

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB642)

Received: **01/11/2010**

Received By: **tkuczens**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Cathy Friedl**

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

Drafter: **tkuczens**

May Contact:

Addl. Drafters: **jkreye**

Subject: **Econ. Development - bus. dev.
Tax, Business - credits**

Extra Copies:

Submit via email: **YES**

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

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

Pre Topic:

No specific pre topic given

Topic:

Equity investment tax credits

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens 01/11/2010 jkreye 01/11/2010	kfollett 01/12/2010		_____ _____ _____			State
/P1	tkuczens 01/25/2010 jkreye 01/25/2010	kfollett 01/26/2010	phenry 01/13/2010	_____ _____ _____	lparisi 01/13/2010		State

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/P2			rschluet 01/26/2010	_____ _____	sbasford 01/26/2010		State
/P3	jkreye 01/28/2010 jkreye 01/28/2010 jkreye 01/28/2010 tkuczens 01/29/2010	kfollett 01/28/2010 chanaman 01/28/2010 kfollett 01/29/2010	mduchek 01/28/2010	_____ _____ _____ _____ _____	mbarman 01/28/2010		State
/P4			mduchek 01/29/2010	_____ _____	sbasford 01/29/2010		State
/1	jkreye 02/01/2010	wjackson 02/01/2010	mduchek 02/01/2010	_____ _____	sbasford 02/01/2010	sbasford 02/01/2010	

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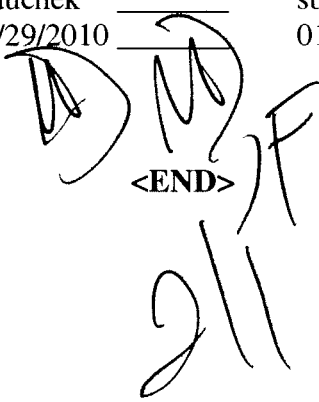
See attached

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5/11/28

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	jkreye 01/11/2010	1/21/5f 1/26		_____			
/P1			pHenry 01/13/2010	_____	lparisi 01/13/2010		

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Handwritten signature and date: 26/10

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/?	tkuczens	1/11/10 PIGF	1/12/10 ph	1/12/10 ph			

FE Sent For:

<END>

Kuczenski, Tracy

From: Lawrence IV, Wayman C. [WLawrence@foley.com]
Sent: Monday, January 11, 2010 8:44 AM
To: Kuczenski, Tracy
Cc: Matthias, Mary; Friedl, Cathy; Kreye, Joseph
Subject: RE: Proposed amendments to LRB 3439/1

There is a typo in my email--in the last sentence of the 1st paragraph, the first clause should read "There should not be a requirement that the state claimant also claim federal NMTC"...in many cases, the state investor and federal investor will be different entities

-----Original Message-----

From: Kuczenski, Tracy [mailto:Tracy.Kuczenski@legis.wisconsin.gov]
Sent: Monday, January 11, 2010 8:40 AM
To: Lawrence IV, Wayman C.
Cc: Matthias, Mary; Friedl, Cathy; Kreye, Joseph
Subject: RE: Proposed amendments to LRB 3439/1

Thanks for these detailed comments, Wayman. I'll be able to get to this draft this afternoon and I don't believe it will take too long to rework.

Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

-----Original Message-----

From: Lawrence IV, Wayman C. [mailto:WLawrence@foley.com]
Sent: Friday, January 08, 2010 2:52 PM
To: Kuczenski, Tracy
Cc: Matthias, Mary; Friedl, Cathy; Kreye, Joseph
Subject: RE: Proposed amendments to LRB 3439/1

A-I are correct with some clarification: Each qualified equity investment to a CDE which is certified by Commerce will also be a qualified equity investment for purposes of 45D--however, the DOC could choose to certify less than all of the federal qualified equity investment (known as a QEI) for the state NMTC. It is true that the QEI will be directed towards a specific project that is described to DOC by the CDE in the application process. There should be a requirement that the state claimant also claim federal NMTC, and there should be no need for DOC to certify the actual state NMTC claimant.

For your questions:

1. The proposed recipient of the loans that will be funded by the CDE with the QEI proceeds will be a "qualified active low income community business", or QALICB, for federal purposes when the CDE comes to DOC requesting certification of a QEI for State NMTC. However, the QEI will be actually funded until after the state NMTC award is made. I would anticipate DOC giving a certain time period for the QEI that has been certified for state NMTC to actually get funded--if it is not funded within that time period (say, 12 months), then the state NMTC award for that QEI would be forfeited.

2 and 3 are fine, but you might want to say instead "a QCDE whose service area includes the state"--the primary mission language you propose is duplicative since a QCDE by definition has that mission. The important thing is that the "service area" include Wisconsin. We do not want to exclude QCDEs with a national service area from participating in this program if they want to bring their federal NMTC to Wisconsin deals.

4. Yes

5. That is up to DOC--typically, the CDE will do a write-up on the community impact (job creation, etc.) in order to justify the deal for federal NMTC purposes. Each CDE has its own deal screening process.

6. The DOC power is only to certify a QEI for state NMTC purposes. Section 45D/IRS/Treasury do not care what Wisconsin does. The amount of the federal QEI will, however, depend in part on how much state NMTC is allocated to the QEI. But that is not DOC's concern, at least not directly.

7. Criteria should be established by DOC, not statute, except that the statute should specify that the criteria be "reasonably consistent with the intent and purposes of Internal Revenue Code Section 45D" and (I think) should specify a quick turnaround so we can get the credits to work.

As to recapture, I would think the State NMTC should be recaptured if the federal NMTC is recaptured. We can talk about that.

*TK - no
need to
draft anything
re: recapture?*

-----Original Message-----

From: Kuczenski, Tracy [mailto:Tracy.Kuczenski@legis.wisconsin.gov]
Sent: Tuesday, January 05, 2010 10:20 AM
To: Lawrence IV, Wayman C.
Cc: Matthias, Mary; Friedl, Cathy; Kreye, Joseph
Subject: Proposed amendments to LRB 3439/1

Hi Wayman -

Thanks for forwarding the November 6 memo. I have attempted to summarize, below, my understanding of the process outlined in both the memo and your most recent email (of December 29th). Following this summary, I pose a series of questions about how to accomplish the objectives you outline in both the memo and your most recent email. These questions may seem excessively detailed, but I believe it is better to err on the side of too much information in the drafting stage; the more information I have, the better able I am to prepare an accurate and functional certification structure. I am copying Cathy Friedl, Mary Matthias, and Joe Kreye on this message.

Note that, at this point, because the bill has been introduced, any changes that need to be made to the bill will either be made in a simple or substitute amendment (after today's hearing). Let me know if you have any questions about this point.

To summarize the NMTC certification process as you have laid it out (These are the assumptions underlying my questions):

- A. Under the bill, the Department of Commerce (Commerce) will be required to certify an (aggregate) *investment*.
- B. The (aggregate) investment to be certified by Commerce will be for a proposed project (commercial real estate, manufacturing, etc.) that must meet certain conditions (geographic location, job creation, etc.). These conditions are established, in part, under federal law (see next item).
- C. The (aggregate) investment will also be a "Qualified equity investment" as that term is defined under 26 USC 45D.
- D. The (aggregate) investment to be certified by Commerce will be submitted to Commerce by a Wisconsin CDE. Each Wisconsin CDE receives (smaller) investments from one or more NMTC investment fund(s); each NMTC investment fund is comprised of members.
- E. The members of the NMTC investment fund will be corporate members and individual members; "membership" is obtained when the members invest money in the fund.
- F. If Commerce certifies the (aggregate) investment, some, but not all, of the members of the NMTC investment fund will be able to claim a credit against state income taxes for their investment in the fund.
- G. There should *not* be a requirement that the individual member claiming the tax credit

also must be eligible to claim the federal NMTC.

H. Commerce should *not* be involved in certifying the individual members to be eligible to claim the tax credit.

I. An individual member of a NMTC investment fund, whether the member is a real person, a corporation, or some other entity, that wishes to claim a credit against state taxes will have to present a copy of the certification granted to the QEI by Commerce to the Department of Revenue.

Please let me know if any of the statements, above, are incorrect.

Here are my questions:

1. Will a proposed project (and the corresponding investment) submitted by a Wisconsin CDE for certification by the Department of Commerce (Commerce) *already* be a "qualified equity investment" under 26 USC 45D at the time the proposed investment project is submitted to Commerce?
2. I proposed to define a "qualified equity investment" (QEI) for purposes of certification under s. 560.2065 as a QEI under 26 USC 45D (b) that is made in project located in this state. Is the word "project" in this proposed definition acceptable and sufficient to cover the scope of proposed investments?
3. I propose to define a "Wisconsin CDE" that could be eligible to submit a proposed investment for certification under s. 560.2065 as a Qualified Community Development Entity (QCDE), as defined in 26 USC 45D (c), that has as its primary mission serving or providing investment capital for low income communities or low income persons in this state.

Is that accurate and sufficient?

4. Is it your intent that every Wisconsin CDE that meets the definition, above, will be eligible to submit a proposed investment to Commerce for certification?
5. What information does Commerce need to receive from a Wisconsin CDE in order to certify a proposed investment?
6. Will Commerce, given this new power to certify QEIs, supplant the power of the Wisconsin CDE to allocate NMTC? If so, Will Commerce have final authority over whether to certify a QEI and permit the allocation of NMTC?
7. What level of control should Commerce have over the parameters within which Commerce may certify a QEI? That is, should Commerce determine, by rule, what criteria to use as it reviews investments for certification (such as criteria that are consistent with economic development goals established under s. 560.01 (2) (ae), stats.), or should these criteria be set forth in the bill itself?

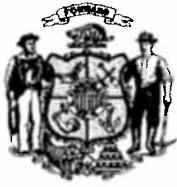
If the latter, what should these criteria be? Creation of a certain number of jobs?
Creation of a certain type (industry) of jobs?
Creation of jobs in certain specific geographic areas? Creation of jobs that pay a certain wage?

8. Your December 29 email indicated that there was a potential problem with s. 560.2065 (3), as drafted. What do I need to do to fix this problem?

Thanks for your assistance.

Tracy

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Legislative Attorney
Wisconsin Legislative Reference Bureau
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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB 0232/PI
LRB-3439/T

JK&TKK:kjf&wlj:md

Stays

ASSEMBLY SUBSTITUTE AMENDMENT
TO 2009 ASSEMBLY BILL 642

in 1-11-10 (due Wed 1-13)

January 4, 2010 - Introduced by Representatives BARCA, GARTHWAITE, ZIGMUNT, HILGENBERG, RADCLIFFE, CLARK, PASCH, MOLEPSKE JR., RIPP, DEXTER, BERCEAU and SINICKI, cosponsored by Senators COGGS, KREITLOW and HOLPERIN. Referred to Committee on Jobs, the Economy and Small Business.

Regen

INSERT ANALYSIS

1 AN ACT to amend 71.08 (1) (intro.); and to create 71.07 (5n), 71.10 (4) (fm), 71.28
2 (5n), 71.30 (3) (dn), 71.47 (5n), 71.49 (1) (dn), 76.639 and 560.2065 of the
3 statutes; relating to: an income and franchise tax credit for a qualified equity
4 investment in a qualified community development entity, providing an
5 exemption from emergency rule procedures, and requiring the exercise of
6 rule-making authority.

Analysis by the Legislative Reference Bureau

Under federal law, the New Markets Tax Credit Program permits federal taxpayers to receive a credit against federal income taxes for making investments in qualified community development entities (QCDE). Federal law defines a QCDE as an entity with the primary mission of serving or providing investment capital for low-income communities or low-income persons that has been certified by the secretary of the Internal Revenue Service.

This bill authorizes the Department of Commerce (Commerce) to certify a qualified equity individual who applies to Commerce, has made an investment in a QCDE, and is eligible to receive the federal New Markets Tax Credit to receive a credit against state income and franchise taxes and against license fees paid by insurers. Prior to certification, Commerce must verify that the person has made an investment in a QCDE with the primary mission of serving or providing investment capital for low-income communities or low-income persons in this state. Commerce must

qualified equity

a person who has invested in a certified qualified equity investment

qualified equity

The bill also permit.

no ff

ASSEMBLY BILL 642

a qualified equity

annually verify that the person continues to hold the investment in any year the person seeks to claim the credit

The credit may be claimed for seven consecutive taxable years beginning with the taxable year in which the taxpayer makes an investment in a OCDE. The amount of the credit that a taxpayer may claim is equal to the amount of the taxpayer's investment multiplied by the following percentages:

1. For the first three taxable years, 5 percent.
2. For the next four taxable years, 6 percent.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 71.07 (5n) of the statutes is created to read:

71.07 (5n) SUPPLEMENT TO FEDERAL NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant" means a person who files a claim under this subsection.

(b) *Filing claims.* Subject to the limitations provided under this subsection and s. 560.2065, a claimant may claim as a credit against the taxes imposed under ss.

71.02 and 71.08, up to the amount of the taxes, the amount the claimant paid to a qualified community development entity, as defined under 26 USC 45D (c), for a

qualified equity investment, as defined under 26 USC 45D (b), at its original issue multiplied by the following percentage: *certified under s. 560.2065(2)*

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

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

(c) *Limitations.* 1. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection. The partners of a partnership, members of a limited liability company, or shareholders in a tax-option

ASSEMBLY BILL 642

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

17 2. The tax basis of a claimant's interest in a partnership, limited liability
18 company, or tax-option corporation shall be reduced, but not below zero, by the
19 amount of any credit claimed under this subsection. The credit claimed under this
20 subsection shall not be limited to the amount of the adjusted tax basis for the
21 claimant's interest in a partnership, limited liability company, or tax-option
22 corporation.

23 3. Any claimant who transfers an interest in a partnership, limited liability
24 company, or tax-option corporation after the first credit allowance date, as defined
25 under 26 USC 45D (b), but before the final credit allowance date for the credit

ASSEMBLY BILL 642

SECTION 1

5. *A claimant may claim the credit under this subsection regardless of whether the claimant claims a credit under*

1 allowed under this subsection shall be entitled to claim the credit for the remaining
2 credit allowance dates by filing with the claimant's return a written agreement
3 between the claimant and the transferee of the interest that specifies that the
4 claimant, not the transferee, is the person entitled to claim the credit.

26 USC
45D

5 4. The limitation under section 469 (a) (1) (B) of the Internal Revenue Code does
6 not apply to the credit under this subsection.

7 (d) *Administration.* 1. Section 71.28 (4) (e) to (h), as it applies to the credit
8 under s. 71.28 (4), applies to the credit under this subsection.

9 2. No credit may be allowed under this subsection unless the claimant includes
10 with the claimant's return a copy of the claimant's certification for tax benefits under
11 s. 560.2065 (2).

12 **SECTION 2.** 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act
13 28, is amended to read:

14 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
15 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
16 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),
17 (3q), (3r), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8r), and (9e),
18 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
19 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
20 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s.
21 71.07 (7), is less than the tax under this section, there is imposed on that natural
22 person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02,
23 an alternative minimum tax computed as follows:

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

25 71.10 (4) (fm) (Supplement to federal) new markets credit under s. 71.07 (5n).

*The department of revenue may promulgate rules regarding the
recapture of tax credits claimed under this subsection, consistent with
26 USC 45D (g)*

ASSEMBLY BILL 642

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

2 71.28 (5n) SUPPLEMENT TO FEDERAL NEW MARKETS CREDIT. (a) *Definition.* In this
3 subsection, "claimant" means a person who files a claim under this subsection.

4 (b) *Filing claims.* Subject to the limitations provided under this subsection and
5 s. 560.2065, a claimant may claim as a credit against the taxes imposed under s.

6 71.23, up to the amount of the taxes, the amount ^{of} the claimant ^{is} paid to a qualified
7 community development entity, as defined under 26 USC 45D (c), for a qualified
8 equity investment, as defined under 26 USC 45D (b), at its original issue multiplied
9 by the following percentage: *certified under s. 560.2065(2)*

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

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

15 (c) *Limitations.* 1. A partnership, limited liability company, or tax-option
16 corporation may not claim the credit under this subsection. The partners of a
17 partnership, members of a limited liability company, or shareholders in a tax-option
18 corporation may claim the credit under this subsection based on eligible costs
19 incurred by the partnership, company, or tax-option corporation. The partnership,
20 limited liability company, or tax-option corporation shall calculate the amount of the
21 credit which may be claimed by each partner, member, or shareholder and shall
22 provide that information to the partner, member, or shareholder. For shareholders
23 of a tax-option corporation, the credit may be allocated in proportion to the
24 ownership interest of each shareholder. Credits computed by a partnership or
25 limited liability company may be claimed in proportion to the ownership interests

ASSEMBLY BILL 642

SECTION 4

1 of the partners or members or allocated to partners or members as provided in a
2 written agreement among the partners or members that is entered into no later than
3 the last day of the taxable year of the partnership or limited liability company, for
4 which the credit is claimed. Any partner or member who claims the credit as
5 provided under this paragraph shall attach a copy of the agreement, if applicable, to
6 the tax return on which the credit is claimed. A person claiming the credit as
7 provided under this paragraph is solely responsible for any tax liability arising from
8 a dispute with the department of revenue related to claiming the credit.

9 2. The tax basis of a claimant's interest in a partnership, limited liability
10 company, or tax-option corporation shall be reduced, but not below zero, by the
11 amount of any credit claimed under this subsection. The credit claimed under this
12 subsection shall not be limited to the amount of the adjusted tax basis for the
13 claimant's interest in a partnership, limited liability company, or tax-option
14 corporation.

15 3. Any claimant who transfers an interest in a partnership, limited liability
16 company, or tax-option corporation after the first credit allowance date, as defined
17 under 26 USC 45D (b), but before the final credit allowance date for the credit
18 allowed under this subsection shall be entitled to claim the credit for the remaining
19 credit allowance dates by filing with the claimant's return a written agreement
20 between the claimant and the transferee of the interest that specifies that the
21 claimant, not the transferee, is the person entitled to claim the credit.

22 4. The limitation under section 469 (a) (1) (B) of the Internal Revenue Code does
23 not apply to the credit under this subsection.

24 (d) *Administration.* 1. Subsection (4) (e) to (h), as it applies to the credit under
25 sub. (4), applies to the credit under this subsection.

5. *a claimant may claim the credit under this subsection regardless of whether the claimant claims a credit under 26 USC 45D.*

ASSEMBLY BILL 642

1 2. No credit may be allowed under this subsection unless the claimant includes
2 with the claimant's return a copy of the claimant's certification for tax benefits under
3 s. 560.2065 (2)

4 SECTION 5. 71.30 (3) (dn) of the statutes is created to read:

5 71.30 (3) (dn) Supplement to federal new markets credit under s. 71.28 (5n).

6 SECTION 6. 71.47 (5n) of the statutes is created to read:

7 71.47 (5n) SUPPLEMENT TO FEDERAL NEW MARKETS CREDIT. (a) *Definition*. In this
8 subsection, "claimant" means a person who files a claim under this subsection.

9 (b) *Filing claims*. Subject to the limitations provided under this subsection and
10 s. 560.2065, a claimant may claim as a credit against the taxes imposed under s.

11 71.43, up to the amount of the taxes, the amount ^{of} the claimant ^{is} paid to a qualified

12 community development entity, as defined under 26 USC 45D (c), for a qualified
13 equity investment, as defined under 26 USC 45D (b), at its original issue multiplied
14 by the following percentage: *certified under*
s. 560.2065(2)

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

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

20 (c) *Limitations*. 1. A partnership, limited liability company, or tax-option
21 corporation may not claim the credit under this subsection. The partners of a
22 partnership, members of a limited liability company, or shareholders in a tax-option
23 corporation may claim the credit under this subsection based on eligible costs
24 incurred by the partnership, company, or tax-option corporation. The partnership,
25 limited liability company, or tax-option corporation shall calculate the amount of the

the department of revenue may promulgate rules regarding the recapture of tax credits claimed under this subsection, consistent with 26 USC 45D(g) recapture

ASSEMBLY BILL 642**SECTION 6**

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

14 2. The tax basis of a claimant's interest in a partnership, limited liability
15 company, or tax-option corporation shall be reduced, but not below zero, by the
16 amount of any credit claimed under this subsection. The credit claimed under this
17 subsection shall not be limited to the amount of the adjusted tax basis for the
18 claimant's interest in a partnership, limited liability company, or tax-option
19 corporation.

20 3. Any claimant who transfers an interest in a partnership, limited liability
21 company, or tax-option corporation after the first credit allowance date, as defined
22 under 26 USC 45D (b), but before the final credit allowance date for the credit
23 allowed under this subsection shall be entitled to claim the credit for the remaining
24 credit allowance dates by filing with the claimant's return a written agreement

ASSEMBLY BILL 642

4. *a claimant may claim the credit under this subsection regardless of whether the claimant claims a credit under 26 USC 45D.*
1 between the claimant and the transferee of the interest that specifies that the
2 claimant, not the transferee, is the person entitled to claim the credit.

3 (d) *Administration.* 1. Section 71.28 (4) (e) to (h), as it applies to the credit
4 under s. 71.28 (4), applies to the credit under this subsection.

5 2. No credit may be allowed under this subsection unless the claimant includes
6 with the claimant's return a copy of the claimant's certification for tax benefits under
7 s. 560.2065 (2).

8 SECTION 7. 71.49 (1) (dn) of the statutes is created to read:

9 71.49 (1) (dn) Supplement to federal new markets credit under s. 71.47 (5n).

10 SECTION 8. 76.639 of the statutes is created to read:

11 **76.639 New markets credit. (1) FILING CLAIMS.** Subject to the limitations

12 provided under this section and s. 560.2065, an insurer may claim as a credit against

13 the fees imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.27 the amount ^{of} the insurer's
14 paid to a qualified community development entity, as defined under 26 USC 45D (c),

15 for a qualified equity investment, as defined under 26 USC 45D (b), at its original

16 issue multiplied by the following percentage: *certified under s. 560.2065(2)*

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

19 (b) For the taxable years that correspond to the 4 credit allowance dates, as
20 defined under 26 USC 45D (a) (3), following the credit allowance dates described in
21 subd. 1., 6 percent. *(INSERT 9-22)E*

22 (2) LIMITATIONS. No credit may be allowed under this section unless the insurer
23 includes with the insurer's annual return under s. 76.64 a copy of the claimant's
24 certification for tax benefits under s. 560.2065 (2).

The department of revenue may promulgate rules regarding the recapture of tax credits claimed under this subsection, consistent with 26 USC 45D (g)

ASSEMBLY BILL 642

SECTION 8

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

7 SECTION 9. 560.2065 of the statutes is created to read:

8 560.2065 Supplement to federal new markets credit. (1) DEFINITIONS.

9 In this section:

10 Certification of qualified equity investments

11 (a) "Credit allowance date" means a credit allowance date as defined under 26
12 USC 45D (a) (3).

13 (b) "Qualified community development entity" means a qualified community
14 development entity as defined under 26 USC 45D (c).

15 (c) "Qualified equity investment" means a qualified equity investment as
16 defined under 26 USC 45D (b).

17 (2) CERTIFICATION. The department may certify a person to receive tax benefits
18 under this section if all of the following apply: qualified equity investment

19 (a) The person applies to the department for certification under this section and
20 includes with the application documentation from the federal internal revenue

21 service indicating that all of the following apply:
22 evidence satisfactory to the department

- 23 1. The person made a qualified equity investment in a qualified community
24 development entity described in subd. 2.
- 25 2. The qualified community development entity's primary mission is serving,
or providing investment capital for, low-income communities or low-income persons
in this state.

on a form provided by the department

INSERT 10-10

INSERT 10-18

INSERT 10-21

ASSEMBLY BILL 642

INSERT 11-4

1 3. The person is eligible to receive new markets tax credits under 26 USC 45D
2 for the qualified equity investment described in subd. 1.
3 (b) The department verifies the information submitted under par. (a).

4 (3) ELIGIBILITY. A person certified under sub. (2) is eligible to receive tax credits
5 under ss. 71.07 (5n), 71.28 (5n), 71.47 (5n), and 76.639 in each taxable year in which
6 a credit allowance date falls if the person continues to hold the qualified equity
7 investment described in sub. (2) (a) 1. in the taxable year in which the credit is
8 claimed.

9 (4) DUTIES OF THE DEPARTMENT. (a) The department of commerce shall notify
10 the department of revenue of all of the following:
11 (1) Every certification issued under sub. (2) and the date on which any such
12 certification is ~~revoked~~ granted.

INSERT 11-13

13 2. The maximum amount of the tax credits under ss. 71.07 (5n), 71.28 (5n),
14 71.47 (5n), and 76.639 that a person certified under sub. (2) may claim in each taxable
15 year in which a credit allowance date falls.

16 (b) Annually, the department shall verify to the department of revenue that
17 each person certified under sub. (2) is the holder of a qualified equity investment in
18 the taxable year for which the person files a claim under s. 71.07 (5n), 71.28 (5n),
19 71.47 (5n), or 76.639.

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

22 1. Deadlines for the submission of an application for certification under this
23 section.

24 2. The period for review of applications submitted under this section, which
25 period may not exceed 45 days.

ASSEMBLY BILL 642

SECTION 9

INSERT 12-2.

1 3. Criteria for reviewing and prioritizing applications for certification under
2 this section.

3 (d) In consultation with the department of revenue, the department of
4 commerce may promulgate rules governing the recapture of tax benefits awarded to
5 a person certified under this section.

SECTION 10. Nonstatutory provisions.

7 (1) (a) The department of commerce shall submit in proposed form the rules
8 required under section 560.2065 (4) (c) of the statutes, as created by this act, to the
9 legislative council staff under section 227.15 (1) of the statutes no later than the first
10 day of the 4th month beginning after the effective date of this paragraph.

11 (b) Using the procedure under section 227.24 of the statutes, the department
12 of commerce may promulgate rules required under section 560.2065 (4) (c) of the
13 statutes, as created by this act, for the period before the effective date of the rules
14 submitted under paragraph (a), but not to exceed the period authorized under section
15 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),
16 and (3) of the statutes, the department is not required to provide evidence that
17 promulgating a rule under this paragraph as an emergency rule is necessary for the
18 preservation of the public peace, health, safety, or welfare and is not required to
19 provide a finding of emergency for a rule promulgated under this paragraph.

SECTION 11. Initial applicability.

21 (1) This act first applies to taxable years beginning on January 1, 2010.

(END)

Insert 9-22K

(a) an insurer may claim the credit under this section regardless of whether the insurer claims a credit under 26 USC 45D.

(b) The department of revenue may promulgate rules regarding the recapture of credits claimed under this ~~subsection~~^y consistent with 26 USC 45D(g).
section

1 **Insert analysis**

no # Federal law defines a qualified equity investment as an investment funded by the QCDE for the purpose of making loans to or investments in certain businesses located in low-income communities identified under the federal law.

2 **Insert 10-10**

3 (a) "Qualified active low-income community business" means a qualified active
4 low-income community business as defined in 26 USC 45D (d) 2.

5 **Insert 10-18**

6 (a) The proposed qualified equity investment will be funded by a qualified
7 community development entity whose service area includes the state.

8 **Insert 10-21**

9 1. Proceeds from the proposed qualified equity investment will be invested in
10 or loaned to a qualified active low-income community business located in this state.

11 2. The proposed qualified equity investment will promote the creation or
12 retention of jobs in this state or will promote other economic development goals
13 established by the department by rule.

14 **Insert 11-4**

15 shall be funded by the qualified community development entity that submitted the
16 application under par. (b) by the last day of the 13th month beginning after the date
17 of certification under sub. (2). The certification of a qualified equity investment
that is not funded by the last day of the 13th
month beginning after the date of certification under

18 **Insert 11-13**

19 (b) The department shall provide to each applicant under sub. (2) a dated
20 written notice indicating the department's decision to grant or deny certification.

sub (2)
(2)
shall
expire
on the

first day of the
14th month beginning
after the date of
certification

1 **Insert 12-2**

2 ^{not} ~~the~~ The criteria under this subdivision shall include economic development goals
3 that are consistent with the provisions of 26 USC 45D.

Kuczenski, Tracy

From: Kreye, Joseph
Sent: Monday, January 25, 2010 1:52 PM
To: Kuczenski, Tracy
Subject: RE: DOR response to certification issue

Tracy,

I just got off the phone with Cathy. It does sound like she wants Commerce to certify both the investor (taxpayer) and the investment.

Joe

LC 232

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

From: Kuczenski, Tracy
Sent: Monday, January 25, 2010 1:38 PM
To: Kreye, Joseph
Subject: FW: DOR response to certification issue

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

From: Friedl, Cathy
Sent: Monday, January 25, 2010 1:33 PM
To: Kuczenski, Tracy
Subject: DOR response to certification issue

Hi Tracy,

This is the DOR response on the certification issue and another change the sub made from the original bill. I think he makes valid points and would like to incorporate them. Please call if this introduces new problems or questions that need clarification.

Cathy Friedl
Office of Rep. Barca

1/25/2010

(608) 266-5504

From: Oakleaf, Michael P - DOR
Sent: Thursday, January 14, 2010 9:05 AM
To: Gates-Hendrix, Sherrie L - DOR
Subject: RE: New Markets Tax Credits draft

Two things I noticed:

The certification is now for the investments made by the QCDE in a low-income business, rather than the investor investing in the QCDE as in the previous draft. And it appears that the certification can be granted up to 13 months before the investment is made. It seems to me that the activity that the author wants to reward with a credit is twofold: 1) the investor investing in the QCDE; and 2) only in cases where the QCDE is going to provide those funds to a project that meets the economic development goals set by Commerce. The certification should encompass both of those things, and should only be granted after evidence that they have both taken place is presented to Commerce. This is similar to how the Angel Investment Credit and the Early Stage Seed Investment credits are handled - both the business receiving the investment and the actual investment made by the investor are certified. As Zach pointed out in the meeting, this is a labor-intensive process, but it also ensures that credits are only granted after the desired activity takes place.

Also, the language in the substitute amendment draft widens the pool of QCDEs that could potentially participate. The standard in the original bill was for a QCDE that had as its primary mission serving low-income communities in this state. In the substitute amendment it is any QCDE whose service area includes this state. This could potentially increase the amount of investment in this state relative to the bill as originally introduced, but it would also increase the fiscal effect.

From: Gates-Hendrix, Sherrie L - DOR
Sent: Thursday, January 14, 2010 7:59 AM
To: Oakleaf, Michael P - DOR
Subject: FW: New Markets Tax Credits draft

Mike, could you comment on this draft

thanks!

From: Friedl, Cathy [mailto:Cathy.Friedl@legis.wisconsin.gov]
Sent: Wednesday, January 13, 2010 5:43 PM
To: Gates-Hendrix, Sherrie L - DOR; Brandon, Zach - COMMERCE; Farshad Maltes; Stricker, John D - COMMERCE; McKinny, Chris - LEGIS; O'Keefe, Jim - COMMERCE; Knickelbine, Mark - LEGIS
Subject: New Markets Tax Credits draft

Hello,

Thank you for taking the time to meet yesterday, it was very helpful and we plan on making sure your suggestions are in the final draft.

Here is a draft we received on NMTC today, please feel free to distribute it to others who should weigh in and let me know what you think (I don't have the contact info for everyone at the meeting). After our conversation yesterday, I'm most interested in the certification language on pages 10-12. The draft certifies the investment, not the tax claimant and we'd be interested in your opinion on this.

The idea is that a Wisconsin CDE presents a proposed investment to DOC and tells them how much the qualified equity investment from NMTC Investment Fund LLC is going to be. The DOC would then certify the amount of the qualified equity investment to the Wisconsin CDE that's eligible for state

1/25/2010

NMTC. With that certification, the Wisconsin CDE could find state NMTC investors for the transaction that DOC has certified. This gives DOC input into which deals are done.

The state NMTC investor members in the NMTC Investment Fund would be required to file the certification granted by the DOC to the Wisconsin CDE with their state income tax returns, as well as any other info required by DOR.

This is still just a preliminary draft, it doesn't include a cap yet and we'll probably limit the credit percentage and make other tweaks. So please forward any thoughts you may have. Thanks.

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

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2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0232/P2insJK
JK:kjf&wlj:ph

Insert A - JK

3x

1 no If a claimant's federal tax credit under 26 USC 45D is subject to recapture under
2 26 USC 45D (g), the claimant's tax credit under this subsection is subject to recapture
3 at the same time and in the same manner as the claimant's federal tax credit.

Insert B - JK

3x

4 3. No credit may be allowed under this subsection unless the claimant includes
5 with the claimant's return a copy of the claimant's certification for tax benefits under
6 s. 560.2065 (2) (b).

Insert C - JK

7 If a claimant's federal tax credit under 26 USC 45D is subject to recapture under
8 26 USC 45D (g), the claimant's tax credit under this section is subject to recapture
9 at the same time and in the same manner as the claimant's federal tax credit.

Insert D - JK

10 (c) No credit may be allowed under this section unless the claimant includes
11 with the claimant's return a copy of the claimant's certification for tax benefits under
12 s. 560.2065 (2) (b).

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0232/P2ins
TKK:kjf&wlj:ph

1 **Insert 10-12**

2 (a) "Credit allowance date" means a credit allowance date as defined under 26
3 USC 45D (a) (3).

4 **Insert 11-6**

5 ^{subject to the limit under sub. (4) ✓}
6 (b) ~~C~~ertify a person to receive tax benefits under this section if the person ✓
7 applies to the department on a form provided by the department and submits
8 evidence satisfactory to the department that the person made an investment in a
9 qualified equity investment certified under par. (a). ✓

9 **Insert 11-13 A**

10 (b) A person certified under sub. (2) (b) is eligible to receive tax credits under ✓
11 ss. 71.07 (5n), 71.28 (5n), 71.47 (5n), and 76.639 in each taxable year in which a credit ✓
12 allowance date falls.

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0232/P2ins2
TKK:kjf&wlj:ph

1 **Insert 11-13B**

2 (4) LIMIT. The department[✓] shall limit the aggregate amount of tax benefits for
3 which certification is issued under sub. (2) (b) to no more than \$10,000,000 in any
4 fiscal year.



RM with R

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2009 ASSEMBLY BILL 642

in mov. 1-25
due filed 1-27
Reger

1 **AN ACT to amend** 71.08 (1) (intro.); and **to create** 71.07 (5n), 71.10 (4) (fm), 71.28
2 (5n), 71.30 (3) (dn), 71.47 (5n), 71.49 (1) (dn), 76.639 and 560.2065 of the
3 statutes; **relating to:** an income and franchise tax credit for a qualified equity
4 investment in a qualified community development entity, providing an
5 exemption from emergency rule procedures, and requiring the exercise of
6 rule-making authority.

Analysis by the Legislative Reference Bureau

Under federal law, the New Markets Tax Credit Program permits federal taxpayers to receive a credit against federal income taxes for making qualified equity investments in qualified community development entities (QCDE). Federal law defines a QCDE as an entity with the primary mission of serving or providing investment capital for low-income communities or low-income persons that has been certified by the secretary of the Internal Revenue Service. Federal law defines a qualified equity investment as an investment funded by the QCDE for the purpose of making loans to or investments in certain businesses located in low-income communities identified under the federal law.

authorizes Commerce to certify

This bill authorizes the Department of Commerce (Commerce) to certify a qualified equity investment in a QCDE. The bill also permits a person who has invested in a certified qualified equity investment to receive a credit against state income and franchise taxes and against license fees paid by insurers. The credit may be claimed for seven consecutive taxable years beginning with the taxable year in which the taxpayer makes a qualified equity investment. The amount of the credit that a taxpayer may claim is equal to the amount of the taxpayer's investment multiplied by the following percentages:

Commerce may certify up to \$10,000,000 in tax credits in any fiscal year

- 1. For the first ~~three~~ taxable years, 5 percent. (year, zero)
- 2. For the next four taxable years, 6 percent. (7)

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 71.07 (5n) of the statutes is created to read:

71.07 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant" means a person who files a claim under this subsection.

(b) *Filing claims.* Subject to the limitations provided under this subsection and s. 560.2065, a claimant may claim as a credit against the taxes imposed under ss.

71.02 and 71.08, up to the amount of the taxes, the amount of the claimant's qualified equity investment, as certified under s. 560.2065 (2), multiplied by the following percentage:

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

2. For the taxable years that correspond to the 4 credit allowance dates, as defined under 26 USC 45D (a) (3), following the credit allowance dates described in subd. 1., 6 percent. (7, date)

(c) *Limitations.* 1. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection. The partners of a

for property placed in service after June 30, 2010,

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

18 2. The tax basis of a claimant's interest in a partnership, limited liability
19 company, or tax-option corporation shall be reduced, but not below zero, by the
20 amount of any credit claimed under this subsection. The credit claimed under this
21 subsection shall not be limited to the amount of the adjusted tax basis for the
22 claimant's interest in a partnership, limited liability company, or tax-option
23 corporation.

24 3. Any claimant who transfers an interest in a partnership, limited liability
25 company, or tax-option corporation after the first credit allowance date, as defined

1 under 26 USC 45D (b), but before the final credit allowance date for the credit
2 allowed under this subsection shall be entitled to claim the credit for the remaining
3 credit allowance dates by filing with the claimant's return a written agreement
4 between the claimant and the transferee of the interest that specifies that the
5 claimant, not the transferee, is the person entitled to claim the credit.

6 4. The limitation under section 469 (a) (1) (B) of the Internal Revenue Code does
7 not apply to the credit under this subsection.

8 5. A claimant may claim the credit under this subsection regardless of whether
9 the claimant claims a credit under 26 USC 45D.

10 (d) *Administration.* 1. Section 71.28 (4) (e) to (h), as it applies to the credit
11 under s. 71.28 (4), applies to the credit under this subsection.

12 2. The department of revenue may promulgate rules regarding the recapture
13 of tax credits claimed under this subsection, consistent with 26 USC 45D (g).

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14 **SECTION 2.** 71.08 (1) (intro.)[✓] of the statutes, as affected by 2009 Wisconsin Act
15 28, is amended to read:

16 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
17 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
18 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),
19 (3q), (3r), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8r), and (9e),
20 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
21 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
22 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s.
23 71.07 (7), is less than the tax under this section, there is imposed on that natural
24 person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02,
25 an alternative minimum tax computed as follows:

for property placed in service after June 30, 2010,

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

2 71.10 (4) (fm) New markets credit under s. 71.07 (5n).

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

4 71.28 (5n) NEW MARKETS CREDIT. (a) *Definition*. In this subsection, "claimant"
5 means a person who files a claim under this subsection.

6 (b) *Filing claims*. Subject to the limitations provided under this subsection and
7 s. 560.2065, a claimant may claim as a credit against the taxes imposed under s.
8 71.23, up to the amount of the taxes, the amount of the claimant's qualified equity
9 investment, as certified under s. 560.2065 (2), multiplied by the following
10 percentage:

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

13 2. For the taxable years that correspond to the 4 credit allowance dates, as
14 defined under 26 USC 45D (a) (3), following the credit allowance dates described in
15 subd. 1., 6 percent. 7 date

16 (c) *Limitations*. 1. A partnership, limited liability company, or tax-option
17 corporation may not claim the credit under this subsection. The partners of a
18 partnership, members of a limited liability company, or shareholders in a tax-option
19 corporation may claim the credit under this subsection based on eligible costs
20 incurred by the partnership, company, or tax-option corporation. The partnership,
21 limited liability company, or tax-option corporation shall calculate the amount of the
22 credit which may be claimed by each partner, member, or shareholder and shall
23 provide that information to the partner, member, or shareholder. For shareholders
24 of a tax-option corporation, the credit may be allocated in proportion to the
25 ownership interest of each shareholder. Credits computed by a partnership or

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

10 2. The tax basis of a claimant's interest in a partnership, limited liability
11 company, or tax-option corporation shall be reduced, but not below zero, by the
12 amount of any credit claimed under this subsection. The credit claimed under this
13 subsection shall not be limited to the amount of the adjusted tax basis for the
14 claimant's interest in a partnership, limited liability company, or tax-option
15 corporation.

16 3. Any claimant who transfers an interest in a partnership, limited liability
17 company, or tax-option corporation after the first credit allowance date, as defined
18 under 26 USC 45D (b), but before the final credit allowance date for the credit
19 allowed under this subsection shall be entitled to claim the credit for the remaining
20 credit allowance dates by filing with the claimant's return a written agreement
21 between the claimant and the transferee of the interest that specifies that the
22 claimant, not the transferee, is the person entitled to claim the credit.

23 4. The limitation under section 469 (a) (1) (B) of the Internal Revenue Code does
24 not apply to the credit under this subsection.

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1 5. A claimant may claim the credit under this subsection regardless of whether
2 the claimant claims a credit under 26 USC 45D.

3 (d) *Administration.* 1. Subsection (4) (e) to (h), as it applies to the credit under
4 sub. (4), applies to the credit under this subsection.

5 2. The department of revenue may promulgate rules regarding the recapture
6 of tax credits claimed under this subsection, consistent with 26 USC 45D (g).

7 **SECTION 5.** 71.30 (3) (dn) of the statutes is created to read:

8 71.30 (3) (dn) (Supplement to federal) new markets credit under s. 71.28 (5n).

9 **SECTION 6.** 71.47 (5n) of the statutes is created to read:

10 71.47 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant"
11 means a person who files a claim under this subsection.

12 (b) *Filing claims.* Subject to the limitations provided under this subsection and
13 s. 560.2065, a claimant may claim as a credit against the taxes imposed under s.

14 71.43, up to the amount of the taxes, the amount of the claimant's qualified equity
15 investment, as certified under s. 560.2065 (2), multiplied by the following
16 percentage:

17 1. For the taxable years that correspond to the first 3 credit allowance dates
18 as defined under 26 USC 45D (a) (3), 0 percent.

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

22 (c) *Limitations.* 1. A partnership, limited liability company, or tax-option
23 corporation may not claim the credit under this subsection. The partners of a
24 partnership, members of a limited liability company, or shareholders in a tax-option
25 corporation may claim the credit under this subsection based on eligible costs

for property placed in service after June 30, 2010,

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

16 2. The tax basis of a claimant's interest in a partnership, limited liability
17 company, or tax-option corporation shall be reduced, but not below zero, by the
18 amount of any credit claimed under this subsection. The credit claimed under this
19 subsection shall not be limited to the amount of the adjusted tax basis for the
20 claimant's interest in a partnership, limited liability company, or tax-option
21 corporation.

22 3. Any claimant who transfers an interest in a partnership, limited liability
23 company, or tax-option corporation after the first credit allowance date, as defined
24 under 26 USC 45D (b), but before the final credit allowance date for the credit
25 allowed under this subsection shall be entitled to claim the credit for the remaining

1 credit allowance dates by filing with the claimant's return a written agreement
2 between the claimant and the transferee of the interest that specifies that the
3 claimant, not the transferee, is the person entitled to claim the credit.

4 4. A claimant may claim the credit under this subsection regardless of whether
5 the claimant claims a credit under 26 USC 45D.

6 (d) *Administration.* 1. Section 71.28 (4) (e) to (h), as it applies to the credit
7 under s. 71.28 (4), applies to the credit under this subsection.

8 2. The department of revenue may promulgate rules regarding the recapture
9 of tax credits claimed under this subsection, consistent with 26 USC 45D (g).

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10 **SECTION 7.** 71.49 (1) (dn) of the statutes is created to read:

11 71.49 (1) (dn) New markets credit under s. 71.47 (5n).

12 **SECTION 8.** 76.639 of the statutes is created to read:

76.67

13 **76.639 New markets credit. (1) FILING CLAIMS.** Subject to the limitations

14 provided under this section and s. 560.2065, an insurer may claim as a credit against

15 the fees imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.27 the amount of the

16 insurer's qualified equity investment, as certified under s. 560.2065 (2), multiplied

17 by the following percentage:

18 (a) 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 (b) 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.

23 (2) LIMITATIONS. (a) An insurer may claim the credit under this section

24 regardless of whether the insurer claims a credit under 26 USC 45D.

for property placed in service after June 30, 2010,

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(b) The department of revenue may promulgate rules regarding the recapture of credits claimed under this section, consistent with 26 USC 45D (g).

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(3) CARRY-FORWARD. If the credit under sub. (2) is not entirely offset against the fees under s. 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.

SECTION 9. 560.2065 of the statutes is created to read:

560.2065 Certification of qualified equity investments. (1) DEFINITIONS.

In this section:

Insert 10-12

(a) "Qualified active low-income community business" means a qualified active low-income community business as defined in 26 USC 45D (d) 2.

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

(c) "Qualified equity investment" means a qualified equity investment as defined under 26 USC 45D (b).

do all of the following (a)

(2) CERTIFICATION. The department may certify a qualified equity investment under this section if all of the following apply:

1. (a) The proposed qualified equity investment will be funded by a qualified community development entity whose service area includes the state.

2. (b) The qualified community development entity identified in par. (a) applies to the department on a form provided by the department and includes with the application evidence satisfactory to the department that all of the following apply:

subd 10

Insert 11-6

Insert 11-13A and 13B

1 a. ^u1) Proceeds from the proposed qualified equity investment will be invested in
2 or loaned to a qualified active low-income community business located in this state.

3 b. ^u2) The proposed qualified equity investment will promote the creation or
4 retention of jobs in this state or will promote other economic development goals
5 established by the department by rule.

6 (3) ELIGIBILITY. ^(a) A qualified equity investment certified under sub. (2) ^(a) shall be

7 funded by the qualified community development entity that submitted the
8 application under ^{sub. (2)} par. (b) ^{(a) 2.} by the last day of the 13th month beginning after the date

9 of certification under sub. (2) ^(a). The certification of a qualified equity investment that

10 is not funded by the last day of the 13th month beginning after the date of
11 certification under sub. (2) ^(a) shall expire on the first day of the 14th month beginning

12 after the date of certification.

13 ^{(5) u} (4) DUTIES OF THE DEPARTMENT. (a) The department of commerce shall notify
14 the department of revenue of every certification issued under sub. (2) and shall
15 include the date on which any such certification is granted.

16 (b) The department shall provide to each applicant under sub. (2) a dated
17 written notice indicating the department's decision to grant or deny certification.

18 (c) The department shall promulgate rules to administer this program,
19 including all of the following:

20 1. Deadlines for the submission of an application for certification under this
21 section.

22 2. The period for review of applications submitted under this section, which
23 period may not exceed 45 days.

1 3. Criteria for reviewing and prioritizing applications for certification under
2 this section. The criteria under this subdivision shall include economic development
3 goals that are consistent with the provisions of 26 USC 45D.

4 **SECTION 10. Nonstatutory provisions.**

5 (1) (a) The department of commerce shall submit in proposed form the rules
6 required under section 560.2065 ⁽⁵⁾(4) (c) of the statutes, as created by this act, to the
7 legislative council staff under section 227.15 (1) of the statutes no later than the first
8 day of the 4th month beginning after the effective date of this paragraph.

9 (b) Using the procedure under section 227.24 of the statutes, the department
10 of commerce may promulgate rules required under section 560.2065 ⁽⁵⁾(4) (c) of the
11 statutes, as created by this act, for the period before the effective date of the rules
12 submitted under paragraph (a), but not to exceed the period authorized under section
13 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),
14 and (3) of the statutes, the department is not required to provide evidence that
15 promulgating a rule under this paragraph as an emergency rule is necessary for the
16 preservation of the public peace, health, safety, or welfare and is not required to
17 provide a finding of emergency for a rule promulgated under this paragraph.

18 **SECTION 11. Initial applicability.**

19 (1) This act first applies to taxable years beginning on January ¹, 2010.

20 (END)

A handwritten signature in cursive is written above the word "January" in the text of Section 11. A long, thin line extends from the signature down to a circle containing the word "July" written in cursive.

Kreye, Joseph

From: Oakleaf, Michael P - DOR [Michael.Oakleaf@revenue.wi.gov]
Sent: Thursday, January 28, 2010 9:21 AM
To: Kreye, Joseph; Friedl, Cathy; Gates-Hendrix, Sherrie L - DOR; Brandon, Zach - COMMERCE; Farshad Maltes; Stricker, John D - COMMERCE; Knickelbine, Mark; O'Keefe, Jim - COMMERCE; Kuczenski, Tracy
Subject: RE: drafting changes to NMTC draft

A couple of clarifications from our technical staff to my earlier comments, if you are in agreement Cathy:

It would be better to have both the placed in service date and the effective date be "taxable years beginning on or after January 1, 2011." Otherwise you have the problem of a fiscal filer making an investment in a taxable year that is prior to the effective date.

The term "property placed in service" should be changed to "investments made." The credit is for the investment. Since some large projects may take two years (or more) to complete, taxpayers making investments in 2011 or 2012 may not be eligible to claim the credit until the project is placed into service in 2013 or 2014.

From: Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]
Sent: Thursday, January 28, 2010 9:18 AM
To: Friedl, Cathy - LEGIS; Gates-Hendrix, Sherrie L - DOR; Brandon, Zach - COMMERCE; Farshad Maltes; Stricker, John D - COMMERCE; Knickelbine, Mark - LEGIS; O'Keefe, Jim - COMMERCE; Kuczenski, Tracy - LEGIS
Cc: Oakleaf, Michael P - DOR
Subject: RE: drafting changes to NMTC draft

I'm on it.

Joseph T. Kreye

Senior Legislative Attorney
 Legislative Reference Bureau
 (608) 266-2263

From: Friedl, Cathy
Sent: Thursday, January 28, 2010 9:13 AM
To: Gates-Hendrix, Sherrie L - DOR; Brandon, Zach - COMMERCE; Farshad Maltes; Stricker, John D - COMMERCE; Knickelbine, Mark; O'Keefe, Jim - COMMERCE; Kreye, Joseph; Kuczenski, Tracy
Cc: Oakleaf, Michael P - DOR
Subject: drafting changes to NMTC draft

Hi Joe and Tracy,

Please incorporate the changes suggested below into our New Markets sub. Also, please have us mirror the 7 year 39% structure like the federal program with the same percentages each year. We don't want to have a fiscal impact in this biennium, so please delay the start date. Let me know if you have any questions. Thanks.

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

01/28/2010

From: Gates-Hendrix, Sherrie L - DOR [mailto:Sherrie.GatesHendrix@revenue.wi.gov]
Sent: Wednesday, January 27, 2010 4:29 PM
To: Friedl, Cathy; Brandon, Zach - COMMERCE; Farshad Maltes; Stricker, John D - COMMERCE; Knickelbine, Mark; O'Keefe, Jim - COMMERCE
Cc: Oakleaf, Michael P - DOR
Subject: RE: revised NMTC draft

Hi Cathy -- A few technical comments from Mike Oakleaf:

Proposed sections 71.07(5n)(c)2, 71.28(5n)(c)2, and 71.47(5n)(c)2 provide that 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. However, there is no provision providing that other entities or individuals that claim the credit based on their own investment must reduce their tax basis in the investment, as is required with other investment credits (the Angel and Early Stage Seed have the taxpayer reduce their basis, for example). Otherwise, the entity or individual should add the credit amount to income as is required with all other non-investment credits.

Most taxpayers' taxable year begins on January 1. The bill first applies to taxable years beginning on or after July 1, 2010. The bill allows for credits for property placed in service after June 30, 2010. It is unclear whether the credit would be available for calendar year taxpayers for any projects placed in service between July 1 and December 31, 2010, since the project would be placed in service during the taxpayer's calendar year 2010 tax year, but the bill wouldn't apply to them until their tax year that starts on January 1, 2011. It would be preferable for taxpayers to have the placed in service date and the effective date both be January 1, 2011.

The second paragraph of the LRB Analysis states that the credit can be claimed over seven years. This new draft has the taxpayer claiming it over five years (with the first tax year's credit percentage being zero).

Because the credit is claimed over multiple years, the fiscal effect will increase in waves over the first five years of the program as Commerce certifies more taxpayers for the credit. For example, if each year Commerce certifies credits up to the \$10 million maximum in the bill, the first year credit claims would be zero, the second it would be \$10 million, the third year \$20 million, the fourth year \$30 million, and the fifth year \$40 million. This assumes that there are sufficient projects that meet Commerce's criteria and sufficient allocations by the feds to reach the maximum. To the extent that there are not sufficient projects or allocations, the fiscal effect would be reduced.

Hope this is helpful.

Sherrie

From: Friedl, Cathy [mailto:Cathy.Friedl@legis.wisconsin.gov]
Sent: Wednesday, January 27, 2010 1:03 PM
To: Brandon, Zach - COMMERCE; Oakleaf, Michael P - DOR; Gates-Hendrix, Sherrie L - DOR; Farshad Maltes; Stricker, John D - COMMERCE; Knickelbine, Mark - LEGIS; O'Keefe, Jim - COMMERCE
Subject: revised NMTC draft

Hello,

We received the revised NMTC draft yesterday and welcome any thoughts, suggestions or concerns you may have. If it's OK we hope to exec on it next week. Thank you.

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

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