

TITLE 70: DEPARTMENT OF FINANCE

**SUBCHAPTER 70-40.3
DEVELOPER TAX REGULATIONS**

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Subchapter Authority: 1 CMC §§ 2553 and 2557; 4 CMC § 1946.

Subchapter History: Amdts Adopted 21 Com. Reg. 16796 (May 19, 1999); Amdts Proposed 21 Com. Reg. 16621 (Mar. 18, 1999); Amdts Adopted 19 Com. Reg. 15794 (Dec. 15, 1997); Amdts Proposed 19 Com. Reg. 15728 (Oct. 15, 1997); Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

Commission Comment: 1 CMC § 2551 creates the Department of Finance within the Commonwealth government. 1 CMC § 2553 authorizes the Department, among other things, to collect and deposit all local revenues from any source, including taxes, custom duties and license fees. The Department is authorized to adopt rules and regulations regarding those matters within its jurisdiction. See 1 CMC § 2557. 1 CMC § 2571 establishes the Division of Revenue and Taxation (Division), headed by a Chief (now the Director) with supervision over all matters concerning revenue and taxation on a day-to-day basis.

Title 4, division 1 of the Commonwealth Code, 4 CMC §§1101-1991, as amended by PL 14-35 (effective Oct. 12, 2004), contains the revenue and taxation laws applicable in the Commonwealth. PL 3-11, the “Revenue and Taxation Act of 1982” took effect, with some exceptions on June 1, 1982. PL 9-22 (effective retroactively January 1, 1995), codified in part as amended at 4 CMC §§ 1201-1717, a comprehensive tax reform measure, repealed and reenacted most of PL 3-11. See the comment to 4 CMC § 1101. PL 14-35 again substantially revised numerous provisions of the tax code.

PL 8-23 (effective July 19, 1993), the “Developer Infrastructure Tax Act of 1993,” codified as amended at 4 CMC §§ 1931-1946, imposes a tax on developers, as defined in the act, of new development projects. 4 CMC § 1946 authorizes the Director of Finance (now the Secretary) to promulgate rules and regulations to carry out the intent and purpose of the act in consultation with the building safety official.

The tax in this subchapter is referred to variously as the “developer tax” and the “developer’s tax.” 4 CMC § 1934 refers to it as the “developer tax.”

Part 001 - General Provisions

§ 70-40.3-001 Authority

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The authority for the promulgation and issuance of Developer Tax Regulation No. 1600, codified in this subchapter, is by virtue of § 20 of PL 8-23 [4 CMC § 1946], 1 CMC § 2553 and 1 CMC § 2557.

Modified, 1 CMC § 3806(d).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

§ 70-40.3-005 Purpose

The purpose of the regulations in this subchapter is to establish policies and procedures and to provide uniform standards for the implementation, collection, and enforcement of the developer's tax.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

Commission Comment: The Commission changed “are” to “is” to correct a manifest error. The Commission inserted a comma after the word “collection” pursuant to 1 CMC § 3806(g).

§ 70-40.3-010 Definitions

- (a) “Abandoned”. Abandoned means no activity has occurred for a period of at least one year in the development or conduct of a business pursuant to a previously approved development plan.
- (b) “Alteration of the Size of a Structure or Land”. Alteration of the size of a structure or land means any extension or increase in the floor area or height of a building or structure or the increase in the area of land use.
- (c) “Annual”. For purposes of the regulations in this subchapter, the term “annual” means a calendar year, unless the context otherwise requires.
- (d) “Change in the Type of Use”. Change in the type of use shall include:
- (1) Any change in a previously established use contemplated under the Uniform Building Code (UBC). Under the UBC, a change in use requires that a building be brought to conform to the requirements of the UBC. The hazard level may have changed or the requirements are more restricted. It may also include a change in the character of the occupancy;
 - (2) Any change in the purpose, capacity, character, or method of operation from that specified in the application for development permit or which existed previously;
 - (3) A partial change while maintaining the previously established use;
 - (4) In determining whether a change in use is a material change in use, a facts and circumstances test shall be used on a case by case basis. Some of the facts and circumstances considered shall be:

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- (i) The reason for the change;
 - (ii) An increase in gross revenue is expected to be generated;
 - (iii) A minimum of three thousand dollars is expected to be expended for the change in use.
- (5) Examples
- (i) A owns a restaurant and wants to remodel the restaurant into a nightclub. This change constitutes a change in use.
 - (ii) B is the owner of a single family dwelling unit and intends to turn this unit into a multi-family dwelling unit. This change constitutes a change in use.
 - (iii) C owns a restaurant and wants to redesign the restaurant to include a bar and dance floor area. This change constitutes a change in use.
 - (iv) D owns a single family dwelling unit and is converting an area of the unit into an office from which to conduct business. This change constitutes a change in use.
 - (v) Same as (d)(4)(iv), except D wants to convert a bedroom into a personal entertainment center for his family. This does not constitute a change in use.
 - (vi) E purchases property that has not been used for 10 months. E renovates this property after applying for a building permit, to open the same type of business that existed previously. Previously there was a Mexican restaurant and E is planning on opening a Middle Eastern restaurant. The renovation costs \$20,000. The changes, as a result of the renovation, do not result in an increase in the occupancy. This proposed development, the renovation, is not a development that constitutes a change in use, but merely a re-establishment of use that has not been abandoned and is not subject to the developer's tax.
- (e) "Change Order". Change order means any change in the project which changes the estimated total project cost.
- (f) "Commencement of Excavation". Commencement of excavation means the initiation of any land-related activity on a project. No excavation shall commence until all other development requirements have been satisfied.
- (g) "Departure from Normal Use". Departure from normal use means a change in the type of use.
- (h) "Development Permission Granted by a Commonwealth Government Agency". Development permission granted by a Commonwealth government agency is defined as permit issuance by the Department of Public Works, Building Safety Code Division.
- (i) "Director". Director means the Director of Finance or his designee.
- (j) "Dwelling Unit". Dwelling unit means one or more rooms designed as the complete facility for cooking, sleeping, bathing and living for a single family and occupied by no more than the equivalent of one family and contains a single kitchen.
- (k) "Family". Family shall mean the collective body of persons living in the owner/leaseholder's household and includes relatives, friends or roommates.

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(1) “Generation of Additional Electrical, Water, Sewage, or Solid Waste Disposal”. Generation of additional electrical, water, sewage, or solid waste disposal shall be determined by an increase of at least 25% for three consecutive month from the previous 12 month average of utility usage. If a developer has used the development for less than 12 previous months then an average is taken of total months of usage prior to the increase in intensity.

(m) “Increase in Occupancy”. Increase in occupancy allowance shall be determined pursuant the UBC.

(n) “Increase in Utility Usage”.

(1) Increase in utility usage means an increase of at least 25% for three consecutive months from the previous 12 month average of utility usage. If a developer has used the development for less than 12 previous months then an average is taken of total months of usage prior to the increase in intensity.

(2) Example. Business X has an average utility usage of 10,000 kilowatt hours per month based on the previous 12 month usage (May 1992 through April 1993). In the month of May 1993, X’s utility usage is 18,000 kilowatt hours. In June, X’s utility usage was 17,000 kilowatt hours. In July, X’s utility usage was 20,000 kilowatt hours. For three consecutive months, X’s kilowatt usage was more than 25% of that usage for the previous 12 months. Therefore X has an increase in utility usage.

(o) “Material Increase in Intensity of Use”. Material increase in intensity of use shall include:

- (1) Any increase in the occupancy allowance;
- (2) Any increase in the operating hours by two or more hours per day;
- (3) Any increase in the utility usage.
- (4) Any generation of additional electrical, water, sewage, or solid waste disposal.

(p) “Mining Operation”. Mining operation shall include the operation of mineral, rock, sand, soil, or coral quarries in, on, over or under land or in, on, over or under submerged land.

(q) “Re-establishment of Use”. Re-establishment of a use is defined as abandoned development being proposed to be re-established for the same use as existed prior to abandonment.

(r) “Total Project Costs for a Mining Operation”.

(1) Total project costs of a mining operation shall be determined on a annual basis for the projected cost of the project for the upcoming year.

(2) Example: In August 1993, Business A decides to start the business of a coral quarry. When business A applies for a license, A will estimate the projected cost of the project for the year 1993. At the end of 1993, if A has underestimated the cost of the project, then A shall pay the actual tax on the cost of the project for that year on or before February 28, 1993. In January 1994, A shall again estimate the projected cost of the project for the year 1994 and pay the tax on that estimated cost on or before January 31 of

the year of the estimate, 1994. At year end in 1994, A shall reconcile the estimated tax with the actual tax based on the actual cost of the project for the year 1994. Such reconciliation and payment of additional tax shall be done on or before February 28 of the following year, in this case 1995.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

Commission Comment: The final paragraph of subsection (d) and the paragraphs of subsections (n) and (r) were not designated. The Commission designated subsections (d)(5), (n)(1) and (n)(2), and (r)(1) and (r)(2). The Commission placed quotation marks around terms defined. The Commission corrected the word “month” in subsection (n)(1) to “months” pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the word “sewage” in subsection (o)(4) pursuant to 1 CMC § 3806(g).

Part 100 - Developer Tax Provisions

§ 70-40.3-101 Exceptions to the Tax

The following types of development are exempted from the developer’s tax requirement.

- (a) New residential construction consisting of not more than two dwelling units.
- (b) Alteration or expansion of an existing single family dwelling unit or duplex where no additional units are created and the use is unchanged.
- (c) The construction of accessory buildings or structures which do not exceed 10% of the total floor area or density of the primary land use and do not generate additional electrical, water, sewage, or solid waste disposal demands above those already associated with the primary land use.
- (d) The replacement of a destroyed or partially destroyed multi-family dwelling or commercial building or structure with a new building or structure that will use no additional water, sewer, electrical or solid waste capacity than the structure being replaced. Any decrease in the generation of water, sewer, electrical or solid waste capacity shall have no affect on any previously collected developer tax.
- (e) Any change in the type of use of a structure or land which does not generate additional electrical, water sewage or solid waste disposal demands above those associated with the previous type of use. Any decrease in the generation of water, sewer, electrical or solid waste capacity shall have no affect on any previously collected developer tax.

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

Commission Comment: The Commission corrected the word “developers” in the first paragraph to “developer’s” pursuant to 1 CMC § 3806(g).

§ 70-40.3-105 Determination and Payment of Developer Tax

(a) Statement of Total Project Costs; Payment of Administrative Fee. A statement of total project costs shall be made by the developer or his agent and shall be submitted in such form as the Director may prescribe. The statement of total project costs shall be accompanied by a non-refundable administrative fee. The non-refundable administration fee shall be at the same rates as those fees established in the Building Safety Code Regulations, vol. 12, no. 9, Commonwealth Register, page 7338, Sept. 15, 1990 [NMIAC, title 155, subchapter 10.1].

(b) Application for Building Permit.

(1) An application for a building permit shall be submitted in such form, through such procedure, with additional information, and accompanied by the required fee as prescribed in the regulations promulgated in the Building Safety Code Regulations of the Department of Public Works [NMIAC, title 155, subchapter 10.1]. Prior to issuing a building permit, the payment of the developer tax is required as provided in subsection (d) of this section.

(2) Application for building permit shall be supported by the following:

(i) A statement of estimated total project cost certified as true under penalties of perjury;

(ii) A evidence of tax credits certified as true under penalties of perjury;

(iii) An official receipt representing payment of the estimated payment of the developer tax; and

(iv) An official receipt representing payment of the administrative filing fee.

(c) Review by the Building Safety Official. The building safety official shall verify the accuracy of the statement of total project costs and the evidence of the tax credits within ten working days. If the application is found to be accurate and complete then the applicant will pay his developer tax based on the requirements of subsection (b). If the application is found to be inaccurate or incomplete then it will be returned to the applicant with a written copy of the reasoning related to the finding of inaccuracy. The applicant can either amend the application or resubmit the application to the building safety official. If the application is still found to be incomplete or inaccurate, the Director shall commission an independent study to resolve the inaccuracy. If the independent study reveals that the application was indeed inaccurate, the applicant will be billed for the cost of the independent study. The results of the independent study will be binding.

(d) Payment of Tax Required. The payment of the developer tax is required prior to the issuance of a building permit. The Director may authorize a schedule of payments based on the following standards:

(1) An initial payment shall be no less than 50% of the total estimated developer tax due.

(2) Further installment payments shall be made at monthly intervals until the final payment of the total estimated developer tax due is paid.

(3) The minimum monthly installment payment shall be no less than five percent of the total estimated developer tax due.

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(4) Installment payments shall be made on or before the first day of each month following the month the building permit is issued.

(5) Installment payments shall be made at the Department of Finance, Division of Treasury. The developer shall provide the building safety official with a copy of the official receipt issued by Treasury as evidence of timely payment of the installment within five days of payment.

(e) Failure to Pay an Installment When Due and Issuance of a Cease and Desist Order.

(1) The Director may terminate an installment agreement entered into in the case of the failure of the developer --

(i) To pay any installment at the time such installment payment is due, or

(ii) To pay any other tax liability at the time such liability is due.

(2) If the installment payments schedule is terminated, the developer may appeal the termination to the Director. The appeal must be in writing and include the reasons for the failure to pay the tax installment or other CNMI tax liability in a timely manner. The Director may accept new terms for the payment or order such person to cease project development until such time as payment is made. Failure to cease activity shall be in direct violation of the Public Law 8-23 [4 CMC §§ 1931-1946]. This order may be enforced by application to the Commonwealth Superior Court for injunction to prohibit such persons from continued project development. A certificate of occupancy permit may not be issued until such time as all developer tax payments including interest and penalties have been made, except as provided in subsection (j) of this section.

(f) Time for Payment of Installment Where Last Day for Payment Falls on Saturday, Sunday, or Legal Holiday. When the last day prescribed for paying an installment payment falls on Saturday, Sunday, or a legal holiday, the payment shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, legal holiday shall also include administrative holidays.

(g) Project Changes.

(1) If the developer makes a change in the plans of development which increases the estimated total project cost following payment of the estimated developer tax, the developer shall submit a statement of the change orders to the Director. The developer shall submit a statement of the change which describes the scope and cost of the proposed change.

(2) The Director shall review the change statement and determine whether additional payment is warranted. If additional payment is warranted the developer will be required to pay the additional tax. Payment must be made under the requirements of subsection (b).

(h) Final Payment. Following completion of a development project, the developer shall submit the statement of actual total project cost including any adjustments in the total project costs resulting from change order to the Director. The final statement shall be submitted to the Director within thirty days of completion of the project. The

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developer shall also include with the statement all documentation necessary and sufficient to substantiate the total project cost. The Director may require that the statement be audited by a certified public accountant. Once the Director is satisfied that the statement is complete and accurate, the developer shall be liable for the total amount of tax owed for the development based on the final total project cost less any previous tax payments or credits received and approved for credit against the developer's tax liability. The developer shall pay the additional tax at the Department of Finance, Division of Treasury.

(i) Accuracy of Project Cost.

(1) If the Director makes a finding that the estimated total project cost is less than 85% accurate with respect to the actual total project cost, including change orders, the developer shall be required to pay the remainder tax due plus a 10% penalty on the amount not paid plus interest from the date the building permit is issued in the amount of 15% as provided in 4 CMC § 1817.

(2) Example. Developer estimates his total project costs to be \$10,000,000 and pays the estimated tax of \$200,000 before the building permit is issued on November 1, 1993. During the development of the project the developer made a change order which resulted in a \$500,000 increase in estimated project cost. Upon completion of the project on November 1, 1994, the statement of final total project cost was \$15,000,000 including the change order. The estimated total project cost of \$10,000,000 is less than 85% accurate with respect to the total actual project cost (\$12,750,000). Therefore, the developer shall pay the remainder tax due of \$100,000 plus 10% penalty of \$10,000 plus interest.

(j) Issuance of a Certificate of Occupancy. A certificate of occupancy permit shall not be issued by the Building Safety Division unless the developer has made the final payment of the developer tax due including penalty and interest, until such time as all developer tax payments including interest and penalties have been made except that an occupancy permit may be issued for any reasonably severable portion of the project of which the estimated tax has been paid for projects whose total estimated project cost including change orders exceeds thirty million dollars. If the total estimated project cost as determined in 4 CMC § 1932(g) including changed orders exceeds thirty million dollars and the developer is making payments, as provided in subsection (d) of this section, upon certification by the Secretary of Finance that the developer is current in making payments, an occupancy permit may be issued for any reasonably severable portion of the project prior to payment of the remainder of the tax due for the completed project. Upon notification by the Secretary of Finance that the developer has failed to make tax payments according to the schedule and procedure provided in subsection (e), the Building Safety Official may revise the occupancy permit to include only any reasonable severable portion of the project for which the estimated developer tax has been paid or the Building Safety Official may revoke the occupancy permit upon notice and hearing as provided in 1 CMC §§ 9101, et seq., Administrative Procedure Act, as the case may be determined.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

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History: Amdts Adopted 21 Com. Reg. 16796 (May 19, 1999); Amdts Proposed 21 Com. Reg. 16621 (Mar. 18, 1999); Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

Commission Comment: The original paragraphs of subsections (b), (e), (g) and (i) were not designated. The Commission designated subsections (b)(1) and (b)(2), (e)(1) and (e)(2), (g)(1) and (g)(2), and (i)(1) and (i)(2).

In subsection (j), the Commission changed “Procedures” to “Procedure” to correct a manifest error.

The 1999 amendments amended subsections (e)(2) and (j).

§ 70-40.3-110 Overpayment of Developer Tax

An overpayment of developer tax shall be refunded within 90 days of an application for refund made to the Director. Such application shall include a copy of the receipt of the estimated payment, any change order, the statement of actual total project cost including any change order. Where the Director requires that the statement of actual total project costs be audited by a certified public accountant, the 90 day period shall be suspended during the time of the audit. Interest shall be allowed and paid on a refund of an overpayment not made within the 90 day period, other than when an audit is required, at the rate of the sum of the federal short-term rate for the first month in each calendar quarter plus 2 percentage points.

Modified, 1 CMC § 3806(f).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

§ 70-40.3-115 Unfinished Development

(a) If a developer purchases an unfinished development in which the previous owner or developer has paid estimated developer tax due, the new owner or developer after providing evidence of the payment of the estimated developer tax paid by the prior owner or developer shall not be required to pay the estimated developer tax due; provided that, the developer makes no changes on the original scope of the project and the project had not been abandoned. A developer purchasing a partially completed development shall be responsible for payment of any remaining developer tax due whether by the installment method established for the previous developer or as final payment upon completion.

(b) If it is determined that the payment of the developer tax by a prior developer was insufficient for any reason, the purchasing developer shall pay a supplemental estimated tax to avoid any penalty upon completion of the project.

(c) A developer re-initiating a project that had previously been abandoned shall be required to pay the requisite developer tax without being credited for payments made by previous developers.

(d) The transfer of a building permit must be approved by the Building Safety Code Division on* concurred by the Director. For purposes of concurring on such transfer the Director may conduct the necessary investigations to determine if the outgoing developer has satisfied all CNMI tax obligations. In the event the outgoing developer did not fully satisfy all tax obligations, the transfer of the permit shall be allowed only if the new developer assumes all prior unsatisfied tax obligation of the outgoing developer.

*So in original.

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

§ 70-40.3-120 Administrative Review

(a) Any appeal regarding the collection, payment, or enforcement of the developer tax shall be made in writing to the Director within 30 days from the date the payment is due or enforcement action is commenced, whichever is applicable. All appeals shall be made in accordance with 1 CMC, division 9, chapter 1 (Administrative Procedure Act).

(b) A written appeal should contain:

- (1) The name, address, and social security number or employer identification number, building permit application number and permit number,
- (2) A statement of the nature of the appeal,
- (3) The location of the project which relates to the request for an appeal,
- (4) A statement of the facts supporting the appeal and potential solutions to the disagreement.
- (5) A statement stating the law or other authority on which the appeal relies.
- (6) A declaration that the facts under (b)(4) are true under penalties of perjury.

Modified, 1 CMC § 3806(f).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

Commission Comment: The Commission inserted a comma after the word “payment” in subsection (a) pursuant to 1 CMC § 3806(g).

§ 70-40.3-125 Judicial Review

(a) Within 20 days after the final decision of the Director is issued, a person aggrieved may appeal the decision to the Superior Court.

(b) A decision is final when the Director has provided a written decision to the aggrieved person after a proper appeal has been made by such person. A proper appeal is one where the requirements of the regulations in this subchapter, section and the Administrative Procedure Act [1 CMC §§ 9101 et seq.] have been met.

Modified, 1 CMC § 3806(d), (g).

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History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

In subsection (b), the Commission inserted a comma between “subchapter” and “section” and changed “Procedures” to “Procedure” to correct manifest errors.

§ 70-40.3-130 Tax Liens and Levies

(a) All developer taxes imposed or authorized shall be a lien upon any property, real or tangible or intangible personal, of the developer obligated to pay developer tax. The lien shall arise at the time the developer applies for a building permit and pays an estimated developers tax and shall continue until the liability for the developer tax is satisfied on final payment or the lien is released by the Director.

(b) Notice of a tax lien shall be recorded with the Commonwealth Recorder’s Office. A notice of a tax lien so recorded shall be perfected as to all of a taxpayer’s real property located within the Commonwealth, to all tangible and intangible personal property and income of a taxpayer residing within the Commonwealth, and to all tangible and intangible personal property and income located in the Commonwealth of a taxpayer residing without the Commonwealth.

(c) The validity and the priority of a tax lien of the Commonwealth government in the property and income of a developer for unpaid developer taxes, penalties, and interest (and any cost that may accrue in addition thereto) shall, as against anyone else claiming an interest in the same property or income of the taxpayer, be determined in accordance with applicable Commonwealth law (including 1 CMC § 3711 and 2 CMC § 4520). No tax lien of the Commonwealth government in a taxpayer’s property and income shall have priority over a bona fide purchaser or lessee of the taxpayer for valuable consideration, a bona fide holder of a security interest for value, a bona fide judgment lien creditor or holder of another bona fide interest or encumbrance for value, unless the Commonwealth government’s tax lien has been recorded previously. The Commonwealth shall have priority where a party claiming the competing interest in the property or income of the taxpayer has actual notice of the tax lien. No interest claimed by a competing party in property or income of a taxpayer shall prevail over a tax lien of the Commonwealth government unless the party claiming such competing interest has taken all steps under applicable law to properly create and perfect the interest claimed in the taxpayer’s property and income, and said interest is not otherwise contrary to or in violation of Commonwealth law.

(d) Developer taxes may be collected by levy upon any property, real or tangible or intangible personal, of the developer obligated to pay the developer taxes. In addition to any other levy, collection and foreclosure procedures, powers and remedies allowed by CNMI law (including 2 CMC § 4520, 4 CMC § 1813, 4 CMC § 4201 through 4 CMC § 4210, 7 CMC § 4102 through 4104), the Director shall have the right to use the levy, collection and foreclosure procedures, powers and remedies set forth in NMTIT § 6331

through § 6331(d)(4) and (g) and NMTIT § 6335(f) and (g), and the reference to NMTIT § 6334 contained in NMTIT § 6331 shall not apply. The Director shall also have the right to use any other levy procedures as outlined within the NMTIT § 6332 through § 6333 and § 6335 through § 6337 to the extent such procedures are not in conflict with any procedure provided under Commonwealth law.

Modified, 1 CMC § 3806(f).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

Commission Comment: The Commission inserted a comma after the word “penalties” in subsection (c) pursuant to 1 CMC § 3806(g).

§ 70-40.3-135 Civil Action of Enforcement

In addition to any other collection procedures of any developer tax imposed or authorized, such tax may also be collected by a civil suit brought by the Attorney General either in the name of the Commonwealth or the Director of Finance.

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

§ 70-40.3-140 Penalties

Any developer tax is levied or imposed when the tax is required to be paid. An estimated tax is required to be paid prior to obtaining a building permit. Since a building permit is not issued until the estimate is paid, this penalty does not apply at that point. Final payment is required when the project is complete. The tax is levied or imposed when the final payment is due. Failure to pay this final payment when due shall be subject to a ten percent penalty of the amount of developer tax due if the period of nonpayment is not more than one month, with an additional ten percent for each additional month or fraction thereof during which nonpayment continues. The penalty shall not exceed 100 percent in the aggregate.

Modified, 1 CMC § 3806(e).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

§ 70-40.3-145 Tax Credits

(a) CUC Connection Fees. If a developer, prior to the effective date of the regulations in this subchapter paid fees in excess of the actual cost of connection to CUC utilities, such excess CUC connection fees shall be credited against the estimated total developer tax and final developer tax liability. CUC shall pay over to the Department of Finance amounts collected and used as a credit against developer tax. The Department of Finance shall deposit such payments into the trust account of the senatorial district where the new development is located.

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(b) CRM Contributions. If a developer has made infrastructure contributions to the Coastal Resources Management Office, such contributions shall be credited against the estimated total developer tax and final developer tax liability. CRM shall pay over to the Department of Finance amounts collected and used as a credit against developer tax. The Department of Finance shall deposit such payments into the trust account of the senatorial district where the new development is located.

(c) Other Payments. If a developer makes a payment toward infrastructure as a condition to receiving a building permit from the Department of Public Works or as a condition of receiving a public land lease, or legislative approval on such a lease, such payment shall be credited against the estimated total developer tax and final developer tax liability. Any government agency receiving such payment shall pay over to the Department of Finance amounts collected and used as a credit against developer tax. The Department of Finance shall deposit such payments into the trust account of the senatorial district where the new development is located. In the event the amount of available tax credit exceeds the developer tax liability, the excess tax credit shall not constitute a right to a refund nor shall the excess credit be used toward future development projects. The payment toward infrastructure applies only to the immediate project planned for which the permit was issued or the property was leased.

(d) Dedicated Capital Improvement. The value of any capital improvement accepted by the Director that the developer dedicates to electrical, water, sewer, roads, or surface water drainage and flood control systems shall be credited against the developer tax liability. The dedicated capital improvement shall exist prior to being allowed as a credit. The dedicated capital improvement may be accepted by the Director after inspection and approval by the Director and the appropriate managing agency or department and such improvement has not been reimbursed by the Commonwealth. The value of the dedicated capital improvement shall be determined by an appraisal prepared by an appraiser chosen with the consent of the Director. The value shall not exceed the reasonable cost to the developer of the dedicated capital improvement. In the event the amount of available tax credit exceeds the developer tax liability, the excess tax credit shall not constitute a right to a refund nor shall the excess credit be used toward future development projects. The value of the dedicated capital improvement applies only as a credit on the immediate project planned.

(e) Evidence of Credit. The developer shall supply to the Director the following:

- (1) A valid receipt that payment under (a)-(c) above has been made, and
- (2) In the case of subsection (d) of this section, a statement certified by the Director of the value of the improvement and his acceptance.

Modified, 1 CMC § 3806(d).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).

§ 70-40.3-150 Tax-exempt Organizations

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(a) Education or Religious. Pursuant to PL 9-14 [4 CMC § 1933], new development undertaken by a non-profit religious or educational organization where the structure is to be used primarily for religious or educational purposes is exempt from the infrastructure tax. In order to qualify for this exemption, the organization must follow the procedure specified in subsection (b).

(b) Application Process. In order to qualify for an exemption from the infrastructure tax as provided in this section, the organization must comply with each of the following requirements:

(1) Present to the Building Safety Official a copy of the letter issued by the CNMI Division of Revenue and Taxation granting the organization tax-exempt status as a religious or educational organization;

(2) Present to the Building Safety Official a written request for the structure to be exempt from the infrastructure tax as a religious or educational organization; and

(3) Present to the Building Safety Official a written statement signed under penalties of perjury by an authorized and knowledgeable representative/agent of the organization containing all facts which support that the structure will be used primarily for religious or educational purposes.

(c) While an application for tax-exempt status is pending with the Division of Revenue and Taxation, the organization is not exempt from taxes imposed under chapter 4, division 10, of title 4 of the Commonwealth Code; however, if the organization is later determined by the Division of Revenue and Taxation to be exempt from taxation, the person may apply pursuant to the procedures established by the Building Safety Official and the Department of Finance for a refund for all taxes imposed under chapter 4, division 10, of title 4 of the Commonwealth Code imposed after (but not before) the person submitted its application to the Division of Revenue and Taxation.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 19 Com. Reg. 15794 (Dec. 15, 1997); Amdts Proposed 19 Com. Reg. 15728 (Oct. 15, 1997).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (c).

Part 200 - Miscellaneous Provisions

§ 70-40.3-201 Severability

If any provision of the regulations in this subchapter should be held invalid by a court of competent jurisdiction, the validity of the remaining provisions of these regulations shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Adopted 16 Com. Reg. 11690 (Feb. 15, 1994); Proposed 15 Com. Reg. 11329 (Dec. 15, 1993); Emergency 15 Com. Reg. 11313 (Dec. 15, 1993) (effective for 120 days from Dec. 15, 1993).