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SALUS POPULI SUPREMA LEX ESTO

“The welfare of the people shall be the supreme law.”



JOHN R. ASHCROFT
SECRETARY OF STATE

MISSOURI
REGISTER

Under this heading will appear the text of proposed rules and changes. The 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 is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbolology 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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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 which 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 and 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.

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.

(B) Department. The Department of Economic Development.

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

(D) Director. The director of the department.

(E) Final Application. A request for tax credits by an applicant whose project is complete and whose preliminary application has been approved by the department, on the form provided by the department.

[(A)](F) 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 ["/]multiple phased project.[/]" Costs associated with one 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. Any exceptions must be submitted to [DED] the department before the final cost certification is submitted and must be approved in writing by [DED] the department.

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

(H) 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.

[(B)](I) Identity of Interest, or Related Party. An identity of interest, or related party, may exist when:

1)]. [when t]The [project owner] applicant has any financial interest in the other party (i.e., general contractor, subcontractor, vendor);

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

3)]. [when a]Any officer, director, stockholder, or partner of the [project owner] applicant has any financial interest whatsoever in the other party or has controlling interest in the management or operation of the other party;

4)]. [when t]The other party advances any funds to the [project owner] applicant;

5)]. [when t]The other party provides and pays on behalf of the [project owner] applicant the cost of any legal services, architectural services, or engineering services other than those of a surveyor,

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85—Division of Business and Community Services

Chapter 5—Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.010 Overview and Definitions. The department is amending section (2) to update the terms used for the Missouri Historic Preservation Tax Credit program.

PURPOSE: This amendment updates the terms used for the Missouri Historic Preservation Tax Credit program.

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

(A) **Applicant.** The entity or individual(s) that owns or has site

general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract;

6[)]. [when t/The other party takes stock or any interest in the [project owner] applicant as part of consideration to be paid; [and]

7[)]. [when t/There exists or comes into being any side deal/s], agreement/s], contract, or undertaking/s] entered into there by altering, amending, or canceling any of the original documents submitted to [DED] the department [at initial] in the preliminary application, except as approved by [DED]. In the event an identity of interest exists between the project owner, developer, and/or contractor, care should be taken that no duplication of work exists.] 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) 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) Incurred. Has the same meaning as set forth in U.S. Treasury Regulation 26 CFR 1.461-1(a)(2)(i).

[(C)](M) Non Qualified Expenditures. All costs included in [T]total [P]project [C]costs which are not [Q]qualified [R]rehabilitation [E]expenditures are considered [N]non [Q]qualified [E]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.

[(D)] Project Owner. The entity or individual(s) owning the structure or property on which rehabilitation or new construction costs have been incurred which are expected to generate HTC and/or Neighborhood Presentation Act (NPA) tax credits.]

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

(O) Phased Project. A project for which the applications for tax credits submitted to the department provide for the project to be completed and reviewed in more than one construction period, as described in 4 CSR 85-5.080.

(P) Preliminary Application. A request by an applicant for an authorization of tax credits, on the form approved and made available by the department.

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

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

(S) Project. The structure or property on which qualified rehabilitation expenditures are to be incurred which is expected to

generate tax credits.

[(E)](T) Qualified Rehabilitation Expenditures, or [(I)] QREs.—HTC. Qualified Rehabilitation Expenditures are t/Those expenditures that are used as eligible basis on which to calculate the Missouri Historic Preservation Tax Credit. 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; and a list of qualified rehabilitation expenditures under the program that the department shall publish in its 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 list of qualified rehabilitation expenditures effective on the date the project's preliminary application was submitted.

[(F)] Qualified Rehabilitation Expenditures (QRE)—NPA. Qualified Rehabilitation Expenditures are those expenditures that are used as eligible basis on which to calculate the Missouri Neighborhood Preservation Tax Credit.]

(U) 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.

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

[(G)](W) Total Project Costs. [Total Project Costs include a/All costs, whether accrued or paid, pertaining to the redevelopment of the property for which an application for tax credits has been submitted. Total [P]project [C]costs include all [Qualified Rehabilitation Expenditures] QREs and all [N]non [Q]qualified [E]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 [project owner] applicant.

AUTHORITY: sections 135.487], RSMo 2000] and [section] 620.010, [HB 788, Second Regular Session, Ninety-fourth General Assembly, 2008] RSMo 2016. Original rule filed July 8, 2008, effective Feb. 28, 2009. Emergency amendment filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Amended: Filed March 20, 2019.

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, General Counsel, PO Box 1157, Jefferson City, MO 65102 1157. 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

Chapter 5—Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.020 [Preliminary] Applications. The department is

amending the title, purpose, and sections (1) through (6) of this rule and adding seven (7) new sections to explain the application process for the Historic Preservation Tax Credit Program.

PURPOSE: This amendment explains the application process for the Historic Preservation Tax Credit Program.

PURPOSE: This rule [establishes requirements for submitting a preliminary] explains the application process for tax credits under the Historic Preservation Tax Credit Program.

[PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which 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) *[In order to qualify for state historic preservation tax credits, the property must be a certified historic structure listed on the National Register of Historic Places or a contributing structure in a certified historic district, as those terms are defined in section 253.545, RSMo. The eligible rehabilitation costs and expenses must exceed fifty percent (50%) of the total basis in the property. A copy of the portion of the settlement statement that shows purchase price must be submitted as proof, preferably with the preliminary application materials. The rehabilitation must meet standards consistent with the standards of the Secretary of the United States Department of the Interior for rehabilitation as determined by the State Historic Preservation Office of the Missouri Department of Natural Resources (SHPO).] All applicants shall submit a preliminary application. 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.*

(2) *[The approval process is broken into two (2) parts—the preliminary application and the final application.] A preliminary application will be 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. The department will automatically reject all incomplete applications. [should be submitted prior to any project work. This allows the Missouri Department of Economic Development (DED) and SHPO to review the project for eligibility and allows SHPO to guide the applicant in regard to rehabilitation. Any work done prior to certification of preliminary approval is done at the applicant's risk.]*

(3) *[A project may be completed in multiple construction periods. Use of construction periods will only be allowed when a phased federal application is also filed. The construction periods used for the state historic rehabilitation must match the phase dates submitted in the federal application. The applicant must apply for all construction periods simultaneously, prior to the start of any work on the project. An applicant who elects to utilize construction periods must submit an audit performed by a certified public accountant.] 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) *[Applicants for state historic preservation tax credits whose] The department shall accept preliminary applications [are received by the DED on, or after, February 28, 2009, but before January 30, 2015 must follow the procedures and guidelines found in Missouri Historic Preservation Tax Credit Program, Preliminary Application and Guidelines and complete Historic Preservation Tax Credit Program—Preliminary Approval Form—Form 1, both of which are incorporated by reference in this rule as published February 28, 2009, by DED and available at DED, Business and Community Services, 301 West High Street, Suite 770, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.] 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.

(B) Pursuant to section 253.559.1, RSMo, preliminary 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.

(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 preliminary application receives the same score, such applications shall be approved in the order determined by the lottery process.

(5) *[Applicants for state historic preservation tax credits whose preliminary applications are received by the DED on, or after, January 30, 2015 must follow the procedures and guidelines found in Missouri Historic Preservation Tax Credit Program, Preliminary Application and Guidelines, which is incorporated by reference in this rule as published September 2, 2014, by DED and available at DED, Division of Business and Community Services, 301 West High Street, Suite 770, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.] Subject to sufficient program cap space, preliminary applications for projects meeting the following requirements are not subject to the application cycles set forth in section (4) of this rule and shall be accepted by the department at any time:*

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

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

(6) 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 until such preliminary application has received written, unconditional approval from the State Historic Preservation Office.

[(6)](7) [After receiving] For projects that receive preliminary approval, the applicant may go forward with the project. When the project is completed and expenses have been paid, the final application should be submitted along with expense documentation and required application materials. (See rule 4 CSR 85-5.030.) After the final materials are received by DED, SHPO performs a final review of the technical project work and DED performs an audit of the expenses. After approval of the project work and expenses, a tax credit certificate for twenty-five percent (25%) of state qualified rehabilitation expenditures is issued and mailed to the applicant.] 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, before being authorized from the amount allocated solely for qualified census tract projects set forth in section 253.550.2(2), RSMo.

(8) An applicant's hard costs set forth in the preliminary application will only be deemed eligible QREs if they are incurred on the later of:

(A) Six (6) months prior to the department's approval of the applicant's preliminary application; or

(B) One (1) month prior to the department's receipt of the applicant's preliminary application.

(9) An applicant's soft costs set forth in the preliminary application will only be deemed eligible QREs if they are incurred on the later of:

(A) One (1) year prior to approval of the applicant's preliminary application; or

(B) Six (6) months prior to the receipt of the applicant's preliminary application.

(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 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 appli-

cation 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.

AUTHORITY: sections 135.487 and 620.010, RSMo [Supp. 2014] 2016. 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, expires Dec. 31, 2019. Amended: Filed March 20, 2019.

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, General Counsel, PO Box 1157, Jefferson City, MO 65102 1157. 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

Chapter 5—Historic Preservation Tax Credit Program

PROPOSED AMENDMENT

4 CSR 85-5.030 [Final] Preliminary Application Evaluation Net Fiscal Benefit. The department is amending the title and purpose and replacing sections (1) through (3) of this rule with a single section.

PURPOSE: This amendment clarifies the application considerations set forth in section 253.559.3(1)(a), RSMo for the Historic Preservation Tax Credit Program.

PURPOSE: This rule [establishes the requirements for submitting the final application for tax credits under the Historic Preservation Tax Credit Program.] clarifies the application considerations set forth in section 253.559.3(1)(a), RSMo.

[PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which 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) When a project for which tax credits are sought under the Historic Preservation Tax Credit Program (HTC) is completed and expenses have been paid, the final application should be submitted along with expense documentation and required application materials. After the final materials are received by the Department of Economic Development (DED), the State Historic Preservation Office of the Department of Natural Resources (SHPO) performs a final

review of the technical project work and DED performs an audit of the expenses. After approval of the project work and expenses, a tax credit certificate for twenty-five percent (25%) of qualified rehabilitation expenditures is issued and mailed to the applicant.

(2) For projects with total project costs of two hundred fifty thousand dollars (\$250,000) or more in which tax credits are being sought under both the HTC program and the Neighborhood Preservation Tax Credit Program (sections 135.475 to 135.487, RSMo), the project applicant must follow the HTC guidelines and complete the HTC cost certification, which will be used by both programs in the credit approval process.

(3) Applicants for state historic preservation tax credits must follow the procedures and guidelines found in Missouri Historic Preservation Tax Credit Program, Final Application and Guidelines and complete Historic Preservation Tax Credit Program—Final Approval Form—Form 2, both of which are incorporated by reference in this rule as published February 28, 2009, by DED and available at DED, Business and Community Services, 301 West High Street, Suite 770, Jefferson City, MO 65101. This rule does not incorporate any subsequent amendments or additions.]

For purposes of evaluating a preliminary application for tax credits pursuant to section 253.559.3(1)(a), RSMo, net fiscal benefit to the state and local municipality shall be reasonably determined by the department.

AUTHORITY: sections 135.487, RSMo 2000] and [section] 620.010, [HB 788, Second Regular Session, Ninety-fourth General Assembly, 2008] RSMo 2016. Original rule filed July 8, 2008, effective Feb. 28, 2009. Emergency amendment filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Amended: Filed March 20, 2019.

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, General Counsel, PO Box 1157, Jefferson City, MO 65102 1157. 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

Chapter 5—Historic Preservation Tax Credit Program

PROPOSED RULE

4 CSR 85-5.040 Preliminary 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 tax credit 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 to the department.

AUTHORITY: sections 135.487 and 620.010, RSMo 2016. Emergency rule filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Original rule filed March 20, 2019.

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

PRIVATE COST: This proposed rule 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 rule with the Department of Economic Development, General Counsel, PO Box 1157, Jefferson City, MO 65102 1157. 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

Chapter 5—Historic Preservation Tax Credit Program

PROPOSED RULE

4 CSR 85-5.050 Preliminary 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 tax credit 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, as defined in section 253.545(7), RSMo;

(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; and

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

AUTHORITY: sections 135.487 and 620.010, RSMo 2016. Emergency rule filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Original rule filed March 20, 2019.

PUBLIC COST: This proposed rule will not cost state agencies or

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

PRIVATE COST: This proposed rule 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 rule with the Department of Economic Development, General Counsel, PO Box 1157, Jefferson City, MO 65102 1157. 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
Chapter 5—Historic Preservation Tax Credit Program

PROPOSED RULE

4 CSR 85-5.060 Preliminary 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 tax credit 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 letter of support from the chief elected official of the jurisdiction where the project will be located.

AUTHORITY: sections 135.487 and 620.010, RSMo 2016. Emergency rule filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Original rule filed March 20, 2019.

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

PRIVATE COST: This proposed rule 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 rule with the Department of Economic Development, General Counsel, PO Box 1157, Jefferson City, MO 65102 1157. 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
Chapter 5—Historic Preservation Tax Credit Program

PROPOSED RULE

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 shall be in an amount no greater than those costs that are deemed eligible under the program, and shall only be issued after 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.

(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: sections 135.487 and 620.010, RSMo 2016. Emergency rule filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Original rule filed March 20, 2019.

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

PRIVATE COST: This proposed rule 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 rule with the Department of Economic Development, General Counsel, PO Box 1157, Jefferson City, MO 65102 1157. 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
Chapter 5—Historic Preservation Tax Credit Program

PROPOSED RULE

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 preliminary application for each construction period of the phased project at the same time; and

(C) The phased project application must be submitted with each preliminary application.

(2) Each phased preliminary application for tax credits must mirror the phasing listed in the federal historic preservation tax incentives project application.

(3) Each construction period 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 application must have identical amendments as the applicant's federal phased project application. An amended phased project application shall be evaluated as an amendment to the project phase in question.

(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 approve a phased project application using an aggregate estimate with flexibility among phases for projects that meet the requirements of 4 CSR 85 5.020(5).

AUTHORITY: sections 135.487 and 620.010, RSMo 2016. Emergency rule filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Original rule filed March 20, 2019.

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

PRIVATE COST: This proposed rule 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 rule with the Department of Economic Development, General Counsel, PO Box 1157, Jefferson City, MO 65102 1157. 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

Chapter 5—Historic Preservation Tax Credit Program

PROPOSED RULE

4 CSR 85-5.090 Developer Fees; General Contractor Requirements

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 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.

(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 written records indicating:

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.

(3) In order to be included as a QRE, general contractor 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 profit is presumed to be reasonable if it is equal to or less than six percent (6%) of total eligible project 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: sections 135.487 and 620.010, RSMo 2016. Emergency rule filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Original rule filed March 20, 2019.

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

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

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Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 85—Division of Business and Community Services

Chapter 5—Historic Preservation Tax Credit Program

PROPOSED RULE

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: sections 135.487 and 620.010, RSMo 2016. Emergency rule filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Original rule filed March 20 2019.

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

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

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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
Chapter 5—Historic Preservation Tax Credit Program

PROPOSED RULE

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 written notice sent to the applicant.

AUTHORITY: sections 135.487 and 620.010, RSMo 2016. Emergency rule filed March 20, 2019, effective March 30, 2019, expires Dec. 31, 2019. Original rule filed March 20, 2019.

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

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