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Amendment to private housing finance law codifies HDFC sales tax exemption

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In connection with the approval of the New York State FY 2021-22 Budget, § 577 of the New York Private Housing Finance Law (“PHFL”) was amended with respect to an exemption to sales and compensating use taxes for Housing Development Fund Companies (“HDFCs”).

Background

HDFCs are formed for the purpose of developing, owning, preserving, and/or rehabilitating affordable housing in New York State, and are incorporated pursuant to two statutes: Article XI of the PHFL, and either the Not-for-Profit Corporation Law (“NPCL”), or the Business Corporation Law (the former most commonly formed for affordable rental projects, and the latter for affordable homeownership cooperatives). Depending on the ownership structure of a given project, a HDFC either holds fee title on behalf of a for-profit entity, which retains beneficial and equitable title, or owns the project outright. Historically, the New York State Department of Taxation and Finance (“DTF”) has issued sales tax exemption certificates to HDFCs in connection with affordable housing projects, in accordance with an application process in which the HDFC demonstrates that the project will serve an underserved population. The sales tax exemption allows projects to realize significant savings on the purchase of construction materials, and is an indispensable tool in the economic feasibility of affordable housing development.

New legislation

The amendment to the PHFL (new § 577(2-a)) codifies long-standing practice that HDFCs incorporated pursuant to the NPCL are exempt from sales and compensating use taxes imposed pursuant to Article 28 and 29 of the New York Tax Law. In order to qualify, the HDFC must have entered into a regulatory agreement with respect to an affordable housing project on or after January 1, 2019, with the New York State Division of Homes and Community Renewal, the New York City Department of Housing Preservation and Development, the New York City Housing Development Corporation, or certain municipal housing authorities, including the New York City Housing Authority.

What’s next?

This amendment to § 577 of the PHFL provides greater certainty and predictability for HDFCs and for the underwriting process for affordable housing projects. We expect DTF will issue guidance on

the implementation of the amendment in the coming months and will update this alert accordingly.

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