



**Rules of
Department of Economic
Development**

**Division 85—Division of Business and Community
Services**

Chapter 5—Historic Preservation Tax Credit Program

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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**

4 CSR 85-5.010 Overview and Definitions

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

(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, 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, 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.

(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 depart-

ment.

(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.

(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 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. 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) 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) 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, 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) 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).

(M) 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) 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 (1) 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.

(T) Qualified Rehabilitation Expenditures, or QREs. 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.

(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.

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

AUTHORITY: section 135.487, RSMo 2016, and section 620.010, RSMo Supp. 2019. 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.

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

4 CSR 85-5.020 Applications

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

(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.

(2) 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.

(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.

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

(5) 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.

(7) 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, 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 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.

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

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

4 CSR 85-5.030 Preliminary Application Evaluation—Net Fiscal Benefit

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

For purposes of evaluating a preliminary application for 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: section 135.487, RSMo 2016, and section 620.010, RSMo Supp. 2019. 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.*

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

4 CSR 85-5.040 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 credits pursuant to section 253.559.3(1)(b), RSMo, the department shall evaluate the following criteria:

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

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

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

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

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

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

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

4 CSR 85-5.050 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 credits pursuant to section 253.559.3(1)(c), RSMo, the department shall evaluate the following criteria:

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

(B) The project census tract's designation as a qualified census tract, 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: section 135.487, RSMo 2016, and section 620.010, RSMo Supp. 2019. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019.*

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

4 CSR 85-5.060 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 credits pursuant to section 253.559.3(1)(d), RSMo, the department shall evaluate the following criteria:

- (A) Committed amount of local incentives to the project; and
(B) Signed letter of support from the chief elected official of the jurisdiction where the project will be located.

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

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

4 CSR 85-5.070 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: section 135.487, RSMo 2016, and section 620.010, RSMo Supp. 2019.* Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019.

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

4 CSR 85-5.080 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: section 135.487, RSMo 2016, and section 620.010, RSMo Supp. 2019.* Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019.

Original rule filed March 20, 2019, effective Nov. 30, 2019.

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

4 CSR 85-5.090 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: section 135.487, RSMo 2016, and section 620.010, RSMo Supp. 2019. Emergency rule filed March 20, 2019, effective March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019.*

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

4 CSR 85-5.100 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 appli-

cant shall have its tax credits reduced by the greater of:

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

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

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

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

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

AUTHORITY: section 135.487, RSMo 2016, and section 620.010, RSMo Supp. 2019. Emergency rule filed March 20, 2019, effec-*

tive March 30, 2019, expired Dec. 31, 2019. Original rule filed March 20, 2019, effective Nov. 30, 2019.

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

4 CSR 85-5.110 Administrative Closure

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

The department may administratively close any inactive project upon written notice sent to the applicant.

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

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