



RULES OF

Department of Economic Development

Division 85—Division of Business and Community Solutions

Chapter 5—Historic Preservation Tax Credit Program

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**TITLE 4 – DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 85 – Division of Business and Community
Solutions**

Chapter 5 – Historic Preservation Tax Credit Program

4 CSR 85-5.010 Overview and Definitions

PURPOSE: This gives a brief overview of the program and defines terms used in this chapter.

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The Missouri Historic Preservation Tax Credit (HTC) Program was enacted in 1997 and took effect on January 1, 1998. The law may be found in sections 253.545 to 253.559, RSMo. The law is intended to aid in the rehabilitation of historic structures in the state of Missouri by providing an incentive in the form of state tax credits equal to twenty-five percent (25%) of the qualified rehabilitation expenditures (QREs), provided that such expenses exceed fifty percent (50%) of the total basis in the property.

(2) As used in this chapter, the following terms mean –

(A) Applicant. The taxpayer seeking an authorization or issuance of tax credits by the department;

(B) Certified Historic Structure. Property located in Missouri and listed individually on the National Register of Historic Places;

(C) Department. The Department of Economic Development;

(D) Developer Fee Agreement. A written agreement for services between the developer and the applicant;

(E) Director. The director of the department;

(F) Eligible Property. Property located in Missouri and offered or used for residential or business purposes;

(G) Excess Tax Credits. As authorized in section 253.559.10, RSMo, excess tax credits may be awarded when the amount of QREs for a project exceed the amount of QREs attributable to the amount of tax credits the department authorized and issued for the project in response to the preliminary application and final application. The amount of excess tax credits is based upon the excess amount of QREs for the project;

(H) Excess Tax Credits Application. A request for issuance of excess tax credits. The excess tax credits application must be on the electronic form provided by the department;

(I) Final Application. A request for issuance of tax credits by an applicant whose project is complete after having received an authorization of tax credits for the project. The final application must be on the electronic form provided by the department;

(J) Final Completion. For the purposes of issuing state historic preservation tax credits, the project is considered complete when all work has been done on the project. The final year construction costs are incurred is the year credits will be issued (i.e., if costs are still being incurred in 2007 then regardless of placed in service date or date of substantial completion, the credits will be issued as 2007 credits if those expenses are being claimed for tax credits). Please note: completion dates have

been established for the state historic program only. Federal guidelines vary. Final completion is separately determined for each construction period of a phased project. Costs associated with one (1) construction period may not be carried to another construction period of a project. Each construction period is considered a separate project for audit purposes and must stand alone to meet all requirements of the program. Any exceptions must be submitted to the department before the final cost certification is submitted and must be approved in writing by the department;

(K) Hard Costs. Qualified rehabilitation expenditures, or QREs, related to the structural components of a building, including but not limited to walls, partitions, floors, ceilings, windows, doors, components of central air conditioning or heating systems, plumbing, electrical wiring and lighting fixtures, chimneys, stairs, escalators, elevators, sprinkling systems, fire escapes, and other components related to the operation or maintenance of the building;

(L) Identity of Interest, or Related Party. An identity of interest, or related party, may exist when –

1. The applicant has any financial interest in the other party (i.e., general contractor, subcontractor, or vendor);

2. One (1) or more of the officers, directors, stockholders, or partners of the applicant is also an officer, director, stockholder, or partner of the other party;

3. Any officer, director, stockholder, or partner of the applicant has any financial interest whatsoever in the other party or has controlling interest in the management or operation of the other party;

4. The other party advances any funds to the applicant;

5. The other party provides and pays on behalf of the applicant the cost of any legal services, architectural services, or engineering services other than those of a surveyor, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract;

6. The other party takes stock or any interest in the applicant as part of consideration to be paid;

7. There exists or comes into being any side deal, agreement, contract, or undertaking entered into thereby altering, amending, or canceling any of the original documents submitted to the department in the preliminary application, except as approved by the department;

8. Any party involved in the project would be deemed to constructively own the stock of another party involved in the project as set forth in section 304(c) of the *Internal Revenue Code* of 1986, as amended; or

9. Any party involved in the project has a stockholder, member, partner, officer, or director that is related by blood, adoption, or marriage to a stockholder, member, partner, officer, or director of another party involved in the project –

(M) Inactive Project. Any project deemed pending as described in written communication from the department to the applicant or that has received a tax credit authorization that, in either case, has remained idle without communication from the applicant to the department providing a justified reason for such idleness, such justification to be reasonably determined by the department, for a period of at least nine (9) months from the date the last written correspondence was sent by the department to the applicant regarding the project;

(N) Incurred. Has the same meaning as set forth in Title 26, *Code of Federal Regulations*, section 1.461-1(a)(2)(i), published November 26, 1960, which is hereby incorporated by reference and made a part of this rule, as published by the Office of the Federal Register, National Archives and Records Administration,



United States Government Publishing Office, 732 N. Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, website: <http://bookstore.gpo.gov>. This rule does not incorporate any subsequent amendments or additions;

(O) Non-Qualified Expenditures. All costs included in total project costs which are not qualified rehabilitation expenditures are considered non-qualified expenditures, including but not limited to a list of non-qualified expenditures under the program published by the department in the program guidelines, which shall be effective for the state fiscal year beginning on July 1 following such publication and may be updated for subsequent state fiscal years in the reasonable determination of the department. Each project shall be held to the non-qualified expenditures effective on the date the project's preliminary application was submitted. Costs of acquisition shall constitute a non-qualified expenditure;

(P) Not-for-profit. A not-for-profit entity, including but not limited to a not-for-profit corporation formed under Chapter 355, RSMo;

(Q) Phased Project. A project for which the preliminary application submitted to the department provides for the project to be completed and reviewed in more than one (1) construction period, as described in 4 CSR 85-5.080;

(R) Postmark. For applications received by the department through a web application, the postmark shall be the date the application was submitted, as recorded by the web application;

(S) Preliminary Application. A request by an applicant for an authorization of tax credits, on the electronic form provided by the department;

(T) Program. The Missouri Historic Preservation Tax Credit Program authorized in sections 253.545 to 253.559, RSMo;

(U) Project. A certified historic structure or structure in a certified historic district that is eligible property;

(V) Projected Net Fiscal Benefit. The total net fiscal benefit to the state or municipality, less any state or local benefits offered to the taxpayer for a project. The projected net fiscal benefit shall be determined as provided in 4 CSR 85-5.030;

(W) Qualified Census Tract, or QCT. A census tract with a poverty rate of twenty percent (20%) or higher as determined by a map and listing of census tracts which shall be published by the department and updated on a five- (5-) year cycle, and which map and listing shall depict census tracts with twenty percent (20%) poverty rate or higher, grouped by census tracts with twenty percent (20%) to forty-two percent (42%) poverty, and forty-two percent (42%) to eighty-one (81%) percent poverty as determined by the most current five- (5-) year figures published by the American Community Survey conducted by the United States Census Bureau;

(X) QCT Tax Credit Cap. The maximum amount of tax credits the department may authorize solely for projects located in QCTs in a state fiscal year, which is up to thirty million dollars (\$30 million) as set forth in subdivision (2) of subsection 2 of section 253.550, RSMo;

(Y) Qualified Rehabilitation Expenditures, or QREs. Those expenditures that are used as eligible basis on which to calculate tax credits. Such costs include but shall not be limited to qualified rehabilitation expenditures as defined under section 47(c)(2)(A) of the *Internal Revenue Code* of 1986, as amended, as determined by the department;

(Z) Soft Costs. QREs other than hard costs, including but not limited to architect fees, engineering fees, construction management costs, utilities incurred during rehabilitation, property taxes, reasonable developer fees, construction period interest, financing costs related to construction financing, contractor overhead, and contractor profit;

(AA) State. The state of Missouri;

(BB) State Fiscal Year. The time period beginning July 1 of one year through June 30 of the following year;

(CC) Statewide Tax Credit Cap. The maximum amount of tax credits the department may authorize for projects located in the state, as set forth in subdivision (1) of subsection 2 of section 253.550, RSMo, adjusted as authorized in subdivision (3) of subsection 2 of section 253.550, RSMo. The statewide tax credit cap and the QCT tax credit cap are separate caps;

(DD) Structure in a Certified Historic District. A structure located in Missouri which is certified by the State Historic Preservation Office as contributing to the historic significance of a certified historic district listed on the National Register of Historic Places, or a local district that has been certified by the United States Department of the Interior;

(EE) Substantial Completion. One (1) of the following –

1. An architect's certificate of substantial completion;

2. An architect's certificate of final completion; or

3. A local political subdivision's issuance of a certificate of occupancy;

(FF) Tax Credits. State historic preservation tax credits authorized under the program;

(GG) Taxpayer. Any person, firm, partnership, trust, estate, limited liability company, or corporation; and

(HH) Total Project Costs. All costs, whether accrued or paid, pertaining to the redevelopment of the property for which an application for tax credits has been submitted. Total project costs include all QREs and all non-qualified expenditures, including the shell acquisition cost. It does not include any cash reserves established or to be established for the project, such as replacement reserves, lease-up reserves, lease commission reserves, or other cash held by, or for, the applicant.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Original rule filed July 8, 2008, effective Feb. 28, 2009. Emergency amendment filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Amended: Filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.020 Applications

PURPOSE: This rule explains the application process for tax credits under the Historic Preservation Tax Credit Program.

(1) Preliminary Application.

(A) All applicants seeking an authorization of tax credits for a project shall submit a preliminary application to the department.

(B) The department shall post on its website a checklist of required information for a preliminary application. If a preliminary application submitted to the department is incomplete, the department will give an applicant one (1) opportunity to provide information or documents to cure any deficiencies within fifteen (15) business days of being notified by the department. The department will reject all preliminary applications that remain incomplete after one (1) opportunity to cure.

(C) A complete preliminary application shall be evaluated by the department for eligibility of the project.

1. Eligibility criteria for a preliminary application include



that the project is an eligible property, is a certified historic structure or structure in a certified historic district, meets the requirements in section 253.559.2, RSMo, and other statutory requirements.

(D) Subsection (1)(E) of this rule shall not apply to projects to receive less than two hundred seventy-five thousand dollars (\$275,000) of tax credits.

(E) The preliminary application shall include the following:

1. Signed letters of support for the project from the local elected officials in the local municipality in which the project is located, as set forth in 4 CSR 85-5.060(1)(B);

2. The type and amount of local incentives or public financing committed to the project;

3. Private financing and developer equity;

4. The estimated number of net new jobs created in the state as a result of the project;

5. The amount of projected net fiscal benefit of the project to the municipality, which may be provided by the applicant, or if the applicant so chooses, determined by the department, based on information provided by the applicant. The projected net fiscal benefit to the municipality shall include the potential multiplier effect for the project and shall clearly state the period in which the municipality would realize such net fiscal benefit;

6. Information regarding the vacancy or underutilization prior to rehabilitation; and

7. A statement of whether the project's address is located in an economically distressed area as set forth in 4 CSR 85-5.050(1)(A) through (E), and if so, which type of area, as well as evidence of same.

(F) A complete preliminary application will be evaluated for eligibility and scored by the department in accordance with section 253.559.3(1), RSMo, subsection (1)(j) of this rule, and 5 CSR 85-5.030, 5.040, 5.050, and 5.060.

(G) The department shall accept preliminary applications and excess tax credits applications in one (1) cycle for each state fiscal year. The application cycle for each state fiscal year shall open no later than July 1 and shall close on June 30.

(H) Pursuant to section 253.559.1, RSMo, preliminary applications and excess tax credits applications within each cycle shall be prioritized for review in the order of the date on which the application was postmarked, with the oldest postmarked date within the cycle receiving priority. For preliminary applications and excess tax credit applications postmarked on the same day, the lottery process used to determine the order in which an application was received by the department will rely on digital timestamps, with the applications being reviewed from oldest to newest, regardless of whether the application is a preliminary application or an excess tax credits application.

(I) Subject to sufficient QCT tax credit cap or statewide tax credit cap, as applicable, preliminary applications for projects meeting the following requirements are not subject to the application cycle set forth in subsection (1)(G) of this rule and shall be accepted by the department at any time:

1. The applicant or an entity with a direct or indirect controlling interest in applicant has received a formal, written proposal for business development incentives executed by the director of the department with regard to the project;

2. The project will be occupied by the applicant or an entity with a direct or indirect controlling interest in applicant upon completion; and

3. The applicant or an entity with a direct or indirect controlling interest in applicant has committed to relocating to Missouri from another state.

(J) Prior to an application cycle, the department shall post on its website the program guidelines, the checklist described in subsection (1)(B) of this rule, scoring criteria, and a scorecard for the cycle.

1. The scoring criteria and scorecard shall set forth the maximum points assigned to the required criteria in section 253.559.3, RSMo.

2. The program guidelines, scoring criteria, and scorecard shall state the minimum amount of points necessary for a project to be authorized tax credits. Projects scoring below that threshold will be denied.

(K) The department shall not authorize tax credits for a project in a preliminary application until such preliminary application has received written unconditional or conditional approval from State Historic Preservation Office or the National Park Service of the U.S. Department of the Interior.

(L) For projects that are located within a qualified census tract, credits shall first be authorized from the QCT tax credit cap before being authorized from the statewide tax credit cap.

(M) Except as otherwise provided, no applicant shall submit a preliminary application to the department within five (5) years following the issuance of tax credits in connection with the same property. The department shall deny any such preliminary application it receives.

(2) Final Application.

(A) An applicant seeking issuance of tax credits, other than excess tax credits, for a completed project shall submit a final application to the department.

(B) The department shall post on its website a checklist of required information for a final application.

(C) The department shall accept final applications year-round.

(D) The department, in consultation with the State Historic Preservation Office, shall determine the final amount of QRE on the project and whether the completed rehabilitation meets the standards of the Secretary of the U.S. Department of the Interior for rehabilitation as determined by the State Historic Preservation Office.

(E) Subject to section 253.559.9, RSMo, an applicant may obtain an independent review of an applicant's cost certification by one (1) or more third-party certified public accountant firms to be paid entirely by the applicant. The cost certification review shall not constitute QRE under the program. The department may publish guidance regarding such independent cost certification review in the program guidelines.

(F) The eligibility of project costs as QREs shall be evaluated using the rules and statutes in effect on the date the applicant's preliminary application was submitted to the department.

(G) The following applies in determining whether a cost is a QRE:

1. An applicant's hard costs set forth in a preliminary application will be QREs only if such costs are –

A. Incurred on or after the date on which the department receives the preliminary application, except that certain hard costs incurred no earlier than one (1) year prior to the date on which the department receives the preliminary application will be QRE if such costs are –

(I) Limited to costs necessary for stabilization of the structure that are cost-mitigating (delaying stabilization would result in higher QRE) or to make the structure suitable for safe entry and inspection; and

(II) Not in an amount in excess of ten percent (10%) of the QRE amount sought in the preliminary application. The amount up to ten percent (10%) may be QRE, but amounts



exceeding ten percent (10%) shall not be QRE;

2. An applicant’s soft costs set forth in a preliminary application will be QREs only if such costs are incurred no earlier than one (1) year prior to the date on which the department receives the preliminary application;

3. To be a QRE, all sources of funds for payment of project costs, invoices for project costs, and other documentation relating to the project must be in applicant’s name and authorized by applicant.

A. Project costs shall not be QREs if paid by the third party on behalf of the applicant, regardless of whether applicant reimburses the third party.

B. A title company paying on behalf of an applicant shall not be considered a third party for purposes of this paragraph;

4. All loans related to the project must be made to applicant, provided that loans may be made to applicant’s owner if applicant is a single member limited liability company where the single member is an individual. Project costs paid with proceeds of loans not as described in this paragraph shall be considered costs paid by a third party, and shall not be QREs; and

5. Additional limitations on QREs are in 4 CSR 85-5.080, Phased Projects, 4 CSR 85-5.090, Developer Fees and General Contractor Overhead and Profit, and 4 CSR 85-5.100, Not-for-Profits.

(3) Excess Tax Credits Application.

(A) All applicants seeking excess tax credits shall submit an excess tax credits application to the department.

(B) If an excess tax credits application submitted to the department is incomplete, the department will give an applicant one (1) opportunity to provide information or documents to cure any deficiencies within fifteen (15) business days of being notified by the department. The department will reject all excess tax credits applications that remain incomplete after one (1) opportunity to cure.

(C) A complete excess tax credits application shall be evaluated by the department for eligibility of the project.

1. Eligibility criteria for an excess tax credits application include that the department previously issued tax credits after determining the total QRE for the project after a final application was submitted, and the amount of QREs for the project exceeded the amount of QREs for which tax credits were issued by the department, and other statutory requirements.

(D) The excess tax credits application shall include the information and documents set forth for a preliminary application in subsection (1)(E) of this rule.

(E) A complete excess tax credits application will be evaluated for eligibility and scored by the department in accordance with section 253.559.3(1), RSMo, subsection (1)(I) of this rule, and 4 CSR 85-5.030, 5.040, 5.050, and 5.060.

(F) Subsection (3)(E) of this rule shall not apply to an excess tax credits application if the project received its authorization of tax credits in 2019 or later. Such a project will not be re-evaluated or re-scored, and the evaluation or score given the project for the evaluation and scoring of the project’s preliminary application will be used for the excess tax credits application.

(G) The department shall accept excess tax credits applications in the same cycle as preliminary applications, as set forth in subsection (1)(G) of this rule.

(H) Excess tax credits applications will be reviewed and scored in the order set forth in subsection (1)(H) of this rule.

(I) Prior to an application cycle, in addition to the required information and documents in subsection (1)(I) of this rule, the

department shall post on its website a checklist for excess tax credits applications.

(J) Except as set forth in subsection (3)(F) of this rule, excess tax credits applications will be scored in the same manner, using the same scoring criteria and scorecard as preliminary applications described in subsection (1)(I) of this rule. Projects scoring below the minimum amount of points necessary for a project to be authorized tax credits will be denied.

(K) Excess tax credits applications will be apportioned to the QCT tax credit cap or statewide tax credit cap in the manner set forth in subsection (1)(L) of this rule.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Original rule filed July 8, 2008, effective Feb. 28, 2009. Amended: Filed July 31, 2014, effective Jan. 30, 2015. Emergency amendment filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Amended: Filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.030 Preliminary and Excess Tax Credits Application Evaluation – Projected Net Fiscal Benefit

PURPOSE: This rule clarifies the application considerations set forth in section 253.559.3(1)(a), RSMo.

For purposes of evaluating a preliminary application for authorization of tax credits and an excess tax credits application for issuance of tax credits pursuant to section 253.559.3(1)(a), RSMo, the projected net fiscal benefit to the state shall be reasonably determined by the department. The projected net fiscal benefit to the municipality may be provided by the applicant, or if the applicant so chooses, determined by the department, based on information provided by the applicant.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Original rule filed July 8, 2008, effective Feb. 28, 2009. Emergency amendment filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Amended: Filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

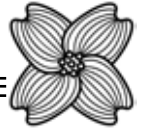
**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.040 Preliminary and Excess Tax Credits Application Evaluation – Overall Size and Quality of the Project

PURPOSE: This rule clarifies the application considerations set forth in section 253.559.3(1)(b), RSMo.

(1) For purposes of evaluating a preliminary application for authorization of tax credits and an excess tax credits application for issuance of tax credits pursuant to section 253.559.3(1)(b), RSMo, the department shall evaluate the following criteria:

(A) Leveraged investment ratio, as determined by the total project investment divided by the amount of tax credits requested;



(B) The number of net new jobs to the state to be created by the project;

(C) The average wage for new jobs to be created by the project;

(D) Potential multiplier effect of the project, based on the project's industry type (e.g., manufacturing office facilities, residential); and

(E) The amount of overall project financing for which the applicant has secured firm commitments prior to submitting its preliminary application or excess tax credits application to the department.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.050 Preliminary and Excess Tax Credits Application Evaluation – Level of Economic Distress

PURPOSE: This rule clarifies the application considerations set forth in section 253.559.3(1)(c), RSMo.

(1) For purposes of evaluating a preliminary application for authorization of tax credits and an excess tax credits application for issuance of tax credits pursuant to section 253.559.3(1)(c), RSMo, the department shall evaluate the following criteria:

(A) The project census tract's designation as a federal opportunity zone;

(B) The project census tract's designation as a qualified census tract;

(C) The project census tract's level of unemployment, as compared to the statewide level of unemployment;

(D) The project census tract's overall poverty rate, as determined pursuant to section 253.545(7), RSMo;

(E) The project census tract's inclusion in an enhanced enterprise zone established under sections 135.950 to 135.973, RSMo; and

(F) The project's vacancy or underutilization prior to rehabilitation.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.060 Preliminary and Excess Tax Credits Application Evaluation – Input from Local Elected Officials

PURPOSE: This rule clarifies the application considerations set forth in section 253.559.3(1)(d), RSMo.

(1) For purposes of evaluating a preliminary application for authorization of tax credits and an excess tax credits application

for issuance of tax credits pursuant to section 253.559.3(1)(d), RSMo, the department shall evaluate the following criteria:

(A) Committed amount of local incentives to the project; and

(B) Signed letters of support for the project from the local elected officials in the local municipality in which the project is located. For any project in any city not within a county, an applicant shall also include a letter of support from the president of the board of aldermen, if one can be obtained.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.070 Compliance with Other Provisions of Law

PURPOSE: This rule clarifies the issuance requirements for Historic Preservation Tax Credit certificates.

(1) A tax credit certificate issued following the final completion of a project, and submission to the department of a complete final application or an excess tax credits application, shall be in an amount no greater than those costs that are Qualified Rehabilitations Expenditures (QREs), and shall only be issued after the department confirms compliance with all other provisions of law, including but not limited to –

(A) Payment of any issuance fees under section 620.1900, RSMo, or similar provisions;

(B) Payment of any back taxes and penalties under section 135.815, RSMo, or similar provisions; and

(C) Compliance with section 285.530, RSMo, with regard to employment of unauthorized aliens.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.080 Phased Projects

PURPOSE: This rule explains the circumstances under which a project can have multiple construction periods under the Historic Preservation Tax Credit program.

(1) To qualify as a phased project, an applicant must –

(A) Apply for the federal historic preservation tax incentives program as a phased project;

(B) Submit a single preliminary application to the department for the entire phased project; and

(C) Submit a copy of the federal historic preservation tax incentives program phased project application with the preliminary application.

(2) The preliminary application for a phased project must



mirror the phasing listed in the federal historic preservation tax incentives program project application.

(3) Each construction period (phase) of a phased project must be described such that expenditures are clearly identified as incurred during an individual phase.

(4) All amendments to a preliminary application for a phased project must be identical to amendments to the applicant's federal historic preservation tax incentives program phased project application, a copy of which must be submitted to the department. An amended preliminary application for a phased project shall be evaluated as an amendment to the project phase being modified.

(5) Each construction period of a phased project must meet all program requirements on its own, without consideration of any other phase of the project.

(6) The director shall have the authority to authorize tax credits for a phased project preliminary application using an aggregate estimate with flexibility among phases for projects that meet the requirements of 4 CSR 85-5.020(1)(I).

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.090 Developer Fees; General Contractor Overhead and Profit

PURPOSE: This rule explains the treatment of developer fees and general contractor requirements under the Historic Preservation Tax Credit program.

(1) For a developer fee to be a QRE, the developer fee agreement must meet the requirements of this rule.

(2) A developer fee shall be deemed a QRE only if –

(A) The developer fee is reasonable, which shall mean that it does not exceed twelve percent (12%) of total project cost less non-qualified expenditures, related party fees, profit, and the total amount of the developer fee itself;

(B) The developer fee is evidenced by a signed and notarized written agreement between the applicant and the developer;

(C) The developer fee is incurred by the applicant no later than upon substantial completion of the project, and the basis for substantial completion, which must be one (1) of the alternatives in 4 CSR 85-5.010(2)(EE), is specified in the developer fee agreement;

(D) The developer fee agreement is submitted to the department by the later of the project's initial closing on construction financing, or initial closing on federal historic tax credit equity, if applicable. If no developer fee agreement has been submitted to the department for review by the later to occur of either event in the preceding sentence, no developer fees will be eligible as a QRE for the project; and

(E) It is preferred that the developer fee agreement does not include activities that are in support of costs that are

ineligible as QRE, such as syndication, organization, property acquisition, obtaining permanent financing, rent-up/lease-up of the property, and ongoing property management (non-QRE activities). If, however, the developer fee agreement includes both QRE and non-QRE activities, the applicant must submit a breakdown of the portions of the developer fee that are for QRE activities and non-QRE activities before being issued tax credits.

(3) Up to ninety percent (90%) of a developer fee can be deferred (incurred but unpaid) and be a QRE, provided that the requirements in section (2) of this rule are met and the developer fee agreement requires full payment of the deferred amount of the developer fee by applicant within five (5) years of substantial completion.

(4) The applicant that is issued tax credits for deferred developer fees as set forth in section (3) of this rule shall be personally liable for repayment of all tax credits attributable to any amount of the developer fee for which tax credits were issued but the developer fee is not paid within five (5) years of substantial completion of the project.

(5) For a developer fee to be a QRE, any amendment to the developer fee agreement –

(A) That changes the amount of the developer fee shall include the justification for such increase or decrease to such amount;

(B) Must be in writing, signed, and notarized by all parties; and

(C) Must be submitted to the department with the project's final application.

(6) Payment of a deferred developer fee within a reasonable period of time following it being incurred is material to the department's determination that a deferred developer fee is a QRE. The appropriate real party in interest to represent the state shall have standing to bring suit for an applicant's failure to pay a deferred developer fee for which tax credits have been issued within five (5) years of substantial completion of the project.

(7) In order to be a QRE, general contractor soft costs of overhead and profit must be separately listed on the expense report form submitted with the final application. General contractor profit and overhead must be reasonable.

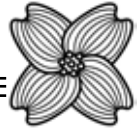
(A) General contractor overhead and profit is presumed to be reasonable if together it is equal to or less than ten percent (10%) of total eligible contractor costs less related party fees, overhead, and profit.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.100 Not-for-Profits

PURPOSE: This rule explains the treatment of not-for-profit entities under the Historic Preservation Tax Credit program.



(1) Not-for-profit entities, including but not limited to entities organized as not-for-profit corporations pursuant to chapter 355, RSMo, shall be ineligible for tax credits. Under no circumstance shall tax credits be issued to a not-for-profit.

(2) A for-profit entity will be restricted from full participation in the program if that entity has a not-for-profit as part of its ownership group or has received a contribution from a related not-for-profit. Such a for-profit applicant shall have its tax credits reduced by the greater of:

(A) The percentage interest in its ownership held by or attributed to a not-for-profit. When a not-for-profit is considered part of the applicant's ownership group, ownership interest shall be attributed to the related party not-for-profit in accordance with the attribution rules of section 304(c)(3) of the Internal Revenue Code of 1986, as amended; and

(B) The percentage of capital contributed by or on behalf of a not-for-profit owner or related party.

(3) A for-profit applicant may obtain a non-forgivable loan from a related not-for-profit entity and not have its tax credits reduced on account of such loan if such loan is made on reasonable, commercial terms evidencing an arms-length transaction, as reasonably determined by the department.

(4) For purposes of section (2) of this rule, an ownership interest will not be attributed to a related party not-for-profit that is separated from the applicant in the ownership structure, directly or indirectly, by a for-profit entity, including blocker corporations and all corporations filing U.S. Treasury (Internal Revenue Service) Form 1120 or their successors that have been formed for a legitimate business purpose. The related party not-for-profit is still considered to be a related party for all other purposes under the program. The determination of whether or not a business was formed for a legitimate business purpose will be made by the department after considering all relevant facts and circumstances. In its review of a legitimate business purpose, the department shall consider, but not be limited to, the factors and principles set forth in *Moline Properties, Inc. v. Commissioner*, 319 U.S. 436 (1943), and applicable federal law.

(5) In cases of not-for-profit ownership for the sole purpose of obtaining local tax exemptions pursuant to chapters 100 or 353, RSMo, consistent with the holding of the U.S. Supreme Court in *Helvering v. F&R Lazarus & Co.*, 308 U.S. 252 (1939) and the Internal Revenue Service's published guidance in Revenue Ruling 68-590, the change in ownership required for such local tax exemptions will not render a project ineligible for tax credits, provided that all invoices submitted to the department as Qualified Rehabilitation Expenditures (QREs) are incurred and paid by the applicant.

AUTHORITY: section 135.487, RSMo 2016, and section 620.010, RSMo Supp. 2019. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019.*

**Original authority: 135.487, RSMo 1999 and 620.010, RSMo 1971, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*

4 CSR 85-5.110 Administrative Closure

PURPOSE: This rule explains the administrative closure process for inactive projects under the Historic Preservation Tax Credit

program.

The department may administratively close any inactive project upon at least thirty (30) days' notice sent to the applicant and the project contact, and shall rescind any tax credits authorized for the project. The department may send such notice by U.S. Mail or email.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. 2023. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019. Amended: Filed July 31, 2023, effective March 30, 2024.*

**Original authority: 135.487, RSMo 1999; 135.802, RSMo 2004, amended 2009, 2022; and 620.010, RSMo 1973, amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001, 2007, 2008, 2010, 2014, 2019.*