

# WATERFRONT DEVELOPMENT TAX CREDIT PROGRAM

Business Guidelines | February 2018



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## Section I – Introduction and Purpose

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The Waterfront Development Tax Credit Program was established by Act 84 of 2016 (the “Act”) for the purpose of providing tax credits to business firms who provide contributions to waterfront development organizations who are undertaking a waterfront development project. The program is established to encourage private investment in waterfront property that creates public access to the water, increases property values, restores ecology and catalyzes further financial investment and job creation. The program is administered by the Department of Community and Economic Development.

## Section II – General

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### A. Definitions

The following terms shall have the following meanings:

**“Business Firms.”** An entity authorized to do business in this Commonwealth and subject to the following taxes: Personal Income Tax, Corporate Net Income Tax, Capital Stock/Foreign Franchise Tax, Bank and Trust Company Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, Mutual Thrift Institutions Tax, or the tax under Article XVI of the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921. The term includes a pass-through entity.

**“Contribution.”** A donation of cash or personal property made by a business firm to a waterfront development organization to fund a waterfront development project.

**“Department.”** The Department of Community and Economic Development of the commonwealth.

**“Pass-through Entity.”** Any of the following:

1. A partnership as defined under section 301 (n.0.) of the Pennsylvania Tax Reform Code of 1971 (Act of March 4, 1971, PL. 6, No. 2) (“PA Tax Code”).
2. A Pennsylvania S corporation as defined under section 301(n.1) of the PA Tax Code.
3. An unincorporated entity subject to section 307.21 of the PA Tax Code.

**“Tax Credit.”** The waterfront development tax credit authorized by Article XVIII-K of the Act.

**“Waterfront.”** A site that is directly adjacent to a body of water.

**“Waterfront Development Organization.”** An authority established under the act of December 6, 1972 (P.L. 1392, No. 298), known as the Third Class City Port Authority Act, or a nonprofit entity that meets all of the following:

1. Exempt from Federal taxation under section 501 (c) (3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. 501 (c) (3) ),
2. Has been in existence for a minimum of five years,
3. Has a board of directors which meets at least once annually, and
4. Has completed a Waterfront Development Plan as defined below.

**“Waterfront Development Plan.”** A plan approved by the Department that meets all of the following:

1. Provides for the development or enhancement of Waterfront property that creates public access to the water, increases property values, restores ecology and catalyzes further financial investment and job creation to incentivize future economic development,
2. Adheres to current environmental practices,
3. Considers and integrates approaches that support natural and native habits, and
4. Considers and integrates architectural and landscape elements and standards.

**“Waterfront Development Project.”** A project to develop a Waterfront site or area or a project that creates or improves public access and connections to the Waterfront. The term may include:

1. Streets and public rights-of-way.
2. Waterfront parks, gardens and open space.
3. Enhancement of access to public utilities.
4. The promotion of erosion control, storm water management and other environmental projects that promote economic development.
5. Water transportation facilities for use by the public, including water transit landings and boat docking.
6. Amenities, including infrastructure and recreational projects.

## **B. Eligibility**

A Business Firm that provides contributions to a Waterfront Development Organization to fund Waterfront Development Projects approved by the Department.

## **C. Limitations**

1. Contributions made to a Waterfront Development Organization must be used by the Waterfront Development Organization for a Waterfront Development Project.
2. No Tax Credit may exceed 75% of the total contribution made by a Business Firm during a taxable year.
3. No Tax Credit shall be granted to a Business Firm for activities that are a part of its normal course of business or in which the Business Firm has a pecuniary interest.
4. The total amount of all Tax Credits shall not exceed \$1,500,000 in any one fiscal year.
5. In any one fiscal year, the Department may not approve more Tax Credits for contributions made to a Waterfront Development Organization than the total aggregate cost of Waterfront Development Projects approved by the Department.
6. Tax credits shall be made available by the department on a first-come, first-served basis.

## **Section III – Application Process**

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Applicants for a Waterfront Development Tax Credit must provide a complete application package consisting of the following to the Department:

1. A completed “Single Application for Assistance” submitted electronically and available at [www.esa.dced.state.pa.us](http://www.esa.dced.state.pa.us).
2. Identification of the amount of the contribution provided to the Waterfront Development Organization.
3. Identification of the name of the Waterfront Development Organization to whom the contribution was made and the name of the Waterfront Development Project being funded.
4. Any other documentation deemed necessary by the Department.

## **Section IV – Application Evaluation**

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All applications will be reviewed for completeness and compliance with the Act and these Guidelines.

All applications will be validated by the Department of Revenue for State Tax Compliance: All applicants must be in compliance with the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Department of Revenue.

Applicants will be notified of missing information and/or non-compliance with the Act or these Guidelines. An applicant will have the opportunity to correct the application; however, the application will not be considered until all required information is received by the Department.

The Department shall review and approve an application meeting the requirements of the Act on an on-going basis throughout the fiscal year.

## **Section V – Earning of Tax Credits**

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Upon receipt of written notification from the Department that the Business Firm has been approved for Tax Credits, the Business Firm must make its contributions to an approved Waterfront Development Organization within 60 days of the date of the letter, and must provide proof of the contribution in the form of a written acknowledgement from the organization, to the Department within 90 days of the date of the approval letter. The Department of Revenue will consider Tax Credits awarded under this program to be effective on the first day of the taxable year in which the contribution was made. If the Business Firm does not make the contribution within 60 days of the date on the approval letter, or the Department does not receive proof of contribution within 90 days of the letter, the approval of Tax Credits will be rescinded.

## **Section VI – Use, Sale, Assignment, and Transfer of Tax Credits (As administered by the PA Department of Revenue)**

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Upon the issuance of the Tax Credit Certificate, the Department will notify the Department of Revenue that the Business Firm has been awarded a Tax Credit within the program.

Recipients of a Waterfront Development Tax Credit may use the Tax Credit to offset their Pennsylvania state tax liability or sell, assign or transfer the credits to another entity.

Waterfront Development Tax Credits may be applied by the recipient or by an entity to whom the Tax Credit has been sold, assigned or transferred, against the tax liability for the following Pennsylvania taxes:

- Personal Income Tax
- Corporate Net Income
- Capital Stock/ Foreign Franchise
- Bank Shares
- Title Insurance
- Insurance Premium
- Mutual Thrift
- Surplus Lines Tax

*Note: Tax Credits cannot be carried back or used to obtain a refund of any unused tax credits by the recipient, buyer, assignee, or transferee.*

### **A. Use of Waterfront Development Tax Credit by Recipient**

First use of the credit must be utilized by the recipient to offset their Pennsylvania state tax liability for the tax year in which the tax credit is issued. If a recipient's tax liability is less than the amount of tax credits awarded, the recipient may carry forward any or all of the unused portion of the credit to offset the recipient's tax liability for up to five additional tax years.

Entities that are no longer subject to filing the RCT- 101 Corporate Tax Report as per the phase out of the Capital Stock & Foreign Franchise Tax are required to file the PA 20S/PA-65, S Corporation/ Partnership Information return prior to selling a restricted credit.

Every domestic or foreign PA S corporation (72 P.S. § 7330.1), partnership (72 P.S. § 7335 (c )), or entity formed as a limited liability company that is classified as a partnership or S corporation for federal income tax purposes, must file the PA- 20S/PA-65 Information Return. Single Member Limited Liability Companies with an individual, partnership or corporation as the single member are required to file the specified returns: An individual as the single member, must file a PA-40 Individual Tax Return. If the single member is a corporation or partnership the return of the owner (RCT-101 Corporate Tax Report or PA 20S/65 Information Return) must be filed.

For education and outreach on this topic, please see the Department of Revenue Tax Credit webpage: [revenue.pa.gov](http://revenue.pa.gov) and select the menu for general tax information followed by selection of the incentives, credits and programs options. For specific questions, please contact 717-772-3896 or [ra-btftrevkoz@pa.gov](mailto:ra-btftrevkoz@pa.gov).

## **B. Transfer of Waterfront Development Tax Credits**

The transfer of unused Waterfront Development Tax Credits is authorized only for pass-through entities (as defined in the Act), which may transfer all or a portion of unused credits to shareholders, members, or partners. The amount of tax credit each individual may receive is based on the proportionate share of the entity's distributive income to which the individual is entitled. The transfer must be authorized in writing by the pass-through entity according to procedures established by the Department of Revenue.

A shareholder, member, or partner can only use the credit in the taxable year in which the transfer is made. Transferred credits cannot be carried forward, carried back, sold, assigned, and/or used to obtain a refund of the credit.

## **C. Sale or Assignment of Waterfront Development Tax Credit**

Recipients of a Waterfront Development Tax Credit with no Pennsylvania tax liability or with unused tax credits may sell or assign all or a portion of the tax credit to one or more entities at any time in the initial tax year or in the five subsequent tax years.

The recipient must apply to the Department for approval of the sale or assignment of all or a portion of the recipient's tax credit to another entity by submitting an official Assignment Application, identifying the buyer company or individual and signed by both the seller and buyer of the tax credit(s). *Note: A separate Assignment Application must be submitted for each buyer.*

Prospective sellers and buyers must submit the completed Assignment Application with all required signatures, a copy of the Waterfront Development Tax Credit Certificate, and any attachments to:

Department of Community & Economic Development  
Center for Business Financing  
Waterfront Development Tax Credit Program  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, Pennsylvania 17120-0225

For specific questions, please contact the Tax Credits Division at 717-787-7120

## **D. Waterfront Development Tax Credit Buyer**

A buyer of a Waterfront Development Tax Credit must be identified in the Assignment Application for the sale of the Tax Credits submitted by the recipient. The buyer must claim the full amount of the purchased tax credits in the taxable year in which the Assignment Application for the sale of the Waterfront Development Tax Credit is approved by the Department.

Any portion of a purchased Waterfront Development Tax Credit that is not used by a buyer in the year of purchase is forfeited and may not be used in any other tax year.

## **Section VII – Program Requirements**

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### **A. Conflict of Interest Provision**

An officer, director, or employee of a Business Firm who is a party to or has a private interest of a Waterfront Development Project shall disclose the nature and extent of the interest to the board of directors of the Business Firm and may not vote on action of the Business Firm concerning the project, nor participate in the deliberations of the Business Firm concerning the project or contributions to be made to the project.

## **Section VIII – Contacts**

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### A. Program inquiries should be directed to:

Department of Community & Economic Development  
Center for Business Financing  
Waterfront Development Tax Credit Program  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, Pennsylvania 17120-0225

Phone: (717) 787-7120  
Fax: (717) 772-3581  
E-mail: [ra-eitc@pa.gov](mailto:ra-eitc@pa.gov)

B. These guidelines can be accessed on-line at [dced.pa.gov](http://dced.pa.gov).

C. The Single Application for Assistance can be accessed on-line at [www.esa.dced.state.pa.us](http://www.esa.dced.state.pa.us).