelly) and 20 years (Stanley R. Kaminski) we have decided it is time for us to bestow the honor of being editor to another section council member. We thank Sara Anderson, ISBA publications manager, for all her challenging work getting our newsletters published timely.■

Chair's Final Note

BY EVAN SCHANERBERGER

Thank you all for being such a great group to not only chair but to help me grow in Chicago to become chair and learn from the best in SALT. I believe every one of you helped me one-on-one with growth within my career and I will always appreciate it. I honestly tell every attorney that this is the greatest bar association council because of the people involved. I appreciate everyone's patience during the years of Zoom. Everyone stepped up to the challenge of another year of e-learnings and Zoom.

I would like to make a special thank you to Mary Ann Connelly and Stanley Kaminski for their outstanding service of an average of two decades as co-editors to the newsletter. These will be big shoes to fill but I am more than confident the new incoming chair, Daniel Heywood, will continue this great Council's work.

I have moved to South Florida taking on large business and international case work coming out of Miami in the IRS Office of Chief Counsel but would love to keep in touch with everyone. I will also be leaving the ISBA to focus on more Federal Bar Association issues in the Miami area, but I know the incoming ISBA presidents will guide this Association well – I have only

Continued on next page

Chair's Final Note

CONTINUED FROM PAGE 1

received the best of help and friendship from this Association.

I wish everyone the best of luck and I know with confidence this group will continue to thrive.

Best,
Evan Schanerberger
Schanerberger.com

The New Affordable Housing Incentive Program and Its Benefits

BY LAUREN ELLIOTT & MELISSA WHITLEY

Summary

The new affordable housing incentive program is established by state law under 35 ILCS 200/15-178. On July 29, 2021, the reduction in assessed value for affordable rental housing construction or rehabilitation statue was passed and went into effect the same day. The law permits qualifying substantial rehabilitation or new construction from 2015 or later to apply for the program. The benefit of the program begins to toll once the building goes into service, not the year the application is made. An applicant who qualifies for the benefit of the incentive will realize it on the 2022 tax bill, payable in 2023. A Certificate of Error ("CofE") for 2021 can be filed If the applicant qualified for the benefit in 2021. Please note that the Assessor's Office will only grant Certificates of Error for 2021 and will not grant Certificates of Error for years prior to 2021.

> For example, if the new construction or rehabilitation was completed and the building went in-service in 2018 and the property owner obtained the incentive for 2022 tax year, the 10-year term of the incentive would begin to toll in 2018. The taxpayer forfeits the benefit of the program for 2018, 2019 and 2020 but may seek a refund for the benefit of the program for the 2021 tax year through the CofE process.

The purpose of the law is to expand availability of affordable housing by incentivizing rehabilitation and new construction of multi-family affordable housing developments. The benefit comes in the form of assessment reductions for multifamily rental developments subject to certain rent, tenant income and other restrictions. The assessment reduction benefit that the applicant qualifies for is determined by the special assessment tier. If at least 70 percent of the net rentable area of a qualified mixed-use development is used for residential purposes, the benefit will be applied to the entire property (including the commercial component of a mixed-use site). Otherwise, the benefit applies only to the residential portion.

Specific Provisions

The new affordable housing incentive program has three tiers, as follows:

Tier 1:

- *Requirement*: At least 15-34 percent of residential units shall be maintained as affordable units for at

Tax Trends

This is the newsletter of the ISBA's Section on State & Local Taxation. Section newsletters are free to section members and published at least four times per year. Section membership dues are $30 per year. To subscribe, visit www.isba.org/sections or call 217-525-1760.

OFFICE
ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS
Mary Ann Connelly
Stanley R. Kaminski

PUBLICATIONS MANAGER
Sara Anderson
sanderson@isba.org

least 10 years. New construction or rehab costing $8 psf of total building square footage and improves at least two primary building systems.

- *Tax Benefit*: Assessment reduced by 25 percent of total for a 10-year term with up totworenewals. Time in Class 9 counts against the term. Service year, not application year, starts the tolling of the term.

Tier 2:

- *Requirement*: At least 35 percent of residential units shall be maintained as affordable units for at least 10 years. New construction or rehab costing $12.50 psf of total building square footage and improves at least two primary building systems.
- *Tax Benefit*: Assessment reduced by 35 percent of total for a 10-year term with up to two renewals. Time in Class 9 counts against the term. Service year, not application year, starts the tolling of the term.

Tier 3:

Specifically, the low affordability community project "lacp"

- *Requirement:* At least 20 percent of residential units shall be maintained as affordable units for 30 years **and** the building shall be in a Low Affordability Community. New construction or rehab costing $60 psf of total building square footage and improves at least five primary building systems.
- *Tax Benefit*: Assessment reduced to a percentage of the difference between the value of the property one year before the affordable units are occupied and post-construction assessed for a 30-year term. Reduction in assessment is front loaded (i.e. first three years, 100 percent reduction applied to the increase in assessment). Please note: This benefit appears to be scheduled to sunset after 12/31/2027.

Definitions

"Multi-family" means seven or more residential units in the building. A mixed-use building with six residential units and one commercial unit does not qualify for this incentive program.

"Affordable Unit" means maximum rent and maximum income limits are met.

"Maximum Rent" means the maximum regular rent for 60 percent of the area median income ("AMI") for the area where the building is located as determined by the United States Department of Housing and Urban Development and published annually by The Illinois Housing Development Authority.

Current allowable monthly rents (subject to change)

Size of Unit	Affordable Unit Rents
0 Bedroom	$979
1 Bedroom	$1,049
2 Bedroom	$1,258
3 Bedroom	$1,454
4 Bedroom	$1,623

"Maximum Income Limits" means the maximum regular income limits for 60 percent of area median income ("AMI") for the geographic area where the multifamily building is located as determined by the United States Department of Housing and Urban Development and published annually by The Illinois Housing Development Authority.

"Low Affordability Community" means the subject building is located within a municipality or jurisdiction with less than $1M population in which 40 percent or less of its total year-round housing units are affordable as determined by the Illinois Housing Development Authority; or the subject building is located in a "D" zoning district as designed in the Chicago Zoning Ordinance; or the subject building is located within a municipality or jurisdiction with a population of $1M or more that has been designed as a low affordability community by ordinance

The program has use-based qualifications. The subject building must contain a minimum of seven residential units and at least 15 percent of the residential units are used as low affordable housing units for at least 10 years. There is no penalty for withdrawing from the incentive early.

The program has investment-based qualifications. It requires either new construction or substantial rehabilitation to occur on or after January 1, 2015. The monetary investment threshold is based on the total building square footage, not just the affordable unit square footage. To qualify, investors must invest at least $8psf and make improvements to two primary building systems. To qualify for Tier 2 benefits, however, investments of $12.50psf are required. To qualify for Tier 3 benefits, investments of $60psf are required and improvement of five primary building systems. Primary building systems can include electrical, heating, plumbing, roofing, exterior doors and windows, floors, walls and ceilings, exterior walls, elevators, health and safety systems, and energy conservation improvements.

The program is available to properties located throughout Cook County; but note locational-based qualifications are required to qualify for Tier 3 benefits as outlined above.

Additional labor-based requirements are placed on Tier 3 program applicants. To qualify for Tier 3 benefits, a Project Labor Agreement must be submitted in Part 1 of the application. All workers must be union trade workers.

Application Procedures and Required Documentation

The application procedure requires one application per building; and each building must have seven or more residential units to be eligible. The application consists of two parts. Both part 1 and part 2 must be submitted by the deadline for any tax year in question.

The deadline to apply for the program for the 2022 tax year was March 31, 2022. The deadline to apply for the program for the 2023 tax year will be January 31, 2023.

Upon receipt of both the eligibility application Part 1 and Part 2, the Assessor's Office will review the applications to determine whether the property is eligible for the new affordable housing incentive program. Once review is completed, the Assessor will email the applicant notice of its decision. If Assessor denies the application, the email will advise as to why the application has been denied and the Applicant has 30 days from date of said email to cure the deficiencies.

Eligibility Application Part 1

The applicant shall be the owner of the property, but the application can be completed by an in-care-of contact. Currently, there is no requirement that Part 1 be filed before the new construction or substantial rehabilitation begins.

The application provides three bases to apply: (1) the applicant is currently in good standing in a Class 9 incentive program, (2) the applicant had been a Class 9 incentive recipient but the Class 9 status was revoked after January 1, 2017, or (3) the applicant is a new applicant. If the basis for the application is (1) current Class 9 program participant, the applicant may rely on prior submissions with Class 9 in lieu of answering questions and/or providing documentation. If the basis for the application is (2) Class 9 recipient with a revoked status, the applicant does not need to reinstate the Class 9 before applying for this affordable housing incentive.

Documentation relating to the planned project must be provided and reported in support of Part 1 of the application. If substantial rehabilitation has yet to begin, the applicant must upload photographs of the work that needs to be completed. If the qualifying project is new construction, the applicant can skip the section in Part 1 of the application that asks for list of major components and corresponding costs. The applicant must provide proposed project dates and projected costs. If the proposed project is substantial rehabilitation, then the application must identify the primary building systems that will be improved and the cost of each system and component of the system that will be renovated. The following documents shall be uploaded with Part 1 of the application (if available): building survey, architectural drawings or blueprints and loan commitment letter. If the applicant is seeking Tier 3 status, a Project Labor Agreement must also be uploaded in support of the Part 1 application.

Eligibility Application Part 2

The applicant shall also complete the eligibility application Part 2 prior to the applicable annual deadline.

In terms of timing, the applicant is not required to wait until a control number is provided from the Part 1 submission to complete and submit the Part 2 application. However, the affordable dwelling units in the building must be "in service" by the time the Part 2 eligibility application is submitted. For new construction projects, the eligibility application Part 2 shall not be submitted until construction is complete and the affordable units are rented.

The eligibility application part must provide actual dates relating to the rehabilitation or construction and actual costs of work completed. If the project is new construction, the applicant does not need to complete the section asking for a list of major components and corresponding costs.

Documentation relating to the completed project must be provided, including photographs of the completed work. The Following required documentation must be provided and the Assessor's office in Cook County asks that each document included the PIN and project name in case attachments get separated from the main file:

- Proof of ownership (deed, etc.)
- Certificate of Occupancy or Certificate of Inspection.
  The applicant must provide documentation from the municipality that the property complies with all local building, safety, health codes and requirements is fit for occupancy.
- If the basis for the application is rehabilitation, need to provide proof of rehab costs including building permits and notarized contractor sworn statements
- Tenant Certification of Household Income form (must be completed for each unit)
  - Income that must be included in total household income: Wages/salaries/tips, net business income, interest/dividend payments, social security income, payment from insurance policies/annuities/pensions/disability benefits/etc., periodic payments, unemployment and works comp or severance pay, alimony/child support/other regular monetary contributions, any other public assistance
  - Income not to be included in total household income: earnings of children under 18 years, temporary income like cash gifts, reimbursement for medical expenses, lump sum inheritance or payments to recoup losses, student financial assistance paid directly to the student, foster childcare payments, receipts from government-funded training, SNAP aid
- Rental Information/Tenant Household Income Report Form
- Proof of written notice to tenants of maximum rent levels
- Verify tenant participating in income-based subsidy program, if any
- A written statement that:
  - The affordable units are comparable to the market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance, energy efficiency and overall

    quality of construction
    - Identifies the household income for every household occupying an affordable unit and certifying that the household income does not exceed the maximum income limits allowable for the area in which the residential real property is located
    - Owner has verified and retained documentation of household income for every household occupying an affordable unit.
- If applicant is applying as a New Applicant under income-based rental subsidy program, the applicant must provide documentation from the administering agency verifying the owner's participation in a qualifying income-based rental subsidy program.

Maintenance

Once a property has been approved for this affordable housing incentive, the property owner must file the following forms every year by January 31st in order to maintain the benefits of this incentive program: Annual affidavit, Tenant Certification of Household Income form and Rental Information/Tenant Household Income Report Form.

As stated above, there are no penalties for withdrawing from this program early.

Resources

Affordable Housing Statute passed July 29, 2021 (https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=003502000K15-178)

Cook County Assessor's website (https://www.cookcountyassessor.com/affordable-housing) and email contact at Cook County Assessor's office (Assessor.affordablehousing@cookcountyil.gov) ■