

PART DDD

A BUDGET BILL submitted by the Governor  
in accordance with Article VII of the Constitution

1 AN ACT to amend the public housing law and  
2 the tax law, in relation to  
3 providing a credit against the  
4 articles 9-A, 22, 32 and 33  
5 franchise and income taxes for  
6 construction or rehabilitation of  
7 low-income housing

8 The People of the State of New York, represented in Senate  
9 and Assembly, do enact as follows:

10 Section 1. The public housing law is amended by adding a  
11 new article 2-a to read as follows:

12 Article 2-A

13 New York State Low Income Housing Tax Credit Program

14 Section

15 21. Definitions

16 22. Allowance of credit, amount and limitations

17 23. Project monitoring

18 24. Credit recapture

19 25. Regulations, coordination with federal low-income housing  
20 credit provisions

21 § 21. Definitions

22 1. (a) "Applicable percentage" means the appropriate  
23 percentage (depending on whether a building is new, existing, or  
24 federally subsidized) prescribed by the Secretary of the Treasury  
25 for purposes of section 42 of the internal revenue code for the  
26 month which is the earlier of

1           (i) the month in which the eligible low-income building is  
2 placed in service, or

3           (ii) at the election of the taxpayer,

4           (I) the month in which the taxpayer and the commissioner  
5 enter into an agreement with respect to such building (which is  
6 binding on the commissioner, the taxpayer, and all successors in  
7 interest) as to the housing credit dollar amount to be allocated  
8 to such building, or

9           (II) in the case of any building to which subsection  
10 (h)(4)(B) of such section 42 applies, the month in which the tax-  
11 exempt obligations are issued.

12           (b) A month may be elected under subparagraph (ii) of  
13 paragraph (a) of this subdivision only if the election is made  
14 not later than the fifth day after the close of such month. Such  
15 election, once made, shall be irrevocable.

16           (c) If, as of the close of any taxable year in the credit  
17 period, the qualified basis of an eligible low-income building  
18 exceeds such basis as of the close of the first year of the  
19 credit period, the applicable percentage which shall apply to  
20 such excess shall be two-thirds of the applicable percentage  
21 originally ascribed to such building.

22           2. "Compliance period" means, with respect to any building,  
23 the period of fifteen taxable years beginning with the first  
24 taxable year of the credit period with respect to such building.

1           3. "Credit period" means, with respect to any eligible low-  
2 income building, the period of ten taxable years beginning with

3           (a) the taxable year in which the building is placed in  
4 service, or

5           (b) at the election of the taxpayer, the succeeding taxable  
6 year,

7 but only if the building is an eligible low-income building as of  
8 the close of the first year of such period. The election under  
9 paragraph (b), once made, shall be irrevocable.

10           4. "Eligibility statement" means a statement issued by the  
11 commissioner certifying that a building is an eligible low-income  
12 building. Such statement shall set forth the taxable year in  
13 which such building is placed in service, the dollar amount of  
14 low-income housing credit allocated by the commissioner to such  
15 building as provided in subdivision five of section twenty-two of  
16 this article, the applicable percentage and maximum qualified  
17 basis with respect to such building taken into account in  
18 determining such dollar amount, sufficient information to  
19 identify each such building and the taxpayer or taxpayers with  
20 respect to each such building, and such other information as the  
21 commissioner, in consultation with the commissioner of taxation  
22 and finance, shall prescribe. Such statement shall be first  
23 issued following the close of the first taxable year in the  
24 credit period, and thereafter, to the extent required by the

1 commissioner of taxation and finance, following the close of each  
2 taxable year of the compliance period.

3 5. "Eligible low-income building" means a building located  
4 in this state which either

5 (a) is a qualified low-income building as defined in section  
6 42(c) of the internal revenue code, or

7 (b) would be a qualified low-income building under such  
8 section if the 40-60 test specified in subsection (g)(1) of such  
9 section were disregarded and the 20-50 test specified in such  
10 subsection (requiring that at least 20 percent of residential  
11 units be both rent-restricted and occupied by individuals whose  
12 income is 50 percent or less of area median gross income) were a  
13 20-90 test.

14 6. "Qualified basis" of an eligible low-income building  
15 means the qualified basis of such building determined under  
16 section 42(c) of the internal revenue code, or which would be  
17 determined under such section if the 20-90 test specified in  
18 paragraph (b) of subdivision five of this section applied under  
19 section 42 to determine if such building were part of a qualified  
20 low-income housing project.

21 7. References in this article to section 42 of the internal  
22 revenue code shall mean such section as amended from time to  
23 time.

24 § 22. Allowance of credit, amount and limitations

1           1. A taxpayer subject to tax under article 9-A, 22, 32 or  
2 33 of the tax law which owns an interest in one or more eligible  
3 low-income buildings shall be allowed a credit against such tax  
4 for the amount of low-income housing credit allocated by the  
5 commissioner to each such building. Except as provided in  
6 subdivision two of this section, the credit amount so allocated  
7 shall be allowed as a credit against the tax for the ten taxable  
8 years in the credit period.

9           2. Adjustment of first-year credit allowed in eleventh year.  
10 The credit allowable for the first taxable year of the credit  
11 period with respect to any building shall be adjusted using the  
12 rules of section 42(f)(2) of the internal revenue code (relating  
13 to first-year adjustment of qualified basis by the weighted  
14 average of low-income to total residential units), and any  
15 reduction in first-year credit by reason of such adjustment shall  
16 be allowable for the first taxable year following the credit  
17 period.

18           3. Amount of credit. Except as provided in subdivisions  
19 four and five of this section, the amount of low-income housing  
20 credit shall be the applicable percentage of the qualified basis  
21 of each eligible low-income building.

22           4. Statewide limitation. The aggregate dollar amount of  
23 credit which the commissioner may allocate to eligible low-income  
24 buildings under this article shall be two million dollars. The

1 limitation provided by this subdivision applies only to  
2 allocation of the aggregate dollar amount of credit by the  
3 commissioner, and does not apply to allowance to a taxpayer of  
4 the credit with respect to an eligible low-income building for  
5 each year of the credit period.

6 5. Building limitation. The dollar amount of credit  
7 allocated to any building shall not exceed the amount the  
8 commissioner determines is necessary for the financial  
9 feasibility of the project and the viability of the building as  
10 an eligible low-income building throughout the credit period. In  
11 allocating a dollar amount of credit to any building, the  
12 commissioner shall specify the applicable percentage and the  
13 maximum qualified basis which may be taken into account under  
14 this article with respect to such building. The applicable  
15 percentage and the maximum qualified basis with respect to a  
16 building shall not exceed the amounts determined in subdivisions  
17 one and six, respectively, of section twenty-one of this article.

18 6. Long-term commitment to low-income housing required. No  
19 credit shall be allowed under this article with respect to a  
20 building for the taxable year unless an extended low-income  
21 housing commitment is in effect as of the end of such taxable  
22 year. For purposes of this subdivision, the term "extended low-  
23 income housing commitment" means an agreement between the  
24 taxpayer and the commissioner substantially similar to the

1 agreement specified in section 42(h)(6)(B) of the internal  
2 revenue code.

3 7. Credit to successor owner. If a credit is allowed under  
4 subdivision one of this section with respect to an eligible low-  
5 income building and such building (or an interest therein) is  
6 sold during the credit period, the credit for the period after  
7 the sale which would have been allowable under such subdivision  
8 one to the prior owner had the building not been sold shall be  
9 allowable to the new owner. Credit for the year of sale shall be  
10 allocated between the parties on the basis of the number of days  
11 during such year that the building or interest was held by each.

12 § 23. Project monitoring

13 The commissioner shall establish such procedures as he deems  
14 necessary for monitoring compliance of an eligible low-income  
15 building with the provisions of this article, and for notifying  
16 the commissioner of taxation and finance of any such  
17 noncompliance of which he becomes aware.

18 § 24. Credit recapture

19 If, as of the close of any taxable year in the compliance  
20 period, the amount of the qualified basis of any building with  
21 respect to the taxpayer is less than the amount of such basis as  
22 of the close of the preceding taxable year, the credit under this  
23 article may be recaptured as provided in section 210.27, 606(u),  
24 1456(k) or 1511(m) of the tax law.

1           § 25. Regulations, coordination with federal low-income  
2 housing credit provisions

3           1. The commissioner shall promulgate rules and regulations  
4 necessary to administer the provisions of this act.

5           2. The provisions of section 42 of the internal revenue code  
6 shall apply to the credit under this article, provided however,  
7 to the extent such provisions are inconsistent with this article,  
8 the provisions of this article shall control.

9           § 2. Section 210 of the tax law is amended by adding a new  
10 subdivision 27 to read as follows:

11           27. Low-income housing credit. (a) General. A taxpayer  
12 shall be allowed a credit against the tax imposed by this article  
13 with respect to the ownership of eligible low-income buildings  
14 for which an eligibility statement has been issued by the  
15 commissioner of housing and community renewal. The amount of the  
16 credit shall be the credit amount for each such building  
17 allocated by such commissioner as provided in article two-A of  
18 the public housing law. The credit amount shall be allowed for  
19 each of the ten taxable years in the credit period, and any  
20 reduction in first-year credit as provided in subdivision two of  
21 section twenty-two of such law shall be allowed in the eleventh  
22 taxable year.

23           (b) Carryovers. In no event shall the credit herein  
24 provided for be allowed in an amount which will reduce the tax



1 payable to less than the higher of the amounts prescribed in  
2 paragraphs (c) and (d) of subdivision one of this section.  
3 Provided, however, that if the amount of credit allowable under  
4 this subdivision for any taxable year reduces the tax to such  
5 amount, any amount of credit not deductible in such taxable year  
6 may be carried over to the following year or years and may be  
7 deducted from the taxpayer's tax for such year or years.

8 (c) Credit recapture. (i) General. If,

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

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

14 (C) then the credit recapture amount must be added back for  
15 the taxable year.

16 (ii) Credit recapture amount. The credit recapture amount  
17 is an amount equal to the sum of

18 (A) the aggregate decrease in the credits allowed to the  
19 taxpayer under this subdivision for all prior taxable years which  
20 would have resulted if the accelerated portion of the credit  
21 allowable by reason of this subdivision were not allowed for all  
22 prior taxable years with respect to the excess of the amount  
23 described in clause (B) of subparagraph (i) of this paragraph  
24 over the amount described in clause (A) of such subparagraph (i),

1 plus

2 (B) interest at the overpayment rate established under  
3 section one thousand ninety-six of this article on the amount  
4 determined under clause (A) of this subparagraph for each prior  
5 taxable year for the period beginning on the due date for filing  
6 the report for the prior taxable year involved.

7 (iii) Accelerated portion of credit. For purposes of  
8 subparagraph (ii) of this paragraph, the accelerated portion of  
9 the credit for the prior taxable years with respect to any amount  
10 of basis is the excess of

11 (A) the aggregate credit allowed by reason of this  
12 subdivision (without regard to this paragraph) for such years  
13 with respect to such basis, over

14 (B) the aggregate credit which would be allowable by reason  
15 of this subdivision for such years with respect to such basis if  
16 the aggregate credit which would (but for this paragraph) have  
17 been allowed for the entire compliance period were allowable  
18 ratably over fifteen years.

19 (iv) Special rules. For purposes of this paragraph, the  
20 rules of section 42 (j)(4)(B) and (C) of the internal revenue  
21 code shall apply in determining the credit recapture amount.

22 (v) Exceptions to recapture. Recapture under this paragraph  
23 shall not apply to a reduction in qualified basis

24 (A) by reason of a casualty loss, if the commissioner, in

1 consultation with the commissioner of housing and community  
2 renewal, determines that such loss is restored by reconstruction  
3 or replacement within a reasonable period, or

4 (B) by reason of a change in floor space devoted to low-  
5 income units in a building, if such building remains an eligible  
6 low-income building after such change, and if the commissioner,  
7 in consultation with the commissioner of housing and community  
8 renewal, determines that such change is de minimis, or

9 (C) by reason of error in complying with low-income  
10 eligibility tests referred to in subdivision five of section  
11 twenty-one of the public housing law, if the commissioner, in  
12 consultation with the commissioner of housing and community  
13 renewal, determines that such error is de minimis.

14 (vi) Recapture by partners of a partnership. In the case of  
15 ownership of a building or interest therein by a partnership  
16 which has thirty-five or more partners, the provisions of section  
17 42(j)(5) of the internal revenue code shall apply to any  
18 recapture under this paragraph unless the partnership elects not  
19 to have such provisions apply.

20 (vii) Bond in lieu of recapture. In the case of a  
21 disposition of a building or an interest therein, the taxpayer  
22 shall be discharged from liability for any recapture under this  
23 paragraph by reason of such disposition if the taxpayer furnishes  
24 to the commissioner a bond or other security acceptable to the

1 commissioner in an amount satisfactory to the commissioner and  
2 for the period required by the commissioner, and it is reasonably  
3 expected that such building will continue to be operated as an  
4 eligible low-income building for the remaining compliance period  
5 with respect to such building.

6 (d) Construction with public housing law; definitions. The  
7 provisions of this subdivision shall be construed in conjunction  
8 with the provisions of article two-A of the public housing law.  
9 For definitions relating to the low-income housing credit, see  
10 section twenty-one of such law.

11 § 3. Paragraph 1 of subsection (i) of section 606 of the  
12 tax law, as separately amended by sections 56, 105 and 130 of  
13 part A of chapter 389 of the laws of 1997, is amended to read as  
14 follows:

15 (1) For purposes of determining the application under this  
16 section of the credit provisions enumerated in the following  
17 table, a shareholder of a New York S corporation:

18 (A) shall be treated as the taxpayer with respect to his or  
19 her pro rata share of the corresponding credit base of such  
20 corporation, determined for the corporation's taxable year ending  
21 with or within the shareholder's taxable year and

22 (B) shall be treated as the owner of a new business with  
23 respect to such share if the corporation qualifies as a new  
24 business pursuant to paragraph (j) of subdivision twelve of

1 section two hundred ten of this chapter, unless the shareholder  
2 has previously received a refund by reason of the application of  
3 this subparagraph, or this subsection as it was in effect for  
4 taxable years beginning before nineteen hundred ninety-four.

5 With respect to the  
6 following credit  
7 under this section:

The corporation's credit  
base under section two  
hundred ten or section  
fourteen hundred fifty-six of  
this chapter is:

10 Investment tax credit  
11 under subsection (a)

Investment credit base or  
qualified rehabilitation  
expenditures under subdivision  
twelve of section two hundred  
ten

15 Economic development  
16 zone investment tax credit  
17 under subsection (j)

Cost or other basis under  
subdivision twelve-B of  
section two hundred ten

18 Economic development  
19 zone wage tax credit  
20 under subsection (k)

Eligible wages under  
subdivision nineteen of  
section two hundred ten or  
subsection (e) of section  
fourteen hundred fifty-six

23 Economic development zone  
24 capital tax credit

Qualified investments and  
contributions under

1	under subsection (l)	subdivision twenty of section
2		two hundred ten or subsection
3		(d) of section fourteen
4		hundred fifty-six
5	Agricultural property tax	Allowable school
6	credit under subsection (n)	district property taxes under
7		subdivision twenty-two of
8		section two hundred ten
9	Credit for employment	Qualified first-year wages or
10	of persons with dis-	qualified second-year wages
11	abilities under	under subdivision twenty-three
12	subsection (o)	of section two hundred ten or
13		subsection (f) of section
14		fourteen hundred fifty-six
15	Employment incentive	Applicable investment credit
16	credit under subsection	base under subdivision
17	(a-1)	twelve-D
18	Economic development	Applicable investment
19	zone employment incentive	credit under subdivision
20	credit under subsection (j-1)	twelve-C
21	Alternative fuels credit	Cost under subdivision
22	under subsection (p)	twenty-four
23	<u>Low-income housing</u>	<u>Credit amount under</u>
24	<u>credit under subsection (u)</u>	<u>subdivision twenty-seven</u>

1 of section two hundred ten or  
2 subsection (k) of section  
3 fourteen hundred fifty-six

4 § 4. Section 606 of the tax law is amended by adding a new  
5 subsection (u) to read as follows:

6 (u) Low-income housing credit. (1) General. A taxpayer  
7 shall be allowed a credit against the tax imposed by this article  
8 with respect to the ownership of eligible low-income buildings  
9 for which an eligibility statement has been issued by the  
10 commissioner of housing and community renewal. The amount of the  
11 credit shall be the credit amount for each such building  
12 allocated by such commissioner as provided in article two-A of  
13 the public housing law. The credit amount shall be allowed for  
14 each of the ten taxable years in the credit period, and any  
15 reduction in first-year credit as provided in subdivision two of  
16 section twenty-two of such law shall be allowed in the eleventh  
17 taxable year.

18 (2) Carryover. If the amount of credit allowable under this  
19 subsection for any taxable year shall exceed the taxpayer's tax  
20 for such year, the excess may be carried over to the following  
21 year or years, and may be deducted from the taxpayer's tax for  
22 such year or years.

23 (3) Credit recapture. (A) General. If,

24 (i) as of the close of any taxable year in the compliance

1 period, the amount of the qualified basis of any building with  
2 respect to the taxpayer is less than

3 (ii) the amount of such basis as of the close of the  
4 preceding taxable year,

5 (iii) then the credit recapture amount must be added back  
6 for the taxable year.

7 (B) Credit recapture amount. The credit recapture amount is  
8 an amount equal to the sum of

9 (i) the aggregate decrease in the credits allowed to the  
10 taxpayer under this subsection for all prior taxable years which  
11 would have resulted if the accelerated portion of the credit  
12 allowable by reason of this subsection were not allowed for all  
13 prior taxable years with respect to the excess of the amount  
14 described in clause (ii) of subparagraph (A) of this paragraph  
15 over the amount described in clause (i) of such subparagraph (A),  
16 plus

17 (ii) interest at the overpayment rate established under  
18 section one thousand ninety-six of this article on the amount  
19 determined under clause (i) of this subparagraph for each prior  
20 taxable year for the period beginning on the due date for filing  
21 the return for the prior taxable year involved.

22 (C) Accelerated portion of credit. For purposes of  
23 subparagraph (B) of this paragraph, the accelerated portion of  
24 the credit for the prior taxable years with respect to any amount



1 of basis is the excess of

2 (i) the aggregate credit allowed by reason of this  
3 subsection (without regard to this paragraph) for such years with  
4 respect to such basis, over

5 (ii) the aggregate credit which would be allowable by reason  
6 of this subsection for such years with respect to such basis if  
7 the aggregate credit which would (but for this paragraph) have  
8 been allowed for the entire compliance period were allowable  
9 ratably over fifteen years.

10 (D) Special rules. For purposes of this paragraph, the  
11 rules of section 42 (j)(4)(B) and (C) of the internal revenue  
12 code shall apply in determining the credit recapture amount.

13 (E) Exceptions to recapture. Recapture under this paragraph  
14 shall not apply to a reduction in qualified basis

15 (i) by reason of a casualty loss, if the commissioner, in  
16 consultation with the commissioner of housing and community  
17 renewal, determines that such loss is restored by reconstruction  
18 or replacement within a reasonable period, or

19 (ii) by reason of a change in floor space devoted to low-  
20 income units in a building, if such building remains an eligible  
21 low-income building after such change, and if the commissioner,  
22 in consultation with the commissioner of housing and community  
23 renewal, determines that such change is de minimis, or

24 (iii) by reason of error in complying with low-income

1 eligibility tests referred to in subdivision five of section  
2 twenty-one of the public housing law, if the commissioner, in  
3 consultation with the commissioner of housing and community  
4 renewal, determines that such error is de minimis.

5 (F) Recapture by partners of a partnership. In the case of  
6 ownership of a building or interest therein by a partnership  
7 which has thirty-five or more partners, the provisions of section  
8 42(j)(5) of the internal revenue code shall apply to any  
9 recapture under this paragraph unless the partnership elects not  
10 to have such provisions apply.

11 (G) Bond in lieu of recapture. In the case of a disposition  
12 of a building or an interest therein, the taxpayer shall be  
13 discharged from liability for any recapture under this paragraph  
14 by reason of such disposition if the taxpayer furnishes to the  
15 commissioner a bond or other security acceptable to the  
16 commissioner in an amount satisfactory to the commissioner and  
17 for the period required by the commissioner, and it is reasonably  
18 expected that such building will continue to be operated as an  
19 eligible low-income building for the remaining compliance period  
20 with respect to such building.

21 (4) Construction with public housing law; definitions. The  
22 provisions of this subsection shall be construed in conjunction  
23 with the provisions of article two-A of the public housing law.  
24 For definitions relating to the low-income housing credit, see

1 section twenty-one of such law.

2 § 5. Section 1456 of the tax law is amended by adding a new  
3 subsection (k) to read as follows:

4 (k) Low-income housing credit. (1) General. A taxpayer  
5 shall be allowed a credit against the tax imposed by this article  
6 with respect to the ownership of eligible low-income buildings  
7 for which an eligibility statement has been issued by the  
8 commissioner of housing and community renewal. The amount of the  
9 credit shall be the credit amount for each such building  
10 allocated by such commissioner as provided in article two-A of  
11 the public housing law. The credit amount shall be allowed for  
12 each of the ten taxable years in the credit period, and any  
13 reduction in first-year credit as provided in subdivision two of  
14 section twenty-two of such law shall be allowed in the eleventh  
15 taxable year.

16 (2) Carryovers. The credit and carryovers of such credit  
17 allowed under this subsection for any taxable year shall not, in  
18 the aggregate, reduce the tax due for such year to less than the  
19 minimum tax fixed by subsection (b) of section fourteen hundred  
20 fifty-five of this article. However, if the amount of credit or  
21 carryovers of such credit, or both, allowed under this subsection  
22 for any taxable year reduces the tax to such amount, then any  
23 amount of credit or carryovers of such credit thus not deductible  
24 in such taxable year may be carried over to the following year or

1 years and may be deducted from the taxpayer's tax for such year  
2 or years.

3 (3) Credit recapture. (A) General. If,

4 (i) as of the close of any taxable year in the compliance  
5 period, the amount of the qualified basis of any building with  
6 respect to the taxpayer is less than

7 (ii) the amount of such basis as of the close of the  
8 preceding taxable year,

9 (iii) then the credit recapture amount must be added back  
10 for the taxable year.

11 (B) Credit recapture amount. The credit recapture amount is  
12 an amount equal to the sum of

13 (i) the aggregate decrease in the credits allowed to the  
14 taxpayer under this subsection for all prior taxable years which  
15 would have resulted if the accelerated portion of the credit  
16 allowable by reason of this subsection were not allowed for all  
17 prior taxable years with respect to the excess of the amount  
18 described in clause (ii) of subparagraph (A) of this paragraph  
19 over the amount described in clause (i) of such subparagraph (A),  
20 plus

21 (ii) interest at the overpayment rate established under  
22 section one thousand ninety-six of this article on the amount  
23 determined under clause (i) of this subparagraph for each prior  
24 taxable year for the period beginning on the due date for filing

1 the return for the prior taxable year involved.

2 (C) Accelerated portion of credit. For purposes of  
3 subparagraph (B) of this paragraph, the accelerated portion of  
4 the credit for the prior taxable years with respect to any amount  
5 of basis is the excess of

6 (i) the aggregate credit allowed by reason of this  
7 subsection (without regard to this paragraph) for such years with  
8 respect to such basis, over

9 (ii) the aggregate credit which would be allowable by reason  
10 of this subsection for such years with respect to such basis if  
11 the aggregate credit which would (but for this paragraph) have  
12 been allowed for the entire compliance period were allowable  
13 ratably over fifteen years.

14 (D) Special rules. For purposes of this paragraph, the  
15 rules of section 42 (j)(4)(B) and (C) of the internal revenue  
16 code shall apply in determining the credit recapture amount.

17 (E) Exceptions to recapture. Recapture under this paragraph  
18 shall not apply to a reduction in qualified basis

19 (i) by reason of a casualty loss, if the commissioner, in  
20 consultation with the commissioner of housing and community  
21 renewal, determines that such loss is restored by reconstruction  
22 or replacement within a reasonable period, or

23 (ii) by reason of a change in floor space devoted to low-  
24 income units in a building, if such building remains an eligible

1 low-income building after such change, and if the commissioner,  
2 in consultation with the commissioner of housing and community  
3 renewal, determines that such change is de minimis, or

4 (iii) by reason of error in complying with low-income  
5 eligibility tests referred to in subdivision five of section  
6 twenty-one of the public housing law, if the commissioner, in  
7 consultation with the commissioner of housing and community  
8 renewal, determines that such error is de minimis.

9 (F) Recapture by partners of a partnership. In the case of  
10 ownership of a building or interest therein by a partnership  
11 which has thirty-five or more partners, the provisions of section  
12 42(j)(5) of the internal revenue code shall apply to any  
13 recapture under this paragraph unless the partnership elects not  
14 to have such provisions apply.

15 (G) Bond in lieu of recapture. In the case of a disposition  
16 of a building or an interest therein, the taxpayer shall be  
17 discharged from liability for any recapture under this paragraph  
18 by reason of such disposition if the taxpayer furnishes to the  
19 commissioner a bond or other security acceptable to the  
20 commissioner in an amount satisfactory to the commissioner and  
21 for the period required by the commissioner, and it is reasonably  
22 expected that such building will continue to be operated as an  
23 eligible low-income building for the remaining compliance period  
24 with respect to such building.

1           (4) Construction with public housing law; definitions. The  
2 provisions of this subsection shall be construed in conjunction  
3 with the provisions of article two-A of the public housing law.  
4 For definitions relating to the low-income housing credit, see  
5 section twenty-one of such law.

6           § 6. Section 1511 of the tax law is amended by adding a new  
7 subdivision (m) to read as follows:

8           (m) Low-income housing credit. (1) General. A taxpayer  
9 shall be allowed a credit against the tax imposed by this article  
10 with respect to the ownership of eligible low-income buildings  
11 for which an eligibility statement has been issued by the  
12 commissioner of housing and community renewal. The amount of the  
13 credit shall be the credit amount for each such building  
14 allocated by such commissioner as provided in article two-A of  
15 the public housing law. The credit amount shall be allowed for  
16 each of the ten taxable years in the credit period, and any  
17 reduction in first-year credit as provided in subdivision two of  
18 section twenty-two of such law shall be allowed in the eleventh  
19 taxable year.

20           (2) Carryover. The credit and carryovers of such credit  
21 allowed under this subdivision for any taxable year shall not, in  
22 the aggregate, reduce the tax due for such year to less than the  
23 minimum fixed by paragraph four of subdivision (a) of section  
24 fifteen hundred two of this article. However, if the amount of

1 credit or carryovers of such credit, or both, allowed under this  
2 subdivision for any taxable year reduces the tax to such amount,  
3 then any amount of credit or carryovers of such credit thus not  
4 deductible in such taxable year may be carried over to the  
5 following year or years and may be deducted from the taxpayer's  
6 tax for such year or years.

7 (3) Credit recapture. (A) General. If,

8 (i) as of the close of any taxable year in the compliance  
9 period, the amount of the qualified basis of any building with  
10 respect to the taxpayer is less than

11 (ii) the amount of such basis as of the close of the  
12 preceding taxable year,

13 (iii) then the credit recapture amount must be added back  
14 for the taxable year.

15 (B) Credit recapture amount. The credit recapture amount is  
16 an amount equal to the sum of

17 (i) the aggregate decrease in the credits allowed to the  
18 taxpayer under this subdivision for all prior taxable years which  
19 would have resulted if the accelerated portion of the credit  
20 allowable by reason of this subdivision were not allowed for all  
21 prior taxable years with respect to the excess of the amount  
22 described in clause (ii) of subparagraph (A) of this paragraph  
23 over the amount described in clause (i) of such subparagraph (A),  
24 plus



1           (ii) interest at the overpayment rate established under  
2 section one thousand ninety-six of this article on the amount  
3 determined under clause (i) of this subparagraph for each prior  
4 taxable year for the period beginning on the due date for filing  
5 the return for the prior taxable year involved.

6           (C) Accelerated portion of credit. For purposes of  
7 subparagraph (B) of this paragraph, the accelerated portion of  
8 the credit for the prior taxable years with respect to any amount  
9 of basis is the excess of

10           (i) the aggregate credit allowed by reason of this  
11 subdivision (without regard to this paragraph) for such years  
12 with respect to such basis, over

13           (ii) the aggregate credit which would be allowable by reason  
14 of this subdivision for such years with respect to such basis if  
15 the aggregate credit which would (but for this paragraph) have  
16 been allowed for the entire compliance period were allowable  
17 ratably over fifteen years.

18           (D) Special rules. For purposes of this paragraph, the  
19 rules of section 42 (j)(4)(B) and (C) of the internal revenue  
20 code shall apply in determining the credit recapture amount.

21           (E) Exceptions to recapture. Recapture under this paragraph  
22 shall not apply to a reduction in qualified basis

23           (i) by reason of a casualty loss, if the commissioner, in  
24 consultation with the commissioner of housing and community

1 renewal, determines that such loss is restored by reconstruction  
2 or replacement within a reasonable period, or

3 (ii) by reason of a change in floor space devoted to low-  
4 income units in a building, if such building remains an eligible  
5 low-income building after such change, and if the commissioner,  
6 in consultation with the commissioner of housing and community  
7 renewal, determines that such change is de minimis, or

8 (iii) by reason of error in complying with low-income  
9 eligibility tests referred to in subdivision five of section  
10 twenty-one of the public housing law, if the commissioner, in  
11 consultation with the commissioner of housing and community  
12 renewal, determines that such error is de minimis.

13 (F) Recapture by partners of a partnership. In the case of  
14 ownership of a building or interest therein by a partnership  
15 which has thirty-five or more partners, the provisions of section  
16 42(j)(5) of the internal revenue code shall apply to any  
17 recapture under this paragraph unless the partnership elects not  
18 to have such provisions apply.

19 (G) Bond in lieu of recapture. In the case of a disposition  
20 of a building or an interest therein, the taxpayer shall be  
21 discharged from liability for any recapture under this paragraph  
22 by reason of such disposition if the taxpayer furnishes to the  
23 commissioner a bond or other security acceptable to the  
24 commissioner in an amount satisfactory to the commissioner and

1 for the period required by the commissioner, and it is reasonably  
2 expected that such building will continue to be operated as an  
3 eligible low-income building for the remaining compliance period  
4 with respect to such building.

5 (4) Construction with public housing law; definitions. The  
6 provisions of this subdivision shall be construed in conjunction  
7 with the provisions of article two-A of the public housing law.  
8 For definitions relating to the low-income housing credit, see  
9 section twenty-one of such law.

10 § 7. This act shall take effect immediately.