WEST VIRGINIA CODE: §11-13J-4

§11-13J-4. Eligibility for tax credits; creation of neighborhood investment fund; certification of project plans by the West Virginia Development Office.

(a) A neighborhood organization which seeks to sponsor a project and have that project certified pursuant to this article shall submit to the Director of the West Virginia Development Office an application for certification of a project plan, in such form as the director shall prescribe, setting forth the project to be implemented, the identity of all project participant organizations, the economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, to be assisted by the project, or the economically disadvantaged area or areas selected for assistance by the project, the amount of total tax credits to be created by the proposed project pursuant to the receipt of eligible contributions from eligible taxpayers under this article, the amount of the total estimated eligible contributions to be received pursuant to the project and the schedule for implementing the project.

(b) Project certification fee; payment of costs; revolving fund. —

(1) (A) Project certification fee. — Any project transferee that receives eligible contributions under or pursuant to a certified project plan shall pay to the West Virginia Development Office a project certification fee in the amount of three percent of the amount of the total eligible contributions received by such project transferee pursuant to the certified project plan. The project certification fee shall be paid to the West Virginia Development Office within thirty days of the receipt of any eligible contribution, or portion thereof.

(B) Eligible contributions made through direct service to end users or recipients, or contributions to end users or recipients. — In the case of eligible contributions of in-kind services or other eligible contributions or portions thereof made pursuant to a certified project plan and contributed or provided directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens or other persons or organizations made under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, such eligible contributions shall be deemed to have been made to the entity, organization or person under whose sponsorship or auspices such eligible contributions are made, and that entity, organization or person is deemed to be the project transferee with relation to those eligible contributions. Such deemed project transferee shall be liable for the project certification fee due for such eligible contributions.

(C) Computation of fee based on fair market value. — In the case of eligible contributions consisting of in-kind services, tangible personal property or realty, the project transferee shall pay to the West Virginia Development Office a project certification fee in the amount of three percent of the fair market value of eligible contributions received pursuant to the certified project plan.

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(2) Sanctions for failure to timely pay the project certification fee. — Failure to timely pay the project certification fee imposed by this section shall be grounds for imposition of any of the following sanctions, to be imposed by the Director of the West Virginia Development Office at the discretion of the director:

(A) Prospective revocation of the project certification. —

No tax credit shall be allowed for any project for which certification has been revoked for periods subsequent to the effective date of revocation. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan prior to the effective date of revocation of project certification shall not be subject to recapture by reason of revocation of the certification. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

(B) Retroactive withdrawal of the project certification. —

No tax credit shall be allowed for any project for which certification has been withdrawn. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan for which certification is later withdrawn pursuant to the provisions of this section shall be subject to recapture upon withdrawal of the certification.

(C) Suspension of the project certification for a stated period of time. —

No tax credit shall be allowed for contributions made during the suspension period for a project. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan prior to or subsequent to the suspension period shall not be subject to recapture by reason of the suspension. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

(D) Temporary or permanent disqualification of one or more project transferees, neighborhood organizations, qualified charitable organizations, charitable organizations or other organizations, entities or persons from participation in a particular specified certified project. —

No tax credit shall be allowed under this article for any contribution made during the disqualification period to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in a certified project. Tax credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person pursuant to a certified project plan prior to or subsequent to the disqualification period shall not be

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subject to recapture by reason of the disqualification of the recipient thereof. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

(E) Temporary or permanent disqualification of any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person, or group thereof, from participation in any and all certified projects currently in existence or to be formed, proposed or certified under this article. —

(i) No tax credit shall be allowed under this article for any contribution made during the disqualification period to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects under this article. Tax credit taken by any eligible taxpayer in accordance with this article pursuant to the making of an eligible contribution to the project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified from participation in any and all certified projects under this article, pursuant to a certified project plan prior to or subsequent to the disqualification period shall not be subject to recapture by reason of the disqualification. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article; and

(ii) No certification shall be issued during the disqualification period for any proposed project in which a project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects is listed as a proposed project participant.

(F) Any combination of the aforementioned sanctions.

(3) Audits and investigations. — The West Virginia Development Office or the Department of Revenue, or both, may initiate and carry out investigations or audits of any recipient of any eligible contribution under this article, any eligible taxpayer or any project transferee to determine whether the project certification fee imposed by this section has been paid in accordance with the requirements of this article.

(4) Procedures, failure to timely pay the project certification fee upon written demand. —

(A) Written demand. — The Director of the West Virginia Development Office shall, upon a reasonable belief that a project transferee has failed to timely pay the fee imposed by this section, issue a written demand for payment thereof, plus interest determined at the interest rate prescribed under section seventeen, article ten of this chapter, in such form as the Director of the West Virginia Development Office may specify. The Director of the West Virginia Development Office may also impose a penalty for failure to timely pay the project certification fee in the amount of twenty percent of the amount of the project certification

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fee due and interest due. Such demand shall notify the project transferee of the opportunity to show that the project certification fee is not due and owing.

(B) Failure to pay pursuant to written demand. —

Failure of the project transferee to pay any project certification fee due, with interest and penalties, as stated in the written demand for payment of the project certification fee, within thirty days of service of such demand, and failure of the project transferee to prove to the satisfaction of the Director of the West Virginia Development Office that the fee imposed by this section is not due and owing, shall result in a determination by the Director of the West Virginia Development Office that sanctions shall apply.

(C) Notice of pending sanctions. — Upon the making of a determination by the Director of the West Virginia Development Office that sanctions for failure to pay the project certification fee apply, the Director of the West Virginia Development Office shall serve upon the project transferee from which the project certification fee, or some portion thereof, is due and owing, a notice of pending sanctions. If the project transferee from which the certified project fee, or some portion thereof, is due and owing is not the applicant for project certification, then an informational copy of the notice of pending sanctions shall also be served upon the applicant for project certification.

(D) Service of notice, content of notice. — The notice of pending sanctions shall be served upon the delinquent project transferee in the same manner as an assessment of tax in accordance with article ten of this chapter. Such notice of pending sanctions shall state the sanctions to be applied in accordance with this section, the effective date or dates of such sanctions, with specific statements of whether any sanction is to be applied retroactively or in part retroactively, and the commencement and termination dates for any suspensions of certification or temporary disqualifications of any program transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person to be disqualified under this section from participation in certified projects. The notice of pending sanctions shall state that sanctions shall be imposed sixty days after service of the notice of pending sanctions upon the delinquent project transferee, unless the delinquent project transferee pays the amount of the project certification fee due and owing, plus interest and penalties.

(E) Appeals. — The project transferee may file an appeal of pending sanctions as if the notice of pending sanctions were an assessment of tax under article ten of this chapter, and the matter on appeal shall be subject to the procedures set forth in article ten of this chapter. On appeal, the burden of proof shall be on the project transferee to prove that the project certification fee and associated interest and penalties are not due and owing. The review on appeal shall be limited to:

(i) The issue of whether a failure to timely pay the project certification fee or any portion thereof has occurred, the time period or periods over which such failure occurred, and whether such failure continues to occur;

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(ii) The amount of the project certification fee and interest due; and

(iii) The mathematical and methodological accuracy of the computation of the project certification fee, interest and penalties.

(F) Statutory confidentiality. — No information, document or proceeding brought pursuant to this section, relating to the liability of any project transferee for the project certification fee, interest or penalties imposed under this section is subject to the confidentiality provisions of article ten of this chapter or any other confidentiality provision of this code. However, any proceeding relating to any amount of tax due or the recapture of tax credit taken under this article or any adjustment of the amount of tax credit taken under this article is subject to the provisions of article ten of this chapter, including all statutory confidentiality provisions, and shall be subject to all other applicable statutory tax confidentiality provisions of this code.

(G) Effect of a final determination, waiver of penalties or sanctions. — The notice of pending sanctions shall become final sixty days after service, unless an appeal is filed under this section, and shall not be subject to further appeal by the recipient thereof. When a determination has become final that a project transferee has failed to timely pay the project certification fee, or any part thereof, the sanctions described in the notice of pending sanctions shall apply, effective as of the date set forth in that notice, unless the project certification fee, interest and penalties due are paid to the West Virginia Development Office within thirty days of the date on which the determination has become final. The twenty percent penalty authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the Director of the West Virginia Development Office. However, payment of the project certification fee and interest due shall not be subject to waiver. The sanctions for failure to pay the project certification fee authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the Director of the West Virginia Development Office.

(c) Within sixty days after the close of the regular meeting of the Neighborhood Investment Advisory Board at which a complete application for approval of a proposed project is considered by the board, the Director of the West Virginia Development Office shall certify, or deny certification of, the proposed project for which such application has been filed: Provided, That applications for which the board requires additional information may be considered at the next regular meeting of the board. Those applications not approved by the director within sixty days of final action of the board shall be deemed disapproved by operation of law.

(d) The West Virginia Development Office shall promptly notify an applicant as to whether an application for certification of a project plan has been approved or disapproved.

(e) Those prospective qualified charitable organizations which receive certification of a project plan, and which otherwise comply with the requirements of this article so as to become qualified charitable organizations, as defined in section three of this article, may

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receive eligible contributions, as defined in said section. Eligible taxpayers which make eligible contributions shall receive a tax credit as provided in section five of this article. No tax credit may be granted under this article for any contribution except eligible contributions made to a project which has been certified in accordance with the requirements of this article prior to the making of the contribution. No tax credit may be granted under this article for any contribution which, if allowed, would cause the amount of tax credit generated by the project to exceed the maximum amount of tax credit for which the project was certified as stated in the application for project certification filed with the West Virginia Development Office.

(f) All applications for certification of a project filed with the West Virginia Development Office, whether such project is certified or denied certification, are public information which may be viewed and copied by the public and, at the discretion of the West Virginia Development Office, published by the West Virginia Development Office.

(g) Project transferees shall file biannual reports with the West Virginia Development Office on the progress of the certified project. The biannual reports shall be filed in a form approved by the director.

(h) Revolving fund. —

(1) For the purpose of permitting payments to be made and costs to be met for operation of the program established by this article, there is hereby created a revolving fund for the West Virginia Development Office, which shall be known as the Neighborhood Investment Fund. All money received by the West Virginia Development Office under this article shall be paid into the State Treasury, and shall be deposited to the credit of the Neighborhood Investment Fund, and shall be expended only for the purposes of defraying the costs of the Neighborhood Investment Program Advisory Board and the West Virginia Development Office in administering the program established pursuant to this article, unless otherwise directed by the Legislature.

(2) The Neighborhood Investment Fund shall be accumulated and administered as follows:

(A) Payments received under this article shall be deposited into the Neighborhood Investment Fund.

(B) Any appropriations made to the Neighborhood Investment Fund shall not be deemed to have expired at the end of any fiscal period.

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