

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in used 10-14

due Fri. 10-16
Gen

1 **AN ACT ...; relating to:** an income and franchise tax credit for a qualified equity
2 investment in a qualified community development entity and authorizing the
3 exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 71.05 (6) (a) 15. [✓] of the statutes, as affected by 2009 Wisconsin Acts
5 2 and 28, is amended to read:

6 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
7 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),
8 (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5n), [✓] and (8r) and not passed through by a
9 partnership, limited liability company, or tax-option corporation that has added that

1 amount to the partnership's, company's, or tax-option corporation's income under s.
2 71.21 (4) or 71.34 (1k) (g).

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28.

3 **SECTION 2.** 71.07 (5n) of the statutes is created to read:

4 71.07 (5n) NEW MARKETS CREDIT. (a) *Definitions.* In this subsection:

5 1. "Adjusted purchase price" means the amount paid for a qualified equity
6 investment multiplied by a fraction, the numerator of which is the amount of
7 qualified low-income community investments, as defined in s. 560.2065 (1) (f), held
8 in this state by the person who issues the investment on the credit allowance date,
9 as defined in s. 560.2065 (1) (a), for the taxable year in which the claimant claims a
10 credit under this subsection and the denominator of which is the amount of qualified
11 low-income community investments held in all states by the person who issues the
12 investment on the credit allowance date for the taxable year in which the claimant
13 claims a credit under this subsection.

14 2. "Claimant means a person who files a claim under this subsection.

15 3. "Qualified equity investment" has the meaning given in s. 560.2065 (1) (e).

16 (b) *Filing claims.* Subject to the limitations provided under this subsection and
17 s. 560.2065, beginning with the 2nd taxable year following the taxable year in which
18 the claimant purchases a qualified equity investment, the claimant may claim as a
19 credit against the taxes imposed under s. 71.02, up to the amount of taxes, an amount
20 equal to the amount of the adjusted purchase price, multiplied by the following
21 percentage:

22 1. For the 2nd taxable ^{year} following the taxable year in which the claimant
23 purchases a qualified equity investment, 7 percent.

1

2. For the four taxable years following the taxable year described under subd.

1., 8 percent.

(c) *Limitations.* Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 3. 71.10 (4) (cs) of the statutes is created to read:

71.10 (4) (cs) New markets credit under s. 71.07 (5n).

SECTION 4. 71.21 (4) of the statutes is amended, as affected by 2009 Wisconsin Acts 2 and 28, to read:

71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and passed through to partners shall be added to the partnership's income.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 1995 a. 27, 400; 1997 a. 27; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2, 28.

SECTION 5. 71.26 (2) (a) 4. of the statutes is amended, as affected by 2009 Wisconsin Acts 2 and 28, to read:

71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3t),

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1 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and not passed through by a
 2 partnership, limited liability company, or tax-option corporation that has added that
 3 amount to the partnership's, limited liability company's, or tax-option corporation's
 4 income under s. 71.21 (4) or 71.34 (1k) (g).

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428;
 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479,
 483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2, 28.

5 **SECTION 6.** 71.28 (5n) of the statutes is created to read:

6 71.28 (5n) NEW MARKETS CREDIT. (a) *Definitions.* In this subsection:

7 1. "Adjusted purchase price" means the amount paid for a qualified equity
 8 investment multiplied by a fraction, the numerator of which is the amount of
 9 qualified low-income community investments, as defined in s. 560.2065 (1) (f), held
 10 in this state by the person who issues the investment on the credit allowance date,
 11 as defined in s. 560.2065 (1) (a), for the taxable year in which the claimant claims a
 12 credit under this subsection and the denominator of which is the amount of qualified
 13 low-income community investments held in all states by the person who issues the
 14 investment on the credit allowance date for the taxable year in which the claimant
 15 claims a credit under this subsection.

16 2. "Claimant means a person who files a claim under this subsection.

17 3. "Qualified equity investment" has the meaning given in s. 560.2065 (1) (e).

18 (b) *Filing claims.* Subject to the limitations provided under this subsection and
 19 s. 560.2065, beginning with the 2nd taxable year following the taxable year in which
 20 the claimant purchases a qualified equity investment, the claimant may claim as a
 21 credit against the taxes imposed under s. 71.23, up to the amount of taxes, an amount
 22 equal to the amount of the adjusted purchase price, multiplied by the following
 23 percentage:

1 1. For the 2nd taxable ^{year} following the taxable year in which the claimant
2 purchases a qualified equity investment, 7 percent.

3 2. For the ⁴ taxable years following the taxable year described under subd.
4 1., 8 percent.

5 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
6 corporations may not claim the credit under this subsection, but the eligibility for,
7 and the amount of, the credit are based on their payment of amounts under par. (b).
8 A partnership, limited liability company, or tax-option corporation shall compute
9 the amount of credit that each of its partners, members, or shareholders may claim
10 and shall provide that information to each of them. Partners, members of limited
11 liability companies, and shareholders of tax-option corporations may claim the
12 credit in proportion to their ownership interests.

13 (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under
14 sub. (4), applies to the credit under this subsection.

15 **SECTION 7.** 71.30 (3) (dn) of the statutes is created to read:

16 71.30 (3) (dn) New market credit under s. 71.28 (5n).

17 **SECTION 8.** 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Acts 2
18 and 28, is amended to read:

19 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
20 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
21 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n),
22 and (8r) and passed through to shareholders.

History: 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33, 99, 135, 255, 326; 2005 a. 25, 49, 74, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28.

23 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Acts
24 2 and 28, is amended to read:

1 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
2 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f),
3 (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and not passed through by a partnership,
4 limited liability company, or tax-option corporation that has added that amount to
5 the partnership's, limited liability company's, or tax-option corporation's income
6 under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47
7 (1), (3), (3t), (4), (4m), and (5).

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28.

8 **SECTION 10.** 71.47 (5n) of the statutes is created to read:

9 71.47 (5n) NEW MARKETS CREDIT. (a) *Definitions.* In this subsection:

10 1. "Adjusted purchase price" means the amount paid for a qualified equity
11 investment multiplied by a fraction, the numerator of which is the amount of
12 qualified low-income community investments, as defined in s. 560.2065 (1) (f), held
13 in this state by the person who issues the investment on the credit allowance date,
14 as defined in s. 560.2065 (1) (a), for the taxable year in which the claimant claims a
15 credit under this subsection and the denominator of which is the amount of qualified
16 low-income community investments held in all states by the person who issues the
17 investment on the credit allowance date for the taxable year in which the claimant
18 claims a credit under this subsection.

19 2. "Claimant means a person who files a claim under this subsection.

20 3. "Qualified equity investment" has the meaning given in s. 560.2065 (1) (e).

21 (b) *Filing claims.* Subject to the limitations provided under this subsection and
22 s. 560.2065, beginning with the 2nd taxable year following the taxable year in which
23 the claimant purchases a qualified equity investment, the claimant may claim as a
24 credit against the taxes imposed under s. 71.43, up to the amount of taxes, an amount

1 equal to the amount of the adjusted purchase price, multiplied by the following
2 percentage:

3 1. For the 2nd taxable ^{year} following the taxable year in which the claimant
4 purchases a qualified equity investment, 7 percent.

5 2. For the ⁴ (four) taxable years following the taxable year described under subd.
6 1., 8 percent.

7 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
8 corporations may not claim the credit under this subsection, but the eligibility for,
9 and the amount of, the credit are based on their payment of amounts under par. (b).
10 A partnership, limited liability company, or tax-option corporation shall compute
11 the amount of credit that each of its partners, members, or shareholders may claim
12 and shall provide that information to each of them. Partners, members of limited
13 liability companies, and shareholders of tax-option corporations may claim the
14 credit in proportion to their ownership interests.

15 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
16 s. 71.28 (4), applies to the credit under this subsection.

17 **SECTION 11.** 71.49 (1) (dn) of the statutes is created to read:

18 71.49 (1) (dn) New markets credit under s. 71.47 (5n).

19 **SECTION 12.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Acts 2 and
20 28, is amended to read:

21 77.92 (4) "Net business income," with respect to a partnership, means taxable
22 income as calculated under section 703 of the Internal Revenue Code; plus the items
23 of income and gain under section 702 of the Internal Revenue Code, including taxable
24 state and municipal bond interest and excluding nontaxable interest income or
25 dividend income from federal government obligations; minus the items of loss and

1 deduction under section 702 of the Internal Revenue Code, except items that are not
 2 deductible under s. 71.21; plus guaranteed payments to partners under section 707
 3 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
 4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),
 5 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r); and plus or minus, as
 6 appropriate, transitional adjustments, depreciation differences, and basis
 7 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
 8 loss, and deductions from farming. "Net business income," with respect to a natural
 9 person, estate, or trust, means profit from a trade or business for federal income tax
 10 purposes and includes net income derived as an employee as defined in section 3121
 11 (d) (3) of the Internal Revenue Code.

History: 1989 a. 335; 1991 a. 39, 269; 1993 a. 16, 112, 490; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2, 28.

12 **SECTION 13.** 560.2065 of the statutes is created to read:

13 **560.2065 New Markets Credit.** (1) DEFINITIONS. In this section:

14 (a) "Credit allowance date" means the date on which a person applying for
 15 certification under this section makes a qualified equity investment and the
 16 subsequent dates which are the anniversaries of the date on which the person made
 17 a qualified equity investment.

18 (b) "Long-term debt security" means a debt instrument issued by a qualified
 19 community development entity, if all of the following apply to the debt instrument:

20 1. It is issued at par value or a premium.

21 2. It has an original maturity date of at least seven years from the date of
 22 issuance.

23 3. Payments on the debt instrument may not be accelerated, amortized, or paid
 24 in advance of the maturity date.

1 4. No distribution or payment is made, nor interest paid, to the holder of the
2 debt instrument which distribution, payment, or interest is dependent upon the
3 profitability of the qualified community development entity or the performance of
4 the investment portfolio of the qualified community development entity.

5 (c) "Qualified active low-income community business" means a qualified active
6 low-income community business as defined under 26 USC 45D (d) (2), except that a
7 business that derives 15 percent or more of its annual federal adjusted gross income
8 from the rental or sale of real estate is not a qualified active low-income community
9 business.

10 (d) "Qualified community development entity" means a qualified community
11 development entity as defined under 26 USC 45D (c).

12 (e) 1. Except as provided in subd. 2., "qualified equity investment" means an
13 equity investment in, or long-term debt security issued by, a qualified community
14 development entity if all of the following apply:

15 a. The equity investment or long-term debt security is acquired by a person
16 applying for certification under this section after September 4, 2007, at its original
17 issuance, and solely in exchange for cash.

****NOTE: What does "at its original issuance" mean with respect to an equity
investment (stock)?

18 b. At least 85 percent of the cash purchase price of the equity investment or
19 long-term debt security is used by the qualified community development entity to
20 make a qualified low-income community investment.

21 c. The equity investment or long-term debt security is designated by the
22 qualified community development entity as for purposes of this section and the

1 department has determined that the equity investment or long-term debt security
2 does not exceed the limits established under sub. (3).

3 2. "Qualified equity investment" includes an equity investment in, or
4 long-term debt security issued by, a qualified community development entity that
5 does not meet the requirements under subd. 1. a. if the equity investment or
6 long-term debt security satisfied all the requirements under subd. 1. when the
7 equity investment or long-term debt security was held by a previous owner.

8 (f) "Qualified low-income community investment" means a capital or equity
9 investment in, or loan to, a qualified active low-income community business.

10 (2) CERTIFICATION. The department may certify a person to receive tax benefits
11 under this section in each taxable year in which a credit allowance date falls if all of
12 the following apply:

13 (a) The person applies to the department for certification under this section in
14 each year for which the tax benefit is to be claimed.

15 (b) The department determines that the person made a qualified equity
16 investment.

17 (c) The department determines that the person is the holder of a qualified
18 equity investment in the taxable year in which the tax benefits are to be claimed.

19 (3) LIMITS. The department may allocate up to \$15,000,000 in tax benefits
20 under this section in any calendar year.

21 (4) DUTIES OF THE DEPARTMENT. ↑

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22 (a) The department of commerce shall notify the department of revenue of all
23 of the following:

24 1. Every certification issued under sub. (2) and the date on which any such
25 certification is revoked.

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New Markets Tax CreditWed 10-28

May be preferable to draft as a supplement to the
federal law

certification at the beginning \rightarrow ^{Wayman} no need for
ongoing recertification

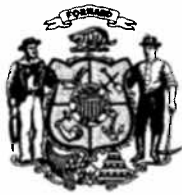
if use as a supplement to the federal credit \rightarrow
may not be able to use the state credit if
cannot or choose not to use the fed credit

(advantage of using a stand alone

CDE - ^{federal} agreement that includes the state of Wisconsin?

* How much latitude does Commerce have to certify
the entity that will receive the investments?

* Use a federal supplement model ^{federal history}
 \rightarrow partnership allocation rule of rehab
credit



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3439/F1
JK&TKK:kjf:rs

RPJ
RMR
insert

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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11/2/09 (if possible)

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1 **AN ACT to amend** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
2 (2) (a) 10. and 77.92 (4); and **to create** 71.07 (5n), 71.10 (4) (cs), 71.28 (5n), 71.30
3 (3) (dn), 71.47 (5n), 71.49 (1) (dn) and 560.2065 of the statutes; **relating to:** an
4 income and franchise tax credit for a qualified equity investment in a qualified
5 community development entity and authorizing the exercise of rule-making
6 authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Acts
8 2 and 28, is amended to read:
9 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
10 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),

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(3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5n), and (8r) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

SECTION 2. 71.07 (5n) of the statutes is created to read:

71.07 **(5n)** ^NNEW MARKETS CREDIT. (a) *Definitions.* In this subsection,

1. "Adjusted purchase price" means the amount paid for a qualified equity investment multiplied by a fraction, the numerator of which is the amount of qualified low-income community investments, as defined in s. 560.2065 (1) (f), held in this state by the person who issues the investment on the credit allowance date, as defined in s. 560.2065 (1) (a), for the taxable year in which the claimant claims a credit under this subsection and the denominator of which is the amount of qualified low-income community investments held in all states by the person who issues the investment on the credit allowance date for the taxable year in which the claimant claims a credit under this subsection.

2. "Claimant" means a person who files a claim under this subsection.

3. "Qualified equity investment" has the meaning given in s. 560.2065 (1) (e).

(b) *Filing claims.* Subject to the limitations provided under this subsection and s. 560.2065, beginning with the 2nd taxable year following the taxable year in which the claimant purchases a qualified equity investment, the claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of taxes, an amount equal to the amount of the adjusted purchase price, multiplied by the following percentage:

1. For the 2nd taxable year following the taxable year in which the claimant purchases a qualified equity investment, 7 percent.

1 2. For the 4 taxable years following the taxable year described under subd. 1.,
2 8 percent.

3 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
4 corporations may not claim the credit under this subsection, but the eligibility for,
5 and the amount of, the credit are based on their payment of amounts under par. (b).
6 A partnership, limited liability company, or tax-option corporation shall compute
7 the amount of credit that each of its partners, members, or shareholders may claim
8 and shall provide that information to each of them. Partners, members of limited
9 liability companies, and shareholders of tax-option corporations may claim the
10 credit in proportion to their ownership interests.

11 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
12 s. 71.28 (4), applies to the credit under this subsection.

13 **SECTION 3.** 71.10 (4) (cs) of the statutes is created to read:

14 71.10 (4) (cs) ⁿNew markets credit under s. 71.07 (5n).

15 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2009 Wisconsin Acts 2 and
16 28, is amended to read:

17 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
18 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w),
19 (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and passed through to partners shall
20 be added to the partnership's income.

21 **SECTION 5.** 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Acts
22 2 and 28, is amended to read:

23 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
24 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3t),
25 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and not passed through by a

Supplement to federal

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1 partnership, limited liability company, or tax-option corporation that has added that
2 amount to the partnership's, limited liability company's, or tax-option corporation's
3 income under s. 71.21 (4) or 71.34 (1k) (g).

4 SECTION 6. 71.28 (5n) of the statutes is created to read:

5 71.28 (5n) ^NNEW MARKETS CREDIT. (a) *Definitions.* In this subsection,

6 1. "Adjusted purchase price" means the amount paid for a qualified equity
7 investment multiplied by a fraction, the numerator of which is the amount of
8 qualified low-income community investments, as defined in s. 560.2065 (1) (f), held
9 in this state by the person who issues the investment on the credit allowance date,
10 as defined in s. 560.2065 (1) (a), for the taxable year in which the claimant claims a
11 credit under this subsection and the denominator of which is the amount of qualified
12 low-income community investments held in all states by the person who issues the
13 investment on the credit allowance date for the taxable year in which the claimant
14 claims a credit under this subsection.

15 2. "Claimant" means a person who files a claim under this subsection.

16 3. "Qualified equity investment" has the meaning given in s. 560.2065 (1) (e).

17 (b) *Filing claims.* Subject to the limitations provided under this subsection and
18 s. 560.2065, beginning with the 2nd taxable year following the taxable year in which

19 the claimant purchases a qualified equity investment, the claimant may claim as a
20 credit against the taxes imposed under s. 71.23, up to the amount of taxes, an amount
21 equal to the amount of the adjusted purchase price, multiplied by the following
22 percentage:

23 1. For the 2nd taxable year following the taxable year in which the claimant
24 purchases a qualified equity investment, 7 percent.

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1 2. For the 4 taxable years following the taxable year described under subd. 1.,
2 8 percent.

3 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
4 corporations may not claim the credit under this subsection, but the eligibility for,
5 and the amount of, the credit are based on their payment of amounts under par. (b).
6 A partnership, limited liability company, or tax-option corporation shall compute
7 the amount of credit that each of its partners, members, or shareholders may claim
8 and shall provide that information to each of them. Partners, members of limited
9 liability companies, and shareholders of tax-option corporations may claim the
10 credit in proportion to their ownership interests.

11 (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under
12 sub. (4), applies to the credit under this subsection.

13 SECTION 7. 71.30 (3) (dn) of the statutes is created to read:

14 71.30 (3) (dn) ⁿ New market credit under s. 71.28 (5n).

15 SECTION 8. 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Acts 2
16 and 28, is amended to read:

17 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
18 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
19 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n),
20 and (8r) and passed through to shareholders.

21 SECTION 9. 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Acts
22 2 and 28, is amended to read:

23 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
24 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f),
25 (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and not passed through by a partnership,

Supplement to federal

CS
SUPPLEMENT TO FEDERAL

1 limited liability company, or tax-option corporation that has added that amount to
2 the partnership's, limited liability company's, or tax-option corporation's income
3 under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47
4 (1), (3), (3t), (4), (4m), and (5).

5 **SECTION 10.** 71.47 (5n) of the statutes is created to read:

6 **71.47 (5n) NEW MARKETS CREDIT.** (a) *Definitions.* In this subsection:

7 1. "Adjusted purchase price" means the amount paid for a qualified equity
8 investment multiplied by a fraction, the numerator of which is the amount of
9 qualified low-income community investments, as defined in s. 560.2065 (1) (f), held
10 in this state by the person who issues the investment on the credit allowance date,
11 as defined in s. 560.2065 (1) (a), for the taxable year in which the claimant claims a
12 credit under this subsection and the denominator of which is the amount of qualified
13 low-income community investments held in all states by the person who issues the
14 investment on the credit allowance date for the taxable year in which the claimant
15 claims a credit under this subsection.

16 2. "Claimant" means a person who files a claim under this subsection.

17 3. "Qualified equity investment" has the meaning given in s. 560.2065 (1) (e).

18 (b) *Filing claims.* Subject to the limitations provided under this subsection and
19 s. 560.2065, beginning with the 2nd taxable year following the taxable year in which
20 the claimant purchases a qualified equity investment, the claimant may claim as a
21 credit against the taxes imposed under s. 71.43, up to the amount of taxes, an amount
22 equal to the amount of the adjusted purchase price, multiplied by the following
23 percentage:

24 1. For the 2nd taxable year following the taxable year in which the claimant
25 purchases a qualified equity investment, 7 percent.

2. For the 4 taxable years following the taxable year described under subd. 1.,
8 percent.

(c) *Limitations.* Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 11. 71.49 (1) (dn) of the statutes is created to read:

71.49 (1) (dn) ⁿNew markets credit under s. 71.47 (5n).

SECTION 12. 77.92 (4) of the statutes, as affected by 2009 Wisconsin Acts 2 and 28, is amended to read:

77.92 (4) "Net business income," with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),

Supplement to Federal

1 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r); and plus or minus, as
 2 appropriate, transitional adjustments, depreciation differences, and basis
 3 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
 4 loss, and deductions from farming. "Net business income," with respect to a natural
 5 person, estate, or trust, means profit from a trade or business for federal income tax
 6 purposes and includes net income derived as an employee as defined in section 3121
 7 (d) (3) of the Internal Revenue Code.

8 **SECTION 13.** 560.2065 of the statutes is created to read:

⑧ *Supplement to federal*

9 **560.2065 New markets credit.** (1) DEFINITIONS. In this section:

10 (a) "Credit allowance date" means the date on which a person applying for
 11 certification under this section makes a qualified equity investment and the 6
 12 subsequent dates which are the anniversaries of the date on which the person made
 13 a qualified equity investment. *↳ a credit allowance date as defined under 26 USC 45D(a)(1)*

14 (b) "Long-term debt security" means a debt instrument issued by a qualified
 15 community development entity, if all of the following apply to the debt instrument:
 16 1. It is issued at par value or a premium.
 17 2. It has an original maturity date of at least 7 years from the date of issuance.
 18 3. Payments on the debt instrument may not be accelerated, amortized, or paid
 19 in advance of the maturity date.
 20 4. No distribution or payment is made, nor interest paid, to the holder of the
 21 debt instrument which distribution, payment, or interest is dependent upon the
 22 profitability of the qualified community development entity or the performance of
 23 the investment portfolio of the qualified community development entity.

24 (b) ~~(c)~~ "Qualified active low-income community business" means a qualified active
 25 low-income community business as defined under 26 USC 45D (d) (2) except that

1 a business that derives 15 percent or more of its annual federal adjusted gross income
2 from the rental or sale of real estate is not a qualified active low-income community
3 business.

4 (c) ~~(d)~~ "Qualified community development entity" means a qualified community
5 development entity as defined under 26 USC 45D (c). a qualified

6 (d) ~~(e)~~ 1. Except as provided in subd. 2., "qualified equity investment" means an
7 equity investment in, or long-term debt security issued by, a qualified community
8 development entity if all of the following apply:

9 a. The equity investment or long-term debt security is acquired by a person
10 applying for certification under this section after September 4, 2007, at its original
11 issuance, and solely in exchange for cash.

****NOTE: What does "at its original issuance" mean with respect to an equity investment (stock)?

12 b. At least 85 percent of the cash purchase price of the equity investment or
13 long-term debt security is used by the qualified community development entity to
14 make a qualified low-income community investment.

15 c. The equity investment or long-term debt security is designated by the
16 qualified community development entity as for purposes of this section and the
17 department has determined that the equity investment or long-term debt security
18 does not exceed the limits established under sub. (3).

19 2. "Qualified equity investment" includes an equity investment in, or
20 long-term debt security issued by, a qualified community development entity that
21 does not meet the requirements under subd. 1. a. if the equity investment or
22 long-term debt security satisfied all the requirements under subd. 1. when the
23 equity investment or long-term debt security was held by a previous owner

~~e~~ as defined under 26 USC 45D (b)

① "Qualified low-income community investment" means a capital or equity
 ② investment in, or loan to, a qualified active low-income community business.

investment as defined under 26 USC 45D(d)(1)

3 (2) CERTIFICATION. The department may certify a person to receive tax benefits
 4 under this section in each taxable year in which a credit allowance date falls if all of
 5 the following apply:

6 (a) The person applies to the department for certification under this section in
 7 each year for which the tax benefit is to be claimed.

8 (b) The department determines that the person made a qualified equity
 9 investment.

10 (c) The department determines that the person is the holder of a qualified
 11 equity investment in the taxable year in which the tax benefits are to be claimed.

12 (3) LIMITS. The department may allocate up to \$15,000,000 in tax benefits
 13 under this section in any calendar year.

14 (4) DUTIES OF THE DEPARTMENT. (a) The department of commerce shall notify
 15 the department of revenue of all of the following:

16 1. Every certification issued under sub. (2) and the date on which any such
 17 certification is revoked.

18 2. The maximum amount of the tax credits under ss. 71.07 (5n), 71.28 (5n), and
 19 71.47 (5n) that a person may claim in the taxable year in which the person is certified.

20 (b) The department shall promulgate rules to administer this program,
 21 including all of the following:

22 1. Information to be provided to the department by a qualified community
 23 development entity in order for the department to determine all of the following:

24 a. Whether an equity investment or long-term debt security issued by the
 25 qualified community development entity is a qualified equity investment.

Insert 2 - 19

1 ~~no #~~ a claimant may claim as a credit against the taxes imposed under s. 71.02, up
2 to the amount of the taxes, the amount the claimant paid to a qualified community
3 development entity, as defined under 26 USC 45D (c), for a qualified equity
4 investment, as defined under 26 USC 45D (b), at its original issue, multiplied by the
5 following percentage:

6 1. For the taxable years that correspond to the first 3 credit allowance dates,
7 as defined under 26 USC 45D (a) (3), 5 percent.

8 2. For the taxable years that correspond to the 4 credit allowance dates, as
9 defined under 26 USC 45D (a) (3), following the credit allowance dates described in
10 subd. 1., 6 percent.

11 (c) *Limitations.* A partnership, limited liability company, or tax-option
12 corporation may not claim the credit under this subsection. The partners of a
13 partnership, members of a limited liability company, or shareholders in a tax-option
14 corporation may claim the credit under this subsection based on eligible costs
15 incurred by the partnership, company, or tax-option corporation. The partnership,
16 limited liability company, or tax-option corporation shall calculate the amount of the
17 credit which may be claimed by each partner, member, or shareholder and shall
18 provide that information to the partner, member, or shareholder. For shareholders
19 of a tax-option corporation, the credit may be allocated in proportion to the
20 ownership interest of each shareholder. Credits computed by a partnership or
21 limited liability company may be claimed in proportion to the ownership interests
22 of the partners or members or allocated to partners or members as provided in a
23 written agreement among the partners or members that is entered into no later than

1 the last day of the taxable year of the partnership or limited liability company, for
 2 which the credit is claimed. Any partner or member who claims the credit as
 3 provided under this paragraph shall attach a copy of the agreement, if applicable, to
 4 the tax return on which the credit is claimed. A person claiming the credit as
 5 provided under this paragraph is solely responsible for any tax liability arising from
 6 a dispute with the department of revenue related to claiming the credit.

Insert 4 - 18

7 ~~No~~ a claimant may claim as a credit against the taxes imposed under s. 71.23, up
 8 to the amount of the taxes, the amount the claimant paid to a qualified community
 9 development entity, as defined under 26 USC 45D (c), for a qualified equity
 10 investment, as defined under 26 USC 45D (b), at its original issue, multiplied by the
 11 following percentage:

12 1. For the taxable years that correspond to the first 3 credit allowance dates,
 13 as defined under 26 USC 45D (a) (3), 5 percent.

14 2. For the taxable years that correspond to the 4 credit allowance dates, as
 15 defined under 26 USC 45D (a) (3), following the credit allowance dates described in
 16 subd. 1., 6 percent.

17 (c) *Limitations.* A partnership, limited liability company, or tax-option
 18 corporation may not claim the credit under this subsection. The partners of a
 19 partnership, members of a limited liability company, or shareholders in a tax-option
 20 corporation may claim the credit under this subsection based on eligible costs
 21 incurred by the partnership, company, or tax-option corporation. The partnership,
 22 limited liability company, or tax-option corporation shall calculate the amount of the
 23 credit which may be claimed by each partner, member, or shareholder and shall

1 provide that information to the partner, member, or shareholder. For shareholders
2 of a tax-option corporation, the credit may be allocated in proportion to the
3 ownership interest of each shareholder. Credits computed by a partnership or
4 limited liability company may be claimed in proportion to the ownership interests
5 of the partners or members or allocated to partners or members as provided in a
6 written agreement among the partners or members that is entered into no later than
7 the last day of the taxable year of the partnership or limited liability company, for
8 which the credit is claimed. Any partner or member who claims the credit as
9 provided under this paragraph shall attach a copy of the agreement, if applicable, to
10 the tax return on which the credit is claimed. A person claiming the credit as
11 provided under this paragraph is solely responsible for any tax liability arising from
12 a dispute with the department of revenue related to claiming the credit.

Insert 6 - 19

13 ~~no~~ a claimant may claim as a credit against the taxes imposed under s. 71.43, up
14 to the amount of the taxes, the amount the claimant paid to a qualified community
15 development entity, as defined under 26 USC 45D (c), for a qualified equity
16 investment, as defined under 26 USC 45D (b), at its original issue, multiplied by the
17 following percentage:

18 1. For the taxable years that correspond to the first 3 credit allowance dates,
19 as defined under 26 USC 45D (a) (3), 5 percent.

20 2. For the taxable years that correspond to the 4 credit allowance dates, as
21 defined under 26 USC 45D (a) (3), following the credit allowance dates described in
22 subd. 1., 6 percent.

1 (c) *Limitations.* A partnership, limited liability company, or tax-option
2 corporation may not claim the credit under this subsection. The partners of a
3 partnership, members of a limited liability company, or shareholders in a tax-option
4 corporation may claim the credit under this subsection based on eligible costs
5 incurred by the partnership, company, or tax-option corporation. The partnership,
6 limited liability company, or tax-option corporation shall calculate the amount of the
7 credit which may be claimed by each partner, member, or shareholder and shall
8 provide that information to the partner, member, or shareholder. For shareholders
9 of a tax-option corporation, the credit may be allocated in proportion to the
10 ownership interest of each shareholder. Credits computed by a partnership or
11 limited liability company may be claimed in proportion to the ownership interests
12 of the partners or members or allocated to partners or members as provided in a
13 written agreement among the partners or members that is entered into no later than
14 the last day of the taxable year of the partnership or limited liability company, for
15 which the credit is claimed. Any partner or member who claims the credit as
16 provided under this paragraph shall attach a copy of the agreement, if applicable, to
17 the tax return on which the credit is claimed. A person claiming the credit as
18 provided under this paragraph is solely responsible for any tax liability arising from
19 a dispute with the department of revenue related to claiming the credit.

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

LRB-3439/P2dn
JK&TKK:kjf:rs

Date

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?

X Please note that the federal new markets tax credit contains a "recapture" provision. Under federal law, if, during the ^{seven} 7-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.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

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.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

Kreye, Joseph

From: Friedl, Cathy
Sent: Friday, November 13, 2009 2:18 PM
To: Kreye, Joseph
Subject: RE: State NMTC Legislation

Hi Joe,

Yes, please redraft this based on Wayman Lawrence's suggestions. Thank you.

Cathy Friedl
Office of Rep. Barca
(608) 266-5504

From: Kreye, Joseph
Sent: Monday, November 09, 2009 1:27 PM
To: Rep.Barca; Friedl, Cathy
Cc: Kuczenski, Tracy
Subject: RE: State NMTC Legislation

Rep. Barca;

Do you want us to redraft the proposal based on these instructions?

Joe

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

From: Olsen, Bryn E. B. [mailto:BOlsen@foley.com] **On Behalf Of** Lawrence IV, Wayman C.
Sent: Friday, November 06, 2009 5:12 PM
To: Rep.Barca; Kreye, Joseph
Cc: Friedl, Cathy; Lawrence IV, Wayman C.; Olsen, Bryn E. B.
Subject: State NMTC Legislation

Please see drafting suggestions for NMTC legislation attached.

Wayman C. Lawrence, IV
Foley & Lardner LLP
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11/13/2009

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Kuczenski, Tracy

From: Kreye, Joseph
Sent: Wednesday, November 25, 2009 8:55 AM
To: Kuczenski, Tracy
Subject: FW: NMTC draft 3439/P2

FYI:

From: Friedl, Cathy
Sent: Tuesday, November 24, 2009 8:33 PM
To: Kreye, Joseph
Subject: NMTC draft 3439/P2

Hi Joe,

I talked to Peter about your drafter's notes from November 2nd and he said "yes" to the percentage question being consistent with his intent.

Regarding the recapture provisions, he said to give Commerce the authority to promulgate rules, but not require it.

Cathy Friedl
Office of Rep. Barca
(608) 266-5504

Kreye, Joseph

From: Olsen, Bryn E. B. [BOlsen@foley.com] on behalf of Lawrence IV, Wayman C. [WLawrence@foley.com]
Sent: Friday, November 06, 2009 5:12 PM
To: Rep.Barca; Kreye, Joseph
Cc: Friedl, Cathy; Lawrence IV, Wayman C.; Olsen, Bryn E. B.
Subject: State NMTC Legislation
Attachments: Barca Memo.pdf; Barca Cover Letter.pdf

Please see drafting suggestions for NMTC legislation attached.

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November 6, 2009

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CLIENT/MATTER NUMBER
999700-4221

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VIA E-MAIL

Peter W. Barca, Majority Caucus Chairman,
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Cathy Friedl
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Re: Proposed State New Markets Tax Credit (NMTC)
Legislation

Dear Representative Barca:

Attached to this cover letter is a memorandum that includes substantial redrafting suggestions for the proposed state NMTC bill that was submitted to you by Senior Legislative Attorney Joseph T. Kreye on November 2. The purpose behind each drafting change is, broadly speaking, to maximize the additional investment capital raised for Wisconsin projects due to enactment of the state credit. This is accomplished by making the state credit rules work in tandem with the federal NMTC rules, while at the same time allowing a separate "state credit investor" to claim the state credit. This ability to "bifurcate" the two credits is critical because the federal NMTC investor often will not have any Wisconsin tax liability.

It is important for you to understand why the "limit" on the annual state NMTC must be changed from \$15 million of credits/calendar year. Since the credit is 39% of each Qualified equity investment, and is allowed over a 7-year period, the state credit investor must know for certain, on the date of investment, how much state credit will be allowed during each year of the 7-year credit period. If the state credit is separately allocated each year, there would be no certainty from year to year. Since \$15 million of tax credits is equivalent to \$38,461,538 of Qualified equity investments in Qualified community development entities (CDEs), the annual

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FOLEY & LARDNER LLP

Peter W. Barca, Majority Caucus Chairman
64th Assembly District
November 6, 2009
Page 2

certification limitation should, at minimum, be \$38,461,538 of Qualified equity investments. If, in 2010, the Department of Commerce certified \$38,461,538 of Qualified equity investments in CDEs, \$15 million of state credits would be spread over the next 7 years even if the Legislature terminated the program in 2011. This approach creates the investment certainty that is needed to maximize the state NMTC's value.

A superior approach to an annual limitation would be a higher "overall" limitation that the Department of Commerce would have a stated number of calendar years to utilize. For example, an overall certification limitation of \$200,000,000 of Qualified equity investments to be certified by the Department of Commerce from 2010-2012 would result in an aggregate of \$78 million of state credits being allowed from 2010-2019 – an average of \$7.8 million/year. One argument for a higher overall limitation, as opposed to a lower annual limitation, is the fact that Wisconsin CDEs now have over \$600 million of federal authority to attract Qualified equity investments that will be used for Wisconsin businesses. It would be nice to match the state credit availability with Wisconsin's current glut of federal NMTC so that deals can get done now, rather than having a smaller annual limit that might not even be used if the federal program is not extended.

There are several additions to the proposed bill designed to allow individuals and insurance companies to benefit from the NMTC.

Finally, the statute as redrafted contemplates that the Department of Commerce will be certifying the amount of Qualified equity investments made to applicant CDEs that will be eligible for state NMTC. The legislation is broad enough to allow the Department of Commerce to take a very "hands on" or a very "hands off" approach towards which CDEs and projects will benefit from the state NMTC. However, the statute does require the Department of Commerce to take swift action.

While I have shared this letter and the drafting changes with my CDE clients and NMTC program participants, and have received generally favorable feedback, please note that there has not been time for formal endorsements from any public or private organizations. I would expect backing from most people involved in the NMTC program, though I am sure many will have suggestions tailored to their circumstances.



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Peter W. Barca, Majority Caucus Chairman
64th Assembly District
November 6, 2009
Page 3

Thank you so much for sponsoring this important legislation and involving me in this process. Please let me know if you have questions or need further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Wayman C. Lawrence', with a long horizontal flourish extending to the right.

Wayman C. Lawrence

Attachments



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MEMORANDUM

CLIENT-MATTER NUMBER
999700-4221

TO: Peter W. Barca
Majority Caucus Chairman
64th Assembly District

FROM: Wayman C. Lawrence

CC: Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau

DATE: November 6, 2009

RE: Drafting Suggestions for NMTC Legislation

1. Basis Reduction Rather Than Net Income Add Back. The supplement to the federal historic rehabilitation credit is not required to be “added back” to the income of a partnership, limited liability company or tax-option corporation. The supplement to the federal new markets tax credit (NMTC) should be treated in the same manner. However, the state tax basis of the claimant’s partnership interest, membership interest or stock should be reduced (but not below zero) by the amount of credit claimed. If this drafting suggestion is acceptable, the amendments to Sections 71.05(6)(a)(15), 71.21(4), 71.34(1k)(g), 71.45(2)(a)(10) and 77.92(4)

would not be needed. The basis reduction rule could be included in a separate subsection under 71.07(5n), 71.28(5n) and 71.47(5n), to read as follows:

Basis Reduction. The tax basis of a claimant's interest in a partnership, limited liability company or tax-option corporation shall be reduced (but not below zero) by the amount of any credit claimed under this subsection. The credit claimed under this subsection shall not be limited to the amount of the adjusted tax basis for the claimant's interest in a partnership, limited liability company or tax-option corporation.

✓ 2. *Coordination with Federal Program.* In many cases, the state NMTC supplement will be claimed by a "state credit investor" who is a partner or member in a partnership or limited liability company with another partner or member that claims all of the federal NMTC. Under the federal NMTC rules, it may be difficult (or impossible) to avoid re-allocating some of the federal NMTC to the state credit investor (and away from the federal NMTC investor who paid for it) in years 5-7 of the NMTC period. To make the two programs work effectively together, and thus maximize utilization of the state credit, the following subsection could be added to 71.07(5n), 71.28(5n) and 71.47(5n), to read as follows:

Transfer of Interest in Partnership, Limited Liability Company or Tax-Option Corporation. Any claimant transferring an interest in a partnership, limited liability company or tax-option corporation after the first credit allowance date but prior to the final credit allowance date for the credit allowed under this subsection shall be entitled to claim the credits for the remaining credit allowance dates by filing with the claimant's tax return a written agreement, executed by the claimant and the transferee of the interest, stating that the claimant (and not the transferee) is the person entitled to claim such credit.

① 3. *Technical Correction.* In the second sentence of subsection (a) of Sections 71.07(5n), 71.28(5n) and 71.47(5n), the words "based on eligible costs incurred by" should be replaced with the words "based on the Qualified equity investment made by."

4. Certification and Limits. The “Certification” process in 560.2065(2) and the “Limits” in 560.2065(3) are fundamentally flawed because the amount of state NMTC credit claimed has to be certified each year and the (up to) \$15,000,000 limit is discretionary each year. A credit allowed over multiple years based on an upfront investment amount (such as the federal NMTC and this proposed state NMTC) must be fixed and certain at the time of investment. If it is not, no tax investor will pay for it at the outset of the transaction. This defeats the purpose of the state NMTC to provide an additional upfront funding source for new business development.

To make the proposed state NMTC program function in concert with (*i.e.*, as a true supplement to) the highly successful federal NMTC program, subsections (2) and (3) of 560.2065 should be redrafted to read as follows:

(2) *Certification.* Subject to the limit imposed by sub. (3) and the procedures described in sub. (4), the department shall have the authority to issue certifications to Qualified community development entities specifying the amount of Qualified equity investments in such Qualified community development entities that are eligible for the supplement to federal new markets tax credit under this section and sections 71.07(5n), 71.28(5n) and 71.47(5n). ✓

(3) *Limits.* The total amount of Qualified equity investments certified by the department under sub. (2) shall not exceed **[\$Dollar Limit to be Determined]**. ✓

5. Notification to Department of Revenue. Subsection.(4)(a)(2) of Section 560.2065 should be revised to read as follows:

2. The maximum amount of the tax credits under ss. 71.07(5n), 71.28(5n) and 71.47(5n) allowable on each Credit allowance date with respect to each Qualified equity investment certified under sub. (2).

6. Department of Commerce Guidance. Subsection (4)(b) of Section 560.2065

should be revised to read as follows:

(b) Within sixty (60) days following the date of enactment, the department shall promulgate rules to administer this program. The administrative rules promulgated by the department shall, at minimum, address each of the following:

1. The application information to be submitted to the department by each Qualified community development entity as a condition to the department's review of one or more Qualified equity investments for possible certification under sub. (2).

2. The deadlines for submission of applications.

3. The time period between submission of a completed application and the department's certification, which time period shall not exceed forty-five (45) days.

4. The general criteria to be used by the department in reviewing applications.

5. The conditions under which the department will revoke a certification, provided:

a. For Qualified equity investments that have not been funded, revocation of a certification shall apply only to credits to be claimed on credit allowance dates following the revocation.

b. The department shall revoke a certification with respect to a Qualified equity investment only if there has been a "recapture event" as defined under 26 USC 45D(g)(3) that is not corrected within the cure period applicable to such recapture event.

✓ 7. Allowing State NMTC to Offset Wisconsin Alternative Minimum Tax (AMT)

and Elimination of Wisconsin Passive Activity Loss Limitations for State NMTC. The state NMTC could be utilized by individuals (thus opening up another investor class) if the AMT and passive activity loss limitations did not apply to it. This could be achieved with two simple amendments.

First, a new subsection 71.08(1)(f) of the Wisconsin Statutes could be added to read:

(f) Subtract the amount of credit allowed under s. 71.07(5n) or 71.28(5n).

Second, a new subsection could be added to 71.07 and 71.28(5n) to read:

() Passive Activities. The limitation contained in section 469(a)(1)(b) of the Internal Revenue Code shall not apply to the credit allowed under this section.

8. Allowing Use of State NMTC to Offset Premiums Tax. Insurance companies have historically purchased tax credits of all kinds. Insurance companies could utilize the new state NMTC if a new s. 76.639 were added to the Wisconsin Statutes to read as follows:

769.639 New Market Tax Credit

(1) Definitions. In this section, "claimant" means an insurer who files a claim under this section and is authorized to claim tax credits under s. 71.47(5n). ?

(2) Filing claims. Subject to the limitations under this section and Section 560.2065, for taxable years beginning on January 1, 2010, a claimant may claim as a credit against the fees due under Section 76.60, 76.63, 76.65, 76.66, or 76.67 the amount authorized for the claimant under Section 71.47(5n).

(3) Limitations.^{exclusion} No credit may be allowed under this section unless the insurer includes with the insurer's annual return under Section 76.64 a copy of the applicable certification under Section 560.2065(2).

(4) Carry-Forward. If the credit under sub. (2) is not entirely offset against the fees under Section 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance may be carried forward and credited against those fees for the following 15 years to the extent that it is not offset by those fees otherwise due in all the years between the year in which the expense was made and the year in which the carry-forward credit is claimed.