

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3439/P2dn

JK:kjf:jf

November 2, 2009

Representative Barca:

Under this draft, a taxpayer who qualifies for the federal new markets tax credit also qualifies for the state new markets tax credit. The percentages of the amount paid for a qualified equity investment under this draft are the same as the percentages of such amount that may be claimed for federal tax purposes. Is this consistent with your intent?

Please note that the federal new markets tax credit contains a "recapture" provision. Under federal law, if, during the seven-year period following the original issue of the qualified equity investment, the qualified community development entity ceases to exist, no longer uses the investment as required under federal law, or redeems the investment, the taxpayer must recalculate the taxpayer's tax liability for each year that the credit was claimed, disregarding the amount of the credit. The taxpayer then pays the IRS the amount of any additional tax, plus interest. The draft does not duplicate this recapture provision for state tax purposes, but, instead, requires Commerce, in consultation with DOR, to promulgate rules related to recapturing the state tax credits. Using the federal new markets tax credit recapture provision as a model seems somewhat problematic to the extent that it punishes the taxpayer for activities that the taxpayer cannot control. Also, because such recapture provisions are unusual for state tax credits under current law, you may want to consider whether you even want to include a recapture provision. Please contact me if you have any questions.

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