2009 DRAFTING REQUEST

Bill

Received: **09/14/2009**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Peter Barca (608) 266-5504**

By/Representing: **cathy**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters: **tkuczens**

Subject: **Tax, Business - credits**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Barca@legis.wisconsin.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**
tracy.kuczenski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Equity investment tax credits

Instructions:

See attached

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/P2	jkreye 10/29/2009	kfollett 10/30/2009	jfrantze 11/02/2009	_____ _____	cduerst 11/02/2009		

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/P4	chanaman 12/30/2009	chanaman 12/30/2009	mduchek 12/21/2009	_____ _____	sbasford 12/21/2009		State
/1			mduchek 12/30/2009	_____ _____	cduerst 12/30/2009	cduerst 12/30/2009	State

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NMTCs

Bill Request Form

Legislative Reference Bureau
One East Main Street, Suite 200
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 9/14/09

Legislator, agency, or other person requesting this draft Peter Barca

Person submitting request (name and phone number) Cathy Fried 266-5504

Persons to contact for questions about this draft (names and phone numbers) Cathy Fried (608-266-5504); Carla MacDonald (608-266-5504); James Sonneman (507-45 -274;

Describe the problem, including any helpful examples. How do you want to solve the problem?
We want to create a program of tax credits designed to promote private investment in designated low income areas. Some adopted states, as well as the federal government, have designed a program commonly known as New Market Tax Credits (NMTC). Specifically, we want to design our program after Missouri's. We will send along the ~~Missouri~~ statutes (135.680), as well as other notes that may help you.

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2005 LRB-2345/1 or 2003 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO

Missouri Revised Statutes

Chapter 135
Tax Relief
Section *135.680*

August 28, 2008

Definitions--tax credit, amount--recapture, when--rulemaking authority--reauthorization procedure--sunset date.

135.680. 1. As used in this section, the following terms shall mean:

(1) "Adjusted purchase price", the product of:

(a) The amount paid to the issuer of a qualified equity investment for such qualified equity investment; and

(b) The following fraction:

a. The numerator shall be the dollar amount of qualified low-income community investments held by the issuer in this state as of the credit allowance date during the applicable tax year; and

b. The denominator shall be the total dollar amount of qualified low-income community investments held by the issuer in all states as of the credit allowance date during the applicable tax year;

c. For purposes of calculating the amount of qualified low-income community investments held by an issuer, an investment shall be considered held by an issuer even if the investment has been sold or repaid; provided that the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within twelve months of the receipt of such capital. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the seventh anniversary of the qualified equity investment's issuance;

(2) "Applicable percentage", zero percent for each of the first two credit allowance dates, seven percent for the third credit allowance date, and eight percent for the next four credit allowance dates;

(3) "Credit allowance date", with respect to any qualified equity investment:

(a) The date on which such investment is initially made; and

(b) Each of the six anniversary dates of such date thereafter;

(4) "Long-term debt security", any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date, and with no distribution, payment, or interest features related to the profitability of the qualified community development entity or the performance of the qualified community development entity's investment portfolio. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the issuer has defaulted on covenants designed to ensure compliance with this section or Section 45D of the Internal

Revenue Code of 1986, as amended;

(5) "Qualified active low-income community business", the meaning given such term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that any business that derives or projects to derive fifteen percent or more of its annual revenue from the rental or sale of real estate shall not be considered to be a qualified active low-income community business;

(6) "Qualified community development entity", the meaning given such term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Treasury Department with respect to credits authorized by Section 45D of the Internal Revenue Code of 1986, as amended, which includes the state of Missouri within the service area set forth in such allocation agreement;

(7) "Qualified equity investment", any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(a) Is acquired after September 4, 2007, at its original issuance solely in exchange for cash;

(b) Has at least eighty-five percent of its cash purchase price used by the issuer to make qualified low-income community investments; and

(c) Is designated by the issuer as a qualified equity investment under this subdivision and is certified by the department of economic development as not exceeding the limitation contained in subsection 2 of this section.

This term shall include any qualified equity investment that does not meet the provisions of paragraph (a) of this subdivision if such investment was a qualified equity investment in the hands of a prior holder;

(8) "Qualified low-income community investment", any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of its affiliates, that may be used from the calculation of any numerator described in subparagraph a. of paragraph (b) of subdivision (1) of this subsection shall be ten million dollars whether issued to one or several qualified community development entities;

(9) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo, excluding withholding tax imposed in sections 143.191 to 143.265, RSMo, or otherwise due under section 375.916, RSMo, or chapter 147, 148, or 153, RSMo; 143- Income tax 147- Corporate Franchise Tax
148- Taxation of Financial Institutions 153- Taxation of P.U.C.s

(10) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143, RSMo, excluding withholding tax imposed in sections 143.191 to 143.265, RSMo, or the tax imposed in section 375.916, RSMo, or chapter 147, 148, or 153, RSMo.

2. A taxpayer that makes a qualified equity investment earns a vested right to tax credits under this section. On each credit allowance date of such qualified equity investment the taxpayer, or subsequent holder of the qualified equity investment, shall be entitled to a tax credit during the taxable year including such credit allowance date. The tax credit amount shall be equal to the applicable percentage of the adjusted purchase price paid to the issuer of such qualified equity investment. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the tax year for which the tax credit is claimed. No tax credit claimed under this section shall be refundable or transferable. Tax credits earned by a partnership, limited liability company, S-corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders. Any amount of tax credit that the taxpayer is prohibited by this section from claiming in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable years. The department of economic development shall limit the monetary amount of qualified equity investments permitted under this section to a level necessary to limit tax credit utilization at no more than fifteen million dollars of tax credits in any fiscal

how does Lomas know when his cut has been reached?

year. Such limitation on qualified equity investments shall be based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

3. The issuer of the qualified equity investment shall certify to the department of economic development the anticipated dollar amount of such investments to be made in this state during the first twelve-month period following the initial credit allowance date. If on the second credit allowance date, the actual dollar amount of such investments is different than the amount estimated, the department of economic development shall adjust the credits arising on the second allowance date to account for such difference.

4. The department of economic development shall recapture the tax credit allowed under this section with respect to such qualified equity investment under this section if:

(1) Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under Section 45D of the Internal Revenue Code of 1986, as amended; or

(2) The issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment.

Any tax credit that is subject to recapture shall be recaptured from the taxpayer that claimed the tax credit on a return.

5. The department of economic development shall promulgate rules to implement the provisions of this section, including recapture provisions on a scaled proportional basis, and to administer the allocation of tax credits issued for qualified equity investments, which shall be conducted on a first-come, first-serve basis. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after September 4, 2007, shall be invalid and void.

6. For fiscal years following fiscal year 2010, qualified equity investments shall not be made under this section unless reauthorization is made pursuant to this subsection. For all fiscal years following fiscal year 2010, unless the general assembly adopts a concurrent resolution granting authority to the department of economic development to approve qualified equity investments for the Missouri new markets development program and clearly describing the amount of tax credits available for the next fiscal year, or otherwise complies with the provisions of this subsection, no qualified equity investments may be permitted to be made under this section. The amount of available tax credits contained in such a resolution shall not exceed the limitation provided under subsection 2 of this section. In any year in which the provisions of this section shall sunset pursuant to subsection 7 of this section, reauthorization shall be made by general law and not by concurrent resolution. Nothing in this subsection shall preclude a taxpayer who makes a qualified equity investment prior to the expiration of authority to make qualified equity investments from claiming tax credits relating to such qualified equity investment for each applicable credit allowance date.

7. Under section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset six years after September 4, 2007, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

However, nothing in this subsection shall preclude a taxpayer who makes a qualified equity investment prior to sunset of this section under the provisions of section 23.253, RSMo, from claiming tax credits relating to such qualified equity investment for each credit allowance date.

(L. 2007 1st Ex. Sess H.B. 1)

Effective 9-04-07

Sunset date 9-04-13, unless reauthorized

Termination date 9-01-14, unless reauthorized

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND

UNITED STATES DEPARTMENT OF THE TREASURY

Accessing the Mapping System

New Markets Tax Credit Program

Announcements

- Request for Public Comment: New Markets Tax Credit Program Allocation Application
- Testimony of CDFI Fund Director Donna J. Gambrell before the Committee on Ways and Means and the Financial Services Committee on a recent GAO Report regarding the New Markets Tax Credit Program
- Government Accountability Office (GAO) Releases Report on NMTC Program
  - Letter from CDFI Fund Director Gambrell to GAO (April 23, 2009)
  - GAO Report on NMTC Program (April 30, 2009)
- 249 Applications Received Requesting $22.5 Billion under 2009 New Markets Tax Credit Program
- Treasury's New Markets Tax Credit Program Named One of Top 50 in the Innovations in American Government Awards Competition
  - CDFI Fund Press Release
  - Harvard Kennedy School Press Release

Overview

The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

Throughout the life of the NMTC Program, the Fund is authorized to allocate to CDEs the authority to issue to their investors up to the aggregate amount of $23 billion in equity as to which NMTCs can be claimed, including $1 billion of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone.

To date, the Fund has made 364 awards totaling $19.5 billion in allocation authority.

Eligibility

An organization wishing to receive awards under the NMTC Program must be certified as a CDE by the Fund.

To qualify as a CDE, an organization must:

- be a domestic corporation or partnership at the time of the certification application;
- demonstrate a primary a mission of serving, or providing investment capital for, low-income communities or low-income persons; and
- maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.

CDE Application and Resources

- **CDE Certification - Application**
- **CDE Certification - Frequently Asked Questions**
- **CDE Certification - Certification Guidance**
- **CDE Certification - Glossary of Terms**

An organization that is currently certified as a CDFI by the CDFI Fund or designated as a Specialized Small Business Investment Company by the Small Business Administration automatically qualifies as a CDE and may register to become a CDE via the online registration link located below on this webpage.

For more detailed information, please refer to the CDE Certification page of this website.

2009 Round Deadlines

- Release of NOAA and application materials: January 22, 2009
- CDE Certification Applications must be postmarked on or before: March 3, 2009
- Online Submission of Allocation Application: April 8, 2009
- Date by which prior-year allocatees must issue the requisite percentage of QEIs: June 17, 2009

Application Materials

- 2009 NMTC Program - Application Workshop Materials (.ppt)
- 2009 NOAA (.pdf)
- 2009 NOAA Amendment (.pdf)
- 2009 NMTC Program - Application (.pdf)
- 2009 NMTC Online Application Instructions (.pdf)
- 2009 NMTC Program - Application Q&A (.pdf)
- 2009 NMTC Program Application Webcast

Supplemental Resources

- QEI Investment Report (September 2009)
- Certification of Material Events Form
- Frequently Asked Questions on Material Events
- Working Paper: Addressing the Prevalence of Real Estate Investments

Missouri Revised Statutes

Chapter 23
Committee on Legislative Research
Section *23.253*

August 28, 2008

New programs to sunset, when--definitions--reauthorized programs, effect of--review of programs, when.

23.253. 1. As used in sections 23.250 to 23.298, the following terms mean:

(1) "Agency", any department, division, or agency of the state responsible for the administration of a program;

(2) "Committee", the committee on legislative research established in section 35, article III, Constitution of Missouri and section 23.010;

(3) "Program", a distinct and coherent set of activities authorized by the general assembly through the legislative process intended to affect a clearly definable target group, problem, or issue and which can be appropriated through the budget process or nonappropriated, as in the case of tax credits;

(4) "Sunset", the termination of legislative authorization of a program.

2. After August 28, 2003, any new program authorized by the general assembly shall sunset not more than six years after its effective date unless reauthorized by an act of the general assembly. No funds may be expended on a program after its authorization has terminated. Legislation passed after August 28, 2003, shall indicate whether it contains a program subject to the Missouri sunset act. Any such program shall have a sunset clause clearly indicating the date of termination without reauthorization.

3. Any program reauthorized by the general assembly pursuant to this section shall include a provision specifying that the program shall sunset at a date not more than twelve years from the effective date of the program's reauthorization.

4. Any program to which money was appropriated prior to August 28, 2003, may at any time be subject to review of the committee by a majority vote of its members for the purpose of recommending to the general assembly its continuation or sunset. The committee shall conduct public hearings concerning but not limited to the application to the program of the criteria provided in section 23.268, and shall issue a report pursuant to subsection 1 of section 23.271. The committee may recommend to the general assembly by a majority vote of its members that a program under review, to which money was appropriated prior to August 28, 2003, be sunset, continued, or reorganized. The committee shall submit such recommendation to all members of the general assembly within thirty calendar days of the vote in which such recommendation is made.

(L. 2003 S.B. 299 & 40)

Missouri Revised Statutes

Chapter 143
Income Tax
Section *143.191*

August 28, 2008

Employer to withhold tax from wages--armed services, withholding from wages or retirement--federal civil service retirement, withholding authorized, when.

143.191. 1. Every employer maintaining an office or transacting any business within this state and making payment of any wages taxable under sections 143.011 to 143.998 to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period the amount provided in subsection 3 of this section.

2. The term "wages" referred to in subsection 1 of this section means wages as defined by section 3401(a) of the Internal Revenue Code of 1986, as amended. The term "employer" means any person, firm, corporation, association, fiduciary of any kind, or other type of organization for whom an individual performs service as an employee, except that if the person or organization for whom the individual performs service does not have control of the payment of compensation for such service, the term "employer" means the person having control of the payment of the compensation. The term includes the United States, this state, other states, and all agencies, instrumentalities, and subdivisions of any of them.

3. The method of determining the amount to be withheld shall be prescribed by regulations of the director of revenue. The prescribed table, percentages, or other method shall result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under sections 143.011 to 143.998 with respect to the amount of such wages included in his Missouri adjusted gross income during the calendar year.

4. For purposes of this section an employee shall be entitled to the same number of personal and dependency withholding exemptions as the number of exemptions to which he is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee, except where the employee provides the employer with a form claiming a different number of withholding exemptions in this state.

5. The director of revenue may enter into agreements with the tax departments of other states (which require income tax to be withheld from the payment of wages) so as to govern the amounts to be withheld from the wages of residents of such states under this section. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under regulations prescribed by the director of revenue, may relieve employers in this state from withholding income tax on wages paid to nonresident employees. The

agreements authorized by this subsection are subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

6. The director of revenue shall enter into agreements with the Secretary of the Treasury of the United States or with the appropriate secretaries of the respective branches of the armed forces of the United States for the withholding, as required by subsections 1 and 2 of this section, of income taxes due the state of Missouri on wages or other payments for service in the armed services of the United States or on payments received as retirement or retainer pay of any member or former member of the armed forces entitled to such pay.

7. Subject to appropriations for the purpose of implementing this section, the director of revenue shall comply with provisions of the laws of the United States as amended and the regulations promulgated thereto in order that all residents of this state receiving monthly retirement income as a civil service annuitant from the federal government taxable by this state may have withheld monthly from any such moneys, whether pension, annuities or otherwise, an amount for payment of state income taxes as required by state law, but such withholding shall not be less than twenty-five dollars per quarter.

(L. 1972 S.B. 549, A.L. 1988 H.B. 1054, et al., A.L. 1990 H.B. 952, A.L. 1992 H.B. 915, A.L. 1994 S.B. 477, et al.)

Effective 12-31-94, and shall apply to all tax periods beginning on or after 1-1-95 (S.B. 477 § C, 1994)

CROSS REFERENCE:

Duties of employers and employees, withholding forms, RSMo 285.300

Missouri Revised Statutes

Chapter 375
Provisions Applicable to All Insurance Companies
Section *375.916*

August 28, 2008

Retaliatory tax, how assessed and paid, exceptions.

375.916. 1. When by the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Missouri insurance companies or carriers doing business, or that might seek to do business, in the other state or country, which in the aggregate are in excess of the taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of the other state or foreign country under the statutes of this state, so long as the laws continue in force, the same obligations, prohibitions, and restrictions of whatever kind shall be imposed upon insurance companies or carriers of the other state or foreign country doing business in Missouri. Any tax, license or other obligation imposed by any city, county or other political subdivision of a state or foreign country on Missouri insurance companies or carriers shall be deemed to be imposed by the state or foreign country within the meaning of this section, and the director of the department of insurance, financial institutions and professional registration for the purpose of this section shall compute the burden of the tax, license or other obligations on an aggregate statewide or foreign-countrywide basis as an addition to the tax and other charges payable by similar Missouri insurance companies or carriers in the state or foreign country. The provisions of this section shall not apply to ad valorem taxes on real or personal property, personal income taxes or to assessments on or credits to insurers for the payment of claims of policyholders of insolvent insurers.

2. All licenses, fees, taxes, fines or penalties collectible under this section shall be paid to the director of revenue. The payment and assessment of retaliatory tax shall be made on an estimated quarterly basis in the same manner as premium insurance tax as provided in sections 148.310 to 148.461, RSMo.

(RSMo 1939 § 6046, A.L. 1945 p. 1017, A. 1949 H.B. 2092, A.L. 1951 p. 261, A.L. 1967 p. 516, A.L. 1982 S.B. 470, A.L. 1983 S.B. 125)

(Source: RSMo 1959 § 375.450)

CROSS REFERENCE:

Director of the department of insurance, financial institutions and professional registration or director of revenue must make supplemental assessment, when, RSMo 374.245

Missouri Revised Statutes

Chapter 536
Administrative Procedure and Review
Section *536.010*

August 28, 2008

Definitions.

536.010. For the purpose of this chapter:

(1) "Affected small business" or "affects small business" means any potential or actual requirement imposed upon a small business or minority small business through a state agency's proposed or adopted rule that will cause direct and significant economic burden upon a small business or minority small business, or that is directly related to the formation, operation, or expansion of a small business;

(2) "Agency" means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases, except those in the legislative or judicial branches;

(3) "Board" means the small business regulatory fairness board, except when the word is used in section 536.100;

(4) "Contested case" means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;

(5) The term "decision" includes decisions and orders whether negative or affirmative in form;

(6) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of an existing rule, but does not include:

(a) A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof;

(b) A declaratory ruling issued pursuant to section 536.050, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts;

(c) An intergovernmental, interagency, or intraagency memorandum, directive, manual or other communication which does not substantially affect the legal rights of, or procedures available to,

the public or any segment thereof;

(d) A determination, decision, or order in a contested case;

(e) An opinion of the attorney general;

(f) Those portions of staff manuals, instructions or other statements issued by an agency which set forth criteria or guidelines to be used by its staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the state;

(g) A specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, or other fees;

(h) A statement concerning only the physical servicing, maintenance or care of publicly owned or operated facilities or property;

(i) A statement relating to the use of a particular publicly owned or operated facility or property, the substance of which is indicated to the public by means of signs or signals;

(j) A decision by an agency not to exercise a discretionary power;

(k) A statement concerning only inmates of an institution under the control of the department of corrections and human resources or the division of youth services, students enrolled in an educational institution, or clients of a health care facility, when issued by such an agency;

(l) Statements or requirements establishing the conditions under which persons may participate in exhibitions, fairs or similar activities, managed by the state or an agency of the state;

(m) Income tax or sales forms, returns and instruction booklets prepared by the state department of revenue for distribution to taxpayers for use in preparing tax returns;

(7) "Small business" means a for-profit enterprise consisting of fewer than one hundred full- or part-time employees;

(8) "State agency" means each board, commission, department, officer or other administrative office or unit of the state other than the general assembly, the courts, the governor, or a political subdivision of the state, existing under the constitution or statute, and authorized by the constitution or statute to make rules or to adjudicate contested cases.

(L. 1945 p. 1504 § 1, A.L. 1957 p. 748, A.L. 1976 S.B. 478, A.L. 2004 H.B. 978, A.L. 2005 H.B. 576, A.L. 2006 S.B. 1146)

(1977) Held, director of revenue must hold hearing on question as to reasonable possibility of judgment being rendered against a person, requires a hearing under § 303.290, RSMo, and is a "contested case" coming under the provision of Chap. 536, RSMo. Randle et al. v. Spradling (Mo.), 556 S.W.2d 10.

(1979) Mandamus was remedy when city council denied a liquor license under a municipal code when all conditions were met and was not a "contested" case. State ex rel. Keeven v. City of Hazelwood, et al. (A.), 585 S.W.2d 557.

(1995) Local school boards qualify as agencies under this definition. If a hearing is required by substantive law, it must be conducted according to contested case procedures. State ex rel. Clint Yarber v. McHenry, 915 S.W.2d 325 (Mo.banc).

(2000) Fire protection district had the power to hire and fire employees and thus was an "agency" under the section's definition. Krentz v. Robertson, 228 F.3d 897 (8th Cir.).

Missouri Revised Statutes

Chapter 536
Administrative Procedure and Review
Section *536.028*

August 28, 2008

Contingent delegation of rulemaking power--effective date of rules --notice to be filed with joint committee--committee's powers --disapproval or annulment of rules, grounds, procedure, effect --publishing of rules, when--nonseverable--contingent effective date.

536.028. 1. Notwithstanding provisions of this chapter to the contrary, the delegation of authority to any state agency to propose to the general assembly rules as provided under this section is contingent upon the agency complying with the provisions of this chapter and this delegation of legislative power to the agency to propose a final order of rulemaking containing a rule or portion thereof that has the effect of substantive law, other than a rule relating to the agency's organization and internal management, is contingent and dependent upon the power of the general assembly to review such proposed order of rulemaking, to delay the effective date of such proposed order of rulemaking until the expiration of at least thirty legislative days of a regular session after such order is filed with the general assembly and the secretary of state, and to disapprove and annul any rule or portion thereof contained in such order of rulemaking.

2. No rule or portion of a rule that has the effect of substantive law shall become effective until the final order of rulemaking has been reviewed by the general assembly in accordance with the procedures provided pursuant to this chapter. Any agency's authority to propose an order of rulemaking is dependent upon the power of the general assembly to disapprove and annul any such proposed rule or portion thereof.

3. In order for the general assembly to have an effective opportunity to be advised of rules proposed by any state agency, an agency shall propose a rule or order of rulemaking by complying with the procedures provided in this chapter, except that the notice of proposed rulemaking shall first be filed with the general assembly by providing a copy thereof to the joint committee on administrative rules, which may hold hearings upon any proposed rule, order of rulemaking or portion thereof at any time. The agency shall cooperate with the joint committee on administrative rules by providing any witnesses, documents or information within the control of the agency as may be requested.

4. Such proposed order of rulemaking shall not become effective prior to the expiration of thirty legislative days of a regular session after such order is filed with the secretary of state and the joint committee on administrative rules.

5. The committee may, by majority vote of its members, recommend that the general assembly disapprove and annul any rule or portion thereof contained in an order of rulemaking after hearings thereon and upon a finding that such rule or portion thereof should be disapproved and annulled. Grounds upon which the committee may recommend such action include, but are not limited to:

(1) Such rule is substantive in nature in that it creates rights or liabilities or provides for sanctions as to any person, corporation or other legal entity; and

(2) Such rule or portion thereof is not in the public interest or is not authorized by the general assembly for one or more of the following grounds:

(a) An absence of statutory authority for the proposed rule;

(b) The proposed rule is in conflict with state law;

(c) Such proposed rule is likely to substantially endanger the public health, safety or welfare;

(d) The rule exceeds the purpose, or is more restrictive than is necessary to carry out the purpose, of the statute granting rulemaking authority;

(e) A substantial change in circumstance has occurred since enactment of the law upon which the proposed rule is based as to result in a conflict between the purpose of the law and the proposed rule, or as to create a substantial danger to public health and welfare; or

(f) The proposed rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

6. Any recommendation or report issued by the committee pursuant to subsection 5 of this section shall be admissible as evidence in any judicial proceeding and entitled to judicial notice without further proof.

7. The general assembly may adopt a concurrent resolution in accordance with the provisions of article IV, section 8 of the Missouri Constitution to disapprove and annul any rule or portion thereof.

8. Any rule or portion thereof not disapproved within thirty legislative days of a regular session pursuant to subsection 7 of this section shall be deemed approved by the general assembly and the secretary of state may publish such final order of rulemaking as soon as practicable upon the expiration of thirty legislative days of a regular session after the final order of rulemaking was filed with the secretary of state and the joint committee on administrative rules.

9. Upon adoption of such concurrent resolution as provided in subsection 7 of this section, the secretary of state shall not publish the order of rulemaking until the expiration of time necessary for such resolution to be signed by the governor, or vetoed and subsequently acted upon by the general assembly pursuant to article III, section 32 of the Missouri Constitution. If such concurrent resolution is adopted and signed by the governor or otherwise reconsidered pursuant to article III, section 32, the secretary of state shall publish in the Missouri Register, as soon as practicable, the order of rulemaking along with notice of the proposed rules or portions thereof which are disapproved and annulled by the general assembly.

10. Notwithstanding the provisions of section 1.140, RSMo, the provisions of this section, section 536.021 and section 536.025 are nonseverable and the delegation of legislative authority to an agency to propose orders of rulemaking is essentially dependent upon the powers vested with the general assembly as provided herein. If any of the powers vested with the general assembly or the joint committee on administrative rules to review, to hold in abeyance the rule pending action by the general assembly, to delay the effective date or to disapprove and annul a rule or portion of a rule contained in an order of rulemaking, are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be revoked and shall be null, void and unenforceable.

11. Nothing in this section shall prevent the general assembly from adopting by concurrent resolution or bill within thirty legislative days of a regular session the rules or portions thereof, or as the same may be amended or annulled, as contained in a proposed order of rulemaking. In that event, the proposed order of rulemaking shall have been superseded and the order and any rule proposed therein shall be null, void and unenforceable. The secretary of state shall not publish a proposed order of rulemaking acted upon as described herein.

12. Upon adoption of any rule now or hereafter in effect, such rule or portion thereof may be revoked by the general assembly either by bill or by concurrent resolution pursuant to article IV, section 8 of the constitution on recommendation of the joint committee on administrative rules. The secretary of state shall publish in the Missouri Register, as soon as practicable, notice of the revocation.

13. This section shall become effective only upon the expiration of twenty calendar days following the:

(1) Failure of the executive to sign executive order number 97-97; or

(2) Modification, amendment or rescission of executive order number 97-97; or

(3) An agency's failure to hold the rule in abeyance as required by executive order number 97-97; or

(4) Declaration by a court with jurisdiction that section 536.024 or any portion of executive order number 97-97 is unconstitutional or invalid for any reason.

Notwithstanding the provisions of this subsection to the contrary, no modification, amendment or rescission of executive order number 97-97 or failure to hold a rule in abeyance shall make this section effective if the modification, amendment or rescission of the executive order or failure to hold the rule in abeyance is approved by the general assembly by concurrent resolution.

(L. 1997 H.B. 335, Repealed 1997 H.B. 600 & 388, A.L. 1997 H.B. 850)

*Contingent effective date, see subsection 13 of this section.

[Page 196-199]

TITLE 26--INTERNAL REVENUE CODE

Subtitle A--Income Taxes

CHAPTER 1--NORMAL TAXES AND SURTAXES

Subchapter A--Determination of Tax Liability

PART IV--CREDITS AGAINST TAX

Subpart D--Business Related Credits

Sec. 45D. New markets tax credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the qualified community development entity for such investment at its original issue.

(2) Applicable percentage

For purposes of paragraph (1), the applicable percentage is--

(A) 5 percent with respect to the first 3 credit allowance dates, and

(B) 6 percent with respect to the remainder of the credit allowance dates.

(3) Credit allowance date

For purposes of paragraph (1), the term ``credit allowance date'' means, with respect to any qualified equity investment--

(A) the date on which such investment is initially made, and

(B) each of the 6 anniversary dates of such date thereafter.

(b) Qualified equity investment

For purposes of this section--

(1) In general

The term ``qualified equity investment'' means any equity investment in a qualified community development entity if--

(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

(B) substantially all of such cash is used by the qualified community development entity to make qualified low-income community investments, and

(C) such investment is designated for purposes of this section by the qualified community development entity.

QEI contains the defined term QCDE

Such term shall not include any equity investment issued by a qualified community development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

(2) Limitation

The maximum amount of equity investments issued by a qualified community development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

(3) Safe harbor for determining use of cash

The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments.

(4) Treatment of subsequent purchasers

The term ``qualified equity investment'' includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

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(5) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

(6) Equity investment

The term ``equity investment'' means--

(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

(B) any capital interest in an entity which is a partnership.

(c) Qualified community development entity

For purposes of this section--

(1) In general

The term ``qualified community development entity'' means any domestic corporation or partnership if--

(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons,

(B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and

(C) the entity is certified by the Secretary for purposes of this section as being a qualified community development entity.

(2) Special rules for certain organizations

The requirements of paragraph (1) shall be treated as met by--

(A) any specialized small business investment company (as defined in section 1044(c)(3)), and

(B) any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

(d) Qualified low-income community investments

For purposes of this section--

(1) In general

The term ``qualified low-income community investment'' means--

(A) any capital or equity investment in, or loan to, any qualified active low-income community business,

(B) the purchase from another qualified community development entity of any loan made by such entity which is a qualified low-income community investment,

(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and

(D) any equity investment in, or loan to, any qualified community development entity.

(2) Qualified active low-income community business

(A) In general

For purposes of paragraph (1), the term ``qualified active low-income community business'' means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year--

(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,

(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community,

(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community,

(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

(B) Proprietorship

Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

(C) Portions of business may be qualified active low-income community business

The term ``qualified active low-income community business'' includes any trades or businesses which would qualify as a qualified active low-income community business if such trades or businesses were separately incorporated.

(3) Qualified business

For purposes of this subsection, the term ``qualified business'' has the meaning given to such term by section 1397C(d); except that--

(A) in lieu of applying paragraph (2)(B) thereof, the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on such property, and

(B) paragraph (3) thereof shall not apply.

(e) Low-income community

For purposes of this section--

(1) In general

The term ``low-income community'' means any population census tract if--

(A) the poverty rate for such tract is at least 20 percent, or

(B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or

(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Subparagraph (B) shall be applied using possessionwide median family income in the

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case of census tracts located within a possession of the United States.

(2) Targeted populations

The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.

(3) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.

(4) Tracts with low population

A population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of this section if such tract--

(A) is within an empowerment zone the designation of which is in effect under section 1391, and

(B) is contiguous to 1 or more low-income communities (determined without regard to this paragraph).

(5) Modification of income requirement for census tracts within high migration rural counties

(A) In general

In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting ``85 percent'' for ``80 percent''.

(B) High migration rural county

For purposes of this paragraph, the term ``high migration rural county'' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

(f) National limitation on amount of investments designated

(1) In general

There is a new markets tax credit limitation for each calendar year. Such limitation is--

(A) $1,000,000,000 for 2001,
(B) $1,500,000,000 for 2002 and 2003,
(C) $2,000,000,000 for 2004 and 2005, and
(D) $3,500,000,000 for 2006, 2007, and 2008.

(2) Allocation of limitation

The limitation under paragraph (1) shall be allocated by the Secretary among qualified community development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity--

(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income community investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

(3) Carryover of unused limitation

If the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2014.

(g) Recapture of credit in certain cases

(1) In general

If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of--

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Recapture event

For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a qualified community development entity if--

(A) such entity ceases to be a qualified community development entity,

(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

(C) such investment is redeemed by such entity.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this

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chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Basis reduction

The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations--

(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

(2) which prevent the abuse of the purposes of this section,

(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

(4) which impose appropriate reporting requirements,

(5) which apply the provisions of this section to newly formed entities, and

(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.

(Added Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 121(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-605; amended Pub. L. 108-357, title II, Secs. 221(a), (b), 223(a), Oct. 22, 2004, 118 Stat. 1431, 1432; Pub. L. 109-432, div. A, title I, Sec. 102(a), (b), Dec. 20, 2006, 120 Stat. 2934.)

Amendments

2006--Subsec. (f)(1)(D). Pub. L. 109-432, Sec. 102(a), substituted ``, 2007, and 2008'' for ``and 2007''.

Subsec. (i)(6). Pub. L. 109-432, Sec. 102(b), added par. (6).

2004--Subsec. (e)(2). Pub. L. 108-357, Sec. 221(a), amended heading and text of par. (2) generally, substituting provisions relating to regulations under which 1 or more targeted populations could be treated as low-income communities for provisions authorizing Secretary to designate any area within any census tract as a low-income community if certain conditions were met.

Subsec. (e)(4). Pub. L. 108-357, Sec. 221(b), added par. (4).

Subsec. (e)(5). Pub. L. 108-357, Sec. 223(a), added par. (5).

Effective Date of 2006 Amendment

Pub. L. 109-432, div. A, title I, Sec. 102(c), Dec. 20, 2006, 120 Stat. 2934, provided that: ``The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].''

Effective Date of 2004 Amendment

Pub. L. 108-357, title II, Sec. 221(c), Oct. 22, 2004, 118 Stat. 1431, provided that:

``(1) Targeted areas.--The amendment made by subsection (a) [amending this section] shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act [Oct. 22, 2004].

``(2) Tracts with low population.--The amendment made by subsection (b) [amending this section] shall apply to investments made after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108-357, title II, Sec. 223(b), Oct. 22, 2004, 118 Stat. 1432, provided that: ``The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 121(a)], enacting this section].''

Effective Date

Section applicable to investments made after Dec. 31, 2000, see Sec. 1(a)(7) [title I, Sec. 121(e)] of Pub. L. 106-554, set out as a Effective Date of 2000 Amendment note under section 38 of this title.

Guidance on Allocation of National Limitation

Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 121(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-610, provided that: ``Not later than 120 days after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies--

``(1) how entities shall apply for an allocation under section 45D(f)(2) of the Internal Revenue Code of 1986, as added by this section;

``(2) the competitive procedure through which such allocations are made; and

``(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.''

Audit and Report

Pub. L. 106-554, Sec. 1(a)(7) [title I, Sec. 121(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A-610, provided that: ``Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the new markets tax credit program established under section 45D of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all qualified community development entities that receive an allocation under the new markets credit under such section.''

Reznick Group

New Markets Tax Credit Connection

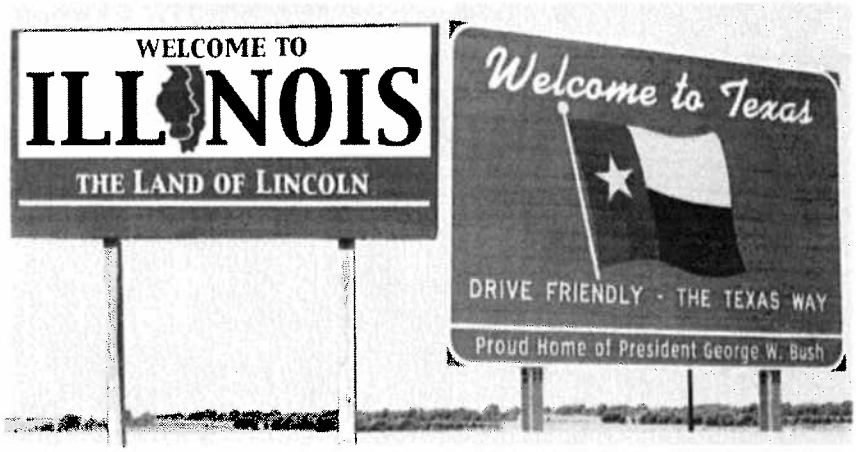
Helping You Stay Connected

Fall 2009

Illinois and Texas — How State Tax Credit Programs Can Differ to Achieve Different Objectives

By: Daniel King

The success of the federal New Markets Tax Credit (NMTC) program in attracting capital to low-income communities has led several states to adopt similar programs. States are finding themselves in competition for limited investment dollars, whether they are trying to promote rehabilitation or increase employment in their communities. An attractive state credit plan, regardless of whether it is designated an NMTC program or not, may be just the thing needed to entice investment in one state as opposed to a neighboring state. The credit plans take various forms depending on the objective; some closely mirror the federal NMTC program, while others use the basic concept of the federal program but change some of the requirements to direct investment as needed. We have featured some of the new state programs in previous editions; here we will highlight programs adopted by Illinois and Texas. The Illinois and Texas plans differ in their objectives, how closely they resemble the federal program, and the taxpayers they benefit.



The program adopted by Illinois closely approximates the federal program, with some variations. The Illinois program, which is effective for Qualified Equity Investments (QEIs) made after December 31, 2008, targets the same goals as the federal program. The following are some of the key deviations from the federal program:

- The applicable percentage for Illinois is 0% for the first two credit allowance dates, 7% for the third credit allowance date, and 8% for the next four dates; the federal program authorizes 5% for the first three dates and 6% for the last four dates. Both the Illinois and federal programs total 39% over the seven periods.
- At least 85% of the QEI must be used to make Qualified Low-Income Community Investments (QLICIs) in Illinois. The Illinois program also requires that the amount of QEI be certified by the Department of Commerce and Economic Opportunity as not exceeding the fiscal year limitation.
- The definition of a Qualified Active Low-Income Community Business

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(QALICB) is generally the same as for federal purposes, with an additional exception that any business that derives or projects to derive 15% or more of its annual revenue from the rental or sale of real estate is not qualified.

- The Illinois credits earned by a partnership, limited liability company, S corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of that entity in any manner they agree upon. The credit, however, is not refundable, nor can it be sold on the open market.
- The amount of credit claimed cannot exceed the taxpayer's Illinois tax liability; any credit that cannot be claimed in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable years.
- The CDE must submit an application to the Department of Commerce and Economic Opportunity with the required documentation and a nonrefundable application fee of $5,000.
- The Illinois program is scheduled to sunset in 2012, the final year that QEIs can be made unless the legislation is reauthorized.

The program Texas implemented is similar in form to the federal NMTC program, but the objective of the program is to assist small businesses, primarily in the manufacturing industry, and promote employment within Texas. The program provides tax credits to "certified investors" — insurance companies, health maintenance organizations, or other persons that have premium tax liability. Under the Texas program, certified investors make an investment of cash in a CAPCO, or certified capital company, which is the equivalent of a CDE under the federal NMTC program. The CAPCO then makes a debt or equity investment in qualified businesses. A qualified business must meet the following requirements:

- Is headquartered and has its principal business operations in Texas or relocates its headquarters and principal business operations to Texas within 90 days, and certifies that it will remain in Texas after the investment by the CAPCO;
- Has agreed to use the investment primarily to establish and/or support its principal business operations in Texas, other than for advertising, promotion, and sales operations;
- Does not have more than 100 employees either full-time or part-time, and at least 80% of them reside in Texas or at least 80% of its payroll is paid to Texas residents;
- Is primarily engaged in manufacturing, processing, assembling products, conducting research and development, or providing services;
- Does not incur more than 20% of its expenses and does not receive more than 20% of its income from retail sales, real estate development, financial services, or professional services; and
- Is not formed directly or indirectly by a CAPCO or an affiliate of a CAPCO, is not a franchisee or an affiliate of the CAPCO, or does not have a financial relationship with the CAPCO prior to the investment.

The certified investor earns a tax credit in the amount of its investment in the CAPCO. For credit allocations and investments made before January 1, 2007, 25% of the credit can be applied against state premium tax liability, but not in excess of the liability, for each taxable year beginning with 2008. For credit allocations and investments made on or after January 1, 2007, the first year the credit can be claimed is 2012. Any unused credit can be carried forward indefinitely. ■