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TITLE 310 – DEPARTMENT OF HOUSING

CHAPTER 10 – TAX CREDITS

SUBCHAPTER 10 – LOW-INCOME HOUSING TAX CREDITS

PART 1 – RULES AND REGULATIONS FOR THE LOW-INCOME HOUSING TAX CREDIT PROGRAM

1.1 Purpose

A. These rules and regulations (the “Rules”) are promulgated to set forth the principles, policies, and practices of the Department of Housing in implementing and administering the Low-Income Housing Tax Credit Act created under R.I. Gen. Laws § 44-71-1, et seq. (the “Act”). The sunset for the Act is set forth in R.I. Gen. Laws § 44-71-12.

1.2 Authority

A. These Rules are promulgated pursuant to R.I. Gen. Laws § 44-71-9. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

1.3 Scope

A. These Rules shall apply to any application for an award of low-income housing tax credits under the Act. Notwithstanding anything contained in these Rules to the contrary, the Department shall have and may exercise all general powers set forth in the Act that are necessary or convenient to effect its purposes, and these Rules shall be liberally construed so as to permit the Department to effectuate the purposes of the Act, the public interest, and other applicable state laws and regulations.

1.4 Severability

A. If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

1.5 Definitions

A. "Act" means the Low-Income Housing Tax Credit Act created under R.I. Gen. Laws § 44-71-1, et seq.

- B. "Applicant" shall have the meaning prescribed to it in R.I. Gen. Laws § 44-71-3(1).
- C. "Application" means the application, published by the Department, which must be finalized and submitted by an applicant pursuant to the requirements of the Act and these Rules.
- D. "Completed" means placed in service.
- E. "Compliance period" shall have the meaning prescribed to it in R.I. Gen. Laws § 44-71-3(2).
- F. "Department" shall have the meaning prescribed to it in R.I. Gen. Laws § 44-71-3(3).
- G. "Developer" means a person, firm, business, partnership, association, political subdivision, or other entity that proposes to build or builds a qualified Rhode Island project, regardless of tax exempt status.
- H. "Division of Taxation" means the division of taxation of the Rhode Island Department of Revenue.
- I. "Eligibility statement" shall have the meaning prescribed to it in R.I. Gen. Laws § 44-71-3(5).
- J. "Federal low-income housing tax credit" shall have the meaning prescribed to it in R.I. Gen. Laws § 44-71-3(6).
- K. "Financing Gap" means the part of the total project cost that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, applicant's equity, a reasonable assumption of debt on the qualified Rhode Island project, federal Low Income Housing Tax Credits, and any other capital source that is reasonably available to the qualified Rhode Island project.
- L. "Low-income project" shall have the meaning prescribed to it in R.I. Gen. Laws § 44-71-3(7).
- M. "Proposed project" means a proposed qualified Rhode Island project.
- N. "Project costs" mean costs incurred and paid in connection with the qualified Rhode Island project by the applicant and included in the cost certification submitted for Federal Low Income Housing Tax Credits. Such costs include, but not limited to, lands, buildings, improvements, real and personal property or any interest therein, including the site, space or air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, and any environmental remediation costs, plus reasonable soft costs as determined by the Department, and ancillary infrastructure projects and

infrastructure improvements, as permitted in the sole discretion of the Department.

- O. "Placed in service" means the date on which the qualified Rhode Island project is certified as being suitable for occupancy in accordance with state or local law. Being placed in service shall be evidenced by the qualified Rhode Island project's receipt of a permanent certificate of occupancy.
- P. "QAP" means the State of Rhode Island Qualified Allocation Plan prepared pursuant to 26 U.S.C. § 42(m)(1)(B) and in effect at the time of application.
- Q. "Qualified Rhode Island project" means a qualified low-income housing project, as defined in section 42 of the 1986 Internal Revenue Code, as amended and in effect for the taxable year, which is located in the state of Rhode Island, which meets the requirements of the Act and these Rules, and whose owner enters into a tax credit agreement with the Department.
- R. "Rhode Island low-income housing tax credit" or "tax credit" shall have the meaning prescribed to it in R.I. Gen. Laws § 44-71-3(9).
- S. "State" means the State of Rhode Island.
- T. "Tax credit agreement" means an agreement between the owner of the qualified Rhode Island project and the Department and filed as an affordable housing restriction in the land records of the city or town where the real estate lies that requires the project to be operated in accordance with the requirements of the Act and these Rules for not less than thirty (30) years from the expiration date of the compliance period.
- U. "Taxpayer" shall have the meaning prescribed to it in R.I. Gen. Laws § 44-71-3(11).

1.6 Eligibility

- A. An applicant can only apply for a tax credit for a proposed project which is the subject of an application for or has or been approved for a federal low-income housing tax credit, and which meets other eligibility criteria set forth in the QAP, or a solicitation issued by the Department.
- B. A proposed project cannot receive a tax credit until the it has been approved for or received a federal low-income housing tax credit.

1.7 Tax Credit Amount

- A. The amount of a Tax Credit issued for a qualified Rhode Island project shall not exceed its financing gap.

1.8 Application

A. Each applicant shall submit an Application in a form prescribed by the Department, in a solicitation for applications for a Tax Credit, or in the QAP.

1.9 Application Review

A. Each application will be reviewed to confirm compliance with the Act and these Rules, and the Department may reject any incomplete or deficient application.

B. The Department may require the submission of additional information in connection with any application or the revision of an application, and may permit the resubmission of an application rejected as being incomplete or deficient.

C. The Department will review complete applications to determine if, in the Department's discretion, a financing gap exists for the proposed project. After the Department reviews an application, it will decide whether to award a Tax Credit to the Applicant. In making that determination, the Department will consider the following, among other things:

1. The evaluation of the applicant's pro forma and need for additional subsidy funding;

2. The proposed project's impact on efforts to increase affordable housing in the State, serve vulnerable populations (including extremely low-income residents) in the State, and address community needs;

3. The proposed project's readiness to proceed;

4. The proposed project's financial feasibility; and

5. The capacity of the proposed development team.

D. The Department may prioritize projects based upon additional criteria set forth in the QAP, or in a solicitation issued by the Department.

E. If the Department determines that it will not approve an application for a tax credit under the Act or these Rules, then it will notify the applicant of that decision in writing.

F. The Department may set periodic application deadlines that will be published on the Department's website.

1.10 Application Review

A. The Department shall not have any obligation to make any award or grant any benefit under the Act or these Rules.

- B. A review of an application shall not constitute a “contested case” under the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9, and no opportunity to object to an application shall be afforded.
- C. If any applicant wishes to appeal the Department's decision to deny an award under the Act or these Rules, the applicant may appeal that decision to the Secretary of Housing within ten business days of the applicant's actual notice or constructive notice of the Department's decision. The appeal must be in writing, set forth the reason for appeal, and be sent to the Secretary of Housing at the Department's office. The Secretary of Housing shall respond to the applicant's appeal in writing within thirty (30) days of receipt of the applicant's appeal, which response shall include the basis for the Department's decision.

1.11 Tax Credit Agreement

- A. Upon the Department's approval of a tax credit for an applicant, the Department and the applicant will enter into a tax credit agreement prior to the issuance of any tax credit to the applicant. The tax credit agreement shall include, among others, the following terms:
1. The maximum tax credit awarded;
 2. The tax credit shall not be issued prior to the qualified Rhode Island project being placed in service;
 3. Evidence that the applicant is in good standing with the Secretary of State and Division of Taxation at the time of execution of the tax credit agreement; a Certificate of Good Standing from the Secretary of State shall be evidence of good standing with the Secretary of State and a Letter of Good Standing from the Division of Taxation shall be evidence of good standing with the Division of Taxation;
 4. A provision that the tax credit shall be allowed in five (5) equal, annual increments;
 5. Default and remedies including events, if any, that would trigger forfeiture, revocation and/or repayment of the awarded tax credits;
 6. Indemnification, insurance and other customary protective requirements;
 7. Reporting requirements;
 8. The imposition of such restrictions or covenants upon the qualified Rhode Island project as may be necessary to ensure continued compliance with the Act and these Rules;

9. At the Department's discretion, a provision requiring the applicant to pay the Department's attorneys' fees incurred in connection with the negotiation, execution, and enforcement of the tax credit agreement;
10. A procedure to obtain an eligibility statement, which shall include, but not be limited to, the following:
 - a. Representations that the qualified Rhode Island project complies with all applicable laws and regulations;
 - b. Evidence that the applicant is in good standing with the Secretary of State and Division of Taxation at the time the applicant files its request for an eligibility statement. A Certificate of Good Standing from the Secretary of State shall be evidence of good standing with the Secretary of State and a Letter of Good Standing from the Division of Taxation shall be evidence of good standing with the Division of Taxation;
 - c. A requirement that the applicant submit, prior to issuance of any tax credit, satisfactory evidence of actual project costs, as certified by a Certified Public Accountant licensed in the State. If the actual project costs are less than the estimated project costs forming the basis for the approval of the awarded tax credits, then the awarded tax credit shall be reduced based upon the actual project costs;
 - d. Evidence that the Qualified Rhode Island project has been placed in service and meets such other criteria as imposed by the Department.
11. A provision that authorizes the Division of Taxation to share the applicant's tax information with the Department.

B. The Tax Credit Agreement will be filed as an affordable housing deed restriction in the land records of the city or town where the real estate lies that requires the project to be operated in accordance with the requirements of the Act for not less than thirty (30) years from the expiration date of the compliance period.

1.12 Eligibility Statement

- A. Upon the qualified Rhode Island project being placed in service, the applicant shall submit a request for an eligibility statement to the Department, pursuant to the tax credit agreement. The request for an eligibility statement must be certified and attested to by a Certified Public Accountant licensed in the State, evidencing that the applicant has satisfied the conditions relating to the project costs and the applicant's equity contribution.
- B. The Department may seek reasonable additional information from the applicant to support the request for an eligibility statement.

- C. Once the Department approves the request for an eligibility statement and finds that the applicant has satisfied the project costs, has made its equity contribution, if any, and satisfied any other applicable requirements of the tax credit agreement, the Department will issue an eligibility statement to the applicant, which shall indicate that the applicant is entitled to a tax credit for a specified year or years in an amount determined pursuant to the tax credit agreement.
- D. In accordance with a procedure set forth in the tax credit agreement, the amount of the annual tax credit otherwise available shall be reduced, or the tax credit for the given year shall be entirely forfeited, if the applicant fails to meet any applicable requirements set forth in the tax credit agreement for the given year.

1.13 Tax Credit Certificates

- A. Upon the issuance of an eligibility statement, the Department will issue tax credit certificates in the amount authorized and allocated in accordance with the eligibility statement and the tax credit agreement. The Department shall provide copies of eligibility statements and tax credit certificates to the Division of Taxation within thirty (30) days of issuance, including copies of all eligibility statements and tax credit certificates that are reissued, transferred, sold, or assigned.
- B. The owner of a qualified Rhode Island project that receives an eligibility statement and tax credit certificates shall, at the time of filing the owner's state tax return, submit therewith the original tax credit certificate issued by the Department with respect to such qualified Rhode Island project. In the case of failure to attach the tax credit certificate, a tax credit shall not be allowed with respect to such qualified Rhode Island project for that year until the original tax credit certificate is provided to the Division of Taxation.

1.14 Assignment of Tax Credits

- A. A tax credit certificate may be assigned to any Taxpayer, provided that no credit has been claimed based on the tax credit certificate being assigned. The tax credit certificate may be assigned by endorsing the assignment clause set forth on the certificate and delivery of the original certificate to the assignee.
- B. The assignee may use the tax credit only to offset the actual tax imposed and those taxes permitted to be offset under the Act as delineated in the tax credit agreement, for the taxable year in which the tax credit is issued or for taxable years to which the tax credit is permitted to be carried forward.
- C. The assignee of a tax credit certificate shall, at the time of filing the assignee's state tax return, submit therewith the original tax credit certificate issued by the Department with respect to a qualified Rhode Island project. In the case of failure to attach the tax credit certificate, a tax credit shall not be allowed with respect to

a qualified Rhode Island project for that year until the original tax credit certificate is provided to the Division of Taxation.

1.15 Redemption of Tax Credits

- A. Upon request of a taxpayer and subject to annual appropriation, the State, through its Division of Taxation, shall redeem any Tax Credit in whole or in part, for ninety percent (90%) of the value of the Tax Credit.
- B. A taxpayer seeking redemption of a tax credit certificate shall file an application with the Division of Taxation on the form prescribed by the Division of Taxation together with the original tax credit certificate. The Division of Taxation will request funds from the Department bi-annually and will pay the redemption amount within thirty (30) days of the receipt of funds from the Department.

1.16 Revocation and Recapture of Tax Credits.

- A. Any Tax Credit can be revoked and/or recaptured by the Department in the following circumstances:
1. Upon federal revocation and recapture as set forth in R.I. Gen. Laws § 44-71-7 (a)
 2. Upon Department's determination:
 - a. In the event that any request for an eligibility statement or information provided by the applicant or any officer, principal, agent, or employee of the Applicant or its successor-in-interest is found to be willfully false, the Department may deny the issuance of any tax credits or revoke any award of tax credits in their entirety, which revocation shall be in addition to any other criminal or civil penalties that the applicant and/or the officer, principal, agent, or employee may be subject to under applicable law.
 - b. That an applicant or its successor-in-interest is convicted of bribery, fraud, theft, embezzlement, misappropriation, and/or extortion involving the State, any State agency or political subdivision of the State.
 - c. Upon breach of a Tax Credit Agreement, the Department may deny the issuance of or revoke the tax credit certificates and any fees paid shall be forfeited.
 - d. If any tax credit certificates have been claimed by any taxpayer based upon a tax credit certificate that has been revoked, the applicant or its successor-in-interest shall pay to the Department an amount equal to the tax credit claimed.

B. The Department shall provide notification of recapture determinations pursuant to R.I. Gen. Laws § 44-71-7(b).

C. The Department may provide for additional rights and remedies in any tax credit agreement, which will be in addition to the rights of revocation and termination provided under this Rule.

1.17 Administration and Examination of Records

A. The Division of Taxation and any of its agents, for the purpose of ascertaining the correctness of any claimed Tax Credit may examine any books, paper, records or memoranda bearing upon the matters required to be included in the return, report or other statement, and may require the attendance of the person executing the return, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine the person under oath respecting any matter which the Division of Taxation or its agents deems pertinent or material in determining eligibility for tax credits claimed, and may request information from the Department, and the Department shall provide such information in all cases, to the extent not otherwise prohibited by statute.

B. The Department may examine any books, paper, records or memoranda bearing upon the approval of Tax Credits, and may require the attendance of any person executing any application, report or other statement, or of any officer or employee of any taxpayer, or the attendance of any other person, and may examine such person under oath respecting any matter which the Department deems pertinent or material in determining eligibility for Tax Credits.

1.18 Inspection Rights

A. The Department and Division of Taxation shall have the right at reasonable times to make an inspection and to enter upon any property that is the subject of an application during the term of the Tax Credit Agreement to verify compliance with the Act, the Rules and such other conditions imposed by the Department.