

## Chapter 4 – Federal Program Requirements

### A. Eligible Activities

Eligible activities for tax credits include new construction, rehabilitation, or acquisition with rehabilitation.

### B. Applicable Percentage

There are two levels of applicable percentage, depending upon whether the building is new or existing, whether there are rehabilitation expenditures and whether the buildings are federally subsidized.

1. New Buildings and Qualifying Rehabilitation Expenditures (if neither is federally subsidized):
  - With respect to new buildings or qualifying rehabilitation expenditures which are not subsidized, the applicable percentage is an amount resulting in aggregate credits having a present value of 70 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 9 percent.
2. New Buildings and Qualifying Rehabilitation Expenditures that are Federally Subsidized and Existing Buildings:
  - With respect to new buildings and qualifying rehabilitation expenditures which are federally subsidized, and the acquisition of existing buildings that are rehabilitated, the applicable percentage is an amount which results in aggregate credits having a present value of 30 percent of qualified basis. Traditionally, this has resulted in a credit percentage of approximately 4 percent.

The 9 percent and 4 percent credit percentage represents the maximum potential rate.

Section 42(b)(2)(A) and (B) of the Internal Revenue Code establishes a **temporary** minimum credit rate for non-federally subsidized buildings. In the case of any new building which is placed in service by the taxpayer after July 30, 2008 and before December 31, 2013, and which is not federally subsidized for the taxable year, the applicable percentage shall not be less than 9 percent.

**Those preparing an application for tax credits are strongly cautioned to carefully evaluate the Applicable Percentage anticipated for the proposed project and the date on which its buildings are expected to be placed in service. As stated above, Section 42(b)(2) of the Internal Revenue Code, establishes a temporary 9 percent minimum credit rate for certain non-federally subsidized new buildings placed in service BEFORE DECEMBER 31, 2013.**

**Depending upon the Applicable Percentage assumptions you choose to use in your project's application, and the Applicable Percentage elections you may make at a time of credit Reservation, placing a building in service on or after December 31, 2013 may have very significant impacts upon the financial viability of your project. A 9 percent Applicable Percentage will not be available to buildings placed in service on or after December 31, 2013.**

Projects may utilize the 9% rate if there is a high level of certainty that the project will place in service before December 31, 2013 as supported by the project schedule submitted with the application.

**New construction projects that utilize the 9% flat rate must close on financing and begin construction no later than February 28, 2013. Failure to meet the February 28, 2013 deadline may result in the reevaluation and adjustment of the tax credits or RFP award, up to and including the total recapture of tax credits or RFP funds. Projects utilizing the 9% rate will not be considered for any additional deferred loan funding to fill the gap created by their inability to meet the placed in service deadline.**

Applicants are strongly advised to consult closely with their tax credit professionals (legal and tax) for guidance with respect to structuring a project to use either the 9 percent or the 4 percent tax credit.

### C. Qualifying Rehabilitation