

GOVERNMENT OF PUERTO RICO

DISBURSEMENT AUTHORIZATION AND TAX CONCESSION COMMITTEE

RESOLUTION 2017-08

JULY 25, 2017

RESOLUTION OF THE DISBURSEMENT AUTHORIZATION AND TAX CONCESSION COMMITTEE (THE "COMMITTEE") TO ESTABLISH THE PROCEDURE TO REVIEW AND APPROVE APPLICATIONS FOR TAX CREDITS, PURSUANT TO THE PROVISIONS OF ADMINISTRATIVE ORDER OA-2017-01, AS AMENDED, ISSUED BY THE FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY (THE "AUTHORITY").

WHEREAS, Act 2-2017 in Article 8(s) establishes that the Fiscal Agency and Financial Advisory Authority of Puerto Rico (the "Authority") "in collaboration with the Department of Treasury and the Office of management and Budget can establish its position in a regulation or an administrative order or can establish a commission to coordinate the policies and processes related to liquidity and cash management for any entity of the Government of Puerto Rico."

WHEREAS, Act 2-2017 in Article 9(b) establishes that "if a contract is incongruent with the Fiscal Plan approved in accordance with PROMESA, the Authority can take all of the actions that it considers necessary to guarantee that said contract does not adversely affect the Government's compliance with the Fiscal Plan, including the prohibition of its execution, its suspension, or its cancellation."

WHEREAS, Act 5-2017 in Section 206(a) establishes that the Governor, together with the Authority, may take the following actions as they deem necessary or advisable to rectify the financial emergency, including but not limited to:

"ii. Limit the expenditure of appropriated funds;

[...]

vii. approve or disapprove any executory contract, expenditure, or loan [...];

viii. review and approve payrolls or other claims against a government entity within the Executive Branch before payment;

[...]

x. reject, modify, or terminate one or more terms and conditions of an existing executory contract of a government entity within the Executive Branch."

WHEREAS, on March 7, 2017, the Authority issued Administrative Order OA-2017-01 (the "Order") that suspends the issuance of new tax credits and creates the Committee, with the authority to control the issuance and utilization of tax credits;

WHEREAS, the Order grants the Committee the authority to review tax credit applications filed but not approved as of March 7, 2017, to receive and review tax credit applications filed after March 7, 2017 and approve such 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 credits granted on or before March 7, 2017;

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

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 rules and limitations on the use of granted credits on or before the date of the Order (March 7, 2017) for tax year 2017 and subsequent years;

WHEREAS, on even date hereof, pursuant to Resolution 2017-09, the Committee established the procedure to approve and the rules and limitations regarding the use of credits granted pursuant to a tax credit application filed on or before the date of the Order (March 7, 2017) and that where in compliance with all the requirements of the special law under which it was filed;

WHEREAS, the Committee now wants to establish the procedure to be followed by the pertinent governmental agencies when submitting for the Committee's review and approval: (i) tax credit applications filed and pending review and approval as of March 7, 2017 and (ii) new tax credit applications;

NOW, THEREFORE, BE IT RESOLVED: that the Committee hereby adopts the following rules and procedures to be followed in connection with the approval of tax credit applications filed on or before March 7, 2017 and pending review and approval as of said date, that are not in compliance with all the requirements of the special law under which the application was filed, and tax credit applications filed or to be filed under any Puerto Rico law after March 7, 2017.

I. DEFINITIONS

A. Applicant – means any natural or juridical person requesting a tax credit under a

Tax Incentive Law.

- B. **Concerned Agency** – means any governmental agency with an interest in the Tax Credit Application, other than the Governing Agency.
- C. **Governing Agency** – means any governmental agency that as of the date of the Order had the authority under a Tax Incentive Law to issue tax credits, render eligibility reports and/or administers the review and approval of Tax Credit Applications.
- D. **PR Code** – Puerto Rico Internal Revenue Code of 2011, as amended
- E. **Tax Credit Application** – means any application for tax credits under a Tax Incentive Law filed with a Governing Agency, not covered by Resolution 2017-01, Resolution 2017-05 and Resolution 2017-09 of the Committee.
- F. **Pending Tax Credit Application** – means any application for tax credits under a Tax Incentive Law filed with a Governing Agency on or before March 7, 2017, if such application does not meet the definition of “Granted Credit” established by the Committee in Resolution 2017-01 and was pending review and approval because the Governing Agency or Concerned Agency did not have all the documents or information required under the applicable Tax Incentive Law.
- G. **Tax Incentive Law** – means any law enacted by the Commonwealth of Puerto Rico granting tax credits, including, without limitation:
- 1) Act 168 of June 30, 1968, also known as the Hospitals Tax Incentive Act, as amended.
 - 2) Act 78-1993, also known as the Puerto Rico Tourism Development Act, as amended.
 - 3) Act 135-1997, also known as the Tax Incentives Act of 1998, as amended.
 - 4) Act 46-2000, also known as the Puerto Rico Investment Capital Fund Act of 1999, as amended.
 - 5) Act 362-1999, also known as the Act for the Development of the Film Industry, as amended;
 - 6) Act 98-2001, also known as the Tax Credits for Special Investments in Housing Infrastructure Act, as amended.
 - 7) Act 140-2001, as amended by Act 77-2015, also known as the Tax Credits Act for Investment in New Construction and Rehabilitation of Rental Housing for Low or Moderate Income Families and for Tax Credits for Investment in the Acquisition, Construction or Rehabilitation of Affordable Housing for Rent to the Elderly, as amended.
 - 8) Act 183-2001, also known as the Puerto Rico Conservation Easement Act, as amended.
 - 9) Act 212-2002, also known as the Urban Centers Revitalization Act, as amended.

- 10) Act 73-2008, also known as the Economic Incentives Act for the Development of Puerto Rico, as amended.
- 11) Act 74-2010, also known as the Puerto Rico Tourism Development Act of 2010, as amended.
- 12) Act 83-2010, also known as the Green Energy Incentives Act of Puerto Rico, as amended.
- 13) Act 27-2011, also known as the Puerto Rico Film Industry Economic Incentives Act, as amended.
- 14) Act 159-2011, also known as the Act to Provide Tax Incentives for Investments in Solid Waste Reduction, Disposal, and/or Treatment Facilities, as amended.
- 15) Any other law enacted by the Commonwealth of Puerto Rico granting tax credits, and not expressly excluded herein.

II. PROCEDURE

- A. Applicants must submit the Tax Credit Application to the Governing Agency in accordance with the requirements established or promulgated under the applicable Tax Incentive Law or any regulation, circular letter or administrative determination issued by the Governing Agency thereunder, including the pronouncements issued by any Concerned Agency, as applicable.
- B. In addition to any documentation required under the applicable Tax Incentive Law, the Applicant must submit with the Tax Credit Application the following: (i) in those case where the amount of the credit requested is less than \$1,000,000, an income projection for the subsequent five (5) years of operations, and (ii) in those case where the amount of the credit is \$1,000,00 or more, an economic impact study, both documents prepared by a third party; provided, however, that the Applicant of a Pending Tax Credit Application will have to comply with this requirement, if determined or requested by the Governing Agency. The Committee retains the right to request any additional document or information as it deems necessary with respect to this requirement.
- C. Upon receipt of any Tax Credit Application, the Governing Agency shall review the same and render an eligibility report, which shall include a summary of the activity or investment proposed by the Applicant, the facts related to the Tax Credit Application, the requirements under the applicable Tax Incentive Law to grant the tax credit and the Governing Agency's recommendations regarding the granting of the tax credit, with a detail of the basis and corresponding analysis supporting such recommendations. When evaluating the Tax Credit Application, the Governing Agency shall verify that the Applicant (and in the case of juridical persons, its shareholder, members, partners or owners as well) are in good standing with respect to their Puerto Rico tax responsibilities and may recommend the approval of such application after considering the following criteria:
 - 1) whether the approval of the Tax Credit Application is in the best social and

economic interests of Puerto Rico, taking into account the demand that there may be for the proposed activity or project,

- 2) the total number of jobs to be created,
- 3) its payroll,
- 4) the investment that the Applicant would make in Puerto Rico,
- 5) the expected amount of taxes to be collected as a result of the proposed project; or
- 6) any other factor that warrants special consideration, such as the potential to increase the economic activity of particular sector, industry or area in Puerto Rico.

D. Tax Credit Applications that receive a favorable recommendation of approval by the Governing Agency must be sent to the Committee for final approval once the Governing Agency receives all documents and information required by the applicable Tax Incentive Law and the Tax Credit Application is deemed completed and in compliance with the applicable minimum requirements. The Governing Agency must send with the Tax Credit Application its eligibility report and a certification confirming that the Tax Credit Application was reviewed in light of the criteria listed in Section II.C (including any other criteria established by the Committee). With respect to Tax Credit Applications that are not Pending Tax Credit Applications, the Governing Agency must also certify that it has received copy of the following documents:

- 1) Tax return filing certificate and zero debt certificates from the Puerto Rico Treasury Department, for the Applicant and its shareholders, members, partners or owners;
- 2) Zero debt certificates from the concerned municipalities (any municipality where the Applicant has a business office) and the Municipal Revenue Collection Center ("CRIM" for its Spanish Acronym);
- 3) Zero debt certificates from the Puerto Rico Labor Department and the Puerto Rico State Insurance Fund Corporation;
- 4) Zero debt certificates from the Puerto Rico Tourism Company (Room Tax Division), if applicable;
- 5) Good standing certificate from the Puerto Rico State Department;
- 6) Merchant registration certificate;
- 7) Municipal license;
- 8) Police Record, if required by the applicable Tax Incentive Law;
- 9) In those case where the amount of the credit requested is less than \$1,000,000, an income projection for the subsequent five (5) years of operations, prepared by a third party; and
- 10) In those case where the amount of the credit is \$1,000,00 or more, an economic impact study, prepared by a third party.

E. If the Governing Agency denies a Tax Credit Application in light of the criteria listed in Section II.C, the Governing Agency shall notify the Applicant such determination and the Applicant must follow the procedures established in the

applicable Tax Incentive Law to request a reconsideration from the Governing Agency.

- F. Upon receipt of the Tax Credit Application and the Governing Agency's eligibility report, the Committee shall review the Tax Credit Application and remit to the Governing Agency a final determination granting or denying the tax credit. When evaluating the Tax Credit Application, the Committee shall confirm that the Applicant (and in the case of juridical persons, its shareholder, members, partners or owners as well) are in good standing with their Puerto Rico tax responsibilities and that such application is in compliance with the criteria listed in paragraph C of this section and any other criteria that the Committee may deem appropriate when reviewing the Tax Credit Application and making a determination to those effects. The Committee shall also consider if approving the Tax Credit Application may adversely affect compliance with the Certified Fiscal Plan and Liquidity Plan for the General Fund of the Government of Puerto Rico.
- G. The Committee may create subcommittees or established such internal procedures as it deems necessary for the review and approval of Tax Credit Applications that have been favorably recommended by the Governing Agency and/or Concerned Agency.
- H. Notwithstanding any provisions of the PR Code or any other special laws, the credits granted by the approval of a Tax Credit Application shall be subject to the following rules of use:
- 1) 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.
 - 2) The tax credit will be available for use during a maximum term of four (4) consecutive tax years. 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.
 - 3) 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.

Notwithstanding the foregoing, the Committee, at its sole discretion, may establish

other limitations on the granting and/or use of tax credits approved pursuant to this resolution, as it deems necessary.

- I. In accordance with the Certified Fiscal Plan and Liquidity Plan for the General Fund of the Government of Puerto Rico, the Committee may establish a limit on the maximum amount of credits that can be granted per fiscal year, as well as limits on the amount of credits that can be granted under each Tax Incentive Law.
- J. The Committee may deny any Tax Credit Application if it is determined that such tax credit will not serve the best economic and social interests of Puerto Rico, after considering the factors listed in subsection C and F above or other factors that in the Committee's judgment warrant such a determination, as well as the recommendations of the Governing Agency or any Concerned Agency; provided, however, that the Committee will not be required to follow any such recommendations and may reject a Tax Credit Application that was favorably recommended by the Governing Agency or Concerned Agency.
- K. After receiving the Committee's final determination granting or denying the Tax Credit Application, the Governing Agency must notify the Applicant of such determination in writing. If the Tax Credit Application is denied, the Applicant must follow the procedures established in the applicable Tax Incentive Law to request a reconsideration from the Governing Agency.
- L. Once the 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.
- M. The Applicant shall, at all times, deal directly and exclusively with the Governing Agency regarding any Tax Credit Application and must submit to the Governing Agency any documents, petitions, amendments, reconsiderations or any administrative proceedings related to a Tax Credit Application.

III. SCOPE AND APPLICABILITY

Except as otherwise provided herein, Applicants must submit the Tax Credit Application using the forms and procedures promulgated by the Governing Agency under the applicable Tax Incentive Law.

This resolution shall govern the procedure for reviewing and approving Tax Credit Applications by the Committee, modifying the existing procedures or rules under the applicable Tax Incentive Law for the review and approval of tax credits. In case of conflict, the provisions of this resolution shall govern. The Committee may, at its sole discretion, request recommendations or reports by any Concerned Agency. Such reports and recommendations must be rendered in compliance with the rules established in Sections II.C y D.

This resolution does not apply and, therefore, the Committee's approval is not required, in the case of tax credits granted pursuant to Sections 1051.01, 1051.02 and 1051.03 of the PR Code, Subchapter B and C of Chapter 5 of Subtitle A of the PR Code, Act 154-2010 and Self Determined Credits (as such term is defined in Resolution 2017-09), but excluding tax credits under Section 5(c) of Act 73, 2008, as amended.

The Committee hereby ratifies any Tax Credit Application duly approved by the Committee before the execution of this resolution, without the requiring that such applications be submitted to the approval process herein established.

IV. EFFECTIVENESS

This resolution will be valid immediately after its approval.

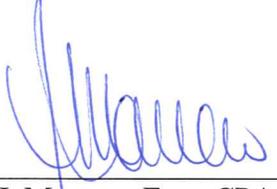
IN WITNESS WHEREOF, we, the members of the Committee sign this resolution on this 25th day of July 2017.



Gerardo José Portela Franco
President of the Committee
Executive Director of FAFAA



Raúl Maldonado Gautier, Esq., CPA
Member of the Committee
Secretary of Treasury



José I. Marrero, Esq., CPA
Member of the Committee
Director of OGP