




CITY OF PHILADELPHIA  
DEPARTMENT OF REVENUE

## MEMORANDUM

**To:** Jeanne Reedy, Administrative Services Director, Records Department

**From:** Joseph F. Procopio Jr., Manager - Technical Staff 

**Date:** August 6, 2015

**Re:** **Advertisement of Proposed Regulations – Business Income and Receipts Tax – Section 501 – Credits for Contributions to Community Development Corporations, Nonprofit Organizations Engaged in Developing and Implementing Healthy Food Initiatives and Nonprofit Intermediaries**

Attached is an amendment to Section 501 of the Department of Revenue's Business Income and Receipts Tax regulations. This amendment reflects the changes to the Regulations based on Bill No. 130012 that increased the number of businesses permitted to enter into a contribution agreement for the CDC credit from 35 to 40; Bill No. 120796 that increased the number of businesses allowed to enter into a contribution agreement for the CDC credit to 42 (those contributions have to be given to nonprofit organizations engaged in developing and implementing healthy food initiatives); Bill No. 130853 that revised the number of Qualifying Nonprofit Intermediaries allowed to receive the contribution from three (3) to four (4); Bill No. 140411 that clarified the timing of payments of the contribution (the contribution must be made in the year for which the credit is sought) and Bill No. 141028 that increased the annual contribution amount required to receive the credit from \$85,000 to \$100,000.

Please proceed to advertise, in accordance with the provisions of Section 8-407(b) of the Philadelphia Home Rule Charter, the attached Regulations.

DEPARTMENT OF RECORDS

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CITY OF PHILADELPHIA  
LAW DEPARTMENT

MEMORANDUM

**TO:** Clarena I.W. Tolson, Revenue Commissioner

**CC:** Tilahun Afessa, Director of Policy  
Joseph F. Procopio, Jr., Manager – Technical Staff

**FROM:** Frances Ruml Beckley, Senior Attorney *FRB*

**DATE:** August 4, 2015

**SUBJECT:** Promulgation by the Department of Revenue of Business Income and Receipts  
Tax Regulations – Amendments to CDC Credits

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I have reviewed the attached promulgation amendments to the Department of Revenue's Business Income and Receipts Tax Regulations, dated August 4, 2015. The relevant Code section gives the Health Department, rather than the Revenue Department, the authority to establish standards for Qualifying Nonprofit Organizations Engaged in Developing and Implementing Healthy Food Initiatives. Code section 19-2604(6) (a) (.2). Nevertheless, because the Health Department has approved that definition, I find the attached amended regulations to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these amended regulations to the Department of Records where they will be made available for public inspection.

*Frances Ruml Beckley*  
Frances Ruml Beckley  
Senior Attorney, Legislation and Appeals

DEPARTMENT OF REVENUE  
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AMENDMENT TO THE DEPARTMENT OF  
REVENUE BUSINESS INCOME AND RECEIPTS TAX  
REGULATIONS

ARTICLE V

CREDITS

**SECTION 501. CREDITS FOR CONTRIBUTIONS TO COMMUNITY  
DEVELOPMENT CORPORATIONS, NONPROFIT ORGANIZATIONS ENGAGED IN  
DEVELOPING AND IMPLEMENTING HEALTHY FOOD INITIATIVES AND  
NONPROFIT[S] INTERMEDIARIES.**

A. Definitions

1. Applicant. A Business or two Businesses applying jointly that applies to enter into a Contribution Agreement with the City of Philadelphia.
2. Business. Any person or entity subject to the Business Income and Receipts Tax under Philadelphia Code §19-2603, as it may be amended
3. Code. The Philadelphia Code, as amended.
4. Community. A geographic location within the City of Philadelphia (but not the entire City) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation.
5. Contribution Agreement.
  - a. A written agreement between the Applicant and the City of Philadelphia whereby the Applicant agrees to contribute ~~[\$85,000]~~ \$100,000 per year for ten consecutive years to a Qualifying Organization that does not already have a Sponsor providing funds under this program. Refer to Section 501(C) for early termination of a Contribution Agreement.

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b. In the event that two Businesses apply jointly, the Contribution Agreement shall include:

- i. A schedule of Payments, and
- ii. The proportionate share of the total annual contribution each Business shall contribute.

6. Ordinance. Philadelphia Code § 19-2604, as it may be amended.

7. Department. Department of Revenue.

8. Economic Development. Activities that increase economic opportunity for individuals or that stimulate or retain businesses or permanent jobs. For purposes of this Tax Credit, economic development does not include activities for the development of housing, education, recreation, or religious facilities, or related activities.

**9. Health Department. The Philadelphia Department of Public Health.**

[9] **10.** Qualifying Community Development Corporation ("QCDC"). A QCDC is an organization that meets all of the following requirements:

a. The organization is a nonprofit organization, which has a ruling from the Internal Revenue Service that the organization is exempt from income taxation under the provisions of section 501(c)(3) of the Internal Revenue Code.

b. The organization is organized under Pennsylvania law as a non-profit corporation.

c. The organization is a Community Development Corporation ("CDC") that promotes economic development in economically distressed neighborhoods of Philadelphia. For purposes of this regulation only, examples of economic distress include but are not limited to high unemployment, vacant commercial and/or industrial properties, or blighting effects of deferred public or private maintenance to commercial areas of a neighborhood. The organization engages in community and economic development activities primarily within an identified geographic area within the City of Philadelphia.

d. The organization engages in activities that have the anticipated outcomes of increasing economic opportunity for residents, retaining, growing, or attracting business, or retaining or creating permanent jobs in the identified area.

e. The organization has a five-year plan that clearly states the economic development goals and strategies which address the specific issues of economic distress in its community and has engaged employees or consultants at the time of its application to undertake these activities. To remain a QCDC at time of renewal the organization must document progress in implementation of the plan, which must be updated on a yearly basis.

f. The organization has an organizational budget that indicates additional funding sources equal to or greater than the CDC Tax Credit of \$~~[85,000]~~100,000 per year.

g. The organization has prior experience conducting economic development activities in the City of Philadelphia. The "prior experience" requirement can be met if the organization has developed a clearly defined plan for undertaking economic development activities which address the specific issues of economic distress in its community and has engaged employees or consultants at the time of its application to undertake these activities.

h. The organization must be in full compliance with all applicable City laws, ordinances, and resolutions.

**11. Qualifying Nonprofit Organization Engaged in Developing and Implementing Healthy Food Initiatives ("QHFI"). A QHFI is an organization that meets all of the following requirements:**

**a. The organization is a nonprofit organization, which has a ruling from the Internal Revenue Service that the organization is exempt from income taxation under the provisions of section 501(c) (3) of the Internal Revenue Code.**

**b. The organization is organized under Pennsylvania law as a nonprofit corporation.**

**c. The organization must have a record of developing and implementing healthy food initiatives within the City of Philadelphia for a minimum of three (3) consecutive years and will continue to develop and implement healthy food initiatives within the City of Philadelphia. These activities include providing Philadelphia residents with easy and affordable access to healthy food in order to alleviate hunger and malnutrition. This includes providing direct goods or services to Philadelphia residents or providing financial, technical, educational, policy and/or related assistance to other Philadelphia entities in furtherance of the above stated purposes.**

**d. The organization must submit a detailed description of its scope of work for the prior three (3) years that demonstrates it has been substantially engaged in, and will continue to be substantially engaged in developing and implementing healthy food initiatives in the City of Philadelphia.**

**e. For each healthy food initiative activity, the organization, must identify the start and end date (if applicable), the number and types of paid or non-paid personnel or volunteers involved, including their responsibilities, the specific area where such activity takes place, the target population for which the activity seeks to benefit, and the number of Philadelphia residents and/or entities directly benefiting from the activity.**

**f. The organization must attach a statement that it does not deny assistance to individuals on the basis of race, color, religion, gender, natural origin, age, disability, or sexual orientation.**

**g. The organization has an organizational budget that indicates additional funding sources equal to or greater than the CDC Tax Credit of \$100,000 per year.**

**h. The organization must be in full compliance with all applicable City laws, ordinances and resolutions.**

**i. At any one time no more than two Qualifying Nonprofit Organizations Engaged in Developing and Implementing Healthy Food Initiatives may be designated as recipients of contributions for which a business seeks to claim a tax credit pursuant to this section of the regulation.**

**[10]12.** Qualifying Nonprofit Intermediary ("QNPI"). A QNPI is an organization that meets **all of** the following requirements:

a. The organization is a nonprofit organization, which has a ruling from the Internal Revenue Service that the organization is exempt from income taxation under the provisions of section 501(c)(3) of the Internal Revenue Code.

b. The organization is organized under Pennsylvania law as a nonprofit corporation.

c. The organization provides financial, technical, policy and/or related assistance to Community Development Corporations undertaking neighborhood economic development activities in economically distressed neighborhoods in Philadelphia. A QNPI must provide assistance to Community Development Corporations with the anticipated outcomes of increasing economic opportunity for residents, retaining, growing, or attracting businesses, or retaining or creating permanent jobs in Philadelphia.

d. The organization has a five-year plan that clearly states the goals and strategies for assisting Community Development Corporations to meet economic development outcomes, and has engaged employees or consultants at the time of its application to implement the plan.

e. The organization has an organizational budget that indicates additional funding sources equal to or greater than the CDC Tax Credit of \$~~[85,000]~~**100,000** per year.

f. The organization has an established record of providing financial, technical, policy or related assistance to Community Development Corporations undertaking neighborhood economic development activities within the City of Philadelphia.

g. The organization must be in full compliance with all applicable City laws, ordinances and resolutions.

h. At any one time no more than **[three]four** Qualifying Nonprofit Intermediaries may be designated as recipients of contributions for which a business seeks to claim a tax credit pursuant to this section of the regulation.

**[11]13.** Qualifying Organization. A Qualifying Commercial Development Corporation, **a Qualifying Nonprofit Organization Engaged in Developing and Implementing Healthy Food Initiatives** or a Qualifying Nonprofit Intermediary.

**[12]14.** Sponsor. An Applicant as defined above, that enters into a Contribution Agreement with the City of Philadelphia.

**[13]15.** Tax Credit. A credit pursuant to subsection (6)(b) of **[the Ordinance]Philadelphia Code §19-2604** against the Business Income and Receipts Tax liability of a Sponsor of a Qualifying Organization, by contributing **[\$85,000]100,000** per year over a ten-year period. A credit of **[\$85,000]100,000** per year will be applied against the Sponsor's Business Income and Receipts Tax liability for each year the Sponsor contributes **[\$85,000]100,000** in cash to a **QCDC, QHFI or QNPI**. If the Sponsor consists of two Businesses, the Tax Credit is each co-Sponsor's proportionate share of the total contribution as established in the Contribution Agreement, as may be amended.

## B. Eligibility

### 1. Sponsor – Eligibility

a. A Sponsor must be in full compliance with all applicable City laws, ordinances and resolutions.

b. The Sponsor must contribute **[\$85,000]100,000** in cash per year in accordance with the Contribution Agreement.

c. The Sponsor may not receive Tax Credits for providing funds to a Qualifying Organization that is already receiving funds under this program.

d. A Sponsor currently participating in the Commonwealth of Pennsylvania Neighborhood Assistance Program/Neighborhood Partnership Program (NAP/NPP) or any successor or similar program shall not use such contributions as credit towards the Contributions to the City of Philadelphia's Business Income and Receipts Tax Credits.

e. Sponsor must be partnered with a Qualified Organization that maintains its eligibility as a **QCDC, QHFI** or **[a]QNPI**.

f. On or before October 15<sup>th</sup> of each year, the Sponsor must submit a renewal application and report form to the Department which at a minimum would include information

detailing its payment to the Qualifying Organization for the current tax year, the Qualifying Organization's expenditures to date, the Qualifying Organization's activities and accomplishments under this program, and a copy of the Contribution Agreement, if amended. The Sponsor is responsible for obtaining any information or certification requested by the Department from the applicant's partner, the Qualifying Organization. Failure to complete and file the renewal application and report form may result in the Sponsor losing its eligibility to participate in the program for any future tax years.

2. Community Development Corporation, **Nonprofit Organization Engaged in Developing and Implementing Healthy Food Initiatives** and Nonprofit Intermediary – Eligibility

a. Either a Community Development Corporation meeting the definition of a QCDC, **a Nonprofit Organization Engaged in Developing and Implementing Healthy Food Initiatives meeting the definition of a QHFI** or a Nonprofit Intermediary meeting the definition of a QNPI is eligible to partner with a Sponsor.

b. To maintain its eligibility on an annual basis, a Qualifying Organization must continue to meet the definition of a QCDC, **QHFI** or QNPI and must expend the proceeds of the Contribution Agreement in a manner consistent with its status as a QCDC, **QHFI** or [a] QNPI as reported in its annual renewal application.

c. In the event a QCDC, **QHFI** or QNPI merges with another organization, and subject to the requirements of subsection D below:

The surviving organization shall submit an amended renewal application in accordance with the requirements of paragraph C(5) below to report the effective date of the merger, and, if the Department determines that the surviving organization meets the definition of a QCDC, **QHFI** or QNPI, the surviving Qualified Organization shall continue the eligibility status of the merging QCDC, **QHFI** or QNPI;

If both the merging and the surviving organization are existing Qualified Organizations, the surviving QCDC, **QHFI** or QNPI shall continue its own eligibility status with its own Sponsor and the merging QCDC's, **QHFI's** or QNPI's Sponsor's Contribution Agreement shall be terminated as of the effective date of the merger, unless the Sponsor of the surviving QCDC, **QHFI** or QNPI submits an amended renewal application containing an election that the QCDC, **QHFI** or QNPI has adopted the eligibility status of the merging organization and the merging organization's Sponsor, effective as of the effective date of the merger, in which case the Contribution Agreement of the surviving QCDC, **QHFI** or QNPI Sponsor shall be terminated;

And further, in the event both the merging and the surviving organization are QCDCs, **QHFI**s or QNPIs, and the Sponsors of both QCDCs, **QHFI**s or QNPIs desire to jointly Sponsor the surviving QCDC, **QHFI** or QNPI, the original Sponsor of the surviving QCDC, **QHFI** or QNPI shall follow the procedures set forth in Paragraph C(3) below, if both Sponsors



desire to Sponsor the surviving QCDC, **QHFI** or QNPI or if the original Sponsor seeks a new co-sponsor.

C. Termination and Modification of Contribution Agreement and Annual Renewal Application.

1. The Sponsor may terminate its Contribution Agreement with the City at any time, but shall use its best efforts to terminate the Contribution Agreement on or before September 15<sup>th</sup> of any year. A Sponsor that terminates a Contribution Agreement will not lose any Tax Credits for which it was eligible for prior contributions made under the Contribution Agreement. The terminating Sponsor may not be eligible to apply for any future Tax Credit for contributions to a Qualifying Organization, **the exception being, if the Sponsor acquires a co-Sponsor in accordance with the requirements of paragraph C(3) below.**

2. If a Sponsor terminates its Contribution Agreement, a new Applicant may apply to receive Tax Credits under this section, provided that such Tax Credits shall be limited to the number of years that are remaining on the terminating Sponsor's Contribution Agreement. The new Applicant must be nominated by the existing Qualifying Organization and must complete and file a Tax Credit application by October 15<sup>th</sup> (or the due date for Renewal Applications) that is approved by the Department. The new Applicant must enter into a Contribution Agreement with the City under which the Applicant agrees to make cash contributions of \$**[85,000]100,000** per year to the same Qualifying Organization which was the recipient under the terminating Sponsor's Contribution Agreement and for the number of years remaining under that agreement.

3. In the event that a Sponsor that is comprised of a single Business wishes to add another Business as co-Sponsor to its Contribution Agreement:

a. The Sponsor shall issue written notice forthwith to the existing Qualifying Organization of its plan to amend the Contribution Agreement by adding a co-Sponsor willing to enter into a Contribution Agreement. The amended Contribution Agreement should include the proportionate shares of the total contribution of \$**[85,000]100,000** that the original Sponsor and the new co-Sponsor agree to contribute annually for the number of years remaining on the original Sponsor's Contribution Agreement.

b. If the original Sponsor is unable or unwilling to enter into a new Contribution Agreement that includes a new co-Sponsor, the original Sponsor shall notify the Qualifying Organization that it will either

(i) continue as Sponsor in accordance with the original Contribution Agreement, or

(ii) terminate the original Contribution Agreement.

4. In the event a Sponsor is two Businesses and one Business terminates the Contribution Agreement under **[paragraph (6)(f) of the Ordinance]Philadelphia Code§ 19-2604(6)(e):**

a. The terminating Business shall issue written notice forthwith to the City, the non-terminating Business, and the QCDC, QHFI or QNPI of the effective date of the termination.

b. Before any other Applicant may apply, the non-terminating Business shall have the earlier of 90 days from receipt of notice of the termination of the Contribution Agreement and December 15th of any year, but shall use its best efforts to meet the deadline set forth in paragraph C(7) to: (i) apply for the remaining term of the Contribution Agreement, either by itself or jointly with a new Business by following the applicable procedure described in paragraph C(2), above, or (ii) notify the Department in writing that it will not apply.

5. Upon the annual review of the Sponsor's renewal application and report form, the Department will determine before December 31st of each year whether the Sponsor will be eligible to participate in this Tax Credit program for the following year. Failure of the Qualifying Organization to make expenditures of the \$[85,000]100,000 annual contribution in furtherance of its qualified status as a QCDC, QHFI or QNPI may, result in the Sponsor losing its eligibility to participate in this Tax Credit program for any future tax year. A Sponsor that is no longer eligible to participate in this Tax Credit program will not lose any Tax Credit for which it was eligible for prior contributions made under the Contribution Agreement

6. If a Sponsor is no longer eligible to participate in this Tax Credit program as a result of the disqualification of the QCDC, QHFI or QNPI, new applications for Tax Credit may be submitted to sponsor a new Qualifying Organization. A new Applicant shall be selected in the same manner prescribed in Section 501(F)(2). A new Applicant may apply to receive Tax Credits under this section, provided that such Tax Credit shall be limited to the number of years that are remaining on the terminating Sponsor's Contribution Agreement. The new Sponsor must enter into a Contribution Agreement with the City under which it agrees to make cash contributions of \$[85,000]100,000 per year to a new QCDC, QHFI or QNPI and for the number of years remaining under the terminated Contribution Agreement.

7. By October 15th of any year, a Sponsor may submit a written proposal to the Revenue Department for approval to amend a Contribution Agreement for the following calendar year, except in the event of a merger of a QCDC, QHFI or QNPI, in which case the Contribution Agreement may be amended during the calendar year.

8. The Department may terminate the Sponsors Contribution Agreement, if the Sponsor has not submitted a renewal application by December 31 of the current year.

#### D. Tax Credit

1. A Sponsor must calculate its Business Income and Receipts Tax liability in accordance with Philadelphia Code §19-2600.

2. A Sponsor shall receive a Tax Credit of \$[85,000]100,000 per year against its Business Income and Receipts Tax liability for each year the Sponsor contributes

\$[85,000]100,000 in cash to a Qualifying Organization under the terms and conditions of this section and the Contribution Agreement. Sponsors with contributions exceeding \$[85,000]100,000 will not be entitled to any additional Tax Credit. Sponsors whose contributions are less than \$[85,000]100,000 will not receive any Tax Credit. Sponsors are encouraged to make their full contributions to the Qualifying Organizations on or before October 15<sup>th</sup> of each year. However, the full contribution must be made by December 31<sup>st</sup> of each year.

3. Any Tax Credit not used in the period the contribution was made may not be carried forward or carried backward.

4. No credit will be given to any contribution made prior to receiving approval from the Department.

5. Tax Credit shall be available to up to [thirty-five (35)]forty (40) **[Applicants]businesses, with respect to contributions to Qualifying CDCs or Qualifying Nonprofit Intermediaries, and up to two (2) businesses, with respect to Qualifying Nonprofit Organizations Engaged in Developing and Implementing Healthy Food Initiatives** that enter into a Contribution Agreement with the City.

6. Tax Credits are non transferable and may be used only by the Sponsor.

7. A Sponsor must take the credit on the [Privilege]Tax Year for which the Contribution is made.

8. The Department of Commerce will facilitate the economic development review and monitor the Qualifying Organizations to ensure that the QCDC and QNPI perform the economic development activities set forth in their yearly plan. If the Qualifying Organization fails to address the economic development objectives or fails to perform the activities set forth in its yearly plan in the Renewal Application the Department will place the Qualifying Organization on one year's probation to allow the Qualifying Organization to rectify the deficiencies. Technical assistance will be provided as needed and as available[.]; however, the main responsibility for becoming compliant resides with the Qualifying Organization. If the Qualifying Organization is still not meeting the economic development objectives or performing the activities of their plan, they will be removed from the program after their probationary year.

**9. The Health Department will review and approve the applications received yearly for the Nonprofit Organizations Engaged in Developing and Implementing Healthy Food Initiatives. If the QHFI fails to demonstrate that it has been substantially engaged in developing and implementing healthy food initiatives in the City of Philadelphia as set forth in its yearly plan in the Renewal Application, the Department will place the QHFI on one year's probation to allow the QHFI to rectify the deficiencies. Technical assistance will be provided as needed and as available; however, the main responsibility for becoming compliant resides with the QHFI. If the QHFI is still not meeting the healthy food objectives or performing the activities of their plan, they will be removed from the program after their probationary year.**

E. Administrative Requirements

1. No Sponsor may claim or receive a Tax Credit under this section unless the Sponsor is in full compliance with all applicable Philadelphia tax laws, ordinances[,] and regulations.

2. If a Sponsor makes an annual payment of less than \$[~~85,000~~100,000] to a Qualifying Organization, the Sponsor must petition the Revenue Commissioner to be reinstated in the program. Where the Sponsor consists of two businesses, the remaining co-sponsor which has paid its pro rata contribution must comply with paragraph C(4).

F. Procedure for Obtaining Tax Credit; Notice.

1. An Applicant or Sponsor must complete the Tax Credit application or renewal form provided by the Department and must file the completed form as required by the Revenue Commissioner.

2. The business must file the completed application form with the Department no earlier than 9:00 am, Eastern Time on the date that has been specified by the Department. Applications received by the Department prior to 9:00 am, Eastern Time, will be deemed to have been received by the Department on the date specified by the Department, between the hours of 9:00 am, Eastern Time and 4:00 pm Eastern Time.

3. Applications will be selected on a "first come-first served" basis. When necessary the Department will choose among the applicants that apply on the same date, on a random basis, pursuant to a drawing as specified by the Revenue Commissioner. Applications received on the same date by the designee of the Department between 9:00 am, Eastern Time, and 4:00 pm Eastern Time, will be considered received at the same time. Applications received after 4:00 pm, Eastern Time, on the date designated by the Department, will be considered received on the next business day.

4. If an Applicant submits an incomplete application in good faith, the Applicant will be notified by the Department that the application is incomplete. The Applicant will be allowed 14 calendar days from the mailing date of the notice letter to cure the failure. If within 14 calendar days the failure is not cured to the satisfaction of the Revenue Commissioner, the application will be denied and another Applicant will be selected on a "first come-first served basis" based on existing filed applications.

G. Appeal Rights

1. The Department shall mail notice of an adverse decision in accordance with the Contribution Agreement if the Department decides that:

- a. An organization is not a Qualifying Organization,
- b. A QCDC, **QHFI** or QNPI is no longer qualified, or
- c. A Sponsor is no longer eligible to receive the Tax Credit.

2. Any aggrieved party may challenge an adverse decision of the Department by filing an appeal with the Office of Administrative Review within 30 calendar days of the mailing date of the adverse decision letter.

H. Reporting Requirements

By January 1 of each year, the Revenue Department shall submit a written report to the Mayor, with a copy to the President and Chief Clerk of Council, summarizing the City's experience during the prior calendar year with the Tax Credit provided under this Section.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Commissioner Clarena I. W. Tolson**  
**Chief Revenue Collections Officer**

In reading the text, note the following:

- Items deleted are in bold and brackets [ ]
- Items in bold and underlined denote new matter \_\_\_\_\_