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TIR 10-14: Certified Housing Development Tax Credit

I. Introduction

This Technical Information Release announces a new tax credit for housing development set forth in chapter 240 of the Acts of 2010, An Act Relative to Economic Development Reorganization (the Act). The Act establishes the Certified Housing Development Program by adding G.L. c. 40V. A key component of the housing program is a tax credit for certain qualified rehabilitation expenditures with respect to a certified housing development project created by adding subsection (q) to G.L. c. 62, § 6 and section 38BB to G.L. c. 63. The effective date of the credit provisions is January 1, 2011.

There is a \$5 million cap on the amount of credit that may be awarded under the program in a calendar year. The \$5 million cap is part of an over-all \$25 million cap imposed on the Economic Development Incentive Program (EDIP) credit authorized pursuant to G.L. c. 62 § 6(g) and c. 63, 38N. The \$25 million cap is reduced by only the amount of the housing development credits that are used by taxpayers to reduce their tax liability for the year.

II. Taxpayers Who May Claim the Credit

Individuals or entities subject to tax pursuant to G.L. c. 62 or G.L. c. 63 are eligible to receive credit awards.

III. Amount of the Credit & Costs Eligible for the Credit

The credit is available to a taxpayer only to the extent awarded by the Massachusetts Department of Housing and Community Development (DHCD) as established pursuant to G.L. c. 23B. The DHCD may award a taxpayer a credit of up to ten percent of the costs of qualified substantial rehabilitation expenditures, as defined in G.L. c. 40V, § 1, of the market rate units within the certified housing development projects. The DHCD may limit (but not expand) the credit available to a project under subsection (q) of section 6 of chapter 62 and section 38BB of chapter 63 to a dollar amount or in any other manner deemed appropriate by the DHCD. St. 2010, c. 240, § 105.

IV. Time for Claiming the Credit

The credit is allowed for the taxable year in which DHCD gives the Commissioner of Revenue (Commissioner) written notification of completion of the certified housing development project. Qualified substantial rehabilitation expenditures applicable to the credit are deemed made on the date that DHCD gives the Commissioner such written notification.

V. Transfer of the Credit

Taxpayers eligible for the credit may, with prior notice to and under rules adopted by the Commissioner, transfer the credits, in whole or in part, to any individual or entity, and the transferee will be entitled to apply the credits against its tax liability imposed by G.L. c. 62 or c. 63. A transferee must apply the credit against its tax liability in the year the credit is transferred, provided that the transferee may not use the credit in any tax year before DHCD notifies the Commissioner of the completion of the certified housing development project.

If a partnership or a limited liability company treated as a partnership for Massachusetts income tax purposes generates the credit, the credit, if transferred, must be transferred by the partnership or the limited liability company. Credits passed through to individual partners or members may not be transferred by the partners or members.

Pursuant to the authority granted to the DHCD to limit the credit in any manner deemed appropriate, the DHCD may, as part of its certification process, limit a taxpayer's ability to transfer the credit.

VI. Carry Forward of the Credit

If the credit available for use for any taxable year exceeds the taxpayer's or a transferee's tax liability for that taxable year, the taxpayer or transferee may carry forward and apply in any subsequent taxable year the portion of those credits, as reduced from year to year, which exceed the tax for the taxable year. However, in no event may the taxpayer or transferee carry the credit forward to a taxable year beginning more than 5 years after the taxable year in which DHCD gave the Commissioner written notification of completion of the certified housing development project to which the credit pertains.

Pursuant to the authority granted to the DHCD to limit the credit in any manner deemed appropriate, the DHCD may, as part of its certification process, limit the credit carry forward available to a taxpayer.

VII. Annual Cap on the Amount of Credit Awarded by DHCD

The total amount of credits that may be authorized by the DHCD in a calendar year under G.L. c. 62, § 6(q) and G.L. c. 63,

§ 38BB may not exceed \$5 million. The following amounts count toward the \$5 million cap: (1) credits granted and used to reduce tax liability during the current year; and (2) carry forwards of the credit from prior years by either a taxpayer that generated the credit or a transferee used to reduce tax liability during the current year.

Any portion of the \$5 million annual cap not awarded by DHCD in a calendar year may not be applied to awards in a subsequent year. Of the \$5 million cap, only the amount of credits used to reduce tax liability during the calendar year will count towards the over-all \$25 million cap imposed on the EDIP credit for that calendar year.

DHCD must provide the Commissioner with any documentation that the Commissioner deems necessary to confirm compliance with the annual cap and the Commissioner must provide a report confirming compliance with the annual cap to the Secretary of Administration and Finance and the Secretary of Housing and Economic Development.

/s/Navjeet K. Bal

Navjeet K. Bal

Commissioner of Revenue

NKB:MTF:lbr

January 6, 2011

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