

## **2020 Mixed-Use Development Tax Credit** **Program Guidelines**

### **Introduction:**

Act 84 of 2016 amended the Tax Reform Code of 1971 by adding Article XIX-E, the Mixed-Use Development Tax Credit program, which is administered by the Pennsylvania Housing Finance Agency (“PHFA” or “Agency”) and authorizes the Agency to sell \$2 million of state tax credits to qualified taxpayers for the purpose of establishing the Mixed-Use Development Fund (the “fund”). In 2019, Act 13 of 2019 was passed increasing the aggregate amount of tax credits from \$2 million to \$3 million.

Distributions from the fund will be awarded to eligible construction or rehabilitation projects in target areas of the Commonwealth with an identifiable need for increased affordable housing opportunities and commercial corridor development. The program provides financing to critical projects as part of an overall strategy for revitalizing communities by maximizing public and private resources, fostering sustainable partnerships committed to addressing community needs and ensuring that resources are used to effectively and efficiently meet those needs.

### **Eligibility:**

PHFA is authorized to sell Mixed-Use Development Fund tax credits through directed or negotiated sale to any qualified taxpayer. A qualified taxpayer is any natural person, business firm, corporation, business trust, limited liability company, partnership, limited liability partnership, association or any other form of legal business entity that is subject to a tax imposed by Article III, IV, VI, VII, VIII, IX, XI, or XV of the Tax Reform Code of 1971, excluding tax withheld by an employer under Article III.

The credit issued to a qualified taxpayer may be applied against any qualified tax liability. A qualified tax liability is any of the following taxes imposed by the Tax Reform Code of 1971:

- Article III: Personal Income Tax (excluding tax withheld by an employer)
- Article IV: Corporate Net Income Tax
- Article VI: Capital Stock and Franchise Tax
- Article VII: Bank and Trust Company Shares Tax
- Article VIII: Title Insurance Company Shares Tax
- Article IX: Insurance Premiums Tax
- Article XI: Gross Receipts Tax
- Article XV: Mutual Thrift Institutions Tax

In addition to criteria established in the bid solicitation, applicants seeking to purchase Mixed-Use Development Fund tax credits must also:

1. Demonstrate compliance with all PHFA criteria, as outlined in the bid solicitation, which includes, but is not limited to good standing with PHFA programs and financial viability (i.e., not bankrupt or under the protection of receivership.) Upon receipt of the bid offer, PHFA will perform its compliance check.
2. The applicant must be in compliance with the laws and regulations of the Commonwealth of Pennsylvania. Upon receiving the bid packet from PHFA, the Pennsylvania Department of Revenue (“DOR”) will perform the compliance check.

## **Application and Sale Process:**

PHFA will develop specific bid criteria, an application and an application timeframe. The bid criteria and application will be made available to the general public and targeted markets on or before September 9, 2020, and shall be posted on the Agency's website ([www.phfa.org](http://www.phfa.org)).

While specific instructions to applicants will be set forth on the website, the process and timeline will generally be as follows:

- September 9, 2020: Invitations for the bids to be submitted by eligible taxpayers is announced and application form is available on the Agency website.
- September 30, 2020: 2 pm- All bids and required materials must be received by the Agency.

A preliminary draft form of the Application For Purchase of Tax Credits form is included as Appendix A. PHFA may obtain additional information and supplemental details which may impact the bid process on or around September 9, 2020. In this regard, PHFA reserves the right to amend the bid process accordingly. This may include establishment of a minimum price per tax credit, a maximum amount per applicant, and other criteria. Under the provisions of the sale and in accordance with PHFA guidance, all qualified taxpayers seeking credits will be required to submit an irrevocable offer to PHFA. The Agency reserves the right to terminate, suspend, amend or withdraw the bid solicitation and may reject all bids in the event it does not receive sufficient bids or in the event the bids result in a minimum raise of less than the established reserve.

In accordance with the law, bids providing maximum benefit and return to the Commonwealth will be favored. Additional criteria to be used by PHFA in making awards may include the following: nature of proposed pay in structure; limited third party fees and costs; geographic distribution; distribution among different types of taxpayer entities.

## **Selection and Disbursement:**

Provided that sufficient bids have been received, and contingent upon DOR review and approval of all compliance matters, tax credit awards are expected to be made within ninety (90) days of the close of the bidding period. Upon acceptance of an offer for the purchase of a tax credit, PHFA shall provide written notification of approval, including the amount of tax credit to be allocated. Award recipients shall deposit a capital commitment equal to 100 percent of the total amount to be paid for the purchase of the credit with PHFA in accordance with instructions from PHFA (in no event shall the funding be deposited more than ninety (90) days from the date of approval.) Upon receipt of payment, the taxpayer will receive the corresponding tax credit certificate from PHFA.

Failure to deposit the required capital commitment within the prescribed timeframe may result in the following:

- Withholding of the tax credit certificate;
- Commonwealth debarment, forfeiture or liquidation of any pledged collateral
- The recapture and reallocation of the credits;
- A penalty assessment equal to 10% of the unpaid capital contribution in addition to any costs and fees incurred by PHFA. If a penalty is assessed, such penalty shall be paid to PHFA within thirty (30) days after a written demand for payment is made by first class mail.

A taxpayer that defaults on payment of capital contribution may, after receipt of notice of penalty, avoid such penalty by transferring any tax credit allocation to another qualified taxpayer within thirty (30) days of the date that the capital contribution was due to PHFA or the date specified in the default letter. Any transferee must

comply with all guidance issued by PHFA regarding the credit and must tender the required capital payment within thirty (30) days of the date of transfer.

Upon issuance of the tax credit, PHFA will provide a copy of the credit certificate and a credit reconciliation workbook to DOR in the format prescribed by DOR to upload the credit to the appropriate account and track credit utilization.

### **Claiming the Tax Credit:**

A taxpayer may claim a tax credit against any qualified tax liability upon presenting a tax credit certificate verified by PHFA to DOR. The tax credit certificate must be presented to both PHFA and DOR no later than the last day of the second calendar month of the calendar year in which the credit is available in order to claim the tax credit.

### **Guidelines for Tax Credit Use:**

A tax credit received by DOR in a taxable year shall first be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the tax credit was issued before any carried over tax credits can be applied against any qualified tax liability.

- The taxpayer entity may carry forward any unused tax credits for no more than the seven succeeding taxable years. Each year in which the credit is carried forward, the amount of tax credit will be reduced by the cumulative amount that was used in the immediately preceding tax year.
- The tax credit may not be carried back and is not refundable.

### **Sale or Assignment:**

The tax credit may be sold or assigned in whole or in part to another qualified taxpayer after receiving approval from PHFA, which consists of a tax compliance verification on the seller conducted by the Department of Revenue and an evaluation by PHFA to ensure that Buyer is in good standing with PHFA criteria. Notification of proposed sale or assignment of tax credits must be submitted at least sixty (60) days in advance of any sale or transfer, with all requisite information required by PHFA (including all information contained on the **APPLICATION FOR PURCHASE OF TAX CREDITS** and upon submission outlining all costs and fees charged in the transaction.) PHFA and DOR will review for compliance with all established criteria and will advise the proposed purchaser or assignee if the sale or transfer has been approved. Third party costs and fees may be limited in these transactions.

- A purchased or assigned tax credit may be applied to 100 percent of the tax liability of the purchaser or assignee.
- The purchaser or assignee shall claim the tax credit in the year in which the purchase or assignment is made and may not carryover, carryback, receive a refund, re-sell or re-assign the tax credit.
- Pass-through Entities:
  - Upon receipt of an award of tax credits, a pass-through entity may elect, in writing and upon PHFA and DOR approval, to transfer all or a portion of unused tax credits to shareholders, members or partners in proportion to the share of the entity's distributive income to which the particular shareholder, member or partner is entitled.
  - The transferred tax credit must be claimed in the taxable year in which the transfer is made and is not eligible for carryover, carry back, refund, sale or assignment.
  - Such tax credit may not be used for the same qualified expenditures by the shareholder, member or partner and the pass-through entity

**Annual Reporting Requirement:**

Mixed-Use Development tax credit recipients, purchasers or assignees shall notify PHFA of the utilization of the tax credit by May 1 annually, until the credit has been used in its entirety. The notice of utilization must include the date that the credit was claimed, towards what qualified tax liability the credit was applied, and the balance of credits available. If no portion of the credit was used for a taxable year in which the credit was available, a notice of utilization must be provided indicating that no portion of the credit was used.

**Supplemental Information and Materials:**

Upon the sale of Mixed-Use Development Fund tax credits, the Agency will establish the Community Revitalization Fund. This fund will be used to provide financing to projects meeting the goals of the Mixed-Use Development program. Specific application information about the criteria to be used by the Agency in evaluating and selecting projects for financing under the Community Revitalization Fund Program will be made available by the Agency on its website and through public announcement of availability of funds.

**APPLICATION FOR PURCHASE OF  
MIXED-USE DEVELOPMENT TAX CREDITS**

1. Name of Purchaser (Qualified Taxpayer)	
2. Address – Street	
City	State ZIP code
3. Federal employer identification number (EIN)	4. NAIC number
5. Name of Contact Person of Qualified Taxpayer	6. Phone and Email of Contact Person
7. PA Department of Revenue ID Number	8. PA Sales and Use Tax License Number:
9. PA Employer Withholding Account Number	10. PA Unemployment Compensation Number
11. Face amount of Tax Credits Purchaser irrevocably commits to purchase:	12. Purchase price of Tax Credits Purchaser irrevocably commits to purchase

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2. Address – Street	
City	State ZIP code
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11. Face amount of Tax Credits Purchaser irrevocably commits to purchase:	12. Purchase price of Tax Credits Purchaser irrevocably commits to purchase

THE UNDERSIGNED OFFICER OF \_\_\_\_\_  
("Purchaser"), being duly sworn, *Participating Purchaser (a Qualified Taxpayer)*  
hereby irrevocably commits Purchaser to purchase the face amount of Tax Credits for the purchase price set  
forth in Subsection XXX subject to the transaction closing by December 31, 2020.

The Qualified Taxpayer acknowledges that in order to become a Purchaser participating in the Mixed-Use  
Development Tax Credit Program, the Qualified Taxpayer must be in compliance with PHFA requirements, and  
the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Department of  
Revenue.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Daytime phone (Area code and number)*

State of \_\_\_\_\_

County of \_\_\_\_\_

*Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020.*

*(Notary Seal)*

\_\_\_\_\_  
*Signature of Notary Public*

*My commission expires \_\_\_\_\_*

**Tax Certificate – Example**

**Mixed-Use Development Tax Credit Program Tax Credit Award Notification**

Name of Taxpayer \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_  
Zip: \_\_\_\_\_

FEIN: XX-XXXXXX  
Revenue ID: 1000XXXXXXXXXX  
Notice Date: July 1, 2020  
Effective Date of Credit: January 1, 2021  
Expiration Date of Credit: December 31, 2027

Attention: \_\_\_\_\_

Dear XXXX,

In compliance with Article XIX-E of the Tax Reform Code of 1971, the Pennsylvania Housing Finance Agency has reviewed this application for the Mixed-Use Development Fund Tax Credit Program.

\$XXX,XXX Total Mixed-Use Development Fund Tax Credits have been approved for utilization beginning in calendar year 2021 against tax liabilities incurred after January 1, 2020.