

ONE STEP CLOSER TO OPENING THE TAX CREDIT APPLICATION WINDOW: OHIO DSA PUBLISHES PROPOSED ADMINISTRATIVE CODE SECTIONS TO TRANSFORMATIONAL MIXED USE DEVELOPMENT (TMUD) TAX CREDIT.

by *Jeremy J. Schirra*

On Tuesday, April 22, 2021, the Ohio Development Services Agency (“ODSA”) published its proposed Ohio Administrative Code Sections (Code Section 122:29-1 General Provisions – Transformational Mixed-Use Development Tax Credit), setting forth proposed rules and clarifications to the recently-passed Senate Bill 39, which authorized the TMUD tax credit (codified at [Ohio Revised Code Section 122.09](#)). While the proposed administrative code sections provide some needed guidance, they also present some potential issues and, in several areas, require greater clarification to accommodate certain projects or allay particular concerns that the proposed rules present.

Highlights of the proposed administrative code sections include:

- Clarifying definitions on the following terms and concepts used in the Ohio Revised Code Section 122.09, among others:
 - “connected buildings”
 - “contiguous parcels”
 - “major city”
 - “major factor” (as far as the necessity of the tax credits to a particular project)
 - “project”
 - “property owner”
 - “viable financial plan”
- Additional information on the project eligibility requirements, including a requirement that the project has in place or obtained commitments for a minimum of 51% of the estimated development costs attributable to the project at the time of application.
- Application and certification process clarifications. Unfortunately, on these points, many of the details needed for a legally compliant application is deferred to the application instructions, both of which will not be produced until after the administrative code sections are final.
- It is permissible for a project that has been approved and granted a conditional award of credits to receive amendments to property owners, completion timelines, or changes in financing, but the tax credit authority will not consider any requests to amend the scope of the project or end uses described in the development plan or application. One comment that we would posit on this particular aspect is that this inflexibility on any changes to the project’s scope or end uses ought to either be clarified and limited or modified

to be less rigid and permit certain modifications in the final rules. However, the state’s concern may be that applicants would be granted awards for projects that, with the changes in scope or end uses, would have been granted to other projects. We also believe that this concern could be addressed in the final rules.

- Clarification on calculating the value of increases in tax collections caused as a result of the project, which is a requirement of a project being eligible for an award (i.e., the value of taxes that are estimated to be collected as a result of the project must exceed the value of the credit). Note that the current draft of the administrative code specifically does not allow the value of any abated taxes to be included in this calculation.
- Reporting requirements, including cure rights and rescission of tax credit award for failure to provide required reporting.
- Provision of a \$2,500 non-refundable application fee due at the time of application.

The ODSA will hold a hearing on the proposed rules at 9:30 AM on Wednesday, May 26, 2021. Written statements advancing positions, arguments or contentions to the proposed rules are due by 5:00 PM on the date of the hearing.

To read the proposed rules, go to <http://www.registerofohio.state.oh.us/> and search on the following sections to view or click on the hyperlinks provided in this article: [122:29-1-01](#); [122:29-1-02](#); [122:29-1-03](#); [122:29-1-04](#); [122:29-1-05](#); [122:29-1-06](#); [122:29-1-07](#); [122:29-1-08](#). Note that the hyperlinks contained in this article to the specified proposed administrative code sections may no longer function after the date of the hearing.

Dickinson Wright PLLC is collecting comments for potential submission in response to the proposed administrative code sections ahead of the hearing. Please contact us if you would like to discuss any comments you wish to advance regarding the proposed code sections or regarding your project’s ability to potentially utilize TMUD tax credits.

ABOUT THE AUTHOR



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