

A GUIDE TO

THE RENTAL HOUSING CONSTRUCTION TAX CREDIT PROGRAM

under

s.10.6(10)-10.6(10) of the *Income Tax Act* (Manitoba) (the Act)



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CONTEXT AND OVERVIEW

As part of the Manitoba Budget 2013, the Province announced the introduction of a new tax credit to stimulate the construction of rental housing and increase the quantity of new affordable rental housing units.

Eligible landlords who complete development of an Eligible Rental Housing Project (the “Project”) will receive a tax credit certificate from the Minister of Housing and Community Development (“the Minister”). The RHC Tax Credit is worth up to eight percent (8%) of the capital cost of new rental housing construction in Manitoba

Eligible projects include: the construction of five or more new residential rental units, the conversion of existing non-residential properties into five or more residential units, where at least 10% of the units on an eligible project are affordable housing units for the unit type. The maximum credit is set at \$12,000 per eligible rental unit..

The tax credit is earned on a project when it becomes available for rental and the affordable housing criteria are met. Eligible not-for-profit projects will receive a fully refundable tax credit in the year in which the tax credit is earned, as qualifying units are rented. The tax credit on for-profit projects will be non-refundable, claimable over a minimum of five years, and capped annually by the amount of Manitoba income tax payable by the landlord. The tax credit will be claimable by filing an income tax return with the Canada Revenue Agency.

INTRODUCTION

This guide is intended to assist eligible corporations, non-profit organizations, limited dividend housing companies and not for profit housing co-operatives in making an application under the RHC Tax Credit Program. It is a general guide on how the RHC Tax Credit (the “Program”) will be administered.

This guide is not intended to replace or substitute for the legislation under which the Program is administered, including sec.10.6 of the *Income Tax Act* (Manitoba) (the “Act”), or the relevant sections of other legislation including but not limited to the federal Income Tax Act, the Cooperatives Act (Manitoba) and the National Housing Act.

Where there is a conflict between this document and the legislation, the legislation will prevail.

An applicant is strongly advised to review the Act and other legislation, which may be accessed here:

Manitoba Income Tax Act: <http://web2.gov.mb.ca/laws/statutes/ccsm/i010e.php>

Federal Income Tax Act: <http://laws-lois.justice.gc.ca/eng/acts/I-3.3/>

Cooperatives Act (Manitoba): <http://web2.gov.mb.ca/laws/statutes/ccsm/c223e.php>

National Housing Act: <http://laws-lois.justice.gc.ca/eng/acts/N-11/page-1.html>

An applicant is also strongly advised to seek professional legal, accounting and tax advice before making an application under the Program.

RHC TAX CREDIT PROGRAM ELIGIBILITY

Section 10.6 (1) of the *Income Tax Act* establishes eligibility for rental housing projects and the elements that must be satisfied to qualify as a corporation or an entity.

Qualifying entities are described in the federal Income Tax Act (sec. 149(1) (i) (l) and (n) and the Cooperatives Act (Manitoba) (sec. 275(2)). Note that the descriptions of the types of eligible Landlords below is provided for information purposes only. Manitoba Housing will not make a determination as to the conformance of any Landlord with one of the eligible categories set out in the federal *Income Tax Act*.

The Landlord may contact the Charities Directorate at the Canada Revenue Agency at 1-800-267-2384 for further information or to receive an advanced ruling on their conformance with (sec. 149(1) (i) (l) or (n)).

LANDLORDS

A Landlord may qualify for the RHC Tax Credit if they have an eligible rental housing project and meet the requirements for a qualifying entity or qualifying corporation. Any amount claimed for the RHC Tax Credit cannot be claimed for any other Manitoba Tax Credit.

Qualifying Entity

A “qualifying entity” may be one of the following:

- **A housing corporation** as described in paragraph 149(1)(i) of the federal Income Tax Act (the “Act”) to include a corporation that was constituted exclusively for the purpose of providing low-cost housing accommodation for the aged, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder.
- **A non-profit organization** as described in paragraph 149(1)(l) of the federal Act means a club, society or association that is not a charity and that was organized and

operated exclusively for social welfare, civic improvement, pleasure or recreation or for any purpose except profit, no part of the income of which is payable to, or is otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada.

- **A limited dividend housing company** described in paragraph 149(1)(n) of the federal Act, all, or substantially all, of the business of which is the construction, holding or management of low-rental housing projects.
- **A not-for-profit housing co-operative** as described in subsection 275(2) of *The Cooperatives Act* (Manitoba) if: the co-operative has articles specifying that it is not-for-profit housing cooperative; it is a former Cooperatives Act cooperative and its articles, letters patent or charter by-laws specified as of March 1, 1998 that it was a not-for profit housing co-operative; it has received from the Government of Canada or the Government of Manitoba or an agency of either of them, a subsidy or assistance of a type prescribed in the regulations that assisted with or reduced housing costs; or it files income tax returns as a not-for-profit corporation.

Landlords can contact the following to determine if they qualify as a not-for-profit housing co-operative:

Registrar of Co-operatives

1115-405 Broadway
Winnipeg, MB R3C 3L6
(204) 945-4466

A Landlord who is a qualifying entity is eligible to receive a refundable Credit equal to the lesser of:

- Eight percent (8%) of the capital cost of a Project, certified as eligible by the Minister, that became available for use during the taxation year; or
- \$12,000 multiplied by the number of residential rental units in the rental housing project.

Example 1:

A housing corporation constructs a new 40 unit seniors' housing project with separate entrances, bathrooms and small kitchenettes, with the capital cost of \$5.5 million, with half of the units (20) designated as affordable. Once the occupancy permit is issued, the affordable

unit criteria has been met, and a certificate is issued by the Minister, the corporation may receive a refundable tax credit based on the lesser of 8% of the capital cost or \$12,000 per residential unit, calculated as follows:

$$\$5,500,000 \times 8\% = \$440,000$$

$$40 \text{ units} \times \$12,000 = \$480,000.$$

Since 8% of the capital costs is less than \$12,000 per unit, the corporation may claim a refundable Credit of \$440,000.

Example 2:

A non-profit housing cooperative constructs a new 60 unit family housing project with a total capital cost of \$15 million , with 10 of the units designated as affordable. The cooperative may receive a refundable tax credit based on the lesser of 8% of the capital cost or \$12,000 per residential unit, calculated as follows:

$$\$15,000,000 \times 8\% = \$1,200,000$$

$$60 \text{ units} \times \$12,000 = \$720,000.$$

Since \$12,000 per unit is less than 8% of the capital costs the cooperative may claim a refundable Credit of \$720,000.

Qualifying Corporation

A "**qualifying corporation**" means a taxable Canadian corporation that has a permanent establishment in Manitoba and is not a qualifying entity. This group includes for profit landlords.

For the purposes of the Program, an eligible taxable Canadian corporation:

- is incorporated under the laws of Canada or a province of Canada;
- files an annual T2 return with the Canada Revenue Agency;
- has a permanent establishment in Manitoba and meets the following three criteria:
 - a fixed place of business in Manitoba - usually an office with a mailing address;
 - an employee or agent established in Manitoba with a general authority to contract on behalf of the corporation; and
 - assets in Manitoba used to generate revenue.

If a Landlord applies as a “**qualifying corporation**” they may receive an annual non-refundable tax credit each year for up to five (5) consecutive years starting in the year the units become available and the affordable criteria are met. The tax credit is deducted from their tax otherwise payable for a taxation year at an amount equal to the lesser of:

- 1.6% of the capital cost of a Project: or
- \$2,400 multiplied by the number of residential units in the rental housing project.

Example 1:

A corporation constructs four buildings, each containing 8 self contained bachelor units with separate entrances, bathrooms and small kitchenettes (total 32 units) at a cost of \$2.88 million with all of the units designated as affordable. The corporation may receive a non-refundable Tax Credit in the year it receives an occupancy permit and has met the affordability requirement and for each of the following four years based on continuing to meet the affordability criteria in each subsequent year, the lesser of 1.6% of the capital cost or \$2,400 per residential unit, calculated as follows:

$$\$2,880,000 \times 1.6\% = \$46,080$$

$$32 \text{ units} \times \$2,400 = \$76,800.$$

Since 1.6% of the capital costs is less than \$2,400 per unit, the corporation may claim a refundable Credit of \$46,080 for each of the five years in which it receives a Certificate of Continuing Eligibility from Manitoba Housing for a potential total tax credit of \$230,400.

Example 2:

A corporation constructs a family townhouse projects comprising 100 two and three bedroom units at a cost of \$16 million, with 10 of the units designated as affordable. The corporation may receive a non-refundable Tax Credit based on the lesser of 1.6% of the capital cost or \$2,400 per residential unit, calculated as follows:

$$\$16,000,000 \times 1.6\% = \$256,000$$

$$100 \text{ units} \times \$2,400 = \$240,000.$$

Since \$2,400 per unit is less than 1.6% of the capital costs the corporation may claim a non-refundable Credit of \$240,000 for each of the five years in which it receives a Certificate of Continuing Eligibility from Manitoba Housing for a potential total tax credit of \$1,200,000.

Carry-over of unused credit

A qualifying corporation may deduct from its tax otherwise payable for a taxation year the unused portion of the RHC Tax Credit earned but not previously claimed.

If the value of the RHC Tax Credit exceeds the Manitoba Corporation Income Tax payable, the unused portions of the RHC Tax Credit may be carried forward for up to 10 years by a qualifying corporation.

Joint Ownership of Project

If a project is owned jointly by more than one qualifying entity or corporation, the tax credit is shared proportionately based on the co-ownership structure of the project. For example, if a project is co-owned by Corporation A (50%) and Corporation B (50%), each of the co-owners would earn their proportionate share of the tax credit based on the co-ownership structure – so in this case 50% to corporation A and 50% to corporation B.

The tax credit may not be transferred between related corporations (one may be profitable while the other is not), except through winding up or an amalgamation (see below).

ELIGIBLE RENTAL HOUSING PROJECTS

To be eligible to claim the RHC Tax Credit, the Landlord must have completed a Rental Housing Project that meets the requirements of the Program as defined in this document and in s.10.6 of the *Income Tax Act* (Manitoba) (the “Act”) and been certified as eligible by the Minister.

Rental Housing Project

A Rental Housing Project means a building, group of buildings or a portion of a building that

- is located in Manitoba;
- is newly constructed, or converted from a non-residential use, by or for the eligible entity in accordance with a building permit obtained after April 16, 2013;
- becomes available for use before January 1, 2020, which means that the property has a valid occupancy permit;
- is situated on land owned or leased by the Landlord;
- is Class 1 property of the eligible entity for the purpose of Schedule II to the federal regulations;
- contains at least five residential units; and

- is not living accommodation occupied on a transient basis provided in a hotel, motel, inn, tourist home or hostel, or other similar accommodation or is otherwise prescribed by regulation as ineligible.

Residential Unit

A “**residential unit**” means a residential dwelling unit that has its own keyed entry door, contains a bathroom and a kitchen or kitchenette and is usually rented or leased for a period of not less than one month.

Affordable Residential Unit

An “**affordable residential unit**” means a residential unit for which the total of the amounts paid as rent and for utilities for the applicable type of unit does not exceed the amount prescribed by Manitoba Housing. Affordable rents are reviewed annually. [The Affordable Rents](#) published on the Housing and Community Development website on September 1 apply for the following tax year.

In addition, the Landlord must lease affordable residential units to households that meet the **Program Income Limit for Affordable Housing (PILs)** at the time of initial occupancy. Income Limits are reviewed annually. The PILs published on the Housing and Community Development website on September 1 apply for the following tax year.

Before being accepted as an approved tenant leasing an affordable residential unit, the tenant, or the Landlord on behalf of the tenant, must submit a Tenant Declaration Form and other documentation required by Manitoba Housing (normally the prior year’s income tax assessment) to Manitoba Housing for approval. Manitoba Housing will provide its approval (or otherwise), in writing, to the tenant and the landlord. The Landlord must retain a copy of the approval provided by Manitoba Housing.

Tenants’ income will only be assessed at the time of initial occupancy of an affordable residential unit. No further review is required provided the tenant remains in occupancy of the unit.

Note that tenants are not required to provide verification of income (unless the Landlord requires it for other purposes), nor is the Landlord prevented from leasing a unit to any tenant at affordable or non-affordable rental rates. However, in order for the Landlord to claim the unit as an “affordable rental unit” for the purposes of the Program, the tenant must provide the required income verification documentation for approval by Manitoba Housing.

A Landlord may not lease an affordable residential unit to a related person, defined in subsection 251(2) of the *Income Tax Act* (Canada). Under the federal Income Tax Act a landlord is related to a person if the landlord and the person are "related persons", or persons related to each other, defined as follows:

- 251(2) For the purpose of this Act, "related persons", or persons related to each other, are
- (a) individuals connected by blood relationship, marriage or common-law partnership or adoption;
 - (b) a corporation and
 - (i) a person who controls the corporation, if it is controlled by one person,
 - (ii) a person who is a member of a related group that controls the corporation, or
 - (iii) any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and
 - (c) any two corporations
 - (i) if they are controlled by the same person or group of persons,
 - (ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
 - (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,
 - (iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
 - (v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or
 - (vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

Eligible Project

The minister shall certify a rental housing project as an eligible rental housing project for a taxation year ending not later than five years after the rental housing project became available for use if the minister is satisfied that

- (a) at least 10% of the residential units in the rental housing project are designated as and rented or available for rent as affordable residential units;
- (b) the Landlord has undertaken to make at least 10% of the residential units in the rental housing project available for rent as affordable units for at least five years after the rental housing project became available for use; and
- (c) in a taxation year that began after the rental housing project became available for use, at least 10% of the residential units in the rental housing project were available throughout the year as affordable residential units.

A Landlord is not required to retain the specific residential units designated as affordable residential units at the time of the Application for a Certificate of Eligibility under the Program provided a minimum of 10% of the units remain affordable residential units leased or available

to be leased to tenants that meet the income requirements of the Program throughout the year for at least five years after the rental housing project becomes available for use. The Landlord may choose to designate an alternate residential unit as an affordable unit either before initial occupancy or upon turnover of the unit. Should an *in situ* tenant be identified as an eligible tenant meeting the income requirements of the Program, the Landlord may designate that unit as an affordable unit, provided the tenant submits the required income verification documentation for approval by Manitoba Housing.

In addition:

- Landlords must have a permanent establishment in Manitoba.
- Eligible entities may be for-profit, not-for-profit, or non-profit housing co-operatives.
- Projects must be new construction, or conversion of existing properties that were previously used for non-residential purposes. New construction may include additions to existing rental properties to develop new residential rental units.
- Projects must include five (5) or more new residential rental units.

If the foregoing conditions have been met, the Minister may approve the application and provide a Certificate of Eligibility to be remitted with CRA Income Tax filing(s).

A project is ineligible if it is an existing residential property which has been renovated or altered to include more units within an existing structure without the expansion of physical space (e.g.: conversion of a single family home into a rooming house or subdivision of existing apartments).

CAPITAL COST

The Landlord shall provide, at the time of initial application, a schedule of the capital costs of the Project, in a form prescribed by Manitoba Housing (sample attached as Appendix 'C'). Manitoba Housing will review and approve the reasonableness of capital costs of the Project on which the Credit may be claimed.

For the purposes of calculation of the Credit, the capital cost of a Project will be reduced by the amount of any federal and/or federal provincial and/or provincial/municipal housing or homelessness assistance or any other grants or assistance provided for the benefit of the Project.

All of the other grants, assistance etc. including the final value of any financing received as a stream of payments over multiple years must be finalized before the Landlord may receive a Certificate of Eligibility under the Rental Housing Credit Program (see below).

APPLICATION FOR A CERTIFICATE OF ELIGIBILITY

In order to be considered for certification as an eligible rental housing project, Landlords must fully complete and submit a Certificate of Eligibility Application under the Rental Housing Credit Program (the “Application”). Applications for the 2013 tax year will be accepted by the Department of Housing and Community Development after January 2, 2014.

In addition to the Application, the Landlord must provide:

- A copy of the Project’s building permit. Only Projects developed under a building permit issued after April 16, 2013 are eligible
- A copy of the final Occupancy Permit for the Project
- Proof of ownership of the Project (certified copy of the Project’s title(s)).
- The capital costs of the Project, in a form prescribed by Manitoba Housing (sample attached as Appendix ‘A ’). Manitoba Housing will review the capital costs and determine the capital costs of the Project on which the Credit may be claimed
- A Schedule of the residential units, by unit number and type (i.e. one bedroom, two bedroom, etc.) comprising the Project, including the residential units initially designated as affordable residential units (minimum 10%), in a form prescribed by Manitoba Housing, and which may include additional required information describing the Project and the residential units.

Applications may be hand delivered by the applicant, by courier, or mail (recommend registered) to:

Manitoba Housing
Housing Delivery Branch (RHC Tax Credit)
Room 200 – 352 Donald Street
Winnipeg, Manitoba R3B 2H8

between the hours of 8:30-4:00 pm (Monday to Friday).

It is the responsibility of the Landlord to confirm that the Application has been delivered the Manitoba Housing.

Letter of Initial Eligibility

Prior to the submission of an Application for a Certificate of Eligibility, the Landlord may request from Manitoba Housing, a letter of initial eligibility for the Rental Housing Tax Credit. The content of the letter will be determined based on the level of detail that the landlord is able to provide respecting its proposed rental housing project, but in no case will the letter of initial eligibility constitute an approval of a Certificate of Eligibility. The latter can only be considered when the project is complete, all conditions outlined herein have been satisfied and all required documentation provided to Manitoba Housing.

Minimally, in order to receive a letter of initial eligibility, the Landlord must provide a description of the proposed rental housing project including location (legal description of site), total number of units, number of affordable units proposed (minimum 10% of total), proposed project start and completion dates and preliminary estimate of capital cost of the project. Additional information may enhance the content of the letter of initial eligibility, including confirmation from the municipal authority having jurisdiction of appropriate zoning for the proposed project, proof of ownership of the site (certified copy of the Project's title(s)), approved building permit, etc.

ANNUAL FILING (CERTIFICATE OF CONTINUING ELIGIBILITY)

Landlords will be required to report on their affordable units annually for five years.

Applications for a Certificate of Continuing Eligibility must be received no later than two months before the Landlord files its income tax return to allow Manitoba Housing at least two months to process the application.

Landlords must fully complete and submit a Certificate of Continuing Eligibility Application under the Rental Housing Credit Program. In addition to the Application, the Landlord must provide:

- Proof of ownership of the Project (certified copy of the Project's title(s)).
- A Schedule of the residential units, by unit number and type (i.e. one bedroom, two bedroom, etc.) comprising the Project, the units designated as affordable during the previous year, if different from the affordable units identified in the initial Application for a Certificate of Eligibility, or the previous year's Application for a Certificate of Continuing Eligibility and the units designated as affordable at the time of filing the Application for a Certificate of Continuing Eligibility, in a form prescribed by Manitoba

Housing, which may include additional required information describing the Project and the residential units.

- A Statutory Declaration, in a form approved/provided by Manitoba Housing, stating that the Landlord leased, and/or had available for lease, no less than the number of affordable units indicated in the initial Application for a Certificate of eligibility, throughout the entire previous year.

FOR FURTHER INFORMATION

For further information or for questions about the RHC tax credit or how to use this Guide may be directed to:

Housing Delivery Branch, Manitoba Housing

Telephone: (204)-945-5566

Toll Free: 1-866-689-5566

Email: housing@gov.mb.ca

APPENDIX 'A'
Schedule of Project Capital Costs

Estimated Capital Costs				
	Applicant Estimate (excluding GST)	Estimated GST (if any)	Total Estimate (including GST)	Manitoba Housing Use Only
Property Acquisition and Servicing Costs				
1 Purchase Price of Land				
2 Off-site Servicing				
3 Legal Services (for land acquisition)				
4 Surveys, Soil Tests, Land Title and Related Fees				
5 Variance Fees/Appraisals				
6 Other (specify)				
7 <i>Subtotal Property Acquisition and Servicing Costs</i>				
Fees and Charges				
8 Taxes during Construction				
9 Insurance during Construction				
10 Utilities during Construction				
11 Architect and Engineering Fees				
12 Development/Project Management Fees				
13 Legal Charges (excluding land acquisition)				
14 Permits and Other Development Fees				
15 Mortgage Insurance and Application Fees				
16 Rent up Costs				
17 Audit Charges				
18 Other (specify)				
19 <i>Subtotal Fees and Charges</i>				
Building and Landscaping Costs				
20 Building Construction Costs				
21 Rehabilitation/Conversion/Demolition Costs				
22 Onsite Servicing (specify)				
23 Landscaping				
24 Stoves, Refrigerators, Laundry Equipment				
25 Hard Furnishings				
26 Maintenance Equipment				
27 Contingency				
28 Other (specify)				
29 <i>Subtotal Building and Landscaping Costs</i>				
30 Total Project Capital Cost (lines 7 + 19 + 29)				
31 Total amount of any Federal and/or federal provincial and/or provincial/municipal housing assistance or grants				
32 Total Residential Capital Costs (line 30 - 31)				