

111TH CONGRESS
2D SESSION

S. 3141

To amend the Internal Revenue Code of 1986 to provide special rules for treatment of low-income housing credits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2010

Mr. BINGAMAN (for himself, Mr. MENENDEZ, Mr. KERRY, Ms. CANTWELL, Ms. STABENOW, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide special rules for treatment of low-income housing credits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Low Income Housing
5 Tax Credit Recovery Act of 2010”.

1 **SEC. 2. FIVE-YEAR CARRYBACK OF LOW-INCOME HOUSING**
 2 **CREDIT.**

3 (a) IN GENERAL.—Subsection (a) of section 39 of the
 4 Internal Revenue Code of 1986 is amended by adding at
 5 the end the following new paragraph:

6 “(4) 5-YEAR CARRYBACK OF LOW-INCOME
 7 HOUSING CREDIT.—

8 “(A) IN GENERAL.—In the case of an ap-
 9 plicable low-income housing credit (within the
 10 meaning of section 38(e)(6)(C))—

11 “(i) this section shall be applied sepa-
 12 rately from the business credit (other than
 13 the low-income housing credit), and

14 “(ii) paragraph (1) shall be applied by
 15 substituting ‘each of the 5 taxable years’
 16 for ‘the taxable year’ in subparagraph (A)
 17 thereof.”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 2007, and to carrybacks of credits from
 21 such taxable years.

22 **SEC. 3. CARRYBACK OF NEW INVESTMENTS.**

23 (a) IN GENERAL.—Section 42(f) of the Internal Rev-
 24 enue Code of 1986 is amended by adding at the end the
 25 following new paragraph:

1 “(6) SPECIAL RULE FOR CERTAIN INVEST-
2 MENTS IN 2010 AND 2011.—

3 “(A) IN GENERAL.—In the case of a tax-
4 payer who enters into an agreement described
5 in section 38(c)(6)(D)(i)(I) (without regard to
6 the applicable date), which satisfies the require-
7 ment of section 38(c)(6)(D)(i)(II), after Decem-
8 ber 31, 2009, and before January 1, 2012, then
9 solely for purposes of determining the taxable
10 year in which the low-income housing credit
11 under this section may be taken into account
12 for purposes of section 38, and the amount of
13 the credit so taken into account—

14 “(i) the preceding paragraphs of this
15 subsection shall not apply,

16 “(ii) the credit period with respect to
17 the housing credit dollar amount to be allo-
18 cated under such agreement shall be the 1
19 taxable year in which the taxpayer enters
20 into such agreement,

21 “(iii) subsections (b) and (c)(1) shall
22 not apply, and

23 “(iv) the amount of the credit under
24 this section which is taken into account in
25 the taxable year described in clause (ii)

1 shall be the housing credit dollar amount
2 to be allocated under such agreement.

3 “(B) REQUIREMENTS OF SECTION UNAF-
4 FECTED.—Except as provided in subparagraph
5 (A), the provisions of this section shall apply to
6 any building to which an agreement described
7 in subparagraph (A) applies as if such subpara-
8 graph had not been enacted.

9 “(C) RECAPTURE OF EXCESS CREDIT.—If,
10 at the end of the credit period with respect to
11 any building (without regard to subparagraph
12 (A)), the amount of the credit taken into ac-
13 count under subparagraph (A)(iv) with respect
14 to such building exceeds the total amount of the
15 credit which would have been allowed under this
16 section with respect to such building during
17 such credit period but for the application of
18 subparagraph (A), then the amount of such ex-
19 cess shall be recaptured as if it were included
20 in the credit recapture amount under subsection
21 (j).”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2009.

1 **SEC. 4. ALLOWING LOW-INCOME HOUSING CREDITS TO**
 2 **OFFSET 100 PERCENT OF FEDERAL INCOME**
 3 **TAX LIABILITY.**

4 (a) IN GENERAL.—Subsection (c) of section 38 is
 5 amended by adding at the end the following new para-
 6 graph:

7 “(6) ALLOWING LOW-INCOME HOUSING CREDIT
 8 TO OFFSET 100 PERCENT OF FEDERAL INCOME TAX
 9 LIABILITY.—

10 “(A) IN GENERAL.—In the case of applica-
 11 ble low-income housing credits—

12 “(i) this section shall be applied sepa-
 13 rately with respect to such credits,

14 “(ii) in applying paragraph (1) to
 15 such credits—

16 “(I) the tentative minimum tax
 17 shall be treated as being zero, and

18 “(II) the limitation under para-
 19 graph (1) (as modified by subclause
 20 (I)) shall be the net income tax (as
 21 defined in paragraph (1)) reduced by
 22 the credit allowed under subsection
 23 (a) for the taxable year (other than
 24 the applicable low-income housing
 25 credits), and

1 “(iii) the excess credit for such tax-
2 able year shall, solely for purposes of de-
3 termining the amount of such excess credit
4 which may be carried back to a preceding
5 taxable year, be increased by the amount
6 of business credit carryforwards which are
7 carried to such taxable year, to which this
8 subparagraph applies, and which are not
9 allowed for such taxable year by reason of
10 the limitation under paragraph (1) (as
11 modified by clause (ii)).

12 “(B) INCREASE IN LIMITATION FOR TAX-
13 ABLE YEARS TO WHICH EXCESS APPLICABLE
14 LOW-INCOME HOUSING CREDITS ARE CARRIED
15 BACK.—

16 “(i) IN GENERAL.—Solely for pur-
17 poses of determining the portion of any ex-
18 cess credit described in subparagraph
19 (A)(iii) for which credit will be allowed
20 under subsection (a)(3) for any preceding
21 taxable year, except as provided in clause
22 (ii), the limitation under paragraph (1) for
23 such preceding taxable year shall be deter-
24 mined under rules similar to the rules de-
25 scribed in subparagraph (A).

1 “(ii) ORDERING RULE.—If the excess
2 credit described in subparagraph (A)(iii)
3 includes business credit carryforwards
4 from preceding taxable years, such excess
5 credit shall be treated as allowed for any
6 preceding taxable year on a first-in first-
7 out basis.

8 “(C) APPLICABLE LOW-INCOME HOUSING
9 CREDITS.—For purposes of this subpart, the
10 term ‘applicable low-income housing credits’
11 means the credit determined under section 42—

12 “(i) to the extent attributable to
13 buildings placed in service after the date of
14 the enactment of this subparagraph, and

15 “(ii) in the case of any other build-
16 ings, for taxable years beginning in 2008,
17 2009, and 2010 (and to business credit
18 carryforwards with respect to such build-
19 ings carried to such taxable years) to the
20 extent provided in subparagraph (D).

21 “(D) PREVIOUSLY PLACED IN SERVICE
22 BUILDINGS.—

23 “(i) IN GENERAL.—Subparagraph
24 (C)(ii) shall apply to such credits for such
25 a taxable year only—

1 “(I) if the taxpayer has entered
2 into a binding commitment to invest
3 equity not later than the applicable
4 date, with respect to an investment in
5 a future project (which is binding on
6 the taxpayer and all successors in in-
7 terest) which specifies the dollar
8 amount of such investment, and

9 “(II) to the extent such credits
10 do not exceed the dollar amount of
11 such proposed investment.

12 “(ii) APPLICABLE DATE.—For pur-
13 poses of this subparagraph, the applicable
14 date is—

15 “(I) in the case of taxable years
16 beginning in 2008 and 2009, Sep-
17 tember 15, 2010, or

18 “(II) in the case of a taxable
19 year beginning in 2010, the due date
20 (including extensions of time) for fil-
21 ing the taxpayer’s return for such tax-
22 able year.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to taxable years beginning after

- 1 December 31, 2007, and to carrybacks of credits from
- 2 such taxable years.

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