

Not-For-Profits Gain Access to Historic Tax Credits with Enactment of Missouri HB 2062

On May 16, Missouri passed HB 2062 modifying the state's existing Historic Tax Credit (HTC) program. The bill alters the program in several significant ways. The program will now feature a year-round application cycle, increased credit allocations for projects in qualified counties, and amends previous project requirements.

Programmatic Changes

From a program perspective, HB 2062 establishes an HTC application cycle that permits year-round applications to be made to the Department of Economic Development (Department). Thereafter, once the department forwards the application to State Historic Preservation Office (SHPO) for comment, SHPO must conduct reviews within a 60-day deadline. But, if SHPO makes no comment within the 60-day period, SHPO must automatically forward the application to the National Park Service for comment within an additional 60 days. Additionally, if SHPO denies the application, HB 2062 also establishes an appeals process that entitles the appellant to at least one meeting with an appeals officer or review panel. But, once the Department receives either a state approval by SHPO or an approved part three federal application, if the project is to receive federal credits, the Department must, within 75 days, issue to the taxpayer 75% of the tax credits the taxpayer applied for. The remaining requested credits are received by the taxpayer within 120 days of the Department's receipt of all required materials and after the Department makes a final determination of the total costs and expenses of rehabilitation as well as the proper amount of credits to be awarded to support those costs and expenses. But, even with credit being issued earlier than past legislation allowed, the Department reserves the right to later determine that if the total amount of credit a taxpayer is to receive exceeds the actual amount the taxpayer should be eligible for, then that taxpayer will be required to repay the Department the amount equal to such excess.

Tax Credit Changes

The modification of HB 2062 increases HTC from 25% to 35% in qualified counties outside of the City of St. Louis and Kansas City. Additionally, for those 35% projects, all pre-application costs for stabilization and investigative assessments (not to exceed 10% of QRE) will count towards HTC. It also will now allow the program to exclude projects over one million square feet from having their allocation count towards the yearly allocation cap while permitting such projects to take their HTC allocation over six years. Furthermore, HB 2062 will allow taxpayers to receive additional credits when the scope of a project 'materially changes' if the Department is notified

and approves of such change(s) in scope first. Finally, upon approval of the cost certification and the work completed on each phase of the project, the Department shall issue 80% of the amount of the state tax credit that was allocated to the project, with the remaining 20% being issued upon the final approval of the project. This greatly increases the timeframe for investors to receive credits as previous legislation only permitted the credits to be issued after final approval of the project.

Project Changes

In addition to the programmatic and tax credit changes, HB 2062 now permits projects to begin prior to receiving the national registration designation. It also amends the previous requirement of a project including proof that the property is an eligible property and a certified historic structure or a structure in a certified historic district. Now, in lieu of that requirement, the act allows proof that part one of a federal application or a draft national register of historic places nomination has been submitted to SHPO. Importantly, HB 2062 also expands the pool of potential applicants by allowing not-for-profits to be eligible for HTCs and will hold historic schools and theaters to the same evaluation standards and exemptions as small projects. Finally, HB 2062 loosens the timeframe for commencing rehabilitation and incurring 10% of QRE to 24 months from approval, a drastic increase from the previous nine-month timeframe.

Taxpayer Changes

Taxpayers will now be required to notify the department of the loss of site control within ten days of the loss but are allowed to forfeit approved tax credits at any time. Additionally, taxpayers are given a 120-day timeframe for submitting evidence of their capacity to finance rehabilitation costs and expenses; this extends the previous timeframe by 60 days.

With the addition of not-for-profit applicants, increased credit allocation(s) and expanded timeframes, attorneys in Polsinelli's Tax Credit Finance Group believe that Missouri's HB 2062 has greatly enhanced Missouri's already robust Historic Tax Credit program.

The bill is at Governor Parson's desk awaiting his signature.