

## ECONOMIC DEVELOPMENT AUTHORITY[261]

### Adopted and Filed

#### Rule making related to brownfield and grayfield redevelopment tax credits

The Economic Development Authority hereby amends Chapter 65, “Brownfield and Grayfield Redevelopment,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 15.106A and 15.293B.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 15.291 to 15.295.

#### *Purpose and Summary*

2022 Iowa Acts, House File 2317, amended Iowa Code section 15.293A relating to the Redevelopment Tax Credit Program for Brownfields and Grayfields. The legislation reduces the refundability of the tax credits by 5 percentage points each year for five years, beginning in tax years beginning on or after January 1, 2023. Additionally, tax credits under the program that are refundable shall not be transferable.

This rule making amends Chapter 65 to reflect the changes made to the Iowa Code section and remove information relating to the tax credit claims process that is addressed in rules promulgated by the Iowa Department of Revenue (IDR).

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 19, 2022, as **ARC 6593C**. No public comments were received. No changes from the Notice have been made.

#### *Adoption of Rule Making*

This rule making was adopted by the Authority Board on December 16, 2022.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 15, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 65.6(4) as follows:

**65.6(4)** Application forms for the brownfield redevelopment program and the redevelopment tax credits program for brownfields and grayfields are available upon request from Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Additional information is available on the authority's Internet site at [www.iowaeconomicdevelopment.com](http://www.iowaeconomicdevelopment.com) website.

ITEM 2. Amend subrule 65.11(3) as follows:

**65.11(3)** *Tax credit certificate.*

*a. Issuance.* The authority shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, and tax identification number; the amount of the credit; the name of the qualifying investor; whether the taxpayer has satisfied the requirements for the credit to be refundable; any other information required by the department of revenue; and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

*b. Acceptance. Claims.* ~~The tax credit certificate, unless rescinded by the board, shall be accepted by the Iowa department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and for the moneys and credits tax imposed in Iowa Code section 533.329, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of this rule, for a portion of a taxpayer's equity investment in a qualifying redevelopment project. To claim a tax credit under this rule, a qualified investor shall file a claim with the department of revenue pursuant to the department's applicable rules. The qualified investor must include one or more tax credit certificates with the qualified investor's tax return. A tax credit certificate shall not be used or included with a return filed for a taxable year beginning prior to the tax year listed on the certificate. The tax credit certificate or certificates included with the qualified investor's tax return shall be issued in the qualified investor's name, expire on or after the last day of the taxable year for which the qualified investor is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the qualified investor's tax return.~~

*c. Transfer.* Tax credit certificates issued under this rule may be transferred to any person or entity pursuant to the department of revenue's applicable rules, except a tax credit certificate that is refundable pursuant to Iowa Code section 15.293A(1)"c"(2) as amended by 2022 Iowa Acts, House File 2317, shall not be transferable. ~~Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the Iowa department of revenue, including a statement with the transferee's name, tax identification number, address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the Iowa department of revenue.~~

*d. Replacement certificate.* ~~Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the Iowa department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate.~~

*e. Claiming a transferred tax credit.* ~~A tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration paid or received for the transfer of the tax credit shall not be included~~

or deducted as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.329.

ITEM 3. Amend subrule 65.11(4) as follows:

**65.11(4) Amount of tax credit.** *Tax credit amount and limitations.*

~~a. Pro rata share.~~ The qualified investor may claim the amount based upon the pro rata share of the qualified investor's earnings from the partnership, limited liability company, S corporation, estate, or trust. Except as provided in paragraph 65.11(4) "b," any tax credit in excess of the qualified investor's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the qualified investor receives the tax credit.

~~b. a. Refundability.~~ A tax credit in excess of the taxpayer's liability for the tax year is refundable if all of the following conditions are met: only to the extent indicated in Iowa Code section 15.293A(1) "c"(2) as amended by 2022 Iowa Acts, House File 2317.

~~(1) The taxpayer is an investor making application for tax credits provided in this rule and is an entity organized under Chapter 504 and qualifying under Section 501(c)(3) of the Internal Revenue Code as an organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code.~~

~~(2) The taxpayer establishes during the application process described in this chapter that the requirement in subparagraph 65.11(4) "b"(1) is satisfied. The authority, when issuing a certificate to a taxpayer that meets the requirements in paragraph 65.11(4) "b," will indicate on the certificate that such requirements have been satisfied. A certificate indicating that it is refundable pursuant to paragraph 65.11(4) "b" shall not also be transferred to another taxpayer unless all the requirements of paragraph 65.11(4) "b" have been met.~~

~~c. b. Percentage.~~ The amount of the tax credit shall equal one of the following:

(1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.

(2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

(3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.

(4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

~~d. c. Maximum credit per project.~~ The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 65.11(4) "e." 65.11(4) "d."

~~e. d. Maximum credit total.~~ For the fiscal year beginning July 1, 2021, and for each subsequent fiscal year, the maximum amount of tax credits allocated to the program by the authority shall be an amount determined by the board but not in excess of the amount established pursuant to Iowa Code section 15.119 ~~as amended by 2021 Iowa Acts, Senate File 619.~~ Tax credits awarded pursuant to paragraph 65.11(8) "b" 65.11(7) "b" shall not be counted against the allocation determined by the board pursuant to this paragraph.

ITEM 4. Rescind subrule **65.11(5).**

ITEM 5. Renumber subrules **65.11(6) to 65.11(10)** as **65.11(5) to 65.11(9).**

ITEM 6. Amend **261—Chapter 65**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 15.291 to 15.295 ~~and 2021 Iowa Acts, Senate File 619.~~

[Filed 12/19/22, effective 2/15/23]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/11/23.