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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO TAXATION - PROPERTY TAX RATE FOR RESIDENTIAL PROPERTY
SUBJECT TO LOW INCOME HOUSING COVENANT RESTRICTIONS

Introduced By: Representative Jeremiah T.O`Grady

Date Introduced: March 06, 2014

Referred To: House Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 33.7

4 PROPERTY TAX RATE FOR RESIDENTIAL PROPERTY SUBJECT TO LOW INCOME

5 HOUSING COVENANT RESTRICTIONS

6 **44-33.7-1. Definitions. --** As used in this chapter the following terms shall have the
7 following meanings:

8 (1) "Capitalization rate" means a market capitalization rate that is typical for the area in
9 which the property is located as determined annually by March 31 by the housing resources
10 commission or designee and as published by the housing resources commission.

11 (2) "Collection loss" means the amount of actual uncollectable rents in the applicable tax
12 year.

13 (3) "Gross potential income" shall be calculated as follows: (i) For residential units
14 receiving assistance under a project-based rental subsidy contract, the gross potential income for
15 such units shall be the rents specified in each unit's respective contract.

16 (ii) For all other residential units subject to a legal affordability restriction, the gross
17 potential income shall be the maximum restricted rents allowed by the legal restrictions
18 governing said units for the area in which the property is located; provided that, where multiple

1 legal restrictions apply, the most restrictive shall be used. Maximum restricted rents shall be
2 adjusted as appropriate using the utility allowances for the area in which the units are located as
3 determined by the United States Department of Housing and Urban Development.

4 (iii) For all non-restricted residential units in properties in which only a portion of the
5 units are subject to a legal affordability restriction, gross potential income shall be calculated by
6 using non-restricted rents as determined by local market data or, in the event that local market
7 data is unavailable, by using the United States Department of Housing and Urban Development
8 fair market rent for the area in which the property is located.

9 (iv) Other income shall be included in the property's gross potential income.

10 (4) "Net operating income" shall be calculated for a property by subtracting from the
11 gross potential income that property's vacancy loss, collection loss, and operating expenses as
12 defined in this chapter.

13 (5) "Operating expenses" means the actual ordinary and typical annual expenses that are
14 necessary to keep the property in compliance with its contractual obligations under the specific
15 affordability restrictions and legal covenants and to keep the property functional, and shall
16 additionally include deposits to restricted reserve accounts as required by the property's
17 respective housing subsidy covenants or other legal restrictions, but shall not include property
18 taxes, mortgage debt service, or depreciation incurred with respect to the property.

19 (i) Expenses for capital improvements, meaning improvements with an expected life
20 exceeding five (5) years (as opposed to expenses associated with yearly maintenance or work
21 performed in preparation for unit turnover) shall not be considered operating expenses.

22 (6) "Other Income" means income that is attributable to the real estate and is ordinary and
23 recurring including, but not limited to, laundry or vending machine income.

24 (i) Interest earned on restricted reserve funds shall be considered other income.

25 (ii) For properties with non-residential space that is or can be rented as commercial space
26 to third parties (with consideration of any legal, market, or covenant restrictions), market rent
27 shall be attributed to such space and shall be considered other income.

28 (iii) Common area space within a property that is used primarily to benefit the property's
29 residents or to provide services to the property's residents shall not be assessed separately and no
30 income shall be imputed to such space.

31 (7) "Property" means the property described in the recorded land use restrictions/subsidy
32 covenant.

33 (8) "Restricted reserve funds" means funds that are required to be reserved by the low
34 income housing tax credit program and/or other affordable housing covenants as they may pertain

1 to the subject property, and are restricted to specific uses. Such funds shall be treated as follows:

2 (i) Actual deposits or payments into such funds shall be considered an operating expense;

3 and

4 (ii) Actual interest earned on such funds shall be considered other income.

5 (9) "Vacancy loss" means a reduction in gross potential income calculated by multiplying
6 the gross potential income for the residential rental units by the rental market vacancy rate for the
7 area in which the property is located as determined by the Rhode Island housing resources
8 commission.

9 **44-33.7-2. Tax rate for residential property subject to low income housing covenant**
10 **restrictions. -- (a) The assessment for real estate tax purposes on multi-family residential rental**
11 **property which is governed by section 42 of the Internal Revenue Code and which is subject to a**
12 **recorded housing subsidy covenant that restricts tenant eligibility, rents, and resale shall, upon the**
13 **affirmative request of the taxpayer, be determined under the provisions of this chapter,**
14 **notwithstanding any statute, law, rule or regulation to the contrary.**

15 (b) A taxpayer eligible to make an election under this section shall be liable for the real
16 estate taxes on the property in an amount that is the greater of:

17 (1) The taxes determined using the income-based approach to valuation as defined in this
18 chapter herein; or

19 (2) The taxes in an amount equal to eight percent (8%) of the property's gross potential
20 income.

21 (c) The assessed value of the property subject to a housing covenant as described under
22 this chapter shall be calculated using an income-based approach to valuation under which the net
23 operating income is divided by the capitalization rate.

24 (d) The assessed value of the property subject to a housing covenant as described under
25 this chapter shall not take into consideration the value of intangible assets including, but not
26 limited to, government subsidies or grants, below market rate mortgage financing, and tax credits
27 where such subsidies are used to offset project development expenses in order to allow for
28 restricted rents. The assessed value shall not take into consideration the actual cost of acquisition
29 or construction of the project.

30 (e) A taxpayer who makes an election for assessment under this chapter shall, by April 15
31 of each applicable tax year, provide the assessor with the relevant information described in this
32 chapter, using a form prepared by the Rhode Island housing resources commission.

33 (f) Financial information that is required from the taxpayer under this chapter shall be the
34 audited financial statements from the prior calendar year as prepared by a third-party certified

1 public accountant. For properties seeking to include financial data for only part of the prior
2 calendar year, the assessor shall use the partial data provided and the projected operating budget
3 for the first full year of operations as provided by the Rhode Island housing and mortgage finance
4 corporation to extrapolate a full year's estimated operating financials.

5 (g) A copy of the recorded land use restriction required by section 42 of the Internal
6 Revenue Code or other low-income rental use restriction covenant(s) required by the Rhode
7 Island housing and mortgage finance corporation, Rhode Island housing resources commission,
8 or another governmental entity is sufficient proof that the property is eligible for assessment
9 under this section.

10 (h) Upon election by the taxpayer, the qualifying property shall be assessed under this
11 section for the following fifteen (15) years, or so long as the property remains subject to the
12 recorded housing subsidy covenants, proof of which is defined in this chapter herein.

13 **44-33.7-3. Rules and procedures.--** The Rhode Island housing resources commission is
14 hereby directed and empowered to adopt rules and procedures pursuant to the Rhode Island
15 Administrative Procedures Act relating to the establishment of capitalization rates.

16 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO TAXATION - PROPERTY TAX RATE FOR RESIDENTIAL PROPERTY
SUBJECT TO LOW INCOME HOUSING COVENANT RESTRICTIONS

1 This act would establish a property tax rate for qualifying residential property which are
2 subject to certain low income housing covenant restrictions. The rate would equal the greater of
3 eight percent (8%) of the property's gross potential income or the tax as determined using an
4 income based approach to valuation.

5 This act would take effect upon passage.

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