§ 21. Definitions. 1. (a) "Applicable percentage" means the appropriate percentage (depending on whether a building is new, existing, or federally subsidized) prescribed by the secretary of the treasury for purposes of section 42 of the internal revenue code for the month which is the earlier of

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

(ii) at the election of the taxpayer,

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

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

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

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

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

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

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

(b) at the election of the taxpayer, the succeeding taxable year, but only if the building is an eligible low-income building as of the close of the first year of such period. The election under paragraph (b) of this subdivision, once made, shall be irrevocable.

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

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

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

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

6. "Qualified basis" of an eligible low-income building means the qualified basis of such building determined under section 42(c) of the internal revenue code, or which would be determined under such section if the 40-90 test specified in paragraph (b) of subdivision five of this section applied under such section 42 to determine if such building were part of a qualified low-income housing project.

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