

Instructions for Completion of Tax Credit Subcommittee Report Cover Sheet and Attachments

The following instructions should be followed in preparing each Subcommittee's Report and Recommendation to the Missouri Tax Credit Review Commission (the "Commission"). Each Subcommittee should make a good faith attempt to be as objective and balanced. Immediately below each Cover Sheet should be the pertinent Administrative Agency's "Tax Credit Analysis" form ("Form 14"). Below that form, and with a Tab which coincides with each numbered block in the Cover Sheet, should be such attachments as the Subcommittee deems necessary to adequately present all relevant information as well as explain the Subcommittee's conclusions. Attached at the end of these instructions is a memorandum prepared by the Department of Economic Development consisting of "20 Working Definitions for Use by the Commission" and which will aid in the understanding of the various tax credit concepts. Behind the above-referenced definitions is a set of separate instructions to the various Administrative Agencies as to the information and data on each tax credit to be furnished by that agency to the appropriate Subcommittees.

1. **Objective, Purpose, and Perceived Beneficial Effects of Credit (Economic Development, Societal Need Met, etc.):** Enter either a brief explanation in Block 1 (if that explanation is adequate) or attach an exhibit to the Cover Sheet which refers to this block. All attachments to the Cover Sheet should be labeled by specific reference to the block number of the cover sheet to which they relate. Accordingly, and for example, a more lengthy explanation of the objective or purpose of a credit would be attached below Tab 1 to the Cover Sheet and labeled as "Explanation of Block 1 (Objective, Purpose, and Perceived Beneficial Effects of Credit)." In this circumstance, the entry "See attached explanation" would be entered in Block 2. Furthermore:

a. **No Legislative History:** Unfortunately, there is no legislative history that can be consulted with respect to many of the tax credits. Thus the "purpose" of a credit may have to be inferred by the Subcommittee from the nature of the credit and its history.

b. **Purpose:** Each Subcommittee should attempt to differentiate between the objective or purpose of a credit and its perceived beneficial effects. For example: any state construction project wherein state funds are used to fund new construction would have the same economic effects as the restoration of an historic structure. Therefore the purpose of the historic preservation tax credit probably should not be listed as some form of economic stimulus even though that may be one of its by-products. Instead, the preservation of a certain type of architecture, etc., could be perceived by the Subcommittee as the true purpose of the credit, and more than one purpose or objective of a credit might be articulated by this Subcommittee as purposes and benefits.

c. **Perceived Beneficial Effects (e.g., Economic Development/Societal Need Met):** If a short description of the intended benefit will fit in this block, enter it, or attach a more lengthy explanation, and refer to that attachment in this block. If the primary purpose

of the credit is permanent jobs creation, for example, then the Subcommittee might determine that a statement to that effect in Block 1 is all that is necessary. If a more lengthy discussion of the benefits of the credit are included as a part of an attachment, refer to that attachment in Block 1.

2. **Cost Benefit Analysis:** It will be somewhat difficult in the case of certain credits to develop an "apples to apples" comparison among the various tax credits here. Some tax credits are scored by the Department of Economic Development using the REMI model. Other credits are evaluated by reference to a completely different methodology known as the IMPLAN Model. Still other credits are not subjected to any cost-benefit analysis. Whatever objective measurement is available should be inserted and described in this Block and the model or analytical tool used should be expressly stated. It will be impossible for any Subcommittee or the Commission itself to reconcile the different methodologies used in these cost benefit tools, and that issue will have to remain open for resolution at a later date.

3. **Number of Persons Applying for and Utilizing Credit:** The numbers entered in this block should NOT be the number of persons who redeem the credit in lieu of paying a particular tax. Rather the numbers entered should be the number of persons (and entities) who or which (respectively): (a) applied for the benefits offered by this credit in fiscal years 2009 and 2010; and (b) the number of persons and entities who were awarded or received the intended benefit of the credit in fiscal years 2009 and 2010. The desired information to be disclosed in Block 3 is the ratio between number of applicants vs. number of those applicants who receive an award of the credit. Accordingly, if applicants in one year are not awarded credits until the following year, a matching of applicants for a particular cycle of credits should be made and reflected in Block 3, and some analysis of the data pertaining to the credit may be required in order to be certain that there is an "apples to apples" correlation. Make such investigations as are necessary so that a reasonably accurate determination of the selectivity of the process of evaluating and awarding the credit is revealed by this statistic, but only if the credit's award is discretionary. Conversely, if the credit is not subject to a discretionary or selective process (such as the Historic Rehabilitation credit), then there isn't any reason to enter any information relating to selectivity in Block 3. Furthermore, if the information is reasonably available, statistics reflecting how many applicants who are "new" to the program versus those who have previously applied for the benefits should be listed as well. In this regard, if an applicant forms a different entity for the credits but it is known that the same group or parent entity controls the applicant, then some reflection in the data of that applicant as a "returning applicant" should be made in order to determine how broad is the group of persons utilizing the credit.

4. **Fiscal Impact on State in 2009, 2010, 2011, and Estimated Impact in 2012 (Amount in \$\$ of Redemptions), and Total Remaining Unredeemed Credits:** For fiscal years 2009, 2010, and 2011, enter the dollar amount of the credit redeemed against taxes otherwise payable to the state. To the extent that the information is available, state the anticipated redemptions of the credit during 2012. Finally, enter in this block the total remaining unredeemed credits which will remain a liability of the state after 2012. For example, the Historic Preservation Credit had

\$140,111,002 of redemptions in 2008, \$186,426,164 of redemptions in 2009, an estimated \$150,000,000 of these credits will be redeemed in 2010, and that will leave more than \$500,000,000 of these credits authorized, issued, and unredeemed thereafter. Furthermore:

a. Different Data Sets: The computation of credits remaining to be redeemed in the future is made more difficult because of the inclusion of "authorized credits" in some data sets. Usually there is a substantial difference between credits which are "authorized" versus credits which are "issued." If the initial amount of credits which are considered as potential liabilities of the state to redeem begins with those credits which are "authorized" for redemption subsequent to fiscal year 2012, then somewhat complex adjustments may be required in order to produce a number which more nearly accords with reality.

b. Issued Minus Redeemed: The better measurement of the State's liability in terms of remaining credits which may be redeemed subsequent to fiscal year 2012 probably is found by subtracting redeemed credits from issued credits.

For information on this concept see the attached "Definition" handout to the Commission.

5. Recommended Priority Category of Credit (A, B, C, or D): Enter either "A," "B," "C," or "D" in this block to reflect the Subcommittee's recommendation of how the credit should rank among other Missouri Tax Credits in relation to each other (but only by reference to the four categories described below). The purpose of this Block 5 is to assist the Commission by prioritizing which tax credits require a modification, those credits which should be substantially reduced, and those credits which should be terminated. Each Subcommittee should note that preserving the "status quo" was not part of the Governor's charge to the Commission, and therefore no credit subject to the Subcommittee's analysis should be immune from criticism, i.e., it is impossible that any existing tax credit is perfect. Accordingly, in establishing the Category to which the credit should be assigned, the Subcommittee should take into account the following:

a. Category A Credits: The tax credits which fall under this category are those with respect to which the following are true:

(1) the tax credit is designed to accomplish a clearly discernable and definable outcome;

(2) there is an easily recognizable cause and effect relationship between the use of the credit and the desired outcome;

(3) the outcome of the credit is capable of reasonably precise measurement;

(4) the current method of measuring the efficiency and effectiveness of the credit allows the state of Missouri to determine a fiscal return on its investment in the project to which the credit relates;

(5) the return on the state's investment in a project benefitting from this credit is a satisfactory return, i.e., a return which reasonably can be anticipated to be at least equal to the state's investment in the project;

(6) the outcome of the credit is relevant and necessary to Missouri's economic or social well being today and in the future;

(7) there are no widespread public objections to the use of public dollars to accomplish the outcome intended by the award of this credit;

(8) the program to which this credit relates serves a reasonable cross section and sufficiently large number of persons; and

(9) the cost of administering this tax credit program do not outweigh the benefits of that program.

If all of the statements set forth above in this subparagraph a are true or accurate with respect to a credit, then the credit is eligible for categorization in Category A and is a credit which should be retained, even though the Subcommittee believes that it can be improved in some respects.

b. Category B Credits: Category B credits are credits for which at least two of the statements set forth in subparagraph a are not true. Accordingly, with respect to such a credit, a determination should be made as to which features of the credit should be modified in order to improve its value to the state of Missouri. In considering the ways or reasons by which this credit may be improved, the Subcommittee should consider modifying the credit's criteria or features in order to:

(1) refine the eligible applicants and eligible activities which pertain to the credit program;

(2) improve the state's value and return on investment;

(3) reduce the cost of administration;

(4) reduce the overall cost of the program; and

(5) any other steps the Subcommittee considers appropriate.

No credit should be listed in Category B unless that credit still has a valid purpose or a problem to solve, still serves to advance Missouri economic or social well being, and would be perceived by the general public as a desirable program to continue.

c. **Category C Credits:** Credits in Category C are those whose method of funding should be replaced with a direct appropriation instead. The Subcommittee needs to ask if the amount currently available for the program were instead subject to the annual appropriations mechanism and budgetary process, the program's objectives could be better accomplished. Also in Category C credits should be those tax credits which should be converted from "supply side" type programs to "demand side" type programs, e.g., vouchers.

d. **Category D Credits:** Credits in this category are those which have outlived their usefulness, do not create a benefit that is justifiable, are utilized by too few persons or entities to justify their cost of administration (i.e., the administrative cost per dollar of benefit is too high), or any other reasons deemed sufficient by the Subcommittee to warrant termination.

6. **Recommended Date of Termination if Category D:** Please enter the date the Subcommittee recommends be the effective date any credit assigned to Category D should be terminated. In an attachment, please describe whether any extraordinary publicity of such termination may be necessary, whether any coordination with any federal agency may be required, and the reasoning behind the selection of the date entered.

7. and 8. **Reasons for Retaining or Terminating Credit:** In Block 7 should be a list of the attachments which the Subcommittee considers as relevant to a determination of the benefits of the credit (and thus justifies its retention), and in Block 8 should be a list of the attachments which the Subcommittee considers as relevant to the termination or substantial curtailment of the credit (and thus justifies its extinction). At least one attachment and argument should be included or attached in each of Blocks 7 and 8 in order to present a fair and balanced picture and reflect the Subcommittee's consideration of all arguments pro and con pertaining to the tax credit involved.

9. **Attachments Explaining Alternatives for Modification of Credit:** Each Subcommittee should attach below Tab 9 its opinion as to whether one or more of the following alternatives to the delivery of the benefit presently afforded by the credit should be considered:

- a. Could this program be combined with other programs in order to achieve efficiency?
- b. Could this program be subjected to an annual, cumulative, or per project cap? Is there any reason not to impose a cap with respect to this credit?
- c. Could this project be temporarily curtailed, suspended, or capped in order to produce immediate budget savings?

- d. If the credit is an "entitlement type" credit which is not subject to administrative review, should it be subjected to administrative review?
- e. Should the amount awarded by the credit each year be subject to the budget process?
- f. Are there better ways of achieving the goal of the credit than by the credit itself?
- g. Are the economic benefits attributed to the credit transitory or permanent?
- h. Are the benefits of the credit sufficiently vague and indeterminate such that it does not meet a reasonable "burden of proof" justifying its continuation?

10. **Minority Reports:** List such minority report which any member of the Subcommittee wishes to attach but which does not reflect the recommendation of the Subcommittee as a part of Tab 10. The Subcommittee should allow all reasonable submissions, but information which duplicates information already part of the attachments referred to above in Blocks 7 and 8 may be omitted if the Subcommittee Chair so determines.

20 “Working” Definitions for Use by the Commission

The need for standardized definitions across programs has been previously recognized. The following recommendations appeared in the 2005 Report from the Governor-appointed Incentives Review Committee:

Section F: Consistency Standards

Improvements in the consistency of definitions, procedures, forms, and application processes of related programs will improve customer satisfaction and reduce errors in processing. The following are areas that should be considered for consistency improvements:

- **Definitions:** The most important definitions that require consistency for related programs are “new jobs,” “new private investment,” “project facility,” “related company,” “base employment,” “taxpayer”, and “eligible company.”
- **Procedures:** The process to apply and the approval response should be consistent in format and procedure. Application forms should be electronic via the internet (fillable forms), assuming that current technology will ensure the applicant’s identity and private information are protected. The type and format of the application should be consistent.
- **Tax Credits:** Certain attributes of tax credit programs should be examined for consistency and efficiency, such as carry back, carry forward, transferability, and “certification” of the credit.

Authorization:

The point at which an administering agency determines that a proposed project, or activity is eligible for tax credits under a tax credit program and awards or assigns an amount of credits , pending performance of the eligible project or activity. Not all tax credit programs are designed with a separate authorization phase, particularly tax credits that are redeemed directly on the income tax return (e.g. the Senior Citizens Property Tax Credit a/k/a the “PTC” or “circuit breaker.”) .

Issuance:

The process by which the state provides an authorized tax credit to a recipient who has met the program performance benchmarks. A tax credit is typically issued in the form of a certificate that a taxpayer submits with their tax return. Issuances may occur several times for the same project. Depending on the specific program, issuance of a credit may be limited solely to the applicant or may be issued to investors or contributors in a project. The amount of credits actually issued for a project or activity may be less than the amount initially authorized.

Redemption:

The process by which the holder of a tax credit applies the credit to outstanding tax liability by turning it in to the Department of Revenue or the Department of Insurance.

Carry forward:

A statutory feature of a tax credit defined as a time period that allows the tax payer to hold the credit and apply it against tax liability in future years. (e.g. 3, 5, or 10 years)

Carry back:

A statutory feature of a tax credit defined as a time period in which the tax payer may use the credit against previous year's returns. (e.g. 3 years)

Sellable/Transferable:

A statutory feature of a tax credit that allows for the credit to be transferred or sold, in whole or in part, to another taxpayer for them to use to reduce their tax liability. Generally, there is no limit on the number of times a credit can be transferred. A handful of tax credit program statutes establish a minimum price for which the credit can be sold. Proceeds from the sale of a tax credit are typically considered taxable income.

Contribution Credit:

A tax credit issued to a contributor for all or a portion of the value of their donation to a non-profit entity for purposes of carrying out an authorized project. The amount of credits authorized for a project is determined by the size, scope and budget of the proposed project. Contribution credits are designed to incentivize private donations. The tax credit value is typically a percentage less than 100%, and therefore a project with a proposed budget of \$100,000 would receive an authorization of \$50,000 in 50% tax credits that can be used to incentivize \$100,000 in private donations for the project. Eligible donations are specified in the statute governing the particular program but typically include cash, stocks, land and other items for which a fair market value may be established.

Investment Credit:

A tax credit authorized for a project to be utilized as equity in the project's financing. The amount of the credits available for a given project is defined as a percentage of total eligible project costs.

Entitlement Credits:

Tax credits that are required by statute to be authorized and issued automatically if a project or activity meets specified eligibility criteria. For entitlement credits, the administering agency typically lacks the discretion to disapprove applications or to recapture credits already issued for subsequent non-compliance with program requirements.

Discretionary Credits:

Tax credits that are may be authorized at the discretion of the administering agency. The specific program will typically define priorities, criteria, and qualifications that must be satisfied for a project or activity to be considered "fundable." Discretionary tax credit programs are often competitive because the aggregate amount of credits applied for in any given year can exceed the aggregate amount of credits that may be authorized under a statutory cap.

Refundable Credits:

Tax credits that are defined by statute to allow a refund to the taxpayer if, at the time of redemption, the taxpayer does not have a tax liability equal to or greater than the amount of the credit. Thus, a refundable credit can result in the direct payment of cash from the State to the taxpayer.

Certificated Credits:

Tax credits for which an administering agency issues a paper tax credit “certificate.” The certificate specifies the party to whom the credit is issued, the amount of the credit, and the taxable year of the credit. If the tax credit is sold in whole or in part, the previously-issued credit certificate is reduced or rescinded and a new certificate is issued to the purchaser.

Syndicate:

A group of investors, most frequently investors in a project authorized Low Income Housing Tax Credits, who may redeem the credits based upon each investor’s percentage share of investment in the overall project.

Claw back:

A statutory or contractual provision that enables the administering agency to recapture a tax credit already issued or to require the repayment the face value of the credit in the event of failure to perform or otherwise comply with program requirements or other provisions of law. . For tax credits that are transferrable, the claw back provision typically provides a remedy against the initial recipient of the credit and not a subsequent purchaser.

Tax Credits Outstanding:

The amount of the State’s present liability for tax credits at any point in time. The amount of tax credits outstanding can be defined in two primary ways –

(1) The amount of tax credits currently authorized, minus the amount of any tax credits forfeited, minus the amount of any tax credits that have expired, minus the amount of any tax credits that have been redeemed,* equals the amount of tax credits currently outstanding; or

(2) The amount of tax credits that have been issued, minus the amount of any tax credits that have expired, minus the amount of any tax credits that have been redeemed,* equals the amount of tax credits currently outstanding.

*The amount of tax credits redeemed includes tax credits that have already expired by the terms of the specific program statute, but that were nonetheless redeemed through the filing of an amended return. See the definition of “Expired Redeemed” below.

Note that the accuracy of any representation of the amount of Tax Credits Outstanding will depend on each administering agency’s ability to remove forfeited and expired tax credits from its data and consistency among administering agencies in recording and counting the amount of authorized credits with issuances that “stream” over a period of years. See the definition of “Streaming Credits” below.

Forfeited:

Tax credits that have been authorized but that have been surrendered or returned to the administering agency for projects that would no longer be completed or not completed to the extent authorized.

Streaming Credits:

Tax credits that, by statute, are authorized for a project with annual issuances over a period of years based on achievement of specified benchmarks. Examples include the Low Income Housing Tax Credit, which

has streaming issuances over a period of ten years, or the Missouri Quality Jobs Tax Credit, which has streamlining issuances over a period of five years. Determining the total amount of Tax Credits Outstanding requires a consistent definition of the point at which tax credits are authorized. For streaming credits, the definition could be based on the total amount of the stream (i.e. the amount authorized for all years) or on the amount authorized to be issued in the first year.

Expired Credits:

Tax credits that, by the terms of the specific program statute, can no longer be carried forward to subsequent tax years or carried back to prior tax years due to the passage of time. The specified carry forward period plus one year (to account for the last tax filing year) will provide the date at which a credit has expired.

Expired Redeemed Credits:

Tax credits that have expired under the terms of the program statute but that are nonetheless redeemed due to the taxpayer's submission of an amended return for a prior tax year and applying the otherwise expired credit against the tax liability for that tax year.

Caps

There are a variety of mechanisms by which the amount of tax credits are limited or "capped," including:

- **Program Caps:** The amount of tax credits available under the program, either on an annual basis or a cumulative basis
- **Annual Program Cap:** The amount of tax credits available under the program in any fiscal year or calendar year. The limit can be based on the amount of tax credits that may be authorized or the amount of tax credits that may be issued under the program.
- **Cumulative Program Cap:** The amount of tax credits available under the program over a defined set of years. The cumulative total over a period of years is typically divided up with an annual program cap. The limit can be based on the amount of tax credits that may be authorized or the amount of tax credits that may be issued under the program for the life of the program, barring action by the legislature to reauthorize or increase the cumulative program cap.
- **Per-Project Cap:** The maximum amount of tax credits available to any one project, taxpayer or donor under a particular program.
- **No Cap:** In the absence of a statutory cap, the default for any tax credit program is that there is no cap on the amount of tax credits that may be authorized or issued.

Sunsets:

The statutorily-defined period of time for which a tax credit program is authorized, unless affirmatively reauthorized by the legislature.

**INSTRUCTION TO ADMINISTRATIVE AGENCIES
CONCERNING DATA AND INFORMATION TO BE FURNISHED
TO TAX CREDIT REVIEW SUBCOMMITTEES**

The following information, as detailed as reasonably available and possible, should be furnished to each of the Tax Review Subcommittees assigned the task of reviewing a particular Missouri Tax Credit. Each Agency should verify that each of the following items are adequately documented and furnished to each Subcommittee as soon as possible, to-wit:

1. **Date and Statutory Citation of Tax Credit:** The appropriate Department should provide each Subcommittee with the correct name and statutory citation for each tax credit assigned to a Subcommittee for its review and should verify that each of the following items is adequately disclosed in said attachment to the extent that the Form 14 which is attached does not adequately or completely recite the following information, to-wit:

a. **Criteria for Eligibility:** Describe who or what entities are eligible to apply for the credit, what specific criteria must be met to be so eligible, the application and determination process, and, if the credit is "Discretionary" (see below), what criteria the approving agency uses to make awards of the credit.

b. **Affected Taxes:** State the various Missouri taxes against which the credit can be redeemed.

c. **Caps:** State whether the amount of the credit is subject to appropriation or specific authorization from year to year.

d. **Sunset:** State whether the credit will automatically terminate or not, and if so, on what date.

e. **Carryback and Carryforward:** State whether the benefits of the credit may be used in any years other than the year for which the credit was awarded, e.g., can a holder of the credit use it to recover taxes paid in a previous year and can a holder carryover to a subsequent year the use of some or all of the credit if its tax benefit can't be used by the holder in a particular year.

f. **Recapture or Clawback:** State whether the failure to meet some criteria in a subsequent year can result in the loss of the credit or the repayment of taxes avoided in an earlier year.

g. **Restrictions on Transferability:** Some credits can be transferred as separate property rights. Other credits can be transferred, in effect, through the transfer of ownership interests in entities to which the credits have been awarded, e.g., the transfer of a partnership interest in a limited partnership might carry with it the right to the benefit of the credit. Other credits can't be transferred by their express terms (e.g., vouchers). Other credits are represented by freely transferable certificates.

h. Streaming: State whether the credit is awarded over several years in installments, or in full in one year. Note: this is different than whether a credit, once awarded, can be carried back or forward to different tax years.

i. Type of Credit: Enter in Block 1 each descriptor listed below which is appropriate to the credit, to-wit:

(1) Supply Type: These credits are intended to increase the supply of a particular good, service, economic activity, contribution, etc. For example, a "Supply Type" credit results in an economic benefit in the form of a monetary subsidy to builders of low income housing, thus increasing the supply of a desirable category of residential housing.

(2) Demand Type: These credits are intended to increase the demand for a particular good, service, economic activity, contribution, etc. Typically these types of credits are awarded to a class of consumers who purchase the intended good, service, etc. For example, a "Demand Type" credit would be a rent voucher issued to an eligible individual.

(3) Discretionary Type: These credits are subject to an award process whereby not all applicants for the benefit receive it. For example, the low income housing tax credits awarded by the state are subject to an extensive and somewhat subjective review process by the Missouri Housing Development Commission ("MHDC").

(4) Entitlement Type: These credits are not subject to any material administrative discretion. Instead, the credit is awarded to those persons or entities who meet the criteria established for it. Examples are the investment tax credit (federal) or the Historic Rehabilitation Credit.

(5) Refundable Type: These credits, upon being claimed, can result in an actual refund (check from the state) if the tax liability of the taxpayer for the year in which the credit is claimed is less than the amount of the credit.

(6) Transferable Type: The tax benefit of these credits can be separated from the economic or social program to which they relate and can be sold in the same manner as any contract right. Sometimes they are represented by a separate written certificate which signifies ownership of the credit; other methods of reflecting ownership of this type of credit require some agency (e.g., DED) to maintain a current "transfer ledger" reflecting who owns what credits. How the credit is transferred should be explained in the attachment supplementing the Subcommittee's response to Block 1 (see subparagraph 1,g, above).

2. **Cover Sheet Information:** Provide the data requested by each Subcommittee in order for the Subcommittee to enter the information required in Blocks 2, 3, and 4 of the report cover sheet to which these instructions are an attachment.