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STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

March 8, 2023

Representative Mark Gamba
900 Court Street NE H477
Salem OR 97301

Re: Continuity of affordability restrictions under House Bill 2653

Dear Representative Gamba:

You asked whether a taxpayer could claim a tax credit under Introduced House Bill 2653 (2023) for the sale of property subjected to a new affordability restriction that makes the dwelling units affordable to tenants earning 80 percent of area median income, even though the property was previously subject to an affordability restriction making the units affordable to lower income tenants.

In short, the answer is yes.

House Bill 2653 would provide a tax credit to a taxpayer that makes a qualifying sale of existing publicly supported housing.[1] The bill defines a "qualifying sale" as a sale to a purchaser that will subject the property to affordability restrictions.[2] The affordability restrictions can be either new or continuing, so long as new restrictions are for at least 30 years, and a continuation of restrictions results in an extension of at least 30 years.[3] The restrictions must limit the rent on each dwelling unit to an amount that is affordable to households earning 80 percent of the area median income.[4] The affordability restrictions, whether new or continuing, must be in place before the expiration of the right of first refusal under ORS 456.262.[5] The Housing and Community Services Department is responsible for reserving and certifying the credit and the Department of Revenue ensures that the credit is correctly calculated and applied.[6]

The deadline for the qualifying sale is established based on the right of first refusal, which is 24 months *after* the date that the previous affordability restrictions have expired.[7] This means that a property could qualify for the tax credit under HB 2653 based upon a sale two years after the dwelling units were legally returned to market rate. Hypothetically, for tenants paying rent for a two-bedroom unit based on 60 percent of area median income affordability criteria in your district

[1] HB 2653, section 3 (1).
[2] HB 2653, section 2 (4).
[3] HB 2653, section 2 (4)(b).
[4] HB 2653, section 2 (4)(c).
[5] HB 2653, section 2 (4)(a).
[6] HB 2653, sections 3 (3) and 4 (1) and (6).
[7] ORS 456.262 (3)(d).

in Clackamas County, monthly rent would be $1,438.[8] The United States Department of Housing and Urban Development calculates "fair market rent" for a two-bedroom unit in Clackamas County as $1,839.[9] Under a potential $401 monthly rent increase for two years, it would be foreseeable that not all tenants could afford or would choose to remain in the dwelling unit after the affordability restrictions expired. And, if two years later the property were sold and subjected to new affordability restrictions where units were made affordable for households earning 80 percent of area median income, in Clackamas County that would actually allow higher rental rates than fair market rent, up to $1,918.[10] The seller of the property could still be entitled to the HB 2653 tax credit, even if the tenants, whether continuing or new, were now paying an additional $480 (33 percent) in monthly rent.[11]

Although a purchaser could purchase a property with existing affordability restrictions and extend those restrictions for 30 years to generate the seller's tax credit and allow the tenants to remain in place, nothing in the definition of "qualifying sale" requires that the new affordability restrictions are continuous with the old restrictions. There can be gaps between affordability restrictions, changes in rentals rates and different occupants.

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

By
Robert Mauger
Deputy Legislative Counsel

[8] Oregon Housing and Community Services, "2022 -- Income Limits for LIHTC & Tax-Exempt Bonds," https://www.oregon.gov/ohcs/compliance-monitoring/Documents/rents-incomes/2022/LIHTC/Clackamas.pdf (last visited March 7, 2023).
[9] "Clackamas County, OR 2023 Fair Market Rents," https://www.ushousingdata.com/fair-market-rents/clackamas-county-or (last visited March 7, 2023).
[10] Oregon Housing and Community Services, *supra* note 8.
[11] ORS 90.323 (3)(c) and 90.324 would limit the rate of rent increase for continuing tenants.