

# Senate Bill 199

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases monetary cap on allowable affordable housing tax credits. Applies to affordable housing tax credits claimed in tax years beginning on or after January 1, 2010.  
Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to affordable housing tax credits; creating new provisions; amending ORS 317.097; and  
3 prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 317.097, as amended by section 6, chapter 29, Oregon Laws 2008, and section  
6 15, chapter 45, Oregon Laws 2008, is amended to read:

7 317.097. (1) A credit against taxes otherwise due under this chapter for the taxable year shall  
8 be allowed to a lending institution in an amount equal to the difference between:

9 (a) The amount of finance charge charged by the lending institution during the taxable year at  
10 an annual rate less than the market rate for a loan that is made before January 1, 2020, that com-  
11 plies with the requirements of this section; and

12 (b) The amount of finance charge that would have been charged during the taxable year by the  
13 lending institution for the loan for housing construction, development, acquisition or rehabilitation  
14 measured at the annual rate charged by the lending institution for nonsubsidized loans made under  
15 like terms and conditions at the time the loan for housing construction, development, acquisition or  
16 rehabilitation is made.

17 (2) The maximum amount of credit for the difference between the amounts described in sub-  
18 section (1)(a) and (b) of this section may not exceed four percent of the average unpaid balance of  
19 the loan during the tax year for which the credit is claimed.

20 (3) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a  
21 particular year may be carried forward and offset against the taxpayer's tax liability for the next  
22 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried  
23 forward and used in the second succeeding tax year, and likewise, any credit not used in that second  
24 succeeding tax year may be carried forward and used in the third succeeding tax year, and any  
25 credit not used in that third succeeding tax year may be carried forward and used in the fourth  
26 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried  
27 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year  
28 thereafter.

29 (4) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan  
30 shall be:

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (a) Made to an individual or individuals who own the dwelling, participate in an owner-occupied  
2 community rehabilitation program and are certified by the local government or its designated agent  
3 as having an income level at the time the loan is made of less than 80 percent of the area median  
4 income;

5 (b)(A) Made to a qualified borrower;

6 (B) Used to finance construction, development, acquisition or rehabilitation of housing; and

7 (C) Accompanied by a written certification by the Housing and Community Services Department  
8 that the:

9 (i) Housing created by the loan is or will be occupied by households earning less than 80 percent  
10 of the area median income; and

11 (ii) Full amount of savings from the reduced interest rate provided by the lending institution is  
12 or will be passed on to the tenants in the form of reduced housing payments, regardless of other  
13 subsidies provided to the housing project;

14 (c)(A) Made to a qualified borrower;

15 (B) Used to finance construction, development, acquisition, or acquisition and rehabilitation of  
16 housing consisting of a manufactured dwelling park; and

17 (C) Accompanied by a written certification by the Housing and Community Services Department  
18 that the housing will continue to be operated as a manufactured dwelling park during the period for  
19 which the tax credit is allowed; or

20 (d)(A) Made to a qualified borrower;

21 (B) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a  
22 preservation project; and

23 (C) Accompanied by a written certification by the Housing and Community Services Department  
24 that the housing preserved by the loan:

25 (i) Is or will be occupied by households earning less than 80 percent of the area median income;  
26 and

27 (ii) Has a rent assistance contract with the United States Department of Housing and Urban  
28 Development or the United States Department of Agriculture that will be maintained by the quali-  
29 fied borrower.

30 (5) A loan made to refinance a loan that meets the criteria stated in subsection (4) of this sec-  
31 tion shall be treated the same as a loan that meets the criteria stated in subsection (4) of this sec-  
32 tion.

33 (6) In order to be eligible for the tax credit allowed under subsection (1) of this section, the loan  
34 also shall be accompanied by a written certification by the Housing and Community Services De-  
35 partment that:

36 (a) Specifies the period, as determined by the Housing and Community Services Department,  
37 during which the loan is eligible for the tax credit under subsection (1) of this section; and

38 (b) States that the loan is within the limitation imposed by subsection (7) of this section.

39 (7)(a) The Housing and Community Services Department may certify loans that are eligible un-  
40 der subsection (4) of this section if the total credits attributable to all loans eligible for credits un-  
41 der subsection (1) of this section and then outstanding do not exceed [~~\$17 million~~] **\$21 million** for  
42 any fiscal year. In making loan certifications, the Housing and Community Services Department  
43 shall attempt to distribute the tax credits statewide, but shall concentrate the tax credits in those  
44 areas of the state that are determined by the State Housing Council to have the greatest need for  
45 affordable housing.

1 (b) The certification under subsection (6) of this section shall state the period for which the  
2 credit will be allowed, which may not exceed 20 years.

3 (8) The applicant's receipt of a credit under section 42 of the Internal Revenue Code does not  
4 affect the credit allowed under this section.

5 (9) A loan meeting the requirements of subsections (4) and (6) of this section may be sold to a  
6 qualified assignee with or without the lending institution's retaining servicing of the loan so long  
7 as a designated lending institution maintains records annually verified by a loan servicer that es-  
8 tablish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

9 (10) As used in this section:

10 (a) "Annual rate" means the yearly interest rate specified on the note, and not the annual per-  
11 centage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

12 (b) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed  
13 by the lending institution, and other charges related to the cost of obtaining credit.

14 (c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008,  
15 any mortgage banking company that maintains an office in this state or any community development  
16 corporation that is organized under the Oregon Nonprofit Corporation Law.

17 (d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

18 (e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section  
19 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2007.

20 (f) "Preservation project" means housing that was previously developed as affordable housing  
21 with a contract for rent assistance from the United States Department of Housing and Urban De-  
22 velopment or the United States Department of Agriculture and that is being acquired by a spon-  
23 soring entity.

24 (g) "Qualified assignee" means any investor participating in the secondary market for real estate  
25 loans.

26 (h) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling  
27 interest in the real property that is financed by the loan described in subsection (4) of this section.  
28 Such a controlling interest includes, but is not limited to, a controlling interest in the general  
29 partner of a limited partnership that owns the real property.

30 (i) "Sponsoring entity" means a nonprofit corporation, nonprofit cooperative, state governmental  
31 entity, local unit of government as defined in ORS 466.706, housing authority or any other person,  
32 provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation,  
33 nonprofit cooperative, state governmental entity, local unit of government or housing authority.

34 (11) Notwithstanding any other provision of law, a lending institution that is a community de-  
35 velopment corporation organized under the Oregon Nonprofit Corporation Law may transfer any  
36 part or all of any tax credit arising under subsection (1) of this section to one or more other lending  
37 institutions that are stockholders or members of the community development corporation or that  
38 otherwise participate through the community development corporation in the making of one or more  
39 loans that generate the tax credit under subsection (1) of this section.

40 (12) The lending institution shall file an annual statement with the Housing and Community  
41 Services Department, specifying that it has conformed with all requirements imposed by law to  
42 qualify for this tax credit.

43 (13) The Housing and Community Services Department and the Department of Revenue may  
44 adopt rules to carry out the provisions of this section.

45 **SECTION 2. The amendments to ORS 317.097 by section 1 of this 2009 Act apply to tax**

1 years beginning on or after January 1, 2010.

2 **SECTION 3.** This 2009 Act takes effect on the 91st day after the date on which the reg-  
3 ular session of the Seventy-fifth Legislative Assembly adjourns sine die.

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