



THE NEWFOUNDLAND AND LABRADOR GAZETTE

EXTRAORDINARY

Part II

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**NEWFOUNDLAND AND LABRADOR
REGULATION**

NLR 85/07



NEWFOUNDLAND AND LABRADOR REGULATION 85/07

*Resort Property Investment Tax Credit Regulations
under the
Income Tax Act, 2000
(O.C. 2007-332)*

(Filed July 30, 2007)

Under the authority of section 46.1 of the *Income Tax Act, 2000*,
the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, July 27, 2007.

Gary Norris
Clerk of the Executive Council

REGULATIONS

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Short title
Definitions

1. These regulations may be cited as the *Resort Property Investment Tax Credit Regulations*.

2. In these regulations

- (a) "Act" means the *Income Tax Act, 2000*;
- (b) "arm's length" means arm's length as defined in section 251 of the *Income Tax Act (Canada)*;
- (c) "certificate of registration" means a certificate of registration issued under section 4;
- (d) "eligible investment" means the purchase of a qualifying resort development property unit by a qualifying investor in accordance with these regulations;
- (e) "north-east Avalon" means the towns of Bauline, Conception Bay South, Flatrock, Logy Bay-Middle Cove-Outer Cove, Paradise, Petty Harbour, Portugal Cove-St. Philip's, Pouch Cove and Torbay incorporated or continued under the *Municipalities Act, 1999*, the City of Mount Pearl incorporated under the *City of Mount Pearl Act* and the City of St. John's incorporated under the *City of St. John's Act*;
- (f) "qualifying investor" means a person other than a trust who invests in a qualifying resort development property unit, where that person and the qualifying resort developer or owner are at arm's length from each other and where, in the case of an individual investor, the person is 19 years of age or older;
- (g) "qualifying resort developer" means a person registered to develop a qualifying resort development complex, where for the purpose of this definition the person includes a corporation, partnership or limited partnership but does not include a trust;
- (h) "qualifying resort development complex" means
 - (i) a newly constructed accommodation facility,
 - (ii) a newly constructed expansion, or

(iii) a property where at least 90 percent of the building area is rebuilt

containing a minimum of 50 qualifying resort development property units, located outside the north-east Avalon, with a Canada Select 4 rating and having at least 3 of the following features:

(iv) a variety of directed exercise facilities and venues including, a fitness area with a minimum of 5 exercise machines per 100 guest capacity supported by trainers and sports professionals,

(v) a variety of other directed leisure activities, supported by personal guidance, including tour guides and interpreters,

(vi) a convention centre with seating capacity for at least 75 persons, as well as 3 meeting rooms, and

(vii) dining facilities with seating capacity for at least 50 persons;

(i) "qualifying resort development property unit" means a town house, chalet or a hotel condominium of the qualifying resort development complex

(i) acquired by the qualifying investor through an initial freehold sale or 99 year lease,

(ii) that is at least 35 square metres, and

(iii) with respect to which the unit holder is required to enter into a 20 year contract relating to the availability of the unit for the rental pool of the qualifying resort development complex for at least three-quarters of the time annually;

(j) "tax credit" means the resort property investment tax credit granted under these regulations;

(k) "tax credit receipt" means a tax credit receipt issued by the minister under section 5; and

(l) "tax otherwise payable" means the amount that would, except for these regulations and the deduction allowed under section 40.1 of the Act, be the tax otherwise payable under the Act.

Application for registration as a qualifying resort developer

3. (1) Where a person intends to construct a resort development complex that person may, in the required form, apply to the minister before January 1, 2013 for a certificate of registration as a qualifying resort developer.

(2) An application for a certificate of registration shall

(a) indicate the name of the person's business;

(b) list the names and residential addresses of all directors and principals of the person's business;

(c) include a business plan containing a detailed description of the business' proposed business activities, its financing plan, market analysis and timeline for construction;

(d) state the location of the proposed qualifying resort development complex;

(e) include a statement signed by an officer or director of the business stating that the information contained in the application is true and correct;

(f) provide a commitment for continuous operation of the venture for a minimum period of 5 years from commencement; and

(g) be in the form and include the other information that the minister may require.

Certificate of registration as a qualifying resort developer

4. (1) Where the person applies for a certificate of registration as a qualifying resort developer under section 3, the minister shall issue a certificate to the person, with conditions that he or she considers to be appropriate, where the minister is satisfied that the requirements under section 3 are met.

(2) A qualifying resort developer has 12 months after being registered under subsection (1) to begin construction of a qualifying resort

development complex and 24 months after the beginning of construction to achieve Canada Select 4 status, complete construction and begin offering qualifying resort development property units for sale.

(3) A qualifying resort developer shall submit documentation supporting the attainment of Canada Select 4 status, within 10 days of achieving the status.

(4) The capital that may be approved by the minister with respect to a qualifying resort development complex shall not exceed \$50 million.

(5) The minister may suspend the issuance of certificates of registration where the total amount that may be deducted or deductible by qualifying investors for a fiscal year of the province exceeds or may exceed \$22.5 million.

Application for tax credit receipt

5. (1) A qualifying investor, or a person acting on behalf of a qualifying investor, not more than 90 days after the sale of the qualifying resort development property unit, shall submit an application for the tax credit.

(2) An application under subsection (1) shall be made in the required form and shall be signed by an authorized officer of the qualifying resort developer that has sold the qualifying resort development property unit for which a tax credit receipt is sought and shall be accompanied by additional information that the minister may require, including

(a) the name, address and Social Insurance Number or Business Number of the purchaser;

(b) the contract referred to in subparagraph 2(i)(iii);

(c) supporting documents respecting the unit sale and transfer of ownership; and

(d) certification from an officer or director of the business that cash payment has been received in full for the resort property.

(3) Where the minister receives an application under subsection (1), he or she, shall issue to the qualifying investor, a tax credit receipt

equal to the lesser of 45 percent of the purchase price of the qualifying resort development property unit acquired after these regulations came into force but not more than 5 years after the unit was first made available for sale, and \$150,000.

(4) The total tax credits that may be issued under this section to a person for one or more qualifying resort development property units shall not exceed a lifetime limit of \$150,000.

(5) Where more than one person acquires a qualifying resort development property unit, the maximum tax credit that may be earned in aggregate by all investors in respect of that unit is limited to \$150,000, and the tax credit shall be allocated to each person in proportion to his or her ownership interest.

(6) The minister shall not issue a tax credit receipt unless he or she is satisfied that the qualifying resort development complex or its directors, officers or shareholders are not conducting the affairs of the business in a manner that is contrary to the Act and these regulations or to the spirit of the Act and these regulations.

(7) The minister shall not issue a tax credit receipt unless he or she is satisfied that

- (a) a tax credit has not been previously allowed under the Act with respect to eligible investments to which the tax credit receipt relates;
- (b) the eligible investments related to the tax credit receipt were purchased and acquired directly from the business that sold the eligible investments;
- (c) \$15,000 from the sale of each qualifying resort development property unit has been placed in an escrow account;
- (d) title to the property has been passed to the purchaser, cash payment has been received in full by the developer and the property is made available to the rental pool for a 20 year period;
- (e) the property unit was sold in whole at one time, so that where there is more than one investor in a unit, all the investors participate in a joint tenancy of the property;

Claiming the non refundable tax credit

- (f) a copy of the 20 year contract referred to in subparagraph 2(i)(iii) and the report referred to in section 12 have been filed with the minister; and
- (g) there has been compliance with all requirements of these regulations.

6. (1) Where, for a taxation year, a qualifying investor has been issued a tax credit receipt, there shall be deducted from the tax otherwise payable by the qualifying investor under the Act for that taxation year, the lesser of

- (a) the tax otherwise payable;
- (b) the amount specified in a tax credit receipt or receipts issued during the year, less amounts used in previous years, plus amounts carried forward or back from another year in accordance with subsection (4); or
- (c) \$50,000.

(2) A qualifying investor who is entitled to a deduction under this section shall file, with the qualifying investor's annual return for a taxation year in which a deduction is claimed under this section, a copy of the tax credit receipt to which the deduction relates.

(3) A deduction made under this section may be made with respect to eligible investments made and paid for by a qualifying investor in the taxation year for which the deduction is claimed.

(4) Where a qualifying investor has been issued a tax credit receipt under these regulations and the amount specified in the tax credit receipt or receipts issued during the year exceeds the lesser of

- (a) the tax otherwise payable; and
- (b) \$50,000,

the qualifying investor may carry forward an unused balance to one or more of 7 subsequent tax years, or carry back the amount to one or more of 3 preceding tax years, where

- (c) in the case of an eligible investor that is an individual, it is not carried back to a taxation year that precedes the year 2006; and
- (d) in the case of an eligible investor that is not an individual, it is not carried back to a taxation year that ended before January 1, 2006 .

Holding period

7. (1) A qualifying investor shall not sell or transfer ownership of a property unit for which a credit has been obtained for a minimum of 5 years after the original sale of the unit.

(2) Notwithstanding subsection (1), a unit may only be sold to a person who assumes the obligations of the contract referred to in subparagraph 2(i)(iii) and all the units sold continue to be subject to these regulations.

(3) The minister may authorize the release of amounts referred to in paragraph 5(7)(c) 5 years after the original sale of each respective unit.

Recovery where no entitlement

8. Where a qualifying investor receives, directly or indirectly, the benefit of all or a part of a tax credit that the qualifying investor is not entitled to, the qualifying investor shall pay the amount of the benefit to the minister plus interest at the rate prescribed under the federal Act.

Revocation of certificate of registration as a qualifying resort developer

9. (1) The minister may, after a certificate of registration for a business has been issued, revoke that certificate where

- (a) in his or her opinion, the business has materially breached these regulations; or
- (b) the business has misrepresented information to the minister either knowingly or in a manner that would be considered negligent.

(2) Where the minister revokes a certificate of registration after a qualifying resort development property unit is sold and

- (a) a tax credit receipt has been issued, the qualifying resort developer is liable for the full amount of the tax credit and shall immediately surrender to the minister from the escrow account referred to in paragraph 5(7)(c) an amount equal to

the aggregate of the amounts of the tax credit receipt issued for the qualifying resort development property units; or

(b) a tax credit receipt has not been issued, the minister shall not issue a tax credit receipt with respect to that qualifying resort developer.

Liability of officers
and directors

10. Where an officer or director of a qualifying resort property development complex permits or acquiesces in a transaction, event or a series of transactions or events that he or she knows or ought to know would cause the certificate of registration to be revoked, the officer or director is jointly and individually liable for the amounts specified in subsection 9(2).

Extension of time

11. The minister may extend, with or without conditions, the time limit in relation to anything under these regulations and may grant the extension notwithstanding that the time limit to be extended has expired.

Reporting

12. A qualifying resort developer shall report annually to the minister on the availability of the unit for the rental pool.

Breach

13. (1) A breach of the 5 year operating commitment under paragraph 3(2)(f) shall result in the surrender of the escrow account to the minister.

(2) A failure to comply with the Act or these regulations or with a certificate of registration issued under the Act shall result in the decertification and render ineligible a pending unit sale.

Commencement

14. These regulations shall be considered to have come into force on June 14, 2007.

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Extraordinary Gazette Index

<u>Title of Act and Subordinate Legislation made thereunder</u>	<u>CNLR or NL Reg.</u>	<u>Amendment</u>	<u>XNL Gazette Date & Page No.</u>
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Income Tax Act

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