

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**

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DATE: March 12, 2007  
TO: Tax Credit Stakeholders  
FROM: William J. Pavão, Executive Director  
SUBJECT: State Prevailing Wages and State Tax Credits

Many applicants request State Low Income Housing Tax Credits (LIHTC) along with nine percent (9%) or four percent (4%) federal credits in each of two competitive funding rounds. In addition, most applicants for competitive 9% federal credits seek points under the "State credit substitution" scoring criterion (Cal. Code Regs., tit. 4, § 10325(c)(11)). Due to ongoing litigation, applicants contemplating using State credits remain uncertain as to the future applicability of State prevailing wage requirements. In light of this uncertainty, the Tax Credit Allocation Committee (TCAC) staff has been asked to provide guidance to applicants competing for credits in 2007.

On November 16, 2005, the State Department of Industrial Relations (DIR) issued a determination that a project receiving State LIHTCs did not invoke State prevailing wage requirements. On January 12, 2005, DIR denied a December 13, 2005 administrative appeal to that decision. On March 1, 2006 I communicated the Tax Credit Allocation Committee's guidance regarding State Low Income Housing Tax Credits (LIHTCs) and prevailing wages (see [http://www.treasurer.ca.gov/ctcac/2006/20060301\\_wages.pdf](http://www.treasurer.ca.gov/ctcac/2006/20060301_wages.pdf).) At the time of my March 1 memorandum, a February 22, 2006 civil filing challenging DIR's decision was pending.

On September 15, 2006 the San Francisco Superior Court ordered DIR to set aside its determination in the matter, and issue a new determination that the construction work in the case before it was subject to State prevailing wages due to the State LIHTCs. The developer and DIR have both appealed that lower court decision, and the matter is pending before the First District Court of Appeals. TCAC awaits the appellate court's decision and has no independent position regarding the applicability of prevailing wages to State tax credits.

In light of the continuing uncertainty surrounding State prevailing wages as they relate to State credits, TCAC will accept applications that build prevailing wages into development budgets and basis calculations. TCAC will also accept applications that do not. In short, the applicant may decide whether or not to assume prevailing wages in their development budgets and basis calculations. However, TCAC will require payment of State prevailing wages on a project if the applicant requested and received credits based upon an application that assumed the payment of State prevailing wages. That is,

if an applicant received the competitive advantage associated with a prevailing wage basis limit boost, and/or additional credits, then TCAC would look to see that the project in fact paid prevailing wages. Among other confirming documentation, TCAC would request copies of the State Department of Industrial Relations' wage determination, and other supporting documentation. Failure to pay prevailing wages where a boost was taken would result in a rescinded reservation.

As the matter is resolved in the courts, TCAC will attempt to keep program stakeholders apprised of developments.