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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before November 14, 2022 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of November 14, 2022.

Gail S. Klakring
Acting Administrator, Division of State Documents
Office of the Secretary of State

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 20 REVITALIZATION PROGRAMS

05.20.05 Catalytic Revitalization Project Tax Credit

Authority: Housing and Community Development Article, §6-904, Annotated Code of Maryland

Notice of Proposed Action

[22-265-P]

The Secretary of Housing and Community Development proposes to adopt new Regulations **.01—.12** under a new chapter, **COMAR 05.20.05 Catalytic Revitalization Project Tax Credit**.

Statement of Purpose

The purpose of this action is to describe policies and procedures for program administration under the Catalytic Revitalization Project Tax Credit Program.

Estimate of Economic Impact

I. Summary of Economic Impact. The new regulations will establish a new tax credit against the State income tax for “catalytic revitalization projects”. The tax credit would apply to 20 percent of approved project costs defined as substantial rehabilitation of historic property that was formerly owned by the State or federal government. The rehabilitation of the property will foster economic, housing and community development within 2,500 feet of the facility. The definition of catalytic revitalization projects includes former education, mental health, or military facilities. Total amount of tax credits issued is capped at \$15 million per project, and the Department may issue a tax credit to a project every 2 years. Assuming the full \$15 million in tax credits were allocated and claimed for a project, general fund revenues would decrease by \$3 million, or 20 percent of the tax credit amount claimed. This would be a refundable credit. Applicants could receive cash payment for tax credits that exceed their State income tax liability.

Revenue
(R+/R-)

II. Types of Economic Impact.

	Expenditure (E+/E-)	Magnitude
A. On issuing agency	NONE	
B. On other State agencies:	NONE	
C. On local governments:	R+	Indeterminable
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	(+)	Indeterminable
F. Direct and indirect effects on public:	(+)	Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

C. Local governments may benefit from increased revenue associated with rehabilitation and adaptive reuse of property formerly owned by the State or federal government. The magnitude of the benefit cannot be determined.

E. Industries and trade groups will benefit from increased economic activity associated with adaptive reuse of vacant or underutilized State or federal facilities. The magnitude of the benefit cannot be determined.

F. The public will benefit from increased economic activity and revenue associated with adaptive reuse of vacant or underutilized State or federal facilities. The magnitude of the benefit cannot be determined.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows: Small businesses in the construction trades may benefit from economic activity associated with adaptive reuse of vacant or underutilized facilities formerly owned by the State or federal government. The magnitude of this impact cannot be estimated.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to John Papagni, Program Officer, Division of Neighborhood Revitalization, Department of Housing and Community Development, 7800 Harkins Road, Lanham MD 20706, or call 301-429-7670, or email to john.papagni@maryland.gov. Comments will be accepted through January 3, 2023. A public hearing has not been scheduled.

.01 General.

This chapter prescribes the policies, procedures, and authorizations for allocating the Catalytic Revitalization Project Tax Credit described in this chapter.

.02 Definitions.

A. *In this chapter, the following terms have the meanings indicated and as defined in the Act.*

B. *Terms Defined.*

(1) *"Act" means the Housing and Community Development Article, Title 6, Subtitle 9, Annotated Code of Maryland.*

(2) *"Affordable" means housing costs do not exceed 30 percent of a household's annual income.*

(3) *"Catalytic revitalization project" means the substantial rehabilitation of a property in the State:*

(a) *That was formerly owned by the State or the federal government;*

(b) *In which rehabilitation will foster economic, housing, and community development within the community in which the property is located; and*

(c) *That is out of service and was formerly used as a college or university, K—12 school, hospital, mental health facility, or military facility or installation.*

(4) *"Costs" means the costs incurred to develop a catalytic revitalization project and includes the costs of:*

(a) *Necessary studies, surveys, plans, and specifications;*

(b) *Architectural, engineering, or other special services, including flood plain studies, environmental audits, and critical area or wetland assessments;*

(c) *Land and improvements;*

(d) *Site preparation;*

(e) *Construction and rehabilitation, as applicable;*

(f) *Indemnity and surety bonds and premiums on insurance;*

(g) *Temporary relocation expenses of residents, if applicable; and*

(h) *Other costs determined to be acceptable by the Department.*

(5) *"Department" means the Department of Housing and Community Development.*

(6) "New construction costs" means the costs associated with the construction of new structures that connect, expand, or integrate the existing structures to be rehabilitated.

(7) "Owned" means a prior ownership interest in real property pursuant to a:

(a) Deed;

(b) Long-term lease;

(c) Federal or State law or legal authority that allowed use and occupation of real property for a governmental purpose;

or

(d) Other legal instrument.

(8) "Rehabilitation costs" means the costs associated with the rehabilitation of existing structures.

(9) "Secretary" means the Secretary of Housing and Community Development.

(10) "State tax credit" means the Catalytic Revitalization Project Tax Credit allowed under the Act and this chapter.

.03 Eligible Applicants.

A. An individual, nonprofit organization, or business entity that is proposing a catalytic revitalization project may apply to the Department for an allocation of the available State tax credit.

B. An applicant shall be in good standing and qualified to do business in Maryland.

C. An applicant shall have the legal authority to execute an enforceable agreement with the Department.

.04 Applications.

A. The Department may accept applications on a first-come, first-served basis or in competitive rounds to be announced by the Department when the State tax credit is available under the Act.

B. The Department shall review each application in accordance with §E of this regulation with an emphasis on applications that promote affordable housing. The Department shall also consider:

(1) Historic preservation;

(2) Community development; and

(3) Economic development.

C. An application submitted to the Department shall:

(1) Be on standard forms prescribed by the Department;

(2) Be submitted by an eligible applicant under Regulation .03 of this chapter;

(3) Be for a catalytic revitalization project;

(4) Provide a description of how the project will promote the factors listed in §B of this regulation; and

(5) Any other information required by the Department.

D. Applications shall be accompanied by all documentation in the form and containing the information specified by the application procedures adopted by the Department, which may vary depending on the type of project.

E. Application Evaluation.

(1) Each application submitted shall be reviewed by the Department to determine whether all of the information required under this chapter is contained in the application.

(2) Upon submission of all required information, the Department shall undertake an analysis of each application and make a recommendation to the Secretary as to whether a project is eligible for an initial allocation of the State tax credit and any special terms and conditions for a project.

F. Approval of Applications.

(1) If the Department recommends approval of a project for an initial State tax credit allocation, the Department shall present the project to the Secretary.

(2) The Secretary shall approve, disapprove, or approve with modifications an initial State tax credit allocation to be provided according to procedures established by the Secretary.

(3) The Secretary, in the sole discretion of the Secretary, may delegate to an authorized officer of the Department the authority to approve, disapprove, or approve with modifications an initial State tax credit allocation.

(4) The Secretary may require that the applicant execute an enforceable agreement related to the construction and rehabilitation of a catalytic revitalization project and issuance of the State tax credit.

G. If the Department does not recommend approval of a project for an initial State tax credit allocation, the Department shall issue a written notice of rejection with an evaluation and explanation for rejection.

H. Reconsideration.

(1) An applicant may request reconsideration of a rejection by submitting a written request to the Secretary that is received within 30 days following the date of the rejection notice. The request for reconsideration shall address each reason for the rejection and provide documentation supporting reasons for reconsideration of the issues. The Secretary shall respond in writing to the applicant's request for reconsideration within 30 days of receipt by the Secretary of the request for reconsideration.

(2) An initial decision or reconsideration of a decision is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

(3) The Secretary, in the sole discretion of the Secretary, may delegate to an authorized officer of the Department the authority to approve, disapprove, or approve with modifications a request for reconsideration of a rejection under the Department.

.05 Allocation and Calculation of the Credit.

A. Upon the approval of an application, the Department shall issue an initial tax credit certificate to the applicant:

- (1) Allocating the initial amount of the State tax credit for the project; and
- (2) Specifying the terms and conditions of the State tax credit.

B. Subject to the limitations of §C of this regulation:

- (1) An initial State tax credit certificate shall equal 20 percent of the applicant's estimated new construction costs and rehabilitation costs for the project; and
- (2) Upon completion of the project, a final tax credit certificate shall equal 20 percent of the applicant's actual new construction costs and rehabilitation costs for the project.

C. For purposes of calculating the credit authorized under §B of this regulation, the portion of costs that are attributed to new construction costs may not exceed 50 percent of the total costs of the catalytic revitalization project.

.06 Notice and Certification.

A. On or before the last day of the taxable year in which a catalytic revitalization project that has been issued an initial State tax credit allocation is completed, the applicant shall:

- (1) Notify the Secretary that the project has been completed; and
- (2) Certify that the project is a catalytic revitalization project eligible for the State tax credit.

B. The notice and certification to the Secretary shall be in a form prescribed by the Department and contain documentation required by the Department.

C. Upon final review and verification of the notice and certification, the Secretary shall issue to the owner a final credit certificate for the project stating the final State tax credit amount for the project, not to exceed the credit amount initially allocated to the project.

.07 Use of Tax Credit.

A. The State tax credit is a credit against State income taxes that may be used in accordance with the Act, this chapter, and Tax-General Article, §10-753, Annotated Code of Maryland.

B. If the State tax credit allowed under this chapter in any taxable year exceeds the total tax otherwise payable by the individual, nonprofit organization, or business entity for that taxable year, the individual, nonprofit organization, or business entity may claim a refund in the amount of the excess.

C. The credit allowed under this chapter may be allocated among the partners, members, or shareholders of a business entity in any manner agreed to by those persons in writing.

D. The amount of the tax credit allowed, but not claimed, under this chapter may be transferred, by written instrument, in whole or in part, to any individual, nonprofit organization, or business entity.

E. For the taxable year of any transfer under §D of this regulation, the transferee may apply the tax credit against the total tax otherwise payable by the transferee in that taxable year.

F. If the tax credit exceeds the total tax otherwise payable by the transferee in any taxable year, the transferee:

- (1) May claim a refund in the amount of the excess;
- (2) May carry forward and apply the excess credit for succeeding taxable years until the full amount of the credit is used; or
- (3) May transfer the remainder of the tax credit to an individual, a nonprofit organization, or a business entity in accordance with §D of this regulation.

.08 Compliance.

A. The Department may monitor a project for compliance and require reports from the applicant demonstrating compliance with this chapter, the Act, and any agreement with the Department.

B. The Comptroller and the Secretary may not recapture a State tax credit authorized under this chapter if:

- (1) The catalytic revitalization project is transferred, in whole or in part, by fee simple transfer of real property or by transfer of an ownership interest in the entity that owns the project to a new owner; and
- (2) The Secretary has issued a final tax credit certificate for the catalytic revitalization project under Regulation .06C of this chapter.

C. Subject to §D of this regulation, the Department may allow the initial tax credit certificate to be transferred after a written request by the recipient if the catalytic revitalization project is to be transferred, in whole or in part, by fee simple transfer of real property or transfer of any ownership interest in the entity that owns the project to a new owner.

D. In reviewing a written request under §C of this regulation, the Secretary shall consider:

- (1) If the transfer will facilitate the completion of the catalytic revitalization project as initially approved;
- (2) The qualifications of the proposed transferee and their ability to complete the project; and
- (3) Any other information required by the Department.

E. The Secretary may approve, deny, or approve with conditions a request to transfer an initial tax credit certificate.

F. An applicant may request a reconsideration of the Secretary's decision on a transfer in accordance with Regulation .04H of this chapter.

.09 Administration.

A. Guidelines and Manuals. The Department may adopt guidelines, and manuals related to the administration of this chapter and the Act.

B. The Department shall ensure that the application forms, guidelines and manuals are publicly available on its website and at its offices.

C. Delegation of Authority. An action or decision required to be taken or permitted to be made by the Department under the Act, or by the Secretary or the Department under this chapter, may be delegated by the Secretary to an employee of the Department.

.10 Waiver.

The Secretary may waive or vary provisions of this chapter to the extent that the waiver or variance is consistent with the Act and if, in the written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

.11 False Statements.

A person may not knowingly make or cause to be made a false statement or report in any document required to be furnished to the Department or in any agreement relating to the tax credits.

.12 Tax Credit Availability.

A. Issuance Before January 1, 2025.

(1) Except as provided in subsection (2) of this section, the Secretary may not issue an initial or final tax credit certificate under this chapter before January 1, 2025.

(2) The Secretary may issue an initial or final tax credit certificate under this chapter before January 1, 2025, if the Comptroller determines that issuing the tax credit certificate will not result in a reduction or repayment of federal funds authorized under the federal American Rescue Plan Act of 2021.

B. The Secretary may not award an initial credit certificate for more than one catalytic revitalization project within a 2-year period.

C. For any catalytic revitalization project, the Secretary may not issue tax credit certificates for credit amounts in the aggregate totaling more than \$15,000,000.

KENNETH C. HOLT
Secretary of Housing and Community Development