

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.

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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

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## 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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