



# STATE OF CONNECTICUT DEPARTMENT OF REVENUE SERVICES

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VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

September 27, 2021

Cathy Carbonaro-Schroeter  
Deputy Director Administrative Services  
City Hall  
165 Church Street  
New Haven, Connecticut 06510  
[ccarbona@newhavenct.net](mailto:ccarbona@newhavenct.net)

**Re: 2021 Connecticut Neighborhood Assistance Act Approved Programs List**

Dear Deputy Director Carbonaro-Schroeter,

The Department of Revenue Services (the “Department”) hereby responds to correspondence from the Office of Corporation Counsel for the City of New Haven (the “City of New Haven”) dated September 16, 2021 regarding Connecticut’s R.E. Van Norstrand Neighborhood Assistance Act tax credit program (the “NAA tax credit program”). Through said letter the City of New Haven claims to provide the Department with postproject audits required by law and requests guidance as to its role in administering the NAA tax credit program. As set forth more fully herein, the documents that the City of New Haven provided are both untimely and fall short of complying with the plain language of the statute and regulation governing the postproject audit requirements of the NAA program. See Conn. Gen. Stat. § 12-637a and Conn. Agencies Regs. § 12-638-8. Additionally, per your request, I have set forth below guidance confirming that the City of New Haven is solely responsible for selecting those programs that will be eligible for investment in the NAA tax credit program in a given year. To suggest otherwise would defy logic (under no circumstances would the Department be in any position to determine what programs would benefit the City of New Haven) and also is contrary to the plain language of Conn. Gen. Stat. § 12-632.

**I. The documents the City of New Haven submitted to the Department on September 16, 2021 are both untimely and do not comply with Conn. Gen. Stat. § 12-637a and Conn. Agencies Regs. § 12-638-8.**

By way of brief background, on or about September 1, 2021, I issued a letter to you explaining that certain programs<sup>1</sup> that the City of New Haven certified as approved programs eligible for investment under the NAA tax credit program were ineligible for investment in taxable year 2021. More specifically, I explained that the reason why the Programs were ineligible is because the City of New Haven had not submitted the required postproject audits in connection with said Programs for one or more taxable years from 2015 to the present.

In response to my letter, the City of New Haven provided the Department with a series of documents that the City of New Haven purports comply with the provisions of Conn. Gen. Stat. § 12-637a and Conn.

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<sup>1</sup> The programs at issue are as follows and are referred to hereinafter as the “Programs”: Edgewood Corners Inc., Edgewood Elm Housing Inc., Edgewood Village Inc., F.O.H. Inc., Yedidei Hagan Inc., and Yeshiva of New Haven Inc.

Agencies Regs. § 12-638-8. Upon review, said documents fall far short of compliance with the requirements set forth in said statute and regulation.

To this end, and as you are aware, each of the Programs received investment in one or more taxable year from taxable year 2015 through 2020 in excess of \$25,000. As such, each said Program was required to submit a postproject audit that met the following statutory and regulatory requirements:

- each postproject audit was required to have been submitted to the City of New Haven by the Program “within three months” of the due date of investment;
- each postproject audit was required to have been “prepared by a certified public accountant”;
- each postproject audit was required to contain, at minimum, sufficient information that the City of New Haven could verify and certify that “expenditures were made in accordance with the program as proposed by such organization”;
- each postproject audit was required to have been submitted to the Department by the City of New Haven “within one month after its receipt of the post project audit”;
- each submission of a post project audit was required to have been reviewed and certified by the City of New Haven prior to submission to the Department.

See Conn. Gen. Stat. § 12-637a and Conn. Agencies Regs. § 12-638-8. The documents provided by the City of New Haven meet none of the above-listed requirements.

First and foremost, the documents that the City of New Haven submitted for the Programs are untimely. As noted above, Conn. Agencies Regs. § 12-638-8 requires the postproject audits to have been completed and sent to the City of New Haven within three months of the due date of investment, and the City of New Haven was correspondingly required to send said postproject audits to the Department within one month of receipt. The City of New Haven submitted documents on or about September 16, 2021 for Programs conducted in taxable years 2015 through 2019, more than one (1) to five (5) years too late, depending on the year.

Moreover, not a single one of the documents submitted by the City of New Haven contains any indicia that it was prepared by a certified public accounting firm as required by the plain language of Conn. Agencies Regs. § 12-638-8 (“The post-project audit . . . shall be prepared by a certified public accounting firm. . .”). Rather these documents simply contain a recitation of the total amount of investment. As set forth in Conn. Gen. Stat. § 12-637a, at minimum, the audit was required to include sufficient information that the City of New Haven could both verify and certify that “such expenditures were made in accordance with the program as proposed by such organization. . .” None of the documents even identify the expenditures made in connection with the Programs. Furthermore, the City of New Haven has not certified said documents as appropriate postproject audits including a “verif[ication] that such expenditures were made in accordance with the programs as proposed by such organization.”

Consistent with the above, the documents provided to the Department as postproject audits of the Programs were not produced timely, said documents were not prepared by a certified public accounting firm, said documents do not contain the information the City of New Haven would need to verify that appropriate expenditures were made by the Programs, and the City of New Haven has not included the required certifications. Accordingly, given that the documents that the City of New Haven provided are both untimely and fall short of complying with the plain language of Conn. Gen. Stat. § 12-637a and Conn. Agencies Regs. § 12-638-8 governing the post project audit requirements of the NAA program, the Department is precluded from accepting said documents.

**II. The City of New Haven has the sole authority to determine which programs will be eligible for investment under the NAA tax credit program in a given year. Moreover, the City of New Haven's reliance on a 2010 legislative amendment is misplaced.**

The City of New Haven has also sought guidance from the Department regarding the City's role in administering the NAA tax credit program. Specifically, the City of New Haven appears to be under the impression that it has no role in the identification, selection, and certification of the programs that are placed on the list as eligible for investment. In support of its position, the City of New Haven places great weight on a 2010 legislative amendment. As set forth below, the City of New Haven's interpretation not only defies logic (under no circumstances would the Department be in any position to determine what programs would benefit the City of New Haven) but also is contrary to the plain language of Conn. Gen. Stat. § 12-632. Said statute makes it clear that the General Assembly has delegated to municipalities the sole authority to determine those programs that are eligible for investment under the NAA tax credit program. Moreover, the City of New Haven's reliance on the 2010 legislative amendment is misplaced as said amendment pertains to the Department's authority to review proposals by businesses to invest in said programs and has no impact on the eligibility of programs.

As you are aware, the purpose of the NAA tax credit program is to provide an opportunity and financial incentives in the form of tax credits to businesses seeking to make charitable contributions to programs that would benefit municipalities in Connecticut. In order to effectuate this goal, the General Assembly delegated to municipalities the authority to determine those programs that will be eligible for investment under the NAA tax credit program. See Conn. Gen. Stat. § 12-632(a)(1). Specifically, Conn. Gen. Stat. § 12-632(a)(1) provides in pertinent part that "any municipality desiring to obtain benefits under the provisions of [the NAA tax credit program] shall, *after approval of the legislative body of such municipality*, submit to the Commissioner of Revenue Services a list . . . of programs eligible for investment by business firms. . ."<sup>2</sup> As explained below, this clear and unambiguous language has been in effect since 1995.

The legislative history of Conn. Gen. Stat. § 12-632 reflects that at one time the State had input into which programs were eligible for investment. To that end, prior to 1995, the NAA tax credit program was administered by the Department of Social Services (formerly known as the Department of Human Services, referred to herein as "DSS"), which evaluated the programs municipalities proposed prior to their inclusion on the list to determine if they were appropriate charitable programs that would benefit Connecticut municipalities. This changed in 1995.

After hearing testimony that municipalities were better suited to determine what programs would benefit them, the General Assembly determined that the State's evaluation of said programs was unnecessary and removed DSS<sup>3</sup> from the administration of the program. Senator Lovegrove remarked regarding how the program would operate without DSS: "Presumably any city council would have discussions with the not-for-profit as to what they have in mind, what they intend to do, what their project is going to be, before they would put their stamp of approval on that particular program to receive contributions in exchange for state tax credits. . . . If -- if, in fact, a not-for-profit dealing with affordable housing goes off and puts up a project that a lot people don't like, I'd say shame on the city council for not knowing what they were doing when they put their name on the list." Committee Hearing Transcript, Sen. Lovegrove June 5, 1995.

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<sup>2</sup> See Bottone v. Town of Westport, 209 Conn. 652, 668-70 (1989) ("Such an approach to delegations by a state to a municipality acknowledges the nature and respective resources of state and local governments. It would not be realistic to assume that the state legislature could address all of the local concerns in the state").

<sup>3</sup> In addition to removing DSS from the NAA tax credit program, the General Assembly transferred the administration of the tax credit program to the Department.

Consistent with Senator Lovegrove’s testimony, in 1995, the General Assembly limited the State’s role in the NAA tax credit program to compiling the list of programs all municipalities certify as eligible for investment and reviewing proposals by businesses for investment in said programs. Consistent with these legislative changes, municipalities in Connecticut are required under current law to provide the Department with such a list of those programs that they certify are eligible for investment by July 1<sup>st</sup> of each year, but said list may only be provided after “[e]ach municipality [holds] at least one public hearing on the subject of which programs shall be included on such list. . . .” Conn. Gen. Stat. § 12-632(a)(1). The Department could never infringe on a delegation of authority made by the General Assembly to a municipality.

Upon receipt of all of the lists of programs that municipalities have certified as eligible for investment, the Department is required to consolidate and publish a comprehensive list of all such programs by September 1<sup>st</sup> of each year. See Conn. Gen. Stat. § 12-632(b).<sup>4</sup> Business firms subject to certain taxes<sup>5</sup> have the ability to submit proposals to invest in the eligible programs. See Conn. Gen. Stat. § 12-632(c). Such proposals must be submitted to the Department between September 15<sup>th</sup> and October 1<sup>st</sup> of each year. See id. The Department has the authority to review and determine if “a business firm’s investment can . . . be made through contributions to a neighborhood organization” so that the business may receive tax credits in exchange for said investment. See id.

The City of New Haven appears to be conflating the municipalities’ responsibility to select eligible programs with the State’s responsibility to review proposals from business firms to make investments in said programs in exchange for tax credits. These responsibilities are set forth in different sections of Conn. Gen. Stat. § 12-632 (subsections (a) and (c), respectively). The State has been carved out of section (a), which pertains to the selection of eligible programs. Municipalities have been carved out of section (c), which pertains to the review of proposals from business firms for tax credits.

To that end, in support of its position that it has no role in the identification, selection, and certification of the programs that are placed on the list as eligible for investment, the City of New Haven is relying on an amendment made in 2010 to Conn. Gen. Stat. § 12-632(c), which as set forth above pertains to the review of proposals from business firms for tax credits. Prior to 2010, municipalities did play a role in reviewing proposals made by businesses to invest in eligible programs. In 2010, the General Assembly changed this and specifically removed municipalities from playing any role in reviewing investment proposals from business firms. See Conn. Pub. Acts 10-188. The General Assembly, however, did not amend the municipalities’ role in compiling the list of eligible programs and certifying said list to the Department (Conn. Gen. Stat. § 12-632(a)).

Notably, the law review article upon which the City of New Haven relies and quotes in its most recent letter to the Department as the primary basis of its analysis concerns the Department’s role in evaluating proposals for investment, not the municipality’s role in determining eligible programs. Said quote provides that “the [2010 amendment] eliminate[d] the municipalities’ role in approving a business firm’s application, leaving the Commissioner as the sole decision-maker.” As evidenced by the foregoing, the law review article the City of New Haven so heavily relies specifically discusses a “business firm’s” application, not the programs eligible for investment. The term “business firm” is a defined in Conn. Gen. Stat. § 12-631 and refers to the company that seeks to invest, not the nonprofit program that the City of New Haven is required to determine is eligible for investment.

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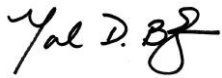
<sup>4</sup> The only authority the Commissioner has to remove a program from the list is if, as has occurred with the Programs, the postproject audit provisions have not been complied with or said audit demonstrates financial irregularities.

<sup>5</sup> Tax credits under the NAA tax credit program may be applied to the taxes set forth in the following Chapters of the Connecticut General Statutes: Chapters 207, 208, 209, 210, 211 or 212.

Conn. Gen. Stat. § 12-632(c) clearly delineates the role of municipalities and the role of the Department in the NAA tax credit program. To this end, Conn. Gen. Stat. § 12-632(c) specifically provides that “[a]ny business firm which desires to engage in any of the activities or programs approved by any municipality subject to subsection (a) of this section . . . may apply to the Commissioner of Revenue Services for a tax credit. . . .” As set forth in the plain language of Conn. Gen. Stat. § 12-632(c), the Commissioner evaluates the proposals for investment in exchange for tax credits submitted by business firms; the municipality “approves” the “activities or programs” eligible for investment.

Given the above, there is no ambiguity in Conn. Gen. Stat. § 12-632; municipalities like the City of New Haven are solely responsible for approving and “submit[ting] to the Commissioner of Revenue Services a list . . . of programs eligible for investment by business firms.” Conn. Gen. Stat. § 12-632(a). Moreover, the City of New Haven’s reliance on a 2010 legislative amendment is misplaced as said amendment pertains to the Department’s authority to review proposals by businesses to invest in said programs and has no impact on the eligibility of programs.

Respectfully,

A handwritten signature in black ink, appearing to read "Mark D. Boughton". The signature is written in a cursive, flowing style.

Mark Boughton  
Commissioner of Revenue Services

cc: The Honorable Justin Elicker, Mayor of the City of New Haven  
The Honorable Tyisha Walker-Myers, President, New Haven Board of Alders