2026 Changes to Kentucky's Historic Tax Credit Program: What Developers and Investors Need to Know

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Authors:

Mackenzie L. Giannotti
Tabitha Buchanan
Amy F. Curry
J. Christopher Coffman

The Kentucky General Assembly recently enacted House Bill 757, which, among other business and individual tax changes, expanded the Commonwealth's historic rehabilitation tax credit (HTC) program by amending KRS 171.396, sunsetting the prior primary statute governing the HTC application process (KRS 171.397), and creating a new HTC statute under KRS 171.398 (collectively, the "Legislation"). The state HTC program now provides an enhanced HTC for projects involving commercial residential property that satisfy certain affordability requirements. The Legislation also broadens the scope of state taxes against which the HTC can apply and, as a result, the types of taxpayers that can potentially benefit from or utilize the HTC. The changes apply to HTC applications received on or after April 30, 2026.

What's New at a Glance

Here are the highlights of what changed:

- **Enhanced credits for affordable housing:** Projects with at least 50% affordable residential space can now qualify for a 30% credit (up from 20%).
- **Broader transfer options:** HTCs can now be transferred to a wider range of taxpayers, including those subject to Kentucky insurance premium taxes and entity-level income taxes.
- **Extended carryforward:** Unused credits can now be carried forward for up to seven years after project completion.
- **Pass-through entity flexibility:** Pass-through entities can now apply HTCs against Kentucky's limited liability entity tax and pass credits through to owners.
- **New application rounds:** There are now two annual application deadlines — April 15 and August 15 — with $50 million allocated to each round.

Annual Credit Cap and Allocation

While the annual state-wide HTC cap for certified historic structures will remain $100 million, the new Legislation dictates that only 15% of the cap will be reserved for owner-occupied residential property, which is a decrease from the prior 25% reservation for such projects. The remaining 85% will be available for all other projects that qualify for HTCs, and this broad category now specifically includes "commercial residential property."

In order for a project to qualify as a commercial residential property, at least 50% of its square footage must be designated as residential space affordable to individuals earning 80% or less of the median family income for the county in which the project is located, as determined by the most recent American Community Survey Five-Year Estimate. The Legislation defines "affordable" to mean that the occupant's housing costs, including utilities, must total 30% or less of the occupant's gross income. This affordability restriction must remain in effect for at least five years after the building is placed in service, and the Legislation authorizes the Kentucky Department of Revenue to assess a penalty equal to 100% of the HTC allowed based on affordability if the taxpayer fails to maintain the commercial residential property requirements discussed above.

The distinction matters when calculating the amount of HTCs that a project is eligible for — if the project qualifies as a commercial residential property, the HTCs will equal 30% of qualified rehabilitation expenses (QREs). For all other property that does not qualify as commercial residential property or is not owner-occupied residential property, the amount of HTCs remains 20% of QREs.

Expanded Transfer and Pass-Through Options

Additionally, the Legislation expanded the scope of taxpayers to whom HTCs can now be transferred or assigned to include any person or entity subject to certain Kentucky insurance premium and retaliatory taxes or entity-level and individual income taxes. The prior statute only permitted HTCs to be transferred to certain financial institutions. If HTCs are transferred, the receiving taxpayer can now carry forward any unused HTCs for up to seven taxable years after the project is completed. Moreover, the Legislation makes it clear that a pass-through entity that is not subject to Kentucky corporation income tax can now apply HTCs at the pass-through entity level against any Kentucky limited liability entity tax and pass the HTCs through to its owners in the same proportion as the distributive share of income or loss is passed through.

New Application Timeline

Finally, the Legislation creates two separate HTC application rounds each year, with taxpayers required to file an application for a preliminary determination of HTC eligibility before April 15 or August 15 of the year in which the proposed project will begin. Preliminary HTC determinations will be made by June 30 (for the April 15 application round) or October 30 (for the August 15 application round) for the year in which the application was filed. The Legislation allocates $50 million of the annual HTC cap ($100 million) to the April 15 application round and the remaining $50 million to the August 15 application round. To the extent the HTC allocation for the April 15 application round is not utilized for applications received for that round, the remainder (not to exceed $25 million) is made available for applications received for the August 15 application round.

If the total amount of preliminary HTC approvals for the applications received in a single application round exceeds $50 million (plus any amounts added to the credit cap for that round), the HTC credit cap amount for that application round will be apportioned pro rata among approved projects as the product of the total HTC credit cap amount for the application round multiplied by a fraction — the numerator of which is the approved HTC amount for an individual taxpayer for the application round, while the denominator is the total approved credits for all taxpayers for that same application round. As a result, if the total approved HTC for all projects in a particular application round exceeds the HTC cap for that allocation round, it could result in a pro rata reduction to the final HTC awards provided to each of the applicants in that round.

What Should You Do Now?

The Kentucky Heritage Council (KHC) is responsible for determining a project's eligibility under the HTC program. As stated on its website, KHC is currently working to update its website to explain and support the changes enacted by the Legislation, in addition to publishing amendments to the relevant Kentucky Administrative Regulations and Rehabilitation Tax Credit forms ("State Forms"). KHC anticipates updated versions of each being published in September or October of 2026. Although some have interpreted the Legislation as potentially requiring an HTC allocation round in August of 2026, the KHC website currently indicates that the next HTC allocation round "will have a deadline of April 15, 2027." While KHC is not currently accepting or processing new State Forms, stakeholders should review projects in light of the program's expanded options.

How We Can Help

FBT Gibbons counsels developers, owners, investors, and key stakeholders on both tax-credit and conventionally funded commercial developments throughout the country. We stay at the forefront of legislative changes affecting federal and state HTCs. Contact the authors or any member of our Multifamily Housing industry team to discuss how these changes might benefit your current or future projects or if you need assistance with HTC deal structuring.

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