



# Boulder County Housing Department

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[www.BoulderCountyHousing.gov](http://www.BoulderCountyHousing.gov)

## BCHA Working Session May 16, 2024 Agenda

### SLP Policy Review

During our working session we would like to review the Policy on Participation in Developments Led by Others (aka special limited partnerships).

The existing Policy was drafted and recorded in 2017; staff believes it is thorough and will serve the current Board and BCHA organization well in determining SLP eligibility.

BCHA staff believes SLPs are a low-effort (although certainly not “no effort”) way to increase affordable housing stock in Boulder County by supporting other projects. SLPs are also a way to generate modest income for BCHA to be invested in additional affordable housing project.

BCHA staff requests that the Commissioners review the policy thoroughly ahead of this meeting and provide direction on how to proceed. In recent months, staff have been approached by four separate affordable housing developers wishing to partner with BCHA to support projects, both new development and existing affordable developments whose operating budgets are suffering and would benefit from tax abatement moving forward.

Questions to consider:

- The Development Participation Proposal Form does not exist or cannot be located. Can we create a new one that includes a checklist for application?
- Can the BCHA Board meetings be utilized for hearings, or will we need to schedule separate hearings?
- For evaluation – there are 7 threshold criteria, 15 evaluation criteria, and 10 “other” criteria. Provide direction on minimum to recommend?
- The policy does not include provisions for existing projects seeking tax exemption. Given the current market, increasing operational costs, staff would like to recommend that existing projects also be considered.

# BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT Housing and Human Services

DIVISION Housing Authority

TITLE H.A. Resolution 2017-06, approving a Policy on BCHA  
Participation in Affordable Housing Projects Led by Others

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DOCUMENT TYPE Resolution

SUBTYPE BCHA

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BUSINESS MEETING DATE 10/03/17

COMMISSIONERS' ACTION

Approved

Denied

Other

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ORIGINAL(S) RETURNED TO Vault + Ben Doyle

AGENDA ITEM NUMBER

1

COMMENTS BOCC acted as Housing Authority Board for this item



# Housing Authority

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## BOULDER COUNTY HOUSING AUTHORITY

### Resolution 2017-06

#### Approving a Policy on BCHA Participation in Affordable Housing Projects Led by Others

##### Recitals

A. Private sector developers have recently submitted unsolicited proposals requesting that BCHA partner with them on affordable housing projects. In many instances, the requestors desire BCHA participation so that the project may become exempt from property taxes, special assessments, and sales and use taxes during construction, for so long as BCHA is a part owner of the project.

B. BCHA does not currently have a formal policy in place addressing how it evaluates such requests.

C. Our mission is to foster the availability of quality affordable housing and related services for residents using broad community resources. We strive to accomplish our mission through community collaboration, effective services and programs, professional organization, efficient resource management, and expansion of funding sources. As such, BCHA welcomes such proposals.

D. The County Housing Authority Enabling Act provides at C.R.S. § 29-4-507 that BCHA and its property shall be exempt from all taxes and special assessments on the same basis and subject to the same conditions as provided for city housing authorities by C.R.S. §§ 29-4-226 and 29-4-227.

E. County housing authorities are also empowered to grant or lend moneys or otherwise provide financing to any person, firm, corporation, the city, or a government for any project or any part thereof; to pledge or otherwise encumber any of its moneys in support of or in connection with a project; and to establish entities controlled by the authority that may own, operate, act, invest in as a partner or other participant, or take any and all steps necessary or convenient to undertake or otherwise develop a project. C.R.S. § 29-4-505 (referencing § 29-4-209).

F. In deciding whether partnership and its associated risks are reasonable and appropriate, BCHA must ensure sufficient benefit will accrue to the public, in terms of furtherance of the housing authority's mission to address community needs, as opposed to BCHA's participation primarily benefitting a private developer.

G. In addition, BCHA has limited staff and financial resources. It is necessary to establish procedures and criteria that staff can use to evaluate proposals and prepare recommendations to the Board, so that the Board can make the most informed decision on

the merits of such proposals.

NOW, THEREFORE, BE IT RESOLVED by the BCHA Board that:

1. The attached development participation policy is hereby adopted.
2. This Resolution shall become effective immediately upon its adoption, and the Policy shall remain in effect until amended or rescinded by the Board.

Passed and approved this 3<sup>rd</sup> day of October, 2017.

By Deb Gardner

Deb Gardner, Chair

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the Housing Authority of the County of Boulder, Colorado, a public body corporate and politic, at the meeting of said Board in Boulder, Colorado.

ATTEST:

By Mike Rojas

Assistant Secretary to BCHA

**Exhibit A to Resolution 2017-06**

**BCHA Policy on Participation in Developments Led by Others**

## **BCHA POLICY ON PARTICIPATION IN DEVELOPMENTS LED BY OTHERS**

### **I. PURPOSE**

The purpose of this policy is to provide guidance to for-profit and non-profit affordable housing developers on the procedure used to evaluate unsolicited proposals for BCHA to participate in affordable housing developments, such that the project may benefit, under agreement with BCHA, from an exemption, in whole or in part, from property taxes, special assessments, sales and use taxes during construction, and/or other benefits.

Authority to approve participation in an affordable housing development led by a third party is reserved to the Board. The Board's decision to participate may take into account analyses and recommendations made by BCHA staff and consultants, as outlined in the policies and procedures set forth herein, as well as any other information which the Board may require.

### **II. BACKGROUND**

The County Housing Authority Enabling Act provides at C.R.S. § 29-4-507 that BCHA and its property "shall be exempt from all taxes and special assessments on the same basis and subject to the same conditions as provided for city housing authorities in sections 29-4-226 and 29-4-227." A copy of these two statutes, as amended in 2016, is attached as Appendix A to this policy. In addition, a copy of the Colorado Department of Revenue's Final Rule, 1 CCR 201-4:39-26-704(1.5), the purpose of which is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., is attached as Appendix B to this policy.

County housing authorities are also empowered to grant or lend moneys or otherwise provide financing to any person, firm, corporation, the city, or a government for any project or any part thereof; to pledge or otherwise encumber any of its moneys in support of or in connection with a project; and to establish entities controlled by the authority that may own, operate, act, invest in as a partner or other participant, or take any and all steps necessary or convenient to undertake or otherwise develop a project. C.R.S. § 29-4-505 (referencing § 29-4-209).

BCHA welcomes such proposals. Our mission is to foster the availability of quality affordable housing and related services for residents using broad community resources. We strive to accomplish our mission through community collaboration, effective services and programs, professional organization, efficient resource management, and expansion of funding sources.

BCHA provides a diverse housing mix to benefit our residents and the communities we serve. BCHA's housing portfolio serves many of Boulder County's most vulnerable residents. We strive to ensure that our properties continue to be affordable, well-maintained, safe for residents, energy efficient, aesthetically pleasing and contribute to increased property values in our neighborhoods. Our stewardship is especially important as opportunities for new construction become less available and costlier, increasing the demand for quality affordable rental housing.

In deciding whether partnership and its associated risks are reasonable and appropriate, BCHA must ensure sufficient benefit will accrue to the public, in furtherance of the housing authority's mission to address community needs, as opposed to BCHA's participation primarily benefitting a private sector developer. BCHA recognizes that the decision to grant tax and assessment exemptions authorized by the statute will have an impact on other stakeholders –

including other public bodies who would otherwise receive the tax revenue, and on communities desiring the development of additional affordable housing.

Lastly, BCHA has limited staff and financial resources. The Board finds it is necessary to establish procedures and criteria that staff can use to evaluate proposals and prepare recommendations, so that the Board can make an efficient, informed decision on the merits of a proposal.

### **III. OVERVIEW OF APPLICATION REVIEW PROCESS**

BCHA shall consider applications as they are received. The application process is not a competitive process. Each project will be evaluated on its individual merit.

- a) Pre-application conference (by phone or in person) with BCHA staff to discuss the process for evaluating the request.
- b) Submission by a Developer of a completed Development Participation Proposal Form to BCHA.
- c) BCHA staff confirms threshold criteria met.
- d) BCHA staff evaluates criteria, receives referral responses as applicable, and formulates written staff recommendation to the Board.
- e) If the Board desires to hear the proposal, the Board conducts a duly noticed public hearing.
- f) At the hearing, staff will present the application, the requestor will have the chance to present its request to the Board if it desires to do so and, in the Board's discretion, the public may be granted time to testify.
- g) The Board will provide direction and/or a decision at the hearing. Action taken could include preliminary approval of the request as proposed, preliminary approval with conditions, denial, or direction to staff and the applicant to return with additional information.
- h) If the Board decides to grant preliminary approval of a proposal, with or without conditions, the Board may also decide to delegate authority to execute closing documentation to staff or, alternatively, to require staff to return to the Board in a public meeting for final approval of all necessary closing documentation.

### **IV. THE APPLICATION PACKAGE AND PROCESSING FEE**

- a) Developer must submit a completed Development Participation Proposal Form, available at <https://www.bouldercounty.org/families/housing/> or by contacting BCHA at (303) 441-1000 or 2525 13th St, Suite 204, Boulder, CO 80304. The Proposal Form requires, at a minimum, the following documents, unless waived by the BCHA Executive Director as unnecessary under the circumstances:
  - 1) Cover letter addressed to the BCHA Board

- 2) Explanation of the proposed project which includes total number of units, addresses, number of units to be rehabilitated or constructed, and number of phases;
- 3) Narrative outlining the proposed ownership structure, including BCHA's proposed partnership interest;
- 4) Overview of plan of finance, including equity and types, terms, and amounts of loans, lien priority, and payment priority;
- 5) Development Source and Use budget;
- 6) Unit mix, income restrictions, and rental rates;
- 7) First year operating revenues and expenses;
- 8) Detailed 15 year pro forma;
- 9) Statement describing Developer compensation from the project, whether Developer Fee, share of cash flow, sale proceeds, or other sources;
- 10) Certification by the Developer that it is not currently involved in nor has any reason to believe it will be involved in litigation;
- 11) Summary of the anticipated property tax, sales and use tax, and special assessment reduction associated with the proposal;
- 12) Schedule number(s) and real estate tax assessment for the last two years for the property to be developed;
- 13) For new construction, a proposed site plan and conceptual design of project, including a legal description, and plans for the placement of proposed structures, parking areas, access points, internal traffic control devices, landscaping, utility easement locations, appropriate zoning setbacks, and any other descriptive illustrations to aid in determining conformance with relevant plans, policies and regulations.
- 14) A list of all project team members, including architects, engineers, contractors, legal, accounting, property management, and equity and debt financing.
- 15) Any identified or established Minority and Women Owned (MBE/WBE) goals for team members and employment opportunities in the project for minority, women, and/or low-income people.
- 16) Evidence of the right to do business and/or good standing in the State of Colorado for the Developer and, if formed, the project owner.
- 17) Tax credit preliminary reservation letter, if applicable;
- 18) Development timeline;
- 19) Resumes of the principals and key employees of the applicant and any guarantor, with a focus on projects completed in Colorado;



- 20) The applicant's and any guarantor's financial statements for the preceding three years; and
  - 21) Statement demonstrating that the Developer has explored other funding sources or other mechanisms to deepen the affordability, or meet the needs of the property or project, prior to submitting the proposal.
  - 22) Other relevant information pertaining to the project.
- b) At the time of submission of the Development Participation Proposal Form and supporting documentation, the Developer must remit a non-refundable application fee in the amount of \$500.00, made payable to BCHA, to reimburse BCHA for its costs incurred in reviewing and analyzing the proposal.

**V. THRESHOLD CRITERIA**

- a) The proposed project must meet the following threshold criteria to be considered:
- 1) Complete application, including the application processing fee.
  - 2) Project is located within BCHA's jurisdiction. Generally, this means anywhere within Boulder County's incorporated and unincorporated areas except the City of Boulder and City of Longmont. (BCHA can participate in projects located in the City of Boulder and City of Longmont with the respective jurisdiction's consent.)
  - 3) The Developer has site control using CHFA's definition of that term.
  - 4) The Developer certifies that it is willing to accept a binding commitment that affordable and/or low income units which will benefit from the property and/or sales tax exemption will remain affordable for a period substantially longer than the term of other applicable restrictions, if not permanently.
  - 5) No environmental or legal impediments are present that could delay or terminate the project.
  - 6) The Developer has demonstrated in objective economic terms why the exemptions (or the extent to which the exemptions) are necessary for the project to be viable.
  - 7) BCHA will have no financial exposure in connection with the project, whether due to guarantees, requirements to contribute capital, debts of the project owner, or other financial obligations.

**II. PROPOSAL EVALUATION CRITERIA**

- a) The proposed project will be evaluated on the following required elements:
- 1) The proposed project is not financially viable at specified income and rent levels without BCHA's participation. BCHA will not participate in the project merely to increase the Developer's profit margin.

- 2) Participation in the project will further BCHA's mission and help address current needs within BCHA's jurisdiction.
- 3) A significant proportion of the proposed construction or rehabilitation of affordable and/or low-income units will serve households earning less than 60% of AMI.
- 4) Commitment to execute a restrictive covenant that affordable and/or low income units will remain affordable for a period substantially longer than the term of other applicable restrictions, if not permanently.
- 5) For preservation projects, existing sources of financing and/or investment in the low-income units are at risk of loss without BCHA's participation.
- 6) The Developer's Fee and any other compensation are reasonable under the circumstances, with the developer fee standards in CHFA's Qualified Allocation Plan used as a guide.
- 7) Demonstrated capacity and experience of the Developer to successfully to construct the project, place it in service, and manage the project in the future.
- 8) Ability to comply with all applicable state law governing exemption from property taxes and/or sales and use taxes and/or special assessments.
- 9) The total amount of property tax exemption requested, assuming a 3% annual operating expense escalation factor.
- 10) The total amount of sales and use tax exemption requested.
- 11) The total amount of special assessment exemption requested, to the extent known at the outset of the project.
- 12) The ability of BCHA to participate in excess cash flow, through cash-flow dependent fees or Payment In Lieu of Taxes ("PILOT") arrangements, or otherwise, so that the project can satisfy Debt Service Coverage Ratio requirements without the exemption providing windfall cash flow benefits to the developer.
- 13) Ability of BCHA to obtain a right of first refusal or other comparable purchase rights.
- 14) The proposal, by itself or in combination with other BCHA tax exempt partnerships, must not have an unreasonable impact to the tax base of affected taxing districts, including the County, the City in which the project is located, the school district, and all other relevant taxing districts.
- 15) The Developer of any properties that are eligible for property tax exemption under federal tax law (i.e. religious institutions, charitable purposes, etc.) must demonstrate that ongoing property tax exemption

through partnership with BCHA provides significantly greater benefit than applying for property tax exemption through other means.

- b) Other criteria and information provided by the applicant that will be considered in the evaluation:
  - 1) How long the Developer requests BCHA participation in the project, with the presumption for LIHTC-funded projects being the initial 15-year compliance period;
  - 2) Whether a non-profit entity is the general partner or managing member;
  - 3) Other public funds included in the project;
  - 4) Whether the project quantifiably increases the economic diversity of a neighborhood;
  - 5) A mix of number of bedrooms per unit appropriate for the nature of the development (e.g., family vs. senior projects);
  - 6) Whether the project will include units available to Section 8 tenants;
  - 7) Whether the project provides opportunities for BCHA to manage the property, or provide other compensated services to the project;
  - 8) Whether BCHA is providing financing (e.g., subordinate debt) or other benefits to the project
  - 9) Other rights obtained and obligations incurred by BCHA if it participates in the project.

#### **VI. REFERRAL AND CONSULTATION PRIOR TO HEARING**

- a) Staff will consult with the relevant land use, zoning, or community development department prior to making a recommendation to the BCHA Board to confirm consistency of the project with the jurisdiction's comprehensive plan, zoning, subdivision, building, and other development codes and policies.
- b) Staff will also determine if any additional review or input is desired from any other related and/or impacted entity (such as the City of Boulder or City of Longmont, if a proposed project is located in the jurisdiction) and consult with that entity prior to making a recommendation to the BCHA Board.
- c) Any request from an applicant located or proposing to locate within one of the County's local municipalities must be recommended by said City or Town. The applicant and the recommending local municipality must demonstrate to the Board that an analysis of the request has been completed on the basis of local policy, and that the request is proper under such local policy.

#### **VII. PUBLIC HEARING ON THE APPLICATION**

- a) Staff will submit participation proposals to the Board with a brief recommendation for preliminary approval, preliminary approval with conditions, or denial.

- b) The staff recommendation shall include, as appropriate, analysis of the project's technical and financial feasibility.
- c) Staff will present its recommendation to the Board at a duly noticed public hearing. If the Developer desires to do so, the Developer will be offered the chance to make a brief presentation to the Board at this public meeting. In the Board's discretion, it may allow the public to testify either in written form, in person at the hearing, both, or neither, as specified in the notice.
- d) The Board may either approve the proposal exactly as proposed, approve it with conditions, deny it, or table the matter (for example, due to a need for additional information). In making its decision, the Board shall rely on the Proposal Evaluation Criteria in this policy. The Board reserves the right to deny any and all applications in its sole discretion.
- e) If it desires to proceed, the Board may give direction to staff on a set of parameters that staff may work within to negotiate a final partnership agreement and related transaction documentation.
- f) The Board may in its discretion place conditions on any approval, including without limitation:
  - 1) Commitment of exemption from property tax, sales and use tax, and special assessment, or any combination of the three, for the first 15-year compliance period. Thereafter, BCHA has the right to reassess the project's need for continued exemption.
  - 2) Execution of a binding, recorded restrictive covenant that affordable and/or low income units will remain affordable for a period substantially longer than the term of other applicable restrictions, if not permanently.
  - 3) Deeper affordability restrictions in the project, e.g., shifting the unit mix from entirely 60% AMI units to 50%, 40%, or 30% AMI units.
  - 4) Grant of a first priority right of first refusal to BCHA purchase the property or the entity that owns the project, where the purchase price is then-outstanding project debt plus federal, state, and local taxes incurred by exiting partners as a result of the sale of the project or the entity that owns the project.
  - 5) Developer's execution of an agreement to provide for the reimbursement of expenses incurred by BCHA in evaluating the request, regardless of whether the transaction closes. As a due diligence fee paid at closing, the Developer shall pay 0.25% of the gross total amount of the exemptions approved for the project, unless another amount is agreed by to BCHA. If, in the opinion of the County Attorney, special tax or partnership counsel must be retained, the Board, in its sole discretion, may require that such special counsel's fees be separately reimbursed. In all circumstances, all expenses incident to the approval of exemptions shall be paid by the Developer.

- 6) A right to inspect the project and a requirement that the Developer pay BCHA an annual compliance monitoring fee to cover BCHA's costs in ensuring ongoing compliance with state law and the terms of the transaction documents.
  - 7) A requirement that the Developer file periodic reports with BCHA on the status of the project for so long as BCHA remains a partner.
  - 8) Execution of reasonable representations, warranties, and indemnifications by the Developer for the benefit of BCHA.
  - 9) A requirement that the project accept Section 8 vouchers.
- g) Unless the Board delegates authority to staff to sign closing documentation, Board approval must be obtained prior to execution of final binding agreements.
  - h) BCHA shall, in performing its duties under the policies and procedures set forth herein, seek to protect and enlarge its good fiscal reputation.

#### **VIII. WAIVERS**


An applicant may request in writing that the Board waive one or more of the provisions of this policy for good cause. The Board may grant such waivers in its sole discretion, but only after consulting with the County Attorney to ensure that such waiver will not jeopardize the project's compliance with all applicable laws.

#### **IX. RESERVATION OF AUTHORITY**

BCHA reserves the right to accept or reject any proposals at any time for any reason, and to revise, change, modify or eliminate this policy at any time, in the sole and absolute discretion of the BCHA Board.

**Appendix A**

**Text of C.R.S. §§ 29-4-226 (special assessment exemption) and 29-4-227 (tax exemption)**

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Colorado Revised Statutes Annotated  
Title 29. Government--Local  
Housing  
Article 4. Housing (Refs & Annos)  
Part 2. Creating Housing Authorities (Refs & Annos)

C.R.S.A. § 29-4-226

§ 29-4-226. Exemption from special assessments

Currentness

(1) The following shall be exempt from the payment of any special assessments to the state, any county, city and county, municipality, or other political subdivision of the state:

(a) A housing authority;

(b) The property of a housing authority;

(c) All property leased to a housing authority; and

(d) The portion of a project that is not used as a store, office, or other commercial facility that is occupied by persons of low income and that is owned by or leased to an entity:

(I) That is wholly owned by an authority;

(II) In which an authority has an ownership interest; or

(III) In which an entity wholly owned by an authority has an ownership interest.

**Credits**

Amended by Laws 2000, Ch. 206, § 8, eff. Aug. 2, 2000.

C. R. S. A. § 29-4-226, CO ST § 29-4-226

Current through Laws effective August 8, 2017 of the First Regular Session of the 71st General Assembly (2017), chapters 8, 14, 15, 16, 19, 21, 22, 30, 32, 37, 38, 40, 42, 46, 47, 48, 49, 51, 52, 53, 60, 63, 65, 68, 74, 78, 81, 82, 84, 85, 86, 88, 89, 94, 95, 100, 102, 103, 106, 108, 114, 117, 119, 122, 124, 125, 127, 129, 130, 132, 133, 134, 136, 140, 145, 147, 148, 150, 151, 169, 170, 175, 181, 182, 184, 185, 186, 188, 195, 199, 209, 212, 213, 215, 216, 220, 223, 236, 239, 241, 247, 248, 252, 265, 281, 290, 291, 297, 309, 310, 314, 315, 316, 318, 322, 325, 334, 338, 343, 346, 350, 352, 355, 357, 359, 364, 366, 368,

§ 29-4-226. Exemption from special assessments, CO ST § 29-4-226

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369, 373, 374, 380, 382, 384, 386, 400, 404, and 405, effective August 9, 2017, and chapters 57, 66, 69, 70, 104, 293, 296, 335, effective September 1, 2017.

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West's Colorado Revised Statutes Annotated  
Title 29. Government--Local  
Housing  
Article 4. Housing (Refs & Annos)  
Part 2. Creating Housing Authorities (Refs & Annos)

C.R.S.A. § 29-4-227

§ 29-4-227. Tax exemptions

Effective: August 10, 2016

Currentness

(1)(a) An authority is exempt from the payment of any taxes or fees to the state or any county, city and county, municipality, or other political subdivision of the state. All property of an authority is exempt from all local and municipal taxes. Bonds, notes, debentures, and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instruments, and, together with interest thereon, are exempt from taxes. All property leased to an authority for the purposes of a project is also exempt from taxation, as is the income derived from the authority by the lessor under the lease.

(b) A project that is owned by, leased to, or under construction by an entity that is wholly owned by an authority, an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority or of which an authority is the sole member has an ownership interest is exempt from both property tax and, during construction, from the payment of sales tax and use tax to the state or any county, city and county, municipality, or other political subdivision of the state in proportion to the percentage of the project that is for occupancy by persons of low income. The determination by an authority of the percentage of the project that qualifies for the exemptions from payment of property taxes and sales and use taxes may be made on the basis of either the relative square footage or cost and is presumed valid absent manifest error.

(2) This section, as amended, applies to property owned by or leased to an authority and property owned by, leased to, or under construction by an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority or of which an authority is the sole member has an ownership interest on or after August 2, 2000. Nothing in this section, as amended, entitles or shall be interpreted to entitle any entity to a refund of taxes from the state for any period beginning before January 1, 2013, or to a refund of taxes from any county, city and county, municipality, or other political subdivision of the state paid prior to August 10, 2016. Notwithstanding the provisions of section 39-26-703(2)(d), C.R.S., from August 10, 2016, until December 31, 2016, an entity may file a claim for a refund of all state taxes overpaid under this section for the period from January 1, 2013, to August 10, 2016. On and after January 1, 2017, all claims for refund under this section are subject to the provisions of section 39-26-703(2)(d) C.R.S.

#### Credits

Amended by Laws 2000, Ch. 206, § 9, eff. Aug. 2, 2000; Laws 2016, Ch. 177, § 2, eff. Aug. 10, 2016.

Notes of Decisions (2)

C. R. S. A. § 29-4-227, CO ST § 29-4-227

Current through Laws effective August 8, 2017 of the First Regular Session of the 71st General Assembly (2017), chapters 8, 14, 15, 16, 19, 21, 22, 30, 32, 37, 38, 40, 42, 46, 47, 48, 49, 51, 52, 53, 60, 63, 65, 68, 74, 78, 81, 82, 84, 85, 86, 88, 89, 94, 95, 100, 102, 103, 106, 108, 114, 117, 119, 122, 124, 125, 127, 129, 130, 132, 133, 134, 136, 140, 145, 147, 148, 150, 151, 169, 170, 175, 181, 182, 184, 185, 186, 188, 195, 199, 209, 212, 213, 215, 216, 220, 223, 236, 239, 241, 247, 248, 252, 265, 281, 290, 291, 297, 309, 310, 314, 315, 316, 318, 322, 325, 334, 338, 343, 346, 350, 352, 355, 357, 359, 364, 366, 368, 369, 373, 374, 380, 382, 384, 386, 400, 404, and 405, effective August 9, 2017, and chapters 57, 66, 69, 70, 104, 293, 296, 335, effective September 1, 2017.

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**Appendix B**

**Copy of Colorado Department of Revenue's Final Rule, 1 CCR 201-4:39-26-704(1.5)**

West's Colorado Administrative Code  
Title 200. Department of Revenue  
201. Taxpayer Service Division - Tax Group  
1 CCR 201-4. Sales and Use Tax

1 CCR 201-4:39-26-704(1.5)

201-4:39-26-704(1.5). Basis and Purpose

Currentness

The basis for this rule is § 39-21-112(1), § 39-26-704(1.5), § 29-4-227, § 29-1-204.5, and § 29-4-507, C.R.S. The purpose of this rule is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., including the process for requesting exemption certificates and refunds for tax paid. To alleviate the administrative burden on housing authorities, an affidavit, as described in this rule, may be submitted in lieu of receipts for refund claims for state sales and use tax paid prior to September 30, 2016. Receipts are required for refunds of state sales and use tax paid after September 30, 2016 and for local sales tax paid after August 10, 2016. These refund claims requiring receipts are expected to be infrequent because, beginning August 10, 2016, exemption certificates will be available to prevent the payment of tax at the point of sale, thus reducing the burden on housing authorities. Receipts are required for refunds of all local sales taxes claimed because local sales taxes can often be exempted at the point of sale with a building permit, which would have been obtained for all projects prior to construction.

(1) General Rule.

(a) *Exemption for Housing Authorities.* All sales to and all storage, use, or consumption of tangible personal property or otherwise taxable services by Housing Authorities are exempt from state, local, and special district sales and use taxes.

(b) *Exemption for Qualifying Projects.* Beginning August 10, 2016, an exemption from state, local, and special district sales and use taxes is allowed to any Qualifying Entity for any Qualifying Project in the manner described in this rule. Only state sales and use taxes paid prior to August 10, 2016 are eligible to be refunded. Local sales and use taxes paid prior to August 10, 2016 are not eligible to be refunded. Eligible Qualifying Projects should obtain exemption certificates beginning August 10, 2016 in order to make purchases tax-free after that date. In the event, expected to be rare, that sales and use taxes are paid on or after August 10, 2016, refunds for all sales and use taxes paid will be made in accordance with subsection (3)(f) of this rule.

(2) Definitions.

(a) "Authority" or "Housing Authority" means:

(i) A city housing authority as defined in § 29-4-203(1), C.R.S., or

(ii) A multijurisdictional housing authority established under § 29-1-204.5, C.R.S., or

(iii) A county housing authority as defined in § 29-4-502(1), C.R.S.

(b) "Department" means the Department of Revenue.

(c) "Qualifying Entity" means an entity that is *wholly or partially* owned by:

(i) A Housing Authority, or

(ii) An entity that is wholly owned by a Housing Authority, or

(iii) An entity of which a Housing Authority is the sole member.

(d) "Qualifying Project" means a project, as defined in § 29-4-203(12), C.R.S., that is wholly owned by, leased to, or under construction by a Qualifying Entity. A Qualifying Project will involve capitalizable expenditures.

**(3) Sales and Use Tax Exemption for Qualifying Projects.**

(a) The exemption for Qualifying Projects under paragraph (b) of subsection (1) of this rule applies only to tangible personal property and otherwise taxable services purchased, acquired, stored, used, or consumed for Qualifying Projects during the construction period determined under paragraph (b) of this subsection (3).

(b) *Determination of Construction Period.* The exemption under paragraph (b) of subsection (1) of this rule applies only during the construction of a Qualifying Project. The Housing Authority shall determine and certify the beginning and ending dates for the construction of the Qualifying Project and the period of time defined thereby will be the construction period for the Qualifying Project.

(c) *Determination of Low-Income Percentage.* The exemption allowed under paragraph (b) of subsection (1) of this rule is in proportion to the percentage of the project that is for occupancy by persons of low income. The Housing Authority shall determine and certify this percentage and such determination shall be presumed valid absent manifest error.

(i) With respect to the definition of "low income" used in the determination made under this paragraph (c), no manifest error exists where a Qualifying Entity uses a definition established by the United States Department of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.

(ii) With respect to the calculation of the percentage of the project that is for occupancy by persons of low income made under this paragraph (c), no manifest error exists where the calculation by the Qualifying Entity is consistent with any such calculation made in accordance with rules prescribed by the United States Department

of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.

(d) *Application for Exemption for Qualifying Projects.* Exemption certificates may be requested from the Department for any Qualifying Project to allow Qualifying Entities and contractors to make tax-free purchases for the Qualifying Project. The exemption certificate may be requested by the Qualifying Entity, the general contractor for the Qualifying Project, or both by completing and submitting the appropriate application. The application must be accompanied by a statement from the Housing Authority detailing the Authority's ownership interest in the Qualifying Entity, certifying the percentage calculated under paragraph (c) of this subsection (3), and certifying the construction period determined under paragraph (b) of this subsection (3).

(e) *Remittance of Tax for Mixed Use Qualifying Projects.* Qualifying Entities that own, lease, or construct Qualifying Projects for which an exemption certificate is issued under paragraph (d) of this subsection (3), and for which the percentage calculated under paragraph (c) of this subsection (3) is less than 100% periodically must file sales tax returns and remit payment of the sales tax for the percentage of the Qualifying Project that is not exempt.

(i) Except as provided in subparagraph (ii) of this paragraph (e), such filing and payment shall be made at least quarterly and shall be made in accordance with all rules governing the filing and payment of sales tax generally.

(ii) If the aggregate annual sales or use tax a Qualifying Entity must remit under this paragraph (e) is less than five thousand dollars, the Qualifying Entity may request from the executive director and the executive director may grant permission to file and remit sales tax under this paragraph (e) on an annual filing basis.

(f) *Refund Claims for Qualifying Projects.* A Qualifying Entity that owns, leases, or constructs a Qualifying Project may, subject to the percentage determined under paragraph (c) of this subsection (3), submit a refund claim for sales and use taxes paid.

(i) A refund claim for a Qualifying Project must be submitted by the Qualifying Entity, not by a contractor performing work for the Qualifying Project.

(ii) Any refund claim submitted under this paragraph (f) must meet the following requirements:

(A) The refund claim must be submitted on the appropriate Departmental form ("Claim for Refund of Tax Paid to Vendors").

(B) The refund claim must be accompanied by a statement from the Housing Authority certifying:

(I) The Housing Authority's place in the ownership structure of the Qualifying Entity, and

(II) The percentage determined under paragraph (c) of this subsection (3).

(C) In the case of state sales or use taxes paid prior to September 30, 2016, the refund claim must be accompanied by an affidavit, signed under penalty of perjury by the Housing Authority, affirming that:

(I) The refund claim is for sales or use tax that actually was paid to vendors or was paid directly to the Department, and

(II) The amount of the claim includes only Colorado state sales or use tax and not any local or special district taxes.

(D) In the case of local and special district sales and use taxes paid on or after August 10, 2016 or state sales and use taxes paid on or after September 30, 2016, the refund claim must be accompanied by all necessary documentation, including receipts or invoices, required under Department rules, guidance, and instructions for refund claims generally.

Cross Reference(s):

1. FYI Income 90.
2. Form DR 0137B and associated instructions.

**Credits**

Adopted March 17, 2017.

Current through CR, Vol. 40, No. 15, August 10, 2017.

1 CCR 201-4:39-26-704(1.5), 1 CO ADC 201-4:39-26-704(1.5)

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