

## **Section 100.2190 Tax Credit for Affordable Housing Donations (IITA Section 214)**

- a) For tax years ending on or after December 31, 2001 and on or before December 31, 2016, a taxpayer who makes a donation under Section 7.28 of the Illinois Housing Development Act [20 ILCS 3805/7.28] is entitled to a credit under IITA Section 214.
- b) The credit shall be equal to 50% of the value of the donation, but in no event shall exceed the amount reserved by the administrative housing agency for that project pursuant to Section 7.28 of the Illinois Housing Development Act and 47 Ill. Adm. Code 355.209.
- c) Year in which credit is taken. At the election of the taxpayer, the credit shall be taken:
  - 1) in the tax year in which the donation is made; provided that such election may not be made for any tax year ending after December 31, 2016;
  - 2) in the tax year in which the reservation letter is issued by the administrative housing agency under 47 Ill. Adm. Code 355.209, provided that the credit may not be claimed until the donation is made and, if the donation is not made before the taxpayer files its Illinois income tax return for the tax year in which the effective date occurs, the credit may not be claimed on the original return, but rather must be claimed on an amended return or claim for refund after the donation is made; or
  - 3) in the tax year in which the credit is transferred to the taxpayer; provided that, if the taxpayer elects under this subsection (c)(3) to take the credit in any tax year after the tax year in which the donation was made, the 5-year carryforward period allowed to the taxpayer in subsection (d) shall be reduced by the number of tax years of the taxpayer that ended on or after the date of the donation and on or before the date of the transfer to the taxpayer. The election shall be made in the manner directed by the Department and, once made, shall be irrevocable.

EXAMPLE: The administrative housing agency issues a reservation letter for a qualifying project in December 2003. A calendar-year donor makes a qualifying donation in January 2004. Under this subsection (c), the donor may elect to take the credit in 2003 or 2004. If, in 2008, the donor transfers any unused credit to a calendar-year taxpayer, the taxpayer may also elect to claim the transferred amount as a credit in 2003 or 2004. However, because the statute of limitations might prevent the taxpayer from deriving any benefit from claiming the credit in 2003 or 2004, subsection (c)(3) allows the taxpayer to claim the credit in 2008, the year of the transfer. If the taxpayer elects to claim the credit in 2008, it may

carry forward any credit in excess of its liability only until 2009, 5 years after the year of the donation.

- d) *If the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The tax credit shall be applied to the earliest year for which there is a tax liability. If there are credits for more than one year that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 214(b))*
  
- e) **Transfer of Credit**
  - 1) Under IITA Section 214(c), the credit allowed under this Section may be transferred:
    - A) *to the purchaser of land that has been designated solely for affordable housing projects in accordance with the Illinois Housing Development Act; or*
    - B) *to another donor who has also made a donation in accordance with Section 7.28 of the Illinois Housing Development Act.*
  - 2) *Persons or entities not subject to the tax imposed by IITA Section 201(a) and (b) and who make a donation under Section 7.28 of the Illinois Housing Development Act are entitled to a credit as described in this Section and may transfer that credit as provided in this subsection (e). (IITA Section 214(a))*
  - 3) Transfer of the credit shall be made pursuant to 47 Ill. Adm. Code 355.309.
  - 4) Transfer may be made of all or of any portion of the credit allowable to the transferor. However, any portion of a credit that has already been used to reduce the tax of a transferor may not be transferred.
  
- f) In the case of a credit earned by or transferred to a partnership or Subchapter S corporation, the credit passes through to the owners for use against their regular income tax liabilities in the same proportion as other items of the taxpayer are passed through to its owners for federal income tax purposes. (See IITA Section 214(a).) The partners and shareholders shall be treated for all purposes as if their shares of the credit had been earned by or transferred to them directly, except that the election under subsection (c) of the tax year in which to take the credit shall be made by the partnership or Subchapter S corporation. Any credit passed through to a partner or shareholder under this subsection (f) may be used in the taxable year of the partner or shareholder in which ends the taxable year of the pass-through entity in which the entity would be allowed to claim the credit under

subsection (c). In the case where the pass-through entity is the donor, the credit may be carried forward to the five succeeding taxable years of the partner or shareholder in the manner provided in subsection (d) until used. In the case where the pass-through entity is a transferee, the partner or shareholder shall be entitled to use the credit in the same number of taxable years as the pass-through entity would have been allowed to use the credit under subsection (c)(3).

- g) Documentation of the credit. *A taxpayer claiming the credit provided by this Section must maintain and record any information that the Department may require by regulation regarding the affordable housing project for which the credit is claimed.* (IITA Section 214(d)) When claiming the credit provided by this Section, the taxpayer must provide the following information regarding the taxpayer's donation to the development of affordable housing under the Illinois Housing Development Act.
- 1) For the taxable year for which the credit is allowed under subsection (c), a donor (or a partner or Subchapter S corporation shareholder of the donor) claiming the credit shall attach to its Illinois income tax return a copy of the reservation letter issued by the administrative housing agency stating the amount of credit allocated to the affordable housing project under 47 Ill. Adm. Code 355.209.
  - 2) For the taxable year in which a credit is transferred, the transferee (or a partner or Subchapter S corporation shareholder of the transferee) shall attach to its Illinois income tax return a copy of the certificate showing the names of the original donor and of the transferee, as provided in 47 Ill. Adm. Code 355.309.
- h) For purposes of this credit, the terms "administrative housing agency", "affordable housing project" and "certificate" shall have the meanings given to those terms in Section 7.28 of the Illinois Housing Development Act and 47 Ill. Adm. Code 355.

(Source: Amended at 38 Ill. Reg. 38 Ill. Reg. 9550, effective April 21, 2014)