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Reinstated State Tax Credit Program is a Boost for Colorado Affordable Housing

Jennifer Haynes
Attorney, Husch Blackwell LLP, Denver

According to the 2014 First Quarter Colorado Multi-Family Housing Vacancy & Rental Survey, average monthly rental rates in Colorado hit a new high of $1,026 and the statewide vacancy rate was 5.2 percent during the first quarter of 2014. Subsequently, the overall demand for rental housing in Colorado continues to be strong. Nowhere is this demand more prevalent than with affordable housing as evidenced by the fact that the 2008-2012 American Community Survey reports more than half of Colorado renter households spend more than 30 percent of their income on housing.

To help address Colorado's shortage of affordable housing, which was compounded by the 2013 floods, Gov. John Hickenlooper signed H.B. 14-1017 into law on May 29, 2014, reinstating Colorado's State Low Income Housing Tax Credit (State Tax Credit) program. Colorado first initiated its State Tax Credit program in 2001 and 2002, and during that two-year period, the allocation of State Tax Credits generated more than $20 million in private equity, leveraged other governmental resources at a rate of $4 to every $1 of State Tax Credits and helped create or preserve more than 800 affordable units.

Similar to Colorado's initial program in terms of both allocation amounts and program length, H.B. 14-1017 authorizes the allocation of up to $5 million annually in State Tax Credits for calendar years 2015 and 2016. The $5 million cap, however, does not apply to the allocation of State Tax Credits awarded to projects located in counties impacted by natural disasters (as designated in the qualified allocation plan), allowing additional resources to be targeted to those areas affected by the 2013 flooding.

Administered by the Colorado Housing and Finance Authority (CHFA), the State Tax Credits are awarded through a competitive process to for-profit or nonprofit owners of a qualified development which is: defined under Colorado Revised Statute 39-22-2101 to mean a "qualified low-income housing project," as described by Section 42 of the Internal Revenue Code (Section 42); located in Colorado; and eligible for an award of Federal Low Income Housing Tax Credits (Federal Tax Credits). A project need not receive an allocation of Federal Tax Credits in order to be awarded an allocation of State Tax Credits. For a project to be awarded an allocation of State Tax Credits, the financial feasibility of the project must be dependent on the award of such credits; however, an allocation of State Tax Credits to any one project may not exceed 30 percent of the qualified basis (which is determined pursuant to Section 42) of such development. The same standards and requirements applicable to Federal Tax Credits under Section 42 apply to the State Tax Credits, including without limitation, tenant eligibility and occupancy requirements and recapture of the State Tax Credits during the compliance period. All allocations of State Tax Credits will be made in accordance with the criteria and guidelines established by CHFA in the qualified application plan. The draft 2015 plan will be made available by CHFA later this year.

Once awarded an allocation of State Tax Credits, an owner then allocates the credits to private investors, either individuals or entities, who can use the credit to offset state tax liability for a period of six years beginning with the year that the project is placed in service. Any such investor must own either a direct or indirect interest in the affordable project for at least the term of the credit period (i.e., six years). The allocation of the State Tax Credits need not be tied to an investor's ownership interest in the ownership entity, but instead, may be allocated among persons with ownership interests in the entity in any manner agreed to by such persons. For example, if the owner entity is a limited partnership, a 1 percent limited partner may receive 100 percent of the State Tax Credits. To the extent that the credit exceeds state tax liability for any year during the credit period, an investor can carry forward and apply such credit to subsequent tax liability for up to 11 years following the year in which the allocation was made.

In order to maximize the amount of equity available for affordable projects, low-income housing tax credits will often be paired with historic tax credits. H.B. 14-1017 amended the term of the credit period under the initial State Tax Credit program by increasing the credit period from four to six years. This change accommodates the pairing of State Tax Credits with Federal Historic Tax Credits, which have a five-year recapture period, during which time there cannot be any change in ownership interests.

The reauthorization of the State Tax Credit program provides a much-needed boost to the development and preservation of affordable housing in Colorado. Given the uncertainty of federal funding and the competition for Federal Tax Credits, the State Tax Credit program provides owners another resource to help bridge the funding gap associated with affordable projects.