



DIVISION OF BUSINESS AND COMMUNITY SERVICES

SMALL BUSINESS INCUBATOR PROGRAM

POLICY GUIDELINES

**THE DEPARTMENT RESERVES THE RIGHT TO UPDATE THESE INSTRUCTIONS
AS NECESSARY TO BE CONSISTENT WITH THE LAW.**

ALL INSTRUCTIONS ARE FOR GUIDANCE ONLY

AND DO NOT STATE THE COMPLETE LAW.

PURPOSE

The Missouri Department of Economic Development (DED) has the responsibility to approve or deny proposals for small business incubators. These guidelines shall serve to assist local sponsors and contributing taxpayers in the implementation of the small business incubator program (program). The program operates under the provisions of section 620.495, RSMo, as amended.

I. INCUBATOR

WHAT IS AN INCUBATOR PROGRAM?

An incubator is a building, which can be divided into smaller units of space to be leased by small businesses. An incubator is also a program without infrastructure in which participants avail themselves of business development services to assist in the growth of their start-up businesses.

In addition to the space, incubators provide business development services for use by the tenants and participants. These services shall include, but are not limited to, financial consulting assistance, management and marketing assistance, business education, and physical services such as personal computers, copier, facsimile, conference rooms, wetlabs, etc. Because of the shared services and efficient use of the available space, costs are usually much less than for a small business operating independently.

The incubator is not intended to be a permanent home for the new firm. After a period determined by the incubator's policy, a tenant will move from the incubator, thereby making room available in the incubator for a new start-up firm. The local sponsor shall explain this feature of an incubator to all tenants before the execution of the initial lease.

WHO MAY APPLY?

Only local sponsors are eligible to apply for the small business incubator program.

LOCAL SPONSOR DEFINED

Local Sponsor is an organization entering into a written agreement with DED to establish, operate, and administer a small business incubator program or to provide funds to another organization that operates such an incubator program. Local Sponsor includes:

1. Missouri municipalities, counties, special tax districts and regional planning commissions;
2. Missouri universities, community colleges, colleges and area vocational schools; or
3. Not-for-profit corporations.

LOCAL SPONSOR MUST DEMONSTRATE

1. That a program exists that can be transformed into an incubator at a specified cost;
2. The ability to directly provide or arrange for the provision of business development services for tenants and participants of the incubator;
3. A potential for sustained use of the incubator facility by eligible tenants and participants, through a market study or other means; and
4. The ability to manage and operate the incubator program.

LOCAL SPONSOR RESPONSIBILITIES ARE TO

1. Secure title on a facility for the program or a lease of a facility for the program at least for ten (10) years;
2. Manage the physical development of the incubator facility, such as personal computers, copiers, facsimile, conference rooms, labs, etc.;
3. Furnish and equip the program to provide business services to tenants and participants;
4. Market the program and secure eligible tenants and participants;
5. Provide financial consulting, marketing and management assistance services or arrange for the provision of these services for tenants and participants of the incubator, including assistance in accessing private financial markets;
6. Set rental and service fees;
7. Encourage the sharing of ideas between tenants and participants and otherwise aid tenants and participants in an innovative manner while they are within the incubator; and
8. Establish policies and criteria for the acceptance, graduation and termination of occupancy of tenants and participants to maximize the opportunity to succeed for the greatest number of tenants.

ELIGIBLE TENANTS AND PARTICIPANTS

Tenants and participants of the incubator shall be small start-up companies.

FUNDS AVAILABLE FOR FINANCING

The provisions of section 620.495, RSMo, allow for the administration of a loan, loan guarantee, and grant program, as well as a contribution tax credit. The only function that is currently being utilized is the contribution tax credit.

HOW TAX CREDITS ARE AWARDED FOR CONTRIBUTIONS MADE

Certified incubators may receive contributions from taxpayers. The taxpayers in turn may receive tax credits in the amount of 50% of the contributions. An incubator must be approved by DED before receiving contributions from taxpayers. The overall maximum amount of tax credits that can be authorized in any one calendar year is \$500,000.

In order to ensure a fair distribution of the limited authorized tax credits, every certified incubator must complete a “Budget of Revenues and Expenditures” for the coming calendar year and send to DED by January 31st of each year. The budget shall include the previous two years’ budgets, as well as the projected budget for the upcoming year... Revenues must clearly detail the expected contributions for which tax credits will be awarded. Incubators must also submit the fund raising plan along with promissory letters from contributors.

DED will review the budget and send a letter stating the amount of tax credits reserved for the incubator. The reserved tax credits will be based upon the appropriate use of contributions, overall competition, and prioritization to support new incubators due to start-up costs.

The contributions for which tax credits are issued shall be used only for establishing, operating, and administering a small business incubator program. No tax credits will be issued for contributions used to finance expenses of graduate companies.

Tax credits for the incubators that submit budgets after January 31st, or an incubator seeking additional tax credits, will be based upon any remaining cap. No tax credits will be awarded to the incubators that do not submit budgets. Unused cap will expire on December 31st of each year.

ELIGIBLE PROJECT COSTS

- Acquisition of land and existing buildings;
- Leasing of land and existing buildings;
- Rehabilitation of buildings or other facilities;
- Construction of new facilities;
- Purchase of equipment and furnishings;
- Business development services included but not limited to business management consulting and business education.
- Material Donations must be “in hand” when counted.

REPORTING REQUIREMENTS

- Every certified incubator must complete a “Missouri Certified Incubators Annual Performance Report” for the Fiscal Year ending June 30th and send to DED by September 30th of each year.
- Every certified incubator requesting tax credits for the up coming year must complete a “Budget of Revenues and Expenditures for Calendar Year ending December 31st, and submitted to DED by January 31st of each year.
- Every certified incubator must submit an annual financial report audited by an independent certified public accountant.

- Every certified incubator must complete a “Tax Credit Accountability Act Reporting Form” for the Calendar Year ending December 31st and submitted to DED by June 30th of each year. Effective June 30, 2006

HOW TO APPLY FOR CERTIFICATION

A “Sponsor Application for a Certified Missouri Incubator Designation” and a “Project Narrative of Application for a Certified Missouri Incubator Designation” shall be completed to demonstrate that all the requirements are met, and sent to DED for review.

A business plan must also be completed and sent to DED and shall include the following topics:

- Groups of target markets and rationale for such selection.
- Explanation of the target market needs that relate to the service provided.
- TOWS analysis that identifies and categorizes threats, opportunities, weaknesses, and strengths.
- Corresponding strategies developed based upon TOWS analysis.
- List and description of the services offered including those that are required by statute.
- Explanation of the break-even table and chart as well as underlying assumptions.
- Explanation of the sales forecast table and chart. Submit the proposed rental and service fee structure, which will be charged to tenants of the incubator. Separate the sales from rental space, business support services (i.e., secretarial, janitorial, etc.) and technical support services.
- Explanation and forecast of the expense forecast table and chart. The projections should include:
 - General administration – salaries, benefits, insurance, travel, management, and professional fees; and
 - Building operation – taxes, utilities, maintenance, depreciation, equipment, interest and principal payments (if any), etc.
 - Do not adjust for changes in the price level.
- Contingency plan.

NAICS

NAICS is North American Industry Classification System. The Federal Office of Management and Budget (OMB) adopted the NAICS as the industry classification system used by the statistical agencies of the United States. NAICS replaces the 1987 Standard Industrial Classification (SIC). The NAICS is used for classifying business establishments to assist with gathering data related to measuring productivity, unit labor costs, and the capital intensity of production, employment and other information. Missouri businesses are assigned a NAICS when the company files a “Report to Determine Liability Status” with the Missouri Department of Labor and Industrial Relations, Division of Employment Security to determine Unemployment Tax Liability. Normally, a general business employer becomes liable for the tax and responsible for providing unemployment insurance for its workers when it:

- Pays \$1,500 in wages (cash and in-kind) in a calendar quarter, or
- Has an employee in some portion of a day in each of twenty (20) different weeks, or
- Becomes liable under the Federal Unemployment Tax Act (FUTA) and employs a worker in Missouri, or
- Acquires and continues without interruption substantially all the business of a liable employer.

QUALIFYING CRITERIA

DED will review applications for the following criteria:

1. Ability of the local sponsor to carry out the provisions of section 620.495, RSMo;
2. Economic impact of the incubator on the community;
3. Conformance with area-wide and local economic development plans, if such exist; and
4. Location of the incubator, in order to encourage geographic distribution of incubators across the state.

II. NOTICE

The Tax Credit Accountability Act of 2004 (Senate Bill 1099, Sections 135.800 through 135.830, RSMo) makes several changes to the tax credit programs, specifically:

- Processing tax credit applications;
- Additional Annual reporting requirements; and
- Penalty provisions.

CHANGES IN PROCESSING OF TAX CREDITS (SECTION 135.815, RSMo, applicable to Incubator and Contributor)

Prior to authorization of a tax credit, DED will contact the Departments of Revenue and Insurance and verify that the applicant does not owe any delinquent income, sales, use, or insurance taxes, or interest or penalties on such taxes. If a delinquency exists, the amount of tax credits issued will be reduced by the amount of the delinquency. After satisfying all delinquencies, the remaining credits shall be issued.

REPORTING REQUIREMENTS (SECTION 135.805, RSMo, applicable to Incubator)

Certain tax credit recipients are required to annually report information pertaining to the project that received the tax credits to DED. The statute requires that a full year pass after the issuance of the tax credits before SB1099 reporting requirements must be met. The earliest date that SB1099 reporting will be required is June 30, 2006.

The Entrepreneurial Category of tax credits, which includes the small business incubator program, requires recipients to annually report for three (3) years following the date of issuance of the tax credits to the DED the following information:

- Amount of investment; and
- Names of the project, fund and research project.

PENALTY PROVISIONS (SECTION 135.810, RSMo, applicable to Incubator)

Failure to meet the annual reporting requirements or fraud in the application process if determined by a court, such person or entity shall be subject to penalties.

If the annual report is ninety (90) days past due, DED shall send notice by registered mail to the last known address of the person or entity who is required to complete the annual report. The notice shall inform the person or entity of the past-due report and the pending penalties and their respective deadlines.

If the annual report is six (6) months past due, the DED shall notify the Department of Revenue that the taxpayer is subject to penalties because of failure to report.

Such penalties include the following:

- ❑ Failure to report for six (6) months but less than one year shall equal a penalty of two percent (2%) of the value of the tax credits issued for each month of the delinquency.
 - **EXAMPLE:** Recipient receives \$10,000 in tax credits. Annual report is due June 30, 2006; however, the recipient does not submit the report until March 30, 2007. The recipient is nine (9) months delinquent and the penalty would equal 2% multiplied by \$10,000 for nine (9) months or \$1800.
- ❑ Failure to report for more than one (1) year shall equal a penalty of ten percent (10%) of the value of the credits issued for each month of the delinquency, not to exceed one hundred percent (100%) of the tax credit value.
 - **EXAMPLE:** Recipient receives \$10,000 in tax credits. Annual report is due June 30, 2006; however, the recipient does not submit the report until March 30, 2008. The recipient is twenty-one (21) months delinquent and the penalty would equal 10% multiplied by \$10,000 for twenty-one (21) months or \$21,000, however, the statute limits the penalty to the amount of the tax credits, therefore, and the penalty would be \$10,000.

The taxpayer shall be liable for any penalties as of December 31 of any tax year and the liability shall be due as of the filing date of the taxpayer's next income tax return.

If the taxpayer is not required to file an income tax return, the taxpayer's liability for penalties shall be due as of April 15th of each year.

The Director of the Department of Revenue shall offset any tax credits claimed on a filed tax return against an outstanding penalty before applying such credits to the tax year against which they were originally claimed.

Any nonpayment of liability for penalties shall be subject to the same provisions of law as a liability for unpaid income taxes, including but not limited to, interest and penalty provisions.

Penalties shall remain the obligation of the person or entity obligated to complete the annual report without regard to any transfer of the credits.

CLOSED RECORDS (SECTIONS 610.255 and 620.014, RSMo, applicable to Incubator and Contributor)

Before August 28, 2004 and pursuant to Section 620.014, DED had the authority to close certain records except for the name of the tax credit recipient and the amount of the tax credit. SB 1099

removes this broad exception but DED retains the authority to close records or documents that “relate to financial investments in a business, or sales projections or other business plan information which may endanger the competitiveness of a business” or as also allowed by law.

III. CONTRIBUTOR

WHO MAY APPLY?

Any taxpayer, including non-for-profit corporations, except those that benefit directly from General Revenue such as public universities, may be a contributor. Applications can be submitted to DED year-round, but decisions will be made on a first-come basis based on the annual amount of tax credits allocated to an approved incubator.

ISSUANCE OF TAX CREDITS

Taxpayers contributing to the incubator shall receive a tax credit against a tax otherwise due under the provisions of chapter 143, RSMo (income tax), excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or chapter 147, RSMo (corporation franchise tax); or chapter 148, RSMo (financial institution tax). The tax credit will be 50% of any amount contributed to the incubator during the taxpayer’s tax year. Tax credits will be issued for the year in which the contribution was made.

Any excess tax credits may be carried forward for up to five (5) years. A taxpayer may sell tax credits allowed under section 620.495, RSMo, under the following conditions:

- For no less than 75% of the par value of such credits; and
- In an amount not to exceed 100% of the tax credit amount.

The assignee may use the acquired credits to offset up to 100% of the tax liability under the same provisions as the assignor.

ELIGIBLE CONTRIBUTIONS:

1. Cash;
2. Marketable securities (publicly traded stocks, bonds, and mutual funds); and
3. Equipment, furniture, and construction materials used in the incubator.

Tax credits for donated marketable securities will be awarded based upon the following:

1. Net liquidated proceeds of the sale, which are calculated by taking the sale proceeds and reducing that amount by broker’s fees, bank charges, etc.
2. The liquidation should take place within fifteen (15) days from the date of receipt. The contribution date is the date the securities are transferred to the approved incubator. Securities received after December 16th must be liquidated by December 31st to be eligible for those calendar years’ tax credits.
3. Contributor application shall be completed after the liquidation has occurred. The application should be signed by the contributor and the incubator and must be mailed to DED along with documentation satisfactory to the department that the transaction has occurred.

Tax credits for donated equipment, furniture, and construction materials will be awarded based upon an invoice or an appraisal (no more than six months old).

HOW TO APPLY

A contributor must complete a “Verification of Contribution to a Certified Missouri Incubator” and send to DED for review along with the proof of contribution. Acceptable proof of cash contribution includes a cancelled check, bank statement, or wire transfer. Once approved, DED will send a certificate of tax credit to the contributor.

To transfer the earned tax credits, the assignor shall enter into a written agreement with the assignee establishing the terms and conditions. The assignor must also complete Missouri Transfer Form MO-TF and send it to DED for the issuance of a new certificate to the assignee along with the proof of sale. Acceptable proof of sale includes a cancelled check, bank statement, or wire transfer.

CONTACT INFORMATION

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