

107TH CONGRESS
1ST SESSION

S. 1886

To amend the Internal Revenue Code of 1986 to allow a business credit
for supported elderly housing.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20 (legislative day, DECEMBER 18), 2001

Mr. DODD 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 allow a
business credit for supported elderly housing.

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 “Assisted Living Tax
5 Credit Act”.

6 **SEC. 2. SUPPORTED ELDERLY HOUSING CREDIT.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of
9 1986 (relating to business related credits) is amended by
10 adding at the end the following:

1 **“SEC. 42A. SUPPORTED ELDERLY HOUSING CREDIT.**

2 “(a) AMOUNT OF CREDIT.—For purposes of section
3 38, the amount of the supported elderly housing credit de-
4 termined under this section for any taxable year in the
5 credit period shall be an amount equal to the sum of—

6 “(1) 9 percent of the qualified basis of each
7 qualified supported elderly building, plus

8 “(2) 4 percent of such qualified basis with re-
9 spect to any qualified supported elderly building pro-
10 viding qualified supported elderly services.

11 “(b) QUALIFIED BASIS; QUALIFIED SUPPORTED EL-
12 DERLY BUILDING; CREDIT PERIOD.—For purposes of this
13 section—

14 “(1) QUALIFIED BASIS.—

15 “(A) DETERMINATION.—The qualified
16 basis of any qualified supported elderly building
17 for any taxable year is an amount equal to—

18 “(i) the applicable fraction (deter-
19 mined as of the close of such taxable year)
20 of

21 “(ii) the eligible basis of such building
22 (determined under rules similar to the
23 rules under section 42(d)).

24 “(B) APPLICABLE FRACTION.—For pur-
25 poses of subparagraph (A), the term ‘applicable

1 fraction' means the smaller of the unit fraction
 2 or the floor space fraction.

3 “(C) UNIT FRACTION.—For purposes of
 4 subparagraph (B), the term ‘unit fraction’
 5 means the fraction—

6 “(i) the numerator of which is the
 7 number of supported elderly units in the
 8 building, and

9 “(ii) the denominator of which is the
 10 number of residential rental units (whether
 11 or not occupied) in such building.

12 “(D) FLOOR SPACE FRACTION.—For pur-
 13 poses of subparagraph (B), the term ‘floor
 14 space fraction’ means the fraction—

15 “(i) the numerator of which is the
 16 total floor space of the supported elderly
 17 units in such building, and

18 “(ii) the denominator of which is the
 19 total floor space of the residential rental
 20 units (whether or not occupied) in such
 21 building.

22 “(E) QUALIFIED BASIS TO INCLUDE POR-
 23 TION OF BUILDING USED TO PROVIDE QUALI-
 24 FIED SUPPORTED ELDERLY SERVICES.—In the
 25 case of a qualified supported elderly building

described in subsection (a)(2), the qualified basis of such building for any taxable year shall be increased by the lesser of—

“(i) so much of the eligible basis of such building as is used throughout the year to provide qualified supported elderly services, or

“(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

“(2) QUALIFIED SUPPORTED ELDERLY BUILDING.—The term ‘qualified supported elderly building’ means any building which is part of a qualified supported elderly housing project at all times during the period—

“(A) beginning on the 1st day in the compliance period on which such building is part of such a project, and

“(B) ending on the last day of the compliance period with respect to such building.

Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the Stew-

1 art B. McKinney Homeless Assistance Act (as in ef-
2 fect on the date of the enactment of this sentence)).

3 “(3) CREDIT PERIOD.—The term ‘credit period’
4 means, with respect to any building, the period of 10
5 taxable years beginning with—

6 “(A) the taxable year in which the building
7 is placed in service, or

8 “(B) at the election of the taxpayer, the
9 succeeding taxable year,

10 but only if the building is a qualified supported el-
11 derly building as of the close of the 1st year of such
12 period. The election under subparagraph (B), once
13 made, shall be irrevocable.

14 “(4) APPLICABLE RULES.—

15 “(A) For treatment of certain rehabilita-
16 tion expenditures as separate new buildings,
17 subsection (e) of section 42 shall apply.

18 “(B) For rules regarding the application of
19 the credit period, paragraphs (2) through (5) of
20 section 42(f) shall apply.

21 “(c) QUALIFIED SUPPORTED ELDERLY HOUSING
22 PROJECT.—For purposes of this section—

23 “(1) IN GENERAL.—The term ‘qualified sup-
24 ported elderly housing project’ means any project for
25 residential rental property if the project meets the

requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

“(A) 20–50 TEST.—The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

“(B) 40–90 TEST.—The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 90 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

“(2) RENT-RESTRICTED UNITS.—

“(A) IN GENERAL.—For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 65 percent of the imputed income

1 limitation applicable to such unit. For purposes
 2 of the preceding sentence, the amount of the in-
 3 come limitation under paragraph (1) applicable
 4 for any period shall not be less than such limi-
 5 tation applicable for the earliest period the
 6 building (which contains the unit) was included
 7 in the determination of whether the project is
 8 a qualified supported elderly housing project.

9 “(B) GROSS RENT.—For purposes of sub-
 10 paragraph (A), gross rent—

11 “(i) includes any fee for a qualified
 12 supported elderly service which is paid to
 13 the owner of the unit (on the basis of the
 14 supported elderly status of the tenant of
 15 the unit) by any governmental program of
 16 assistance (or by an organization described
 17 in section 501(c)(3) and exempt from tax
 18 under section 501(a)) if such program (or
 19 organization) provides assistance for rent
 20 and the amount of assistance provided for
 21 rent is not separable from the amount of
 22 assistance provided for supportive services,

23 “(ii) does not include any payment
 24 under section 8 of the United States Hous-
 25 ing Act of 1937 or any comparable rental

1 assistance program (with respect to such
2 unit or occupants thereof),

3 “(iii) includes any utility allowance
4 determined by the Secretary after taking
5 into account such determinations under
6 section 8 of the United States Housing Act
7 of 1937, and

8 “(iv) does not include any rental pay-
9 ment to the owner of the unit to the extent
10 such owner pays an equivalent amount to
11 the Farmers’ Home Administration under
12 section 515 of the Housing Act of 1949.

13 “(C) IMPUTED INCOME LIMITATION APPLI-
14 CABLE TO UNIT.—For purposes of this para-
15 graph, the imputed income limitation applicable
16 to a unit is the income limitation which would
17 apply under paragraph (1) to individuals occu-
18 pying the unit if the number of individuals oc-
19 cupying the unit were as follows:

20 “(i) In the case of a unit which does
21 not have a separate bedroom, 1 individual.

22 “(ii) In the case of a unit which has
23 1 or more separate bedrooms, 1.5 individ-
24 uals for each separate bedroom.

1 In the case of a project with respect to which
 2 a credit is allowable by reason of this section
 3 and for which financing is provided by a bond
 4 described in section 142(a)(7), the imputed in-
 5 come limitation shall apply in lieu of the other-
 6 wise applicable income limitation for purposes
 7 of applying section 142(d)(4)(B)(ii).

8 “(D) TREATMENT OF UNITS OCCUPIED BY
 9 INDIVIDUALS WHOSE INCOMES RISE ABOVE
 10 LIMIT.—

11 “(i) IN GENERAL.—Except as pro-
 12 vided in clause (ii), notwithstanding an in-
 13 crease in the income of the occupants of a
 14 supported elderly unit above the income
 15 limitation applicable under paragraph (1),
 16 such unit shall continue to be treated as a
 17 supported elderly unit if the income of
 18 such occupants initially met such income
 19 limitation and such unit continues to be
 20 rent restricted.

21 “(ii) NEXT AVAILABLE UNIT MUST BE
 22 RENTED TO SUPPORTED ELDERLY TENANT
 23 IF INCOME RISES ABOVE 140 PERCENT OF
 24 INCOME LIMIT.—If the income of the occu-
 25 pants of the unit increases above 140 per-

cent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting ‘170 percent’ for ‘140 percent’ and by substituting ‘any supported elderly unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income’ for ‘any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation’.

“(E) UNITS WHERE FEDERAL RENTAL ASSISTANCE IS REDUCED AS TENANT’S INCOME INCREASES.—If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the in-

1 come limitation applicable under paragraph (1),
2 such unit shall, nevertheless, be treated as a
3 rent-restricted unit for purposes of paragraph
4 (1) if—

5 “(i) a Federal rental assistance pay-
6 ment described in subparagraph (B)(i) is
7 made with respect to such unit or its occu-
8 pants, and

9 “(ii) the sum of such payment and the
10 gross rent with respect to such unit does
11 not exceed the sum of the amount of such
12 payment which would be made and the
13 gross rent which would be payable with re-
14 spect to such unit if—

15 “(I) the income of the occupants
16 thereof did not exceed the income lim-
17 itation applicable under paragraph
18 (1), and

19 “(II) such units were rent-re-
20 stricted within the meaning of sub-
21 paragraph (A).

22 The preceding sentence shall apply to any unit
23 only if the result described in clause (ii) is re-
24 quired by Federal statute as of the date of the
25 enactment of this subparagraph and as of the

1 date the Federal rental assistance payment is
2 made.

3 “(3) QUALIFIED SUPPORTED ELDERLY SERV-
4 ICE.—The term ‘qualified supported elderly service’
5 means any service provided under a planned pro-
6 gram of services designed to enable residents of a
7 residential rental property to remain independent
8 and avoid placement in a hospital, nursing home, or
9 intermediate care facility for the mentally or phys-
10 ically handicapped. In the case of a single-room oc-
11 cupancy unit or a building described in subsection
12 (h)(2)(B)(iii), such term includes any service pro-
13 vided to assist tenants in locating and retaining per-
14 manent housing.

15 “(4) DATE FOR MEETING REQUIREMENTS.—

16 “(A) IN GENERAL.—Except as otherwise
17 provided in this paragraph, a building shall be
18 treated as a qualified supported elderly building
19 only if the project (of which such building is a
20 part) meets the requirements of paragraph (1)
21 not later than the close of the 1st year of the
22 credit period for such building.

23 “(B) BUILDINGS WHICH RELY ON LATER
24 BUILDINGS FOR QUALIFICATION.—

1 “(i) IN GENERAL.—In determining
2 whether a building (in this subparagraph
3 referred to as the ‘prior building’) is a
4 qualified supported elderly building, the
5 taxpayer may take into account 1 or more
6 additional buildings placed in service dur-
7 ing the 12-month period described in sub-
8 paragraph (A) with respect to the prior
9 building only if the taxpayer elects to apply
10 clause (ii) with respect to each additional
11 building taken into account.

12 “(ii) TREATMENT OF ELECTED
13 BUILDINGS.—In the case of a building
14 which the taxpayer elects to take into ac-
15 count under clause (i), the period under
16 subparagraph (A) for such building shall
17 end at the close of the 12-month period ap-
18 plicable to the prior building.

19 “(iii) DATE PRIOR BUILDING IS
20 TREATED AS PLACED IN SERVICE.—For
21 purposes of determining the credit period
22 and the compliance period for the prior
23 building, the prior building shall be treated
24 for purposes of this section as placed in
25 service on the most recent date any addi-

1 tional building elected by the taxpayer
2 (with respect to such prior building) was
3 placed in service.

4 “(C) SPECIAL RULE.—A building—

5 “(i) other than the 1st building placed
6 in service as part of a project, and

7 “(ii) other than a building which is
8 placed in service during the 12-month pe-
9 riod described in subparagraph (A) with
10 respect to a prior building which becomes
11 a qualified supported elderly building,

12 shall in no event be treated as a qualified sup-
13 ported elderly building unless the project is a
14 qualified supported elderly housing project
15 (without regard to such building) on the date
16 such building is placed in service.

17 “(D) PROJECTS WITH MORE THAN 1
18 BUILDING MUST BE IDENTIFIED.—For pur-
19 poses of this section, a project shall be treated
20 as consisting of only 1 building unless, before
21 the close of the 1st calendar year in the project
22 period (as defined in subsection (d)(1)(F)(ii)),
23 each building which is (or will be) part of such
24 project is identified in such form and manner
25 as the Secretary may provide.

1 “(5) CERTAIN RULES MADE APPLICABLE.—
 2 Paragraphs (2) (other than subparagraph (A) there-
 3 of), (3), (4), (5), (6), and (7) of section 142(d), and
 4 section 6652(j), shall apply for purposes of deter-
 5 mining whether any project is a qualified supported
 6 elderly housing project and whether any unit is a
 7 supported elderly unit; except that, in applying such
 8 provisions for such purposes, the term ‘gross rent’
 9 shall have the meaning given such term by para-
 10 graph (2)(B) of this subsection.

11 “(6) ELECTION TO TREAT BUILDING AFTER
 12 COMPLIANCE PERIOD AS NOT PART OF A PROJECT.—
 13 For purposes of this section, the taxpayer may elect
 14 to treat any building as not part of a qualified sup-
 15 ported elderly housing project for any period begin-
 16 ning after the compliance period for such building.

17 “(7) SPECIAL RULE WHERE DE MINIMIS EQ-
 18 UITY CONTRIBUTION.—Property shall not be treated
 19 as failing to be residential rental property for pur-
 20 poses of this section merely because the occupant of
 21 a residential unit in the project pays (on a voluntary
 22 basis) to the lessor a de minimis amount to be held
 23 toward the purchase by such occupant of a residen-
 24 tial unit in such project if—

1 “(A) all amounts so paid are refunded to
 2 the occupant on the cessation of his occupancy
 3 of a unit in the project, and

4 “(B) the purchase of the unit is not per-
 5 mitted until after the close of the compliance
 6 period with respect to the building in which the
 7 unit is located.

8 Any amount paid to the lessor as described in the
 9 preceding sentence shall be included in gross rent
 10 under paragraph (2) for purposes of determining
 11 whether the unit is rent-restricted.

12 “(8) SCATTERED SITE PROJECTS.—Buildings
 13 which would (but for their lack of proximity) be
 14 treated as a project for purposes of this section shall
 15 be so treated if all of the dwelling units in each of
 16 the buildings are rent-restricted (within the meaning
 17 of paragraph (2)) residential rental units.

18 “(9) WAIVER OF CERTAIN DE MINIMIS ERRORS
 19 AND RECERTIFICATIONS.—On application by the
 20 taxpayer, the Secretary may waive—

21 “(A) any recapture under subsection (i) in
 22 the case of any de minimis error in complying
 23 with paragraph (1), or

24 “(B) any annual recertification of tenant
 25 income for purposes of this subsection, if the

1 entire building is occupied by supported elderly
2 tenants.

3 “(d) LIMITATION ON AGGREGATE CREDIT ALLOW-
4 ABLE WITH RESPECT TO PROJECTS LOCATED IN A
5 STATE.—

6 “(1) CREDIT MAY NOT EXCEED CREDIT
7 AMOUNT ALLOCATED TO BUILDING.—The amount of
8 the credit determined under this section for any tax-
9 able year with respect to any building shall not ex-
10 ceed the supported elderly housing credit dollar
11 amount allocated to such building under rules simi-
12 lar to the rules of paragraph (1) of section 42(h).

13 “(2) ALLOCATED CREDIT AMOUNT TO APPLY
14 TO ALL TAXABLE YEARS ENDING DURING OR AFTER
15 CREDIT ALLOCATION YEAR.—Any supported elderly
16 housing credit dollar amount allocated to any build-
17 ing for any calendar year—

18 “(A) shall apply to such building for all
19 taxable years in the compliance period ending
20 during or after such calendar year, and

21 “(B) shall reduce the aggregate supported
22 elderly housing credit dollar amount of the allo-
23 cating agency only for such calendar year.

24 “(3) SUPPORTED ELDERLY HOUSING CREDIT
25 DOLLAR AMOUNT FOR AGENCIES.—

1 “(A) IN GENERAL.—The aggregate sup-
 2 ported elderly housing credit dollar amount
 3 which a supported elderly housing credit agency
 4 may allocate for any calendar year is the por-
 5 tion of the State supported elderly housing
 6 credit ceiling allocated under this paragraph for
 7 such calendar year to such agency.

8 “(B) STATE CEILING INITIALLY ALLO-
 9 CATED TO STATE SUPPORTED ELDERLY HOUS-
 10 ING CREDIT AGENCIES.—Except as provided in
 11 subparagraphs (D) and (E), the State sup-
 12 ported elderly housing credit ceiling for each
 13 calendar year shall be allocated to the sup-
 14 ported elderly housing credit agency of such
 15 State. If there is more than 1 supported elderly
 16 housing credit agency of a State, all such agen-
 17 cies shall be treated as a single agency.

18 “(C) STATE SUPPORTED ELDERLY HOUS-
 19 ING CREDIT CEILING.—The State supported el-
 20 derly housing credit ceiling applicable to any
 21 State and any calendar year shall be an amount
 22 equal to the sum of—

23 “(i) the unused State supported elder-
 24 ly housing credit ceiling (if any) of such
 25 State for the preceding calendar year,

1 “(ii) \$1.25 multiplied by the State
2 population,

3 “(iii) the amount of State supported
4 elderly housing credit ceiling returned in
5 the calendar year, plus

6 “(iv) the amount (if any) allocated
7 under subparagraph (D) to such State by
8 the Secretary.

9 For purposes of clause (i), the unused State
10 supported elderly housing credit ceiling for any
11 calendar year is the excess (if any) of the sum
12 of the amounts described in clauses (i) through
13 (iv) over the aggregate supported elderly hous-
14 ing credit dollar amount allocated for such year.

15 For purposes of clause (iii), the amount of
16 State supported elderly housing credit ceiling
17 returned in the calendar year equals the sup-
18 ported elderly housing credit dollar amount pre-
19 viously allocated within the State to any project
20 which fails to meet the 10 percent test under
21 section 42(h)(1)(E)(ii) on a date after the close
22 of the calendar year in which the allocation was
23 made or which does not become a qualified sup-
24 ported elderly housing project within the period
25 required by this section or the terms of the allo-

1 cation or to any project with respect to which
 2 an allocation is canceled by mutual consent of
 3 the supported elderly housing credit agency and
 4 the allocation recipient.

5 “(D) UNUSED SUPPORTED ELDERLY
 6 HOUSING CREDIT CARRYOVERS ALLOCATED
 7 AMONG CERTAIN STATES.—

8 “(i) IN GENERAL.—The unused sup-
 9 ported elderly housing credit carryover of a
 10 State for any calendar year shall be as-
 11 signed to the Secretary for allocation
 12 among qualified States for the succeeding
 13 calendar year.

14 “(ii) UNUSED SUPPORTED ELDERLY
 15 HOUSING CREDIT CARRYOVER.—For pur-
 16 poses of this subparagraph, the unused
 17 supported elderly housing credit carryover
 18 of a State for any calendar year is the ex-
 19 cess (if any) of—

20 “(I) the unused State supported
 21 elderly housing credit ceiling for the
 22 year preceding such year, over

23 “(II) the aggregate supported el-
 24 derly housing credit dollar amount al-
 25 located for such year.

1 “(iii) FORMULA FOR ALLOCATION OF
 2 UNUSED SUPPORTED ELDERLY HOUSING
 3 CREDIT CARRYOVERS AMONG QUALIFIED
 4 STATES.—The amount allocated under this
 5 subparagraph to a qualified State for any
 6 calendar year shall be the amount deter-
 7 mined by the Secretary to bear the same
 8 ratio to the aggregate unused supported el-
 9 derly housing credit carryovers of all
 10 States for the preceding calendar year as
 11 such State’s population for the calendar
 12 year bears to the population of all qualified
 13 States for the calendar year. For purposes
 14 of the preceding sentence, population shall
 15 be determined in accordance with section
 16 146(j).

17 “(iv) QUALIFIED STATE.—For pur-
 18 poses of this subparagraph, the term
 19 ‘qualified State’ means, with respect to a
 20 calendar year, any State—

21 “(I) which allocated its entire
 22 State supported elderly housing credit
 23 ceiling for the preceding calendar
 24 year, and

1 “(II) for which a request is made
 2 (not later than May 1 of the calendar
 3 year) to receive an allocation under
 4 clause (iii).

5 “(E) SPECIAL RULE FOR STATES WITH
 6 CONSTITUTIONAL HOME RULE CITIES.—For
 7 purposes of this subsection—

8 “(i) IN GENERAL.—The aggregate
 9 supported elderly housing credit dollar
 10 amount for any constitutional home rule
 11 city for any calendar year shall be an
 12 amount which bears the same ratio to the
 13 State supported elderly housing credit ceil-
 14 ing for such calendar year as—

15 “(I) the population of such city,
 16 bears to

17 “(II) the population of the entire
 18 State.

19 “(ii) COORDINATION WITH OTHER AL-
 20 LOCATIONS.—In the case of any State
 21 which contains 1 or more constitutional
 22 home rule cities, for purposes of applying
 23 this paragraph with respect to supported
 24 elderly housing credit agencies in such
 25 State other than constitutional home rule

1 cities, the State supported elderly housing
 2 credit ceiling for any calendar year shall be
 3 reduced by the aggregate supported elderly
 4 housing credit dollar amounts determined
 5 for such year for all constitutional home
 6 rule cities in such State.

7 “(iii) CONSTITUTIONAL HOME RULE
 8 CITY.—For purposes of this paragraph, the
 9 term ‘constitutional home rule city’ has the
 10 meaning given such term by section
 11 146(d)(3)(C).

12 “(F) STATE MAY PROVIDE FOR DIF-
 13 FERENT ALLOCATION.—Rules similar to the
 14 rules of section 146(e) (other than paragraph
 15 (2)(B) thereof) shall apply for purposes of this
 16 paragraph.

17 “(G) POPULATION.—For purposes of this
 18 paragraph, population shall be determined in
 19 accordance with section 146(j).

20 “(4) CREDIT FOR BUILDINGS FINANCED BY
 21 TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP NOT
 22 TAKEN INTO ACCOUNT.—

23 “(A) IN GENERAL.—Paragraph (1) shall
 24 not apply to the portion of any credit allowable
 25 under subsection (a) which is attributable to eli-

gible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

“(i) such obligation is taken into account under section 146, and

“(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

“(B) SPECIAL RULE WHERE 50 PERCENT OR MORE OF BUILDING IS FINANCED WITH TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP.—For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

“(5) PORTION OF STATE CEILING SET-ASIDE FOR CERTAIN PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—

“(A) IN GENERAL.—Not more than 90 percent of the State supported elderly housing

1 credit ceiling for any State for any calendar
2 year shall be allocated to projects other than
3 qualified supported elderly housing projects de-
4 scribed in subparagraph (B).

5 “(B) PROJECTS INVOLVING QUALIFIED
6 NONPROFIT ORGANIZATIONS.—For purposes of
7 subparagraph (A), a qualified supported elderly
8 housing project is described in this subpara-
9 graph if a qualified nonprofit organization is to
10 materially participate (within the meaning of
11 section 469(h)) in the development and oper-
12 ation of the project throughout the compliance
13 period.

14 “(C) QUALIFIED NONPROFIT ORGANIZA-
15 TION.—For purposes of this paragraph, the
16 term ‘qualified nonprofit organization’ means
17 any organization if—

18 “(i) such organization is described in
19 paragraph (3) or (4) of section 501(c) and
20 is exempt from tax under section 501(a),

21 “(ii) such organization is determined
22 by the State supported elderly housing
23 credit agency not to be affiliated with or
24 controlled by a for-profit organization; and

1 “(iii) 1 of the exempt purposes of
 2 such organization includes the fostering of
 3 supported elderly housing.

4 “(D) TREATMENT OF CERTAIN SUBSIDI-
 5 ARIES.—

6 “(i) IN GENERAL.—For purposes of
 7 this paragraph, a qualified nonprofit orga-
 8 nization shall be treated as satisfying the
 9 ownership and material participation test
 10 of subparagraph (B) if any qualified cor-
 11 poration in which such organization holds
 12 stock satisfies such test.

13 “(ii) QUALIFIED CORPORATION.—For
 14 purposes of clause (i), the term ‘qualified
 15 corporation’ means any corporation if 100
 16 percent of the stock of such corporation is
 17 held by 1 or more qualified nonprofit orga-
 18 nizations at all times during the period
 19 such corporation is in existence.

20 “(E) STATE MAY NOT OVERRIDE SET-
 21 ASIDE.—Nothing in subparagraph (F) of para-
 22 graph (3) shall be construed to permit a State
 23 not to comply with subparagraph (A) of this
 24 paragraph.

1 “(6) BUILDINGS ELIGIBLE FOR CREDIT ONLY
 2 IF MINIMUM LONG-TERM COMMITMENT TO SUP-
 3 PORTED ELDERLY HOUSING.—

4 “(A) IN GENERAL.—Under rules similar to
 5 the rules under section 42(h)(6), no credit shall
 6 be allowed by reason of this section with respect
 7 to any building for the taxable year unless an
 8 extended supported elderly housing commitment
 9 is in effect as of the end of such taxable year.

10 “(B) EXTENDED SUPPORTED ELDERLY
 11 HOUSING COMMITMENT.—For purposes of this
 12 paragraph, the term ‘extended supported elderly
 13 housing commitment’ has the meaning given
 14 the term ‘extended low-income housing commit-
 15 ment’ under section 42(h)(6).

16 “(7) APPLICATION OF CERTAIN RULES.—For
 17 purposes of this section, rules similar to the rules of
 18 section 42(h)(7) shall apply.

19 “(8) OTHER DEFINITIONS.—For purposes of
 20 this subsection—

21 “(A) SUPPORTED ELDERLY HOUSING
 22 CREDIT AGENCY.—The term ‘supported elderly
 23 housing credit agency’ means any agency au-
 24 thorized to carry out this subsection.

1 “(B) POSSESSIONS TREATED AS STATES.—

2 The term ‘State’ includes a possession of the
3 United States.

4 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
5 poses of this section—

6 “(1) COMPLIANCE PERIOD.—The term ‘compli-
7 ance period’ means, with respect to any building, the
8 period of 15 taxable years beginning with the 1st
9 taxable year of the credit period with respect there-
10 to.

11 “(2) SUPPORTED ELDERLY UNIT.—

12 “(A) IN GENERAL.—The term ‘supported
13 elderly unit’ means any unit in a building if—

14 “(i) such unit is rent-restricted (as de-
15 fined in subsection (c)(2)), and

16 “(ii) the individuals occupying such
17 unit meet the income limitation applicable
18 under subsection (c)(1) to the project of
19 which such building is a part.

20 “(B) EXCEPTIONS.—

21 “(i) IN GENERAL.—A unit shall not
22 be treated as a supported elderly unit un-
23 less the unit is suitable for occupancy and
24 used other than on a transient basis.

1 “(ii) SUITABILITY FOR OCCUPANCY.—

2 For purposes of clause (i), the suitability
3 of a unit for occupancy shall be determined
4 under regulations prescribed by the Sec-
5 retary taking into account local health,
6 safety, and building codes.

7 “(iii) TRANSITIONAL HOUSING FOR
8 HOMELESS.—For purposes of clause (i), a
9 unit shall be considered to be used other
10 than on a transient basis if the unit con-
11 tains sleeping accommodations and kitchen
12 and bathroom facilities and is located in a
13 building—

14 “(I) which is used exclusively to
15 facilitate the transition of homeless
16 individuals (within the meaning of
17 section 103 of the Stewart B. McKin-
18 ney Homeless Assistance Act (42
19 U.S.C. 11302), as in effect on the
20 date of the enactment of this clause)
21 to independent living within 24
22 months, and

23 “(II) in which a governmental
24 entity or qualified nonprofit organiza-
25 tion (as defined in subsection

1 (d)(5)(C)) provides such individuals
 2 with temporary housing and sup-
 3 portive services designed to assist
 4 such individuals in locating and re-
 5 taining permanent housing.

6 “(iv) SINGLE-ROOM OCCUPANCY
 7 UNITS.—For purposes of clause (i), a sin-
 8 gle-room occupancy unit shall not be treat-
 9 ed as used on a transient basis merely be-
 10 cause it is rented on a month-by-month
 11 basis.

12 “(C) SPECIAL RULE FOR BUILDINGS HAV-
 13 ING 4 OR FEWER UNITS.—In the case of any
 14 building which has 4 or fewer residential rental
 15 units, no unit in such building shall be treated
 16 as a supported elderly unit if the units in such
 17 building are owned by—

18 “(i) any individual who occupies a res-
 19 idential unit in such building, or

20 “(ii) any person who is related (within
 21 the meaning of section 42(d)(2)(D)(iii)) to
 22 such individual.

23 “(D) OWNER-OCCUPIED BUILDING HAVING
 24 4 OR FEWER UNITS ELIGIBLE FOR CREDIT
 25 WHERE DEVELOPMENT PLAN.—

1 “(i) IN GENERAL.—Subparagraph (C)
 2 shall not apply to the acquisition or reha-
 3 bilitation of a building pursuant to a devel-
 4 opment plan of action sponsored by a
 5 State or local government or a qualified
 6 nonprofit organization (as defined in sub-
 7 section (d)(5)(C)).

8 “(ii) LIMITATION ON CREDIT.—In the
 9 case of a building to which clause (i) ap-
 10 plies, the applicable fraction shall not ex-
 11 ceed 80 percent of the unit fraction.

12 “(iii) CERTAIN UNRENTED UNITS
 13 TREATED AS OWNER-OCCUPIED.—In the
 14 case of a building to which clause (i) ap-
 15 plies, any unit which is not rented for 90
 16 days or more shall be treated as occupied
 17 by the owner of the building as of the 1st
 18 day it is not rented.

19 “(3) APPLICATION TO ESTATES AND TRUSTS.—
 20 In the case of an estate or trust, the amount of the
 21 credit determined under subsection (a) and any in-
 22 crease in tax under subsection (i) shall be appor-
 23 tioned between the estate or trust and the bene-
 24 ficiaries on the basis of the income of the estate or
 25 trust allocable to each.

1 “(4) IMPACT OF TENANTS RIGHT OF 1ST RE-
2 FUSAL TO ACQUIRE PROPERTY.—

3 “(A) IN GENERAL.—No Federal income
4 tax benefit shall fail to be allowable to the tax-
5 payer with respect to any qualified supported
6 elderly building merely by reason of a right of
7 1st refusal held by the tenants (in cooperative
8 form or otherwise) or resident management cor-
9 poration of such building or by a qualified non-
10 profit organization (as defined in subsection
11 (d)(5)(C)) or government agency to purchase
12 the property after the close of the compliance
13 period for a price which is not less than the
14 minimum purchase price determined under sub-
15 paragraph (B).

16 “(B) MINIMUM PURCHASE PRICE.—For
17 purposes of subparagraph (A), the minimum
18 purchase price under this subparagraph is an
19 amount equal to the sum of—

20 “(i) the principal amount of out-
21 standing indebtedness secured by the
22 building (other than indebtedness incurred
23 within the 5-year period ending on the date
24 of the sale to the tenants), and

1 “(ii) all Federal, State, and local
2 taxes attributable to such sale.

3 Except in the case of Federal income taxes,
4 there shall not be taken into account under
5 clause (ii) any additional tax attributable to the
6 application of clause (ii).

7 “(f) RECAPTURE OF CREDIT.—

8 “(1) IN GENERAL.—If—

9 “(A) as of the close of any taxable year in
10 the compliance period, the amount of the quali-
11 fied basis of any building with respect to the
12 taxpayer is less than

13 “(B) the amount of such basis as of the
14 close of the preceding taxable year,

15 then the taxpayer’s tax under this chapter for the
16 taxable year shall be increased by the credit recap-
17 ture amount determined under rules similar to the
18 rules of section 42(j).

19 “(g) APPLICATION OF AT-RISK RULES.—For pur-
20 poses of this section, rules similar to the rules of section
21 42(k) shall apply.

22 “(h) RESPONSIBILITIES OF TAXPAYERS AND SUP-
23 PORTED ELDERLY HOUSING CREDIT AGENCIES.—For
24 purposes of this section, subsections (l) and (m) of section
25 42 shall apply.

1 “(i) REGULATIONS.—The Secretary shall prescribe
 2 such regulations as may be necessary or appropriate to
 3 carry out the purposes of this section, including
 4 regulations—

5 “(1) dealing with—

6 “(A) projects which include more than 1
 7 building or only a portion of a building,

8 “(B) buildings which are placed in service
 9 in portions,

10 “(2) providing for the application of this section
 11 to short taxable years,

12 “(3) preventing the avoidance of the rules of
 13 this section, and

14 “(4) providing the opportunity for supported el-
 15 derly housing credit agencies to correct administra-
 16 tive errors and omissions with respect to allocations
 17 and record keeping within a reasonable period after
 18 their discovery, taking into account the availability
 19 of regulations and other administrative guidance
 20 from the Secretary.”.

21 (b) CURRENT YEAR BUSINESS CREDIT CALCULA-
 22 TION.—Section 38(b) of the Internal Revenue Code of
 23 1986 (relating to current year business credit) is amended
 24 by striking “plus” at the end of paragraph (12), by strik-

1 ing the period at the end of paragraph (13) and inserting
 2 “, plus”, and by adding at the end the following:

3 “(14) the supported elderly housing credit de-
 4 termined under section 42A(a).”.

5 (c) LIMITATION ON CARRYBACK.—Subsection (d) of
 6 section 39 of the Internal Revenue Code of 1986 (relating
 7 to carryback and carryforward of unused credits) is
 8 amended by adding at the end the following:

9 “(10) NO CARRYBACK OF SUPPORTED ELDERLY
 10 HOUSING CREDIT BEFORE EFFECTIVE DATE.—No
 11 amount of unused business credit available under
 12 section 42A may be carried back to a taxable year
 13 beginning on or before the date of the enactment of
 14 this paragraph.”.

15 (d) CONFORMING AMENDMENTS.—

16 (1) Section 55(c)(1) of the Internal Revenue
 17 Code of 1986 is amended by inserting “or subsection
 18 (f) or (g) of section 42A” after “section 42”.

19 (2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and
 20 (k)(1) of section 469 of such Code are each amended
 21 by inserting “or 42A” after “section 42”.

22 (3) Section 772(a) of such Code is amended by
 23 striking “and” at the end of paragraph (10), by re-
 24 designating paragraph (11) as paragraph (12), and
 25 by inserting after paragraph (10) the following:

1 “(11) the supported elderly housing credit de-
2 termined under section 42A, and”.

3 (4) Section 774(b)(4) of such Code is amended
4 by inserting “, 42A(f),” after “section 42(j)”.

5 (e) CLERICAL AMENDMENT.—The table of sections
6 for subpart D of part IV of subchapter A of chapter 1
7 of the Internal Revenue Code of 1986 is amended by in-
8 serting after the item relating to section 42 the following:

 “Sec. 42A. Supported elderly housing credit.”.

9 (f) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to expenditures made in taxable
11 years beginning after the date of the enactment of this
12 Act.

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