

The text of proposed rules and changes will appear under this heading. A notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This explanation is set out in the PURPOSE section of each rule. A citation of the legal authority to make rules is also required, and appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules that are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close-of-comments date will be used as the beginning day in the ninety- (90-) day count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice, file a new notice of proposed rulemaking, and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed tek indicates matter being deleted.]

TITLE 2 – DEPARTMENT OF AGRICULTURE
Division 30 – Animal Health
Chapter 1 – Organization and Description

PROPOSED AMENDMENT

2 CSR 30-1.010 General Organization. The director is amending sections (1)–(3)

PURPOSE: This amendment provides clarification on location and names of all Animal Health Laboratories and state veterinarian's office location.

(1) The Division of Animal Health is a unit of the Department of Agriculture, state of Missouri. The animal health *[program's]* **division's** primary responsibility is to control and eradicate livestock diseases to *[insure]* **ensure** optimum health of Missouri's livestock population. This responsibility is carried

out through various *[sub]*programs such as disease control and eradication, animal health laboratories, livestock market *[licensing and surveillance registration of livestock dealers, rendering plant licensing and dead animal surveillance and registration of livestock brands]* and **dealer registration, rendering plant licensing, meat and poultry inspection, registration of livestock brands, and dead animal surveillance.**

(2) The state veterinarian's office is *[in the Department of Agriculture on the 3rd floor of the Missouri Boulevard Staff]* **housed within the George Washington Carver State Office Building** located at 1616 Missouri Boulevard, Jefferson City, MO 65102.

(3) Two (2) laboratories are maintained by the state veterinarian's office and are located at the following addresses: *[Veterinary Diagnostic Laboratory]* **Animal Health Diagnostic Laboratory**, 101 North Chestnut, Jefferson City, MO 65101; *[Post Office Box 630, Jefferson City, MO 65102;]* and *[Veterinary Diagnostic Laboratory]* **Animal Health Diagnostic Laboratory**, 701 North Miller Avenue, *[Post Office Box 2510,]* Springfield, MO 65802-2510.

AUTHORITY: section 536.023, RSMo *[Supp. 2010]* **2016.** Original rule filed April 9, 1976, effective July 15, 1976. For intervening history, please consult the **Code of State Regulations.** Amended: Filed July 21, 2023.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by website at <https://agriculture.mo.gov/proposed-rules/> or by mail to the Missouri Department of Agriculture, ATTN: Dr. Steve Strubberg, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days of publication of this notice in the **Missouri Register.** No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 85 – Division of Business and Community
[Services] Solutions
Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.010 Overview and Definitions. The department is amending the division title and sections (1)–(2).

PURPOSE: This proposed amendment will ensure consistency in definitions as between the statutes and the regulations, add definitions to reflect the three different stages when applications can be submitted, and update some definitions to reflect technological advancements in filing and processing of applications.

(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 *[253.561]* **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 *[total costs and expenses of rehabilitation]* **qualified rehabilitation expenditures (QREs)**, provided that such *[costs and]* expenses exceed fifty percent (50%) of the total basis in the property. *[The Department of Economic Development (DED) is responsible for the issuance of the credits based upon certification of the rehabilitation by the Department of Natural Resources, State Historic Preservation Office.]*

(2) As used in this chapter, the following terms mean[:]-

(A) **Applicant.** The *[entity or individual(s) that owns or has site control of the eligible property (as defined in section 253.545(3), RSMo) on which qualified rehabilitation expenditures have been incurred which are expected to generate tax credits. Proof of ownership shall include evidence that applicant is the fee simple owner of the eligible property, such as a warranty deed or closing statement. Proof of site control may be evidenced by a leasehold interest for a term of not less than thirty (30) years, provided that such leasehold interest is not determined to be a disqualified lease as defined in section 168(h) of the Internal Revenue Code of 1986, as amended, or an option to acquire such an interest. If the applicant is in the process of acquiring fee simple ownership, proof of site control shall include an executed sales contract or an executed option to purchase the eligible property.] 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;**

[(B)](C) Department. The Department of Economic Development[:];

[(C)](D) Developer Fee Agreement. A written agreement for services between the developer and the applicant *[in the form provided by the department];*

[(D)](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;**

[(E)](I) Final Application. A request for issuance of tax credits by an applicant whose project is complete *[and whose preliminary application has been approved by the department.] after having received an authorization of tax credits for the project. The final application must be on the electronic form provided by the department[:];*

[(F)](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 *[HTC Program] 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[:];

[(G)] Guidelines. The program guidelines, which shall be published on the department's website[:]

[(H)](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[:];

[(I)](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[:]-

[(J)](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[:];

[(K)] Incomplete Application. A preliminary application received by the department that is not submitted in accordance with the preliminary application or its instructions, regulations, or the department's guidelines published on its website[:]

[(L)](N) Incurred. Has the same meaning as set forth in U.S. Treasury Regulation 26 CFR 1.461-1(a)(2)(i), or any successor

regulation[.];

[(M)](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[.];

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

[(O)](Q) Phased Project. A project for which the **preliminary application[s for tax credits]** 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;

[(P)](S) Preliminary Application. A request by an applicant for an authorization of tax credits, on the **electronic** form [approved and made available] provided by the department[.];

[(Q)](P) Preliminary Approval. The department's authorization of tax credits for a particular project under the program.]

[(R)](T) Program. The Missouri Historic Preservation Tax Credit Program [as set forth] authorized in sections 253.545 to 253.559, RSMo[.];

[(S)](U) Project. [The structure or property on which qualified rehabilitation expenditures are to be incurred which is expected to generate tax credits.] 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;

[(T)](Y) Qualified Rehabilitation Expenditures, or QREs. Those expenditures that are used as eligible basis on which to calculate [the Missouri Historic Preservation Tax Credit] 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[.];

[(U)](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, [and] 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 QTC 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;

[(V)](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

[(W)](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, sections 135.802 and 620.010, RSMo Supp. [2019] 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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**TITLE 4 – DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 85 – Division of Business and Community
[Services] Solutions**

Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.020 Applications. The department is amending the division title and sections (1)–(13).

PURPOSE: This proposed amendment will make the rule reflect the three different stages when an application may be submitted, clarifying the steps within and the requirements for each application type or stage, in order to make it easier for prospective applicants to follow the rule's requirements. This rule includes significant substantive changes: (a) the addition of a fifteen-business day opportunity to cure an incomplete application; (b) the elimination of a three-tier scoring system, replaced with a simpler passing and failing score system; (c) the elimination of a two one-month application cycles per fiscal year, replacing it with a single cycle open for 12 months; (d) changing the order in which tax credits are allocated from a statutory set-aside for projects in qualified census tracts; (e) allowing a project to be authorized tax credits upon a conditional approval from the State Historic Preservation Office or the National Park Service, rather than only upon an unconditional approval from SHPO; and (f) adding the ability to receive tax credits for certain hard costs incurred one year before a preliminary application for tax credits is submitted.

(1) [All applicants shall submit a preliminary application. The department will automatically reject all incomplete applications. Sections (2) through (7) of this rule shall not apply to projects to receive less than two hundred seventy-five thousand dollars (\$275,000) of tax credits.] **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. A signed letter of support for the project from the chief elected official of the jurisdiction 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, as determined 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.

[(2)](F) A complete preliminary application will be evaluated for eligibility and scored [and considered] by the department in accordance with section 253.559.3(1), RSMo. The scoring criteria for preliminary applications shall be published annually on the department's website. Based on their scores, the department will place preliminary applications into one of three tiers: Tier 1, Tier 2, or Tier 3., subsection (1)(J) of this rule, and 5 CSR 85-5.030, 5.040, 5.050, and 5.060.

[(3) A Tier 1 preliminary application that has been received by the department, but has not been approved due to an exhaustion of the program cap, will be placed in line for review until there is sufficient program cap space due to a rescission of authorized tax credits for such state fiscal year in which the program cap has been exhausted or until the next state fiscal year with sufficient program cap space. Tier 2 and Tier 3 preliminary applications that have been received by the department, but have not been approved due to an exhaustion of the program cap, will not be further considered.

(4) The department shall accept preliminary applications in two (2) cycles for each state fiscal year. An applicant shall apply to the program on the preliminary application form approved and made available by the department.

(A) Specific application submission schedules shall be established by the department and published not less than two (2) months prior to the beginning of each application period. Preliminary applications for the first cycle must be submitted to the department and postmarked no earlier than June 1, 2019, for allocations to be awarded for the fiscal year starting July 1, 2019, or no earlier than October 1 for allocations to be awarded on or after January 1, 2020.]

(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.

[(B)](H) Pursuant to section 253.559.1, RSMo, preliminary applications and excess tax credits applications within each cycle shall be prioritized for review [and approval] 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.

[(C) Preliminary applications postmarked on the same day shall go through a lottery process to determine the order in which such preliminary applications shall be reviewed. Upon

the department's review, if more than one (1) preliminary application receives the same score, such applications shall be approved in the order determined by the lottery process.]

[(5)](I) Subject to sufficient [program cap space,] **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[s] set forth in **subsection [(4)](1)(G)** of this rule and shall be accepted by the department at any time:

[(A)]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;

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

[(C)]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 required by 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.

[(6)](K) The department [shall review preliminary applications in the order established by the lottery system described in section (4) of this rule; however, 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.

[(7)](L) For projects [that receive preliminary approval and] that are located within a qualified census tract [as defined in section 253.545, RSMo], credits shall first be authorized from the [amount allocated for all projects set forth in section 253.550.2(1), RSMo,] **QCT tax credit cap** before being authorized from the [amount allocated solely for qualified census tract projects set forth in section 253.550.2(2), RSMo] **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.

[(8) An applicant's hard costs set forth in a preliminary application will be considered eligible for tax credits only if such costs are incurred on or after the date on which the department receives the preliminary application.

[(9) An applicant's soft costs set forth in a preliminary application will be considered eligible for tax credits only if such costs are incurred within one (1) year prior to the date on which the department receives the preliminary application, or later.

[(10) Subject to section 253.559.9, RSMo, at an applicant's request, the department may contract to facilitate an independent review process of an applicant's preliminary cost certification by one (1) or more third-party certified public

accountant firms, provided that any such independent cost certification review shall be paid entirely by the applicant and shall not constitute an eligible QRE under the program, and further provided that, under such independent review process, applicant may not contract with a certified public accountant firm with which it is a related party or has had a significant business relationship, as reasonably determined by the department. The department may publish guidance regarding such independent cost certification review in the program guidelines.

(11) An applicant shall submit the final application on the form approved and made available by the department. The final application shall be evaluated using the rules and guidelines published by the department for the fiscal year in which the applicant's preliminary application was submitted.

(12) If upon submitting the final application, the amount of eligible QREs is in excess of the amount approved under the program's preliminary application process, the applicant may apply to the department for issuance of tax credits in an amount equal to such excess. The applicant must apply for issuance of the excess credits on the form provided by the department. Applications for issuance of excess credits will be placed in line for issuance at the next available date. When evaluating an application for excess credits, the department may adjust the project scores in light of the excess amount.

(13) Except as otherwise provided, no property shall receive preliminary approval within five (5) years following the issuance of tax credits in connection with that property.]

(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 no earlier than one (1) year prior to the date on which the department receives the preliminary application;

B. 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

C. 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) The department shall post on its website a checklist of required information for an excess tax credits application. If an excess tax credits application submitted to the department is incomplete, the department will give an applicant one 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)(j) 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)(J) 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)(M) of this rule.

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. [2019] 2023. Original rule filed July 8, 2008, effective Feb. 28, 2009. For intervening history, please consult the Code of State Regulations. Amended: Filed July 31, 2023.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions

Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.030 Preliminary and Excess Tax Credits Application Evaluation – Projected Net Fiscal Benefit. The department is amending the division title, rule title, and the rule text.

PURPOSE: This proposed amendment clarifies which applications require a net fiscal benefit evaluation and require the applicant to submit the analysis of municipal net fiscal benefit.

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 [and local municipality] shall be reasonably determined

by the department. **The projected net fiscal benefit to the municipality shall be provided by the applicant.**

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. [2019] 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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.040 Preliminary and Excess Tax Credits Application Evaluation – Overall Size and Quality of the Project. The department is amending the division title, rule title, and section (1).

PURPOSE: This proposed amendment clarifies which applications are evaluated for overall size and quality.

(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:

(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. [2019] 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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.050 Preliminary and Excess Tax Credits Application Evaluation – Level of Economic Distress. The department is amending the division title, rule title, and section (1).

PURPOSE: This proposed amendment clarifies which applications require a level of economic distress evaluation and adds inclusion in an enhanced enterprise zone as a basis for receiving a higher score.

(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:

(B) The project census tract's designation as a qualified census tract [*as defined in section 253.545(7), RSMo*];

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

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

~~(E)~~**(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. [2019] 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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions

Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.060 Preliminary and Excess Tax Credits Application Evaluation – Input from Local Elected Officials. The department is amending the division title, rule title, and section (1).

PURPOSE: This proposed amendment clarifies which applications require a letter of support from local officials and when a letter from the president of the board of aldermen in the City of St. Louis must be included.

(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:

(B) Signed letter of support from the chief elected official of the jurisdiction where the project [will be] 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. [2019]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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions

Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.070 Compliance with Other Provisions of Law. The department is amending the division title and section (1) and removing section (2).

PURPOSE: This proposed amendment clarifies which applications result in an issuance of tax credits, and adds compliance with

section 285.530, RSMo 2016, to the rule, which is required by statute, but inclusion in the rule helps ensure understanding by prospective applicants of its applicability. Deleted section (2) has been moved to 4 CSR 85-5.020(2)(G).

(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 [deemed eligible under the program] **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; [and]

(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.

[(2) 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. 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. An applicant may not receive tax credits for Qualified Rehabilitation Expenditures (QREs) paid by a third party payor on behalf of the applicant, regardless of whether applicant reimburses the third party payor. A title company paying on behalf of an applicant shall not be considered a third party payor for purposes of this section.]

AUTHORITY: section 135.487, RSMo 2016, and sections **135.802 and 620.010**, RSMo Supp. [2019]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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions

Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.080 Phased Projects. The department is amending the division title and sections (1)–(4) and (6).

PURPOSE: This proposed amendment eliminates duplicative paperwork by allowing a phased project to submit a single preliminary application instead of a separate preliminary application for each phase of the project.

(1) To qualify as a phased project, an applicant must[:]—

(B) [Submit a preliminary application for each construction period of the phased project at the same time] **Submit a single preliminary application to the department for the entire phased project;** and

(C) [The] **Submit a copy of the federal historic preservation tax incentives program** phased project application [must be submitted] with [each] the preliminary application.

(2) [Each phased] **The** preliminary application [for tax credits] **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 [state phased project] **preliminary application for a phased project** must [have] be identical to amendments [as] 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** [application] shall be evaluated as an amendment to the project phase [in question] **being modified.**

(6) The director shall have the authority to [approve] **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[(5)](1)(1).

AUTHORITY: section 135.487, RSMo 2016, and sections **135.802 and 620.010**, RSMo Supp. [2019]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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions

Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.090 Developer Fees; General Contractor [Requirements] Overhead and Profit. The department is amending the division title, rule title, and sections (1)–(4), inserting two (2) new sections, and renumbering as necessary.

PURPOSE: This proposed amendment removes the requirement that applicants and developers use a specific department-created form for a developer fee agreement, instead allowing the parties to create their own agreement that can suit other needs besides those of the department and combines two separate percentage caps for contract overhead and contractor profit into one combined percentage to give applicants greater flexibility in such arrangements.

(1) For a developer fee to be a [Qualified Rehabilitation Expenditure (] QRE [)], the developer fee agreement must [be on the form approved and made available by the department in the program guidelines for the applicable state fiscal year] **meet the requirements of this rule.**

(2) A developer fee shall be deemed a QRE only if[:]—

(B) The developer fee is evidenced by a **signed and notarized** written [records indicating:] **agreement between the applicant and the developer;**

[1. A requirement of full payment of the developer fee within five (5) years of final completion, as defined within the developer fee agreement; and

2. That the applicant will be personally liable for repayment of all credits attributable to any amount of the developer fee not paid within five (5) years of final completion; and

(C) The developer fee agreement is provided to the department with an applicant's preliminary application, if notarized at or prior to that date, but not after the later to occur of the project's initial closing on construction financing; or initial closing on federal historic tax credits, 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 deemed eligible as QREs for such project.

1. Any amendments to the developer fee agreement that change the amount of the developer fee shall include the justification for such increase or decrease to such amount.

2. All developer agreements and amendments thereto must be signed and notarized by all parties involved to be considered eligible as a QRE.

3. In the event applicant amends any developer fee agreement for any developer fees that applicant requests or has requested as QREs, applicant shall provide the department with such amendment upon its execution.]

(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 credits, 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) The developer fee agreement does not include activities that are in support of costs that are ineligible as a QRE, such as syndication, organization, property acquisition, obtaining permanent financing, rent-up/lease-up of the property, and ongoing property management.

(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.

[(3)](7) In order to be [included as] a QRE, general contractor soft costs of overhead [, including general requirements.] 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 [six] ten percent [(6%)] (10%) of total eligible [project] contractor costs less related party fees, overhead, and profit.

[(B)] General contractor overhead, including general requirements, is presumed to be reasonable if it is equal to, or less than four percent (4%) of total eligible project costs less related party fees, overhead, and profit.]

[(4)] Payment of a developer fee within a reasonable period of time following its accrual is material to the department's approval of such developer fee as 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 an accrued developer fee for which tax credits have been issued within five (5) years of such developer fee's accrual.]

AUTHORITY: section 135.487, RSMo 2016, and sections 135.802 and 620.010, RSMo Supp. [2019]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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private

entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions

Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.100 Not-for-Profits. The department is amending the division title, deleting section (3), and renumbering as necessary.

PURPOSE: This proposed amendment will eliminate an unnecessary provision.

[(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)](3) 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)](4) In cases of not-for-profit ownership for the sole purpose of obtaining local tax exemptions pursuant to [c] 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 sections 135.802, and 620.010, RSMo Supp. [2019]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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

TITLE 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85 – Division of Business and Community [Services] Solutions

Chapter 5 – Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.110 Administrative Closure. The department is amending the division title and the rule text.

PURPOSE: This proposed amendment will clarify how the department may notify an applicant of administrative closure of inactive projects, taking into account technological advances in communications with program participants.

The department may administratively close any inactive project upon [written] notice sent to the applicant, **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. [2019]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.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Economic Development, Business and Community Solutions Division, ATTN: Redevelopment Finance Manager, PO Box 118, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

TITLE 12 – DEPARTMENT OF REVENUE Division 10 – Director of Revenue Chapter 4 – State Use Tax

PROPOSED RESCISSION

12 CSR 10-4.015 Sale Consummation. This rule aided in determining when a sale took place and interpreted and applied section 144.605(5), RSMo.

PURPOSE: This rule is being rescinded because it is outdated as written and is covered correctly in other rules.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 605-3 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Rescinded: Filed July 27, 2023.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Legislative Office, 301 W. High Street, Room 218, Jefferson City, MO 65109-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

TITLE 12 – DEPARTMENT OF REVENUE

Division 10 – Director of Revenue

Chapter 4 – State Use Tax

PROPOSED RESCISSION

12 CSR 10-4.100 Tax Paid to Another State. This rule indicated the liability of a person who makes a taxable purchase and takes delivery in another state and interprets and applies section 144.615(1), RSMo.

PURPOSE: This rule is being rescinded because it is completely contained in 12 CSR 103.250.

AUTHORITY: section 144.705, RSMo 1994. U.T. regulation 615-5 originally filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985. Rescinded: Filed July 27, 2023.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Legislative Office, 301 W. High Street, Room 218, Jefferson City, MO 65109-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.