

**GOVERNMENT OF PUERTO RICO**

**DISBURSEMENT AND TAX CONCESSION AUTHORIZATION COMMITTEE**

**RESOLUTION 2017-09**

**JULY 25, 2017**

**RESOLUTION OF THE DISBURSEMENT AND TAX CONCESSION AUTHORIZATION COMMITTEE (THE "COMMITTEE") TO ESTABLISH THE PROCEDURE FOR THE APPROVAL OF TAX CREDIT APPLICATIONS PENDING APPROVAL AS OF MARCH 7, 2017 AND THE RULES FOR THE USE OF CREDITS GRANTED UNDER SAID APPLICATIONS, PURSUANT TO THE PROVISIONS OF ADMINISTRATIVE ORDER AO 2017-01, AS AMENDED, ISSUED BY THE FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY (THE "AUTHORITY").**

**WHEREAS**, on March 7, 2017, the Authority issued Administrative Order AO 2017-01 (the "Order") suspending the concession of new tax credits and creating the Committee, with authority to control the concession and use of tax credits;

**WHEREAS**, the Order grants the Committee authority to evaluate tax credit applications submitted and not approved as of March 7, 2017, receive and evaluate new tax credit applications submitted after March 7, 2017, and approve the applications and grant the tax credits it deems appropriate;

**WHEREAS**, the Order also grants the Committee the authority to establish limitations on the use of the credits granted on or before March 7, 2017;

**WHEREAS**, on March 22, 2017, the Committee issued Resolution 2017-01 to authorize the use of tax credits granted before the date of the Order (March 7, 2017) for tax year 2016, pursuant to the rules therein provided and to the guidelines that shall be issued by the Puerto Rico Department of the Treasury;

**WHEREAS**, on June 20, 2017, the Authority issued Administrative Order 2017-03, which amends the Order to expand the authority of the Committee to impose limitations on the use of granted credits;

**WHEREAS**, on June 20, 2017, the Committee issued Resolution 2017-05 to establish the rules and limitations for use applicable to the tax credits granted on or before the date of the Order (March 7, 2017) for tax year 2017 and subsequent years;

**WHEREAS**, pursuant to Resolution 2017-08, the Committee established the procedure that the corresponding government agencies must follow to submit for the revision and approval of the Committee tax credit applications not covered by Resolution 2017-01, Resolution 2017-05, or this resolution;

**WHEREAS**, the Committee wishes to establish the procedure for the approval of tax credit applications pending review and approval as of March 7, 2017 and the applicable rules for the use of credits granted under said applications pursuant this resolution;

**NOW, THEREFORE, BE IT RESOLVED** that the Committee hereby adopts the following:

**I. DEFINITIONS**

For the purposes of this resolution, all definitions provided in Resolution 2017-01 Resolution 2017-05, and Resolution 2017-08 with respect to the terms "Granted Credit," "Holder," "Tax Year 2016," "Applicant," "Concerned Agency," "Governing Agency," "PR Code," and "Tax Incentives Law". In addition, the following terms will have the meaning stated hereinafter:

**(A) Credit Self-Determined by the Applicant** – tax credits determined by the Applicant and claimed in a Puerto Rico income tax return without requiring the prior resolution or determination of the Governing Agency.

**(B) Completed Tax Credit Application** – shall include any tax credit application submitted on or before March 7, 2017 with the Governing Agency in accordance with a Tax Incentives Law, that does not comply with the definition of Granted Credit established by the Committee in Resolution 2017-01 and with respect to which the Governing Agency or Concerned Agency was in a position to approve as of the date of the Order, without the need of requesting any further documentation or information.

Provided that, for the purposes of credits authorized under Act No. 74-2010, as amended, the term Completed Tax Credit Application shall not include an application for which an extension to comply with any requirement of the law, regulation, circular letter or directive issued by the Puerto Rico Tourism Company was requested, and the term of such extension expired as of the date of the Order without the Applicant complying with said requirement and Applicant's failure to comply was not for just cause.

The term Completed Tax Credit Application shall also not include tax credit applications filed on or before March 7, 2017 if after such date the Applicant submitted an amendment to the application to change the credit amount requested in the original application or an amendment to an existing tax concession decree. Additionally, the term Completed Tax Credit Application shall not include applications submitted by an Applicant that is not in good standing with its tax responsibilities in Puerto Rico, including, without limitation tax responsibilities with the following government agencies, the Municipal Revenues Collection Center, Puerto Rico Treasury Department, State Insurance Fund Corporation, Puerto Rico Department of Labor and the Puerto Rico Tourism Company. If there is any debt with any of the above-mentioned agencies, the Applicant must have a payment plan in place and be in full compliance with said agreement.

In the case of tax credits authorized under Act No. 27-2011, as amended, the term Completed Tax Credit Application shall include all credits for which a reservation was established under the provisions of Article 3.1(b) of said act as of the date of the Order.

Furthermore, the following will be considered as a Completed Credit Application:

1. Credits self-determined by the applicant in the income tax returns of the tax year 2017 under Section 5 of Act No. 73-2008, Sections 3(b), 5(a) and 5(b) of Act No. 135-1997, Article 211 of Act No. 83-2010, and Article 1 of Act No. 168-1968.
2. Credits Self-Determined by the Applicant in the income tax returns for tax year 2017 under Sections 1051.04, 1051.05, 1051.06, 1051.07, 1051.09, 1051.14, 1113.14, and 4050.10 of the Puerto Rico Code.

## II. PROCEDURE

The Governing Agency will remit the Completed Tax Credit Application to the Department of the Treasury after reviewing the Completed Tax Credit Application for its full compliance with the requirements established or enacted by the applicable Tax Incentives Law or any regulation, circular letter, or administrative order issued by the Governing agency under such law, including the pronouncements issued by any Concerned Agency, as applicable, valid as of March 7, 2017, and expressing that the Completed Tax Credit Application is in conformity with the applicable Tax Incentives Law In case of an adverse determination, the Applicant shall be notified in writing and said Applicant may follow the reconsideration procedures or any other related administrative procedure with the Governing Agency.

When evaluating the Completed Tax Credit Application, the Governing Agency shall confirm that the Applicant (and in the case of a legal entity, its shareholders, members, partners and

owners) are in good standing with regards to their tax liabilities in Puerto Rico.

After the procedure described above, the Department of the Treasury shall thoroughly review the Completed Tax Credit Application and issue its recommendation to the Committee together with a certification that the Completed Tax Credit Application is in full compliance with the Tax Incentives Law and other applicable rules existing at the time of its review. In those cases in which the Department of the Treasury acts as the Governing Agency, said entity shall issue its recommendation in accordance with the prior sentence. Once the Completed Tax Credit Application is before the consideration of the Committee, neither the Committee nor any of its members may communicate with the Applicant or any person acting on behalf of the Applicant. The Governing Agency shall notify in writing the final determination of the Committee to the Applicant. In case of an adverse determination by the Committee, the Applicant may follow the reconsideration procedures or any other related administrative procedure with the Governing Agency.

In the case of Credits Self-Determined by the Applicant that are considered Completed Tax Credit Applications, the Governing Agency and the Concerned Agency shall continue with the procedures in effect as of the date of the Order to certify said credits, if any.

Governing Agencies and Concerned Agencies are hereby ordered to submit to the Committee a detailed inventory itemizing the Completed Tax Credit Applications currently under their consideration within a term of thirty (30) days from the date this resolution is approved.

### **III. RULES FOR THE USE OF CREDITS GRANTED BY THE APPROVAL OF A COMPLETED TAX CREDIT APPLICATION**

Notwithstanding the provisions of the PR Code and any other special laws,

**IV. SCOPE AND APPLICABILITY** all credits granted by the approval of a Completed Tax Credit Application shall be subject to the following rules of use:

(A) The tax credit may be used against the income tax liability of the Holder, as determined under the provisions of Subtitle A of the PR Code or any applicable special law, up to a maximum of twenty-five percent (25%) of said income tax liability, irrespective of the tax year for which said credit is available according to the provisions of the applicable Tax Incentive Law.

(B) The tax credit will be available for use during a maximum term of four (4) consecutive tax years, commencing with the 2017 tax year. Provided that, after prior request in writing by a Holder, the Committee may extend the previously mentioned period for a maximum

additional term of three (3) years, as long as said extension is compatible with the Certified Fiscal Plan and with the Liquidity Plan of the General Fund. The Holder shall present his application for extension ninety (90) days prior to the expiration of the aforementioned maximum four (4) year period. Any credit balance available and not used after the maximum period of four (4) tax years or after the maximum additional term of three (3) years, if granted, may not be claimed and shall be extinguished.

(C) During said period, and in the cases where the law under which the credit was granted allows it, the Holder may sell or assign the credit and the buyer or assignee shall be subject to the limitations established in this Resolution.


The provisions of this resolution shall not apply, therefore, the Committee's approval is not required, in the case of tax credits authorized under Sections 1051.01, 1051.02 and 1051.03 of the Puerto Rico Code, Subchapters B and C of Chapter 5 of Subtitle A of the Puerto Rico Code, Act 154-2010, or to waivers to those effects issued by the Committee.


#### V. EFFECTIVENESS

This resolution shall enter in effect immediately upon its approval.

**IN WITNESS WHEREOF**, we, the members of the Committee, sign this resolution, on July 25, 2017.

  
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Gerardo José Portela-Franco  
Chairman of the Committee

  
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Raúl Maldonado-Gautier, Esq. CPA  
Member of the Committee

  
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José I. Marrero-Rosado, Esq. CPA  
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