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Regulatory
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Proposed Regulation
Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-41
Regulation title	Neighborhood Assistance Tax Credit Program
Action title	Amend the Neighborhood Assistance tax credit program regulation to make both technical and substantive changes.
Document preparation date	October 19, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The amendments are being proposed to ensure the availability of tax credits and their equitable distribution among approved organizations. Also, amendments are being proposed to ensure fairness in the valuation of certain donated items and to improve the process for determining eligibility of organizations applying to participate in the Neighborhood Assistance Program (NAP). In addition, the amendments will make several technical and clarifying changes including updating code citations and correcting inconsistencies in terminology.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Legal authority for promulgation of this regulation is in §§ 63.2-217 and 63.2-2002. While we are required to have regulations for this program, § 63.2-2002 allows the department the discretion to develop regulations for the equitable distribution of tax credits and the fair and efficient operation of the program.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The changes and clarifications to this regulation will make the program more equitable and the language more consistent, benefiting both approved organizations, and their donors and the clients they serve. Improvements to this program will have a direct impact on the approved organizations and an indirect impact on families and individuals they serve. Ensuring that only viable organizations participate in the NAP helps protect the health, safety, and welfare of citizens who receive their services.

These are amendments to the regulations for the program. NAP is a state tax credit program that was established by the General Assembly in 1981. The program uses tax credits as an incentive for businesses and, with certain restrictions, individuals, to make donations to an approved organization. To be a participant an organization must be a 501(c) (3) or (4) whose primary function is providing assistance to impoverished individuals and families. Tax credits are issued for 45 percent of the donation value within the minimum and maximum guidelines.

The amendments will make several technical and clarifying changes including updating code citations and correcting inconsistencies in terminology. In addition, amendments are being proposed to ensure the availability of tax credits and their equitable distribution among approved organization. Also, amendments are being proposed to ensure fairness in the valuation of certain donated items and to improve the process for determining eligibility of organizations applying to participate in NAP.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

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22 VAC 40-41-10 - Two definitions were added and one definition was clarified.

22 VAC 40-41-20 - This section was revised to provide uniform and consistent terminology for approved organizations. A new section was added to consolidate all eligibility criteria. Also, an additional requirement was added.

22 VAC 40-41-30 - The language was simplified to more clearly describe the process used to allocate tax credits among approved organizations. In addition, a cap of $500,000 was added.

22 VAC-40-41-40 - The language was simplified to more clearly describe the process used to determine the value of donations. In addition, a new rule was added for determining the value of donated items to be sold, auctioned or raffled.

22 VAC-40-41-50 - This section was revised to provide consistency and clarification.

22 VAC-40-41-55 - This section was revised to provide consistency and clarification.

22 VAC-40-41-60 - This section was revised to provide consistency and clarification. In addition, a definition for the date of certain donated items was added.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

This regulation provides a new method for determining the value of items donated to be sold, auctioned, or raffled. Currently, these items are valued using IRS guidelines. The proposed regulations would establish the value as the lesser of the value using IRS guidelines or the proceeds received by the nonprofit organization at time of sale. In most cases, the nonprofit organization does not receive the value in relation to IRS guidelines for sold items. The adoption of this new rule could decrease the amount of tax credits received by the donating business which could reduce the incentive for a business to make a donation of this type. The new rule would ensure that tax credits issued would directly reflect the actual proceeds received by the nonprofit organization. This would also allow the nonprofit organization to receive the maximum benefit from their tax credit allocation.

The proposed regulation provides a maximum allocation of a $500,000 to an approved organization per program year. This cap will limit the amount of tax credits available to certain organizations to use as an incentive to receive donations. This could reduce the total amount of donations these approved organizations would receive. This change will ensure that the program is not dominated by just a few organizations and will continue to allow a diverse group of organizations to participate in the program. It will also ensure that approved organizations will operate throughout the state.

This regulation includes an eligibility requirement that at least 60% of clients served must be impoverished and that at least 75% of an organization's revenue is used in support of their program services. These provisions help ensure that the primary function is assisting impoverished individuals. The requirement that at least 60% of impoverished served has be in practice for two years and meets the legislative intent of the program. Organizations that do not meet the 60% requirement will not be eligible for the program. The 75% requirement is an effort to ensure that an organization uses their revenue to provide services to the impoverished population each year.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Neighborhood organizations applying to participate in the program and the businesses and individuals that receive tax credits for donations could be affected by these regulations. Organizations that do not meet the eligibility criteria and organizations that use more than $500,000 in tax credits would be affected. Businesses making donations of merchandise to be sold, auctioned or raffled could receive a reduced tax credit.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	Currently only a few neighborhood organizations would be affected by the $500,000 cap. Less than 5% of all donations are merchandise to be sold, auctioned or raffled. We do not collect detailed information on businesses making donations but most would meet the definition of a small business.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	These regulations would not increase costs for neighborhood organizations, businesses or individuals. It could reduce the amount of tax credits a business or individual may receive.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

An alternative to these amendments would be to amend the NAP Act in the Code of Virginia. This was considered during the development of the regulation; however, it is unlikely that legislation will be pursued as regulations can provide a level of detail and flexibility inappropriate for statute. Input was received input from both NAP organizations and donors and their suggestions were considered in the development of these regulations

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Ms. Chris Bridge PWHD Consulting	She does not support the $500,000 cap. Foundations should be eligible if they clearly support low-income people. The current way to value items donated for sale or auction should not be changed. She supports the requirement that at least 60% clients served by an organization must be impoverished.	The agency feels this cap is necessary to ensure the equitable distribution of tax credits. No special rules for foundations are specifically addressed in the proposed regulations. The agency feels that this proposed regulation would more appropriately ensure the business donor receives a tax credit that is based on the value received by the approved organization. This provision is in the proposed regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

NAP does not have a direct impact on families and family stability. These regulations impact nonprofit organizations and their donors. The services provided by these nonprofits organizations have a positive **impact** on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the p for clients re-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-41-10		The term "Approved Organization" and "Commissioner" were not previously defined.	A definition for the term "Approved Organization" and "Commissioner" was added. Throughout the regulation, the term "Approved Organization" replaces "neighborhood assistance project" and "qualified programs". Throughout the regulation, the term "Commissioner" replaces reference to the Commissioner and

			his designee or authorized representative. Under the definition for "Audit", language was added to clarify that the audit must be prepared by an outside independent certified public accountant.
22 VAC 40-41-20			Title was changed to reflect a new section addressing eligibility criteria.
22 VAC 40-41-20.B			The word "proposal" was changed to "application". The language change was for clarification purpose and to reflect current practice.
22 VAC 40-41-20.B.1			The words "to be" were changed to "being". The previous language may have given the impression that organizations could apply for the program prior to being operational**.**
22 VAC 40-41-20.B.3			The words "most recent" were changed to "current". The previous language could have resulted in outdated information being provided and not present an accurate representation of the organization's status. The requirement for a brochure was added to be consistent with current practice.
	22 VAC 40-41-20.C		This section was added to describe the eligibility criteria for participation in the Neighborhood Assistance Program. Most of the provisions in this section have been addressed in policy and in the application process.
	22 VAC 40-41-20.C.1		Regulations specify the organization must have been in operation providing assistance for at least 12 months. This is current practice.
	22 VAC 40-41-20.C.2		The applicant must be able to demonstrate that at least 60% of total people served and 60% of total expenditures were for impoverished people. This requirement is consistent with program legislation. This is current practice.
	22 VAC 40-41-20.C.3		The applicant's audit must not contain any significant findings or areas of concern for the ongoing operation of their organization. An audit is required under NAP legislation.
	22 VAC 40-41-20.C.4		The requirement was added that an approved organization must be spending at least 75% of their total revenue to support their ongoing programs each year. This was added to ensure that approved organizations use NAP tax credits to obtain donations to support the ongoing operation of their existing programs and not build up reserve funds to be used for some future program.

22 VAC 40-41-20.C	22 VAC 40-41-20.D		The date was changed from "March 1" to "March 15" to be consistent with current practice. The word "working" was changed to "business" to be consistent with the current Neighborhood Assistance Program application. Language was removed as a housekeeping measure.
22 VAC 40-41-20.D	22 VAC 40-41-20.E		The word "organizations" was changed to "applicants" to be consistent with the eligibility criteria section. The word "and" was added as a housekeeping measure. Other language was removed as a housekeeping measure.
22 VAC 40-41-20.E	22 VAC 40-41-20.F		The term "project" was replaced with "approved organization."
22 VAC 40-41-20.F	22 VAC 40-41-20.G		Language was added to clarify that appeals of the Department decisions must be in writing.
22 VAC 40-41-30.A.2			The word "requested" was added for clarification purpose.
22 VAC 40-41-30.A.3			Language was changed to better describe the sequence of the allocation process.
22 VAC 40-41-30.A.4			Language was changed to better describe the sequence of the allocation process.
22 VAC 40-41-30.A.5			Language was removed as a housekeeping measure since this is no longer necessary.
22 VAC 40-41-30.B			Language was added to address the request for additional tax credits and limits as described to in 22 VAC 40-41-30. The word "funds" was changed to "tax credits" as a housekeeping measure. Language was removed to reflect current practice.
	22 VAC 40-41-30.C		This section was added to set a maximum allocation of tax credits. Currently there is no maximum allocation.
	22 VAC 40-41-30.C.1		This established a maximum allocation of $500,000 in tax credits that may be allocated to an approved organization during a program year. The purpose of the cap is to prevent larger organizations from monopolizing a majority of the tax credits and ensure a more equitable distribution among all approved organizations. Using $500,000 in tax credits would allow an organization to receive over $1,000,000 in donations. Six other states with similar tax credit programs have a limit on the amount of credits that can be allocated to any participating organization.
	22 VAC 40-41-30.C.2		This section was added to apply the maximum allocation to a parent organization that establishes an affiliate organization. These organizations normally serve the same client base and generally support and benefit each other.

22 VAC 40-41-30.C	22 VAC 40-41-30.D		This language was added as a housekeeping measure and to reflect current practice.
22 VAC 40-41-40.A			The words “acceptable to” were changed to “as required by”. The words “and establishing” were changed to “to verify”. These changed were made as a housekeeping measure.
22 VAC 40-41-40.B			The words “bonds, or other negotiable items” were removed to reflect current policy. The words “to be used by the approved organization” were added to distinguish them from items donated to be sold, auctioned or raffled which are addressed in 22 VAC 40-41-40.C.
	22 VAC 40-41-40.C		This section was added for items donated to be sold, auctioned, or raffled and will ensure that businesses receive a tax credit that reflects the value received by the approved organization. Currently, businesses may donate items that will be sold, auctioned or raffled and claim a value much higher than is received for the item. This results in the business receiving a disproportionately higher tax credit in relation to the benefit received by the approved organization. Current regulations use IRS guidelines.This change is intended to be similar to recent changes the IRS has made to the federal regulations relating to donations made by individuals.
22 VAC 40-41-40.C	22 VAC 40-41-40.D		The word “property” was changed to “the approved organization’s facility” for clarification purpose. This is current practice.
22 VAC 40-41-40.D.1	22 VAC 40-41-40.E.1		The word “contribution” was changed to “value” for clarification purpose.
22 VAC 40-41-40.D.3			This section was removed as it relates to health care professionals which is addressed in 22VAC 40-41-50.C.
22 VAC 40-41-50.A			The words “and contracting services” were added to align the regulations with the Code of Virginia.
22 VAC 40-41-50.C			This is changed to reflect all health care professionals and the eligibility conditions as sited in the Code of Virginia. This requirement is addressed in the Code of Virginia.
22 VAC 40-41-50.D			The words “directly to the approved organization” were added for clarification purposes and to be consistent with current policy. The words” property or professional services is” were changed to “donations and bargain sales are” to be consistent with

			current policy. The word “donations” was added for clarification purposes.
	22 VAC 40-41-55.D		The language was added to be consistent with section 22VAC-40-41-50.H of the regulation.
22 VAC 40-41-60.A			The words “bonds, or other negotiable items” were removed to reflect current policy. The words “to be used by the approved organization” were added to be consistent with section 22 VAC 40-41-40.B.
	22 VAC 40-41-60.B		This section was added for clarification of the date for donated items to be sold, auctioned, or raffled as referred to in section 22 VAC 40-41-40.C.
22 VAC 40-41-60 FORMS			References to obsolete forms were deleted.