



Thomas A. Schweich
Missouri State Auditor

FOLLOW-UP REPORT ON AUDIT FINDINGS

Brownfield Remediation Tax Credit Program

October 2014
Report No. 2014-099



<http://auditor.mo.gov>

Brownfield Remediation Tax Credit Program

Follow-Up Report on Audit Findings

Table of Contents

State Auditor's Letter	2
------------------------	---

Status of Findings*

1.1	Program Administration and Oversight - Eligible cost percentage and per-project caps.....	3
1.2	Program Administration and Oversight - Procurement of project services	3
1.3	Program Administration and Oversight - Cost certification	4
1.4	Program Administration and Oversight - Scrap values	5
2.1	Program Efficiency and Effectiveness - Job creation	5
2.2	Program Efficiency and Effectiveness - Annual and cumulative limits	5
2.3	Program Efficiency and Effectiveness - Sunset provision.....	6
2.4	Program Efficiency and Effectiveness - Use of multiple incentives	6

*Includes selected findings



THOMAS A. SCHWEICH

Missouri State Auditor

Honorable Jeremiah W. (Jay) Nixon, Governor
and
Mike Downing, Director
Department of Economic Development
Jefferson City, Missouri

We have conducted follow-up work on certain audit report findings contained in Report No. 2014-023, *Brownfield Remediation Tax Credit Program*, issued in April 2014, pursuant to the Auditor's Follow-Up Team to Effect Recommendations (AFTER) program. The objectives of the AFTER program are to:

1. Identify audit report findings that require immediate management attention and any other findings for which follow up is considered necessary at this time, and inform the Department of Economic Development (DED) about the follow-up review on those findings.
2. Identify and provide status information for each recommendation reviewed. The status of each recommendation reviewed will be one of the following:
 - Implemented: Auditee fully implemented the recommendation, either as described in the report or in a manner that resolved the underlying issue.
 - In Progress: Auditee has specific plans to begin, or has begun, to implement and intends to fully implement the recommendation.
 - Partially Implemented: Auditee implemented the recommendation in part, but is not making efforts to fully implement it.
 - Not Implemented: Auditee has not implemented the recommendation and indicates that it will not do so.

Our methodology included working with the DED, prior to completion of the audit report, to develop a timeline for the implementation of corrective action related to the audit recommendations. As part of the AFTER work conducted, we met with DED officials and received a written status to selected recommendations. We reviewed the DED's written responses related to those recommendations. We identified bills introduced in the current session of the General Assembly that included provisions involving tax credit programs. We contacted an official of the Joint Committee on Administrative Rules regarding that process. This report is a summary of the results of this follow-up work, which was substantially completed during September 2014.

A handwritten signature in black ink that reads "Thomas A. Schweich".

Thomas A. Schweich
State Auditor

Brownfield Remediation Tax Credit Program

Follow-Up Report on Prior Audit Findings

Status of Findings

1.1 Program Administration and Oversight - Eligible cost percentage and per-project caps The DED had not conducted a formal evaluation of the Brownfield Remediation Tax Credit (BRTC) Program to determine whether authorizing BRTCs for 100 percent of eligible costs was the most advantageous to the state. The DED issued BRTCs for up to 100 percent of the eligible costs, subject to limitations of the proven financing gap and the state net economic benefit provisions. State law provides the DED with the authority to base the credit on a lower percentage. For 6 of 15 projects reviewed, the DED authorized BRTCs for 100 percent of eligible costs. In addition, Missouri had not established a per-project cap. Of the 13 states with brownfield remediation programs, only Missouri and Connecticut authorized tax credits for up to 100 percent of eligible costs. The rates noted for the other states ranged from a low of 12 percent for some types of projects in Iowa to 75 percent in New Jersey. Six states have established per-project caps ranging from \$150,000 to \$500,000.

Recommendation The DED evaluate and consider decreasing the percentage of eligible costs qualifying for BRTCs.

Status **Implemented**

The DED indicated this recommendation has been implemented for all applications approved after April 2014. The DED will decrease the percentage of eligible costs qualifying for BRTCs to the extent the applicant fails to prove that costs estimates were obtained in a competitive manner. The DED indicated no applicant since April 2014 has failed to meet the requirements for competitive procurement.

Recommendation The General Assembly consider establishing per-project caps for individual projects.

Status **Not Implemented**

The audit was released in April 2014, after General Assembly deadlines to submit new legislation. However, several legislative bills had already been introduced that would have impacted the BRTC program, including Senate Bill (SB) 577, House Bill (HB) 1477, HB 2133 and HB 2207. These bills were omnibus tax credit bills that impacted many if not all of the state's tax credit programs and did not solely impact the BRTC program. None of these bills were amended to establish caps for individual projects, and none passed.

1.2 Program Administration and Oversight - Procurement of project services The DED did not (1) require developers to solicit bids for project services on a competitive basis, require detailed unit price/quantity bids, or require bids for some project costs; (2) have policies to restrict potential conflicts of interest on BRTC projects; and (3) compile historical unit costs for BRTC projects.



Brownfield Remediation Tax Credit Program
Follow-up Report on Prior Audit Findings
Status of Findings

Recommendation

The DED promulgate state regulations to establish procedures requiring BRTC applicants to procure project activities competitively and to select the lowest and best bid, and rules to define and limit conflicts of interest. We also recommend the DED maintain a database of historical cost information for BRTC projects.

Status

In Progress

The DED filed rules with the Secretary of State, however, the Joint Committee on Administrative Rules (JCAR) "disapproved" the proposed rules. As a result of JCAR's disapproval, the DED currently has the following options (1) withdraw the proposed rules, (2) revise the rules, hold additional public hearings, and resubmit the rule for JCAR's consideration, or (3) wait for the General Assembly to act. If the DED chooses not to withdraw or modify the proposed rules, the General Assembly has 30 legislative days after it reconvenes in January of 2015, to ratify by concurrent resolution, JCAR's disapproval pursuant to Article IV, Section 8 of the Constitution. If the General Assembly ratifies JCAR's disapproval, the resolution is then sent to the Governor who may either approve or veto the resolution. If the Governor vetoes the resolution the General Assembly may override the veto. If the General Assembly does not ratify JCAR's disapproval, the rule will go into effect.

The DED is currently evaluating all options related to the administrative rulemaking process. In the interim, the DED has begun to maintain a database of cost information for BRTC projects, and is instructing current applicants to procure project activities competitively.

1.3 Program Administration and Oversight - Cost certification

The DED did not require certification of the actual project costs by a licensed engineer, architect or certified public accountant. The DED requires a certification of eligible costs by a certified public accountant (CPA) in other tax credit programs including the Historic Preservation and Low Income Housing Tax Credit programs. Both Iowa and Florida require an independent CPA firm to review eligible costs prior to issuance of Brownfield tax credits.

Recommendation

The DED require certification of actual project costs by a licensed engineer, architect, and/or certified public accountant.

Status

Implemented

The DED indicated this recommendation has been implemented for all applications approved after April 2014. The DED informs all applicants that project costs should be certified by a licensed engineer, architect, or certified public accountant. Without the certification, the DED will not provide applicants any assurance that tax credits will be issued.



Brownfield Remediation Tax Credit Program
Follow-up Report on Prior Audit Findings
Status of Findings

1.4 Program Administration and Oversight - Scrap values The DED authorized BRTCs for \$2,265,000 more than the financing gap for the Northwest Plaza Project (NWP) because the DED did not reduce the authorized BRTCs for the proceeds from the sale of scrap materials generated during demolition. In addition, the DED had not established policies and procedures to handle scrap proceeds.

Recommendation The DED reduce the authorization award associated with the NWP project by \$2,265,000 and establish policies and procedures to handle scrap proceeds.

Status **In Progress**
The DED has not completed its review of, and no tax credits have been issued in connection with, the NWP project. The DED directs all applicants to structure bids to account for and list scrap values in their bid documents. DED project managers are required to check that scrap value is included in the bids.

2.1 Program Efficiency and Effectiveness - Job creation The DED did not usually include clawback provisions that required developers to repay portions of the BRTCs if the number of projected new jobs were not created. According to DED personnel, the DED required clawback provisions for only three projects since the programs inception.

For the 15 projects we reviewed, no project had the amount of authorized BRTCs limited because of the state economic benefit calculation. Most BRTC projects did not create the projected number of new jobs. Of the 15 projects reviewed, 10 had completed remediation activities. For those 10 projects, developers projected approximately 2,500 jobs would be created; however, according to the annual reports developers submitted to the DED only 116 full-time and 322 part-time jobs were actually created. In addition, because the DED used the developers' estimates in the annual cost-benefit analysis submitted to the General Assembly, the state economic impact of the BRTC program was significantly overstated.

Recommendation The DED include clawback provisions for BRTC projects.

Status **Implemented**
The DED indicated this recommendation has been implemented for all applications approved after April 2014. The DED requires all applicants to submit a clawback agreement prior to receiving a notice to proceed.

2.2 Program Efficiency and Effectiveness - Annual and cumulative limits The General Assembly had not established annual or cumulative limits on the BRTC. During the period of state fiscal years 2003 through 2013, the DED issued BRTCs totaling approximately \$174 million and redemptions totaled approximately \$168 million.



Brownfield Remediation Tax Credit Program
Follow-up Report on Prior Audit Findings
Status of Findings

Recommendation

The General Assembly evaluate and consider implementing an annual limit on the amount of BRTCs awarded.

Status

Not Implemented

The audit was released in April 2014, after General Assembly deadlines to submit new legislation. However, several legislative bills had already been introduced that would have impacted the BRTC program, including SB 577, HB 1477, HB 2133 and HB 2207. These bills were omnibus tax credit bills that impacted many if not all of the state's tax credit programs and did not solely impact the BRTC program. None of these bills were amended to establish an annual limit on the amount of BRTCs issued, although one bill would have made all tax credits subject to the appropriation process. In addition, none of these bills passed.

2.3 Program Efficiency and Effectiveness - Sunset Provision

State law did not include a sunset provision for many tax credits, including the BRTC program. The Sunset Act, passed in 2003, provides for new programs to sunset after a period of not more than 6 years unless reauthorized by the General Assembly or the program is exempted from the Sunset Act. The Act requires the Committee on Legislative Research to review applicable programs before the sunset dates and present a report to the General Assembly regarding the sunset, continuation, or reorganization of each affected program. However, the BRTC program was created prior to the Sunset Act and is exempted.

Recommendation

The General Assembly establish a sunset provision for the BRTC program.

Status

Not Implemented

The audit was released in April 2014, after General Assembly deadlines to submit new legislation. However, several legislative bills had already been introduced that would have impacted the BRTC program, including SB 577, HB 1477, HB 2133 and HB 2207. These bills were omnibus tax credit bills that impacted many if not all of the state's tax credit programs and did not solely impact the BRTC program. None of these bills were amended to establish a sunset provision, and none passed.

2.4 Program Efficiency and Effectiveness - Use of multiple incentives

State law does not prohibit claiming the same project costs under two or more tax credit programs. This "stacking" of tax credits can be lucrative for developers resulting in additional tax credits being issued while no additional economic activity or state benefit is generated.

Companies may claim certain project costs under the Historic Preservation, Low Income Housing, Brownfield Remediation, and the Neighborhood Preservation Tax Credit programs. Between fiscal years 2000 and 2011, the



Brownfield Remediation Tax Credit Program
Follow-up Report on Prior Audit Findings
Status of Findings

state issued tax credits totaling approximately \$738 million for 117 projects that received funding from two or more of these tax programs.

Recommendation

The General Assembly establish cost containment provisions regarding project costs claimed under multiple tax credit programs.

Status

Not Implemented

The audit was released in April 2014, after General Assembly deadlines to submit new legislation. However, several legislative bills had already been introduced that would have impacted the BRTC program, including SB 577, HB 1477, HB 2133 and HB 2207. These bills were omnibus tax credit bills that impacted many if not all of the state's tax credit programs and did not solely impact the BRTC program. None of these bills were amended to establish cost containment provisions regarding project costs claimed under multiple tax credit programs, and none passed.