

P3
RMR

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

in 1-28-10

due Fri 1-29

Regen

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.

This bill authorizes the Department of Commerce (Commerce) to certify a qualified equity investment in a QCDE. The bill also authorizes Commerce to certify 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. Commerce may certify up to \$10,000,000 in tax credits in any fiscal year. 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:

- 1. For the first taxable year, zero percent.
- 2. For the next four taxable years, 7 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) 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, for ~~property placed in service~~ after ~~June 30,~~ ^{December 31} 2010, 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 year that corresponds to the first credit allowance date, as defined under 26 USC 45D (a) (3), ~~zero 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 date described in subd. 1., 7 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

INSERT A

investment made

INSERT B

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). If a
14 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
15 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
16 same time and in the same manner as the claimant's federal tax credit.

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

20 **SECTION 2.** 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act
21 28, is amended to read:

22 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
23 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
24 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),
25 (3q), (3r), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8r), and (9e),

1 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
2 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
3 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s.
4 71.07 (7), is less than the tax under this section, there is imposed on that natural
5 person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02,
6 an alternative minimum tax computed as follows:

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

8 71.10 (4) (fm) New markets credit under s. 71.07 (5n).

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

10 71.28 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant"
11 means a person who files a claim under this subsection. December 31

12 (b) *Filing claims.* Subject to the limitations provided under this subsection and

13 s. 560.2065, for property placed in service after June 30, 2010, a claimant may claim
14 as a credit against the taxes imposed under s. 71.23, up to the amount of the taxes,
15 the amount of the claimant's qualified equity investment, as certified under s.
16 560.2065 (2), multiplied by the following percentage:

17 1. For the taxable year that corresponds to the first credit allowance date, as
18 defined under 26 USC 45D (a) (3), zero 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 date described in
21 subd. 1., 7 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

inserts made

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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

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

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

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

10 2. The department of revenue may promulgate rules regarding the recapture
11 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
12 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
13 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
14 same time and in the same manner as the claimant's federal tax credit.

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

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

19 71.30 (3) (dn) New markets credit under s. 71.28 (5n).

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

21 71.47 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant"
22 means a person who files a claim under this subsection.

23 (b) *Filing claims.* Subject to the limitations provided under this subsection and

24 s. 560.2065, for property placed in service after June 30, 2010, a claimant may claim
25 as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes,

investments made

December 31

1 the amount of the claimant's qualified equity investment, as certified under s.
2 560.2065 (2), multiplied by the following percentage:

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

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

1 provided under this paragraph is solely responsible for any tax liability arising from
2 a dispute with the department of revenue related to claiming the credit.

3 2. The tax basis of a claimant's interest in a partnership, limited liability
4 company, or tax-option corporation shall be reduced, but not below zero, by the
5 amount of any credit claimed under this subsection. The credit claimed under this
6 subsection shall not be limited to the amount of the adjusted tax basis for the
7 claimant's interest in a partnership, limited liability company, or tax-option
8 corporation.

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

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

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

20 2. The department of revenue may promulgate rules regarding the recapture
21 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
22 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
23 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
24 same time and in the same manner as the claimant's federal tax credit.

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December 31

1 3. 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) (b).

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

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

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

7 76.639 New markets credit. (1) FILING CLAIMS. Subject to the limitations
8 provided under this section and s. 560.2065, for property placed in service after June

9 30, 2010, an insurer may claim as a credit against the fees imposed under s. 76.60,
10 76.63, 76.65, 76.66, or 76.67 the amount of the insurer's qualified equity investment,
11 as certified under s. 560.2065 (2), multiplied by the following percentage:

12 (a) For the taxable year that corresponds to the first credit allowance date, as
13 defined under 26 USC 45D (a) (3), zero percent.

14 (b) 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 date described in
16 subd. 1., 7 percent.

17 (2) LIMITATIONS. (a) An insurer may claim the credit under this section
18 regardless of whether the insurer claims a credit under 26 USC 45D.

19 (b) The department of revenue may promulgate rules regarding the recapture
20 of credits claimed under this section, consistent with 26 USC 45D (g). If a claimant's
21 federal tax credit under 26 USC 45D is subject to recapture under 26 USC 45D (g),
22 the claimant's tax credit under this section is subject to recapture at the same time
23 and in the same manner as the claimant's federal tax credit.

investment made

date

1 (c) No credit may be allowed under this section 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) (b).

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

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

11 **560.2065 Certification of qualified equity investments. (1) DEFINITIONS.**

12 In this section:

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

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

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

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

21 (2) CERTIFICATION. The department may do all of the following:

22 (a) Certify a qualified equity investment under this section if all of the following
23 apply:

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

1 2. The qualified community development entity identified in subd. 1. applies
2 to the department on a form provided by the department and includes with the
3 application evidence satisfactory to the department that all of the following apply:

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

6 b. The proposed qualified equity investment will promote the creation or
7 retention of jobs in this state or will promote other economic development goals
8 established by the department by rule.

9 (b) Subject to the limit under sub. (4), certify a person to receive tax benefits
10 under this section if the person applies to the department on a form provided by the
11 department and submits evidence satisfactory to the department that the person
12 made an investment in a qualified equity investment certified under par. (a).

13 **(3) ELIGIBILITY.** (a) A qualified equity investment certified under sub. (2) (a)
14 shall be funded by the qualified community development entity that submitted the
15 application under sub. (2) (a) 2. by the last day of the 13th month beginning after the
16 date of certification under sub. (2) (a). The certification of a qualified equity
17 investment that is not funded by the last day of the 13th month beginning after the
18 date of certification under sub. (2) (a) shall expire on the first day of the 14th month
19 beginning after the date of certification.

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

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

1 **(5) DUTIES OF THE DEPARTMENT.** (a) The department of commerce shall notify
2 the department of revenue of every certification issued under sub. (2) and shall
3 include the date on which any such certification is granted.

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

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

8 1. Deadlines for the submission of an application for certification under this
9 section.

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

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

15 **SECTION 10. Nonstatutory provisions.**

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

20 (b) Using the procedure under section 227.24 of the statutes, the department
21 of commerce may promulgate rules required under section 560.2065 (5) (c) of the
22 statutes, as created by this act, for the period before the effective date of the rules
23 submitted under paragraph (a), but not to exceed the period authorized under section
24 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),
25 and (3) of the statutes, the department is not required to provide evidence that

1 promulgating a rule under this paragraph as an emergency rule is necessary for the
2 preservation of the public peace, health, safety, or welfare and is not required to
3 provide a finding of emergency for a rule promulgated under this paragraph.

4 **SECTION 11. Initial applicability.**

5 (1) This act first applies to taxable years beginning on July 1, 2010.

6 (END)

Handwritten annotations:
A large handwritten '2' is written above the '2010' in the text above.
A large handwritten '3' is written above the '2010' in the text above.
A circle around '2010' in the text above has a line pointing to a circle containing '2011'.
A circle containing the word 'January' is written below the text.

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

LRBs0232/P3ins
JK&TKK:kjf&wlj:rs

use 3 times

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- 1 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
- 2 under par. (b) shall be reduced by the amount of the credit that is offset against
- 3 Wisconsin income taxes.

***NOTE: This provision is identical to the provisions related to investments made under the angel and early stage seed investment credits.



2009 ASSEMBLY BILL 642

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.

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 an 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

ASSEMBLY BILL 642

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 QCDE. 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.

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

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

2 71.07 (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 ss.
6 71.02 and 71.08, up to the amount of the taxes, the amount the claimant paid to a
7 qualified community development entity, as defined under 26 USC 45D (c), for a
8 qualified equity investment, as defined under 26 USC 45D (b), at its original issue,
9 multiplied by the following percentage:

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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.

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3 Times

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

Kreye, Joseph

From: Friedl, Cathy
Sent: Thursday, January 28, 2010 2:52 PM
To: Kreye, Joseph; Kuczenski, Tracy
Subject: NMTC draft

not return!

Hi Joe and Tracy,

A lot of emails have been flying around on the NMTC sub today and we've gotten some interesting feedback. I'm sorry to have another request on this draft, but here goes:

- ✓ 1. total credit of 18% over 7 years; year 1: 0% and years 2-7: 3%
- No. 2. Wayman had some concerns about what the \$10 million a year limit means (see below); we'd like to go with #1 so there's no confusion
- 3. a cap of \$5 million for each project
- 4. we'd like Commerce to place a priority on owner occupied and operating businesses "

→ credits or investment
QEI?

↳ Not just real estate
See s. 560.205(1)(g)
No qualified active (or income com. business)
may receive more than \$ 5mil. in QEI

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

From: Lawrence IV, Wayman C. [mailto:WLawrence@foley.com]
Sent: Thursday, January 28, 2010 10:42 AM
To: Friedl, Cathy; Latona, David; Carol Maria
Cc: Farshad Maltes
Subject: RE: NMTC draft

From the Desk of: Wayman Lawrence



[My Location](#) [My V-card](#) [My Bio](#)

www.foley.com

What does the 10 million/year limit mean? I can think of two very different meanings:

1. 35,714,285 of qualified equity investments=10,million of credits over the five year credit period (.28 x 35,714,285)--under this interpretation, DOC would be limited to certifying 35.714 million of qualified equity investments/year but the annual credit amount in a given year could go well over 10 million after a couple years.

2. Alternatively, the maximum credit rate in any year is 7%. So, one could interpret the overall limitation on qualified equity investments as being 142,857,143 (.07 of 142,857,143 is 10 million).

As I have urged several times previously, the best way to express the "limit" is as a total amount of qualified equity investments that can be certified under the program. This could be an annual and/or total limitation. If the "credit amount" limitation is used, we will need clarity.

The effective date of taxable years starting after July 1, 2010, would seem to eliminate the program for this year. How about taxable years starting after January 1, 2010?

From: Friedl, Cathy [mailto:Cathy.Friedl@legis.wisconsin.gov]

01/28/2010

Sent: Wednesday, January 27, 2010 12:56 PM
To: Latona, David; Carol Maria; Lawrence IV, Wayman C.
Subject: NMTC draft

Hello,

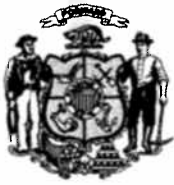
Here is the revised NMTC draft. Please let me know what you think. If it's OK, we hope to have a vote next week.

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



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State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0232/PS
JK&TKK:kjf&wlj:md

py
RM:TK
insert

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

1/29/2010

TODAY

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.

This bill authorizes the Department of Commerce (Commerce) to certify a qualified equity investment in a QCDE. The bill also authorizes Commerce to certify 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. Commerce may certify up to \$10,000,000 in tax credits in any fiscal year. 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:

- 1. For the first ~~three~~^{year} taxable years, ~~5~~^{year, zero} percent.
- 2. For the next ~~four~~³ taxable years, ~~6~~³ percent.

DX

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:

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

2 71.07 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant"
3 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, for investments made after December 31, 2010, a claimant may claim
6 as a credit against the taxes imposed under ss. 71.02 and 71.08, up to the amount of
7 the taxes, the amount of the claimant's qualified equity investment, as certified
8 under s. 560.2065 (2), multiplied by the following percentage:

- 9 1. For the taxable ~~years~~^{year} that ~~correspond~~^{corresponds} to the first ~~3~~³ credit allowance ~~dates~~^{date}
10 as defined under 26 USC 45D (a) (3), ~~5~~^{zero} percent.
- 11 2. For the taxable years that correspond to the ~~4~~³ credit allowance dates, as
12 defined under 26 USC 45D (a) (3), following the credit allowance ~~dates~~^{date} described in
13 subd. 1., ~~6~~³ percent.

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

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

1 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
2 under par. (b) shall be reduced by the amount of the credit that is offset against
3 Wisconsin income taxes.

X NOTE: This provision is identical to the provisions related to investments made
under the angel and early stage seed investment credits.

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

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

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

10 2. The department of revenue may promulgate rules regarding the recapture
11 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
12 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
13 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
14 same time and in the same manner as the claimant's federal tax credit.

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

18 **SECTION 2.** 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act
19 28, is amended to read:

20 71.08 (1) **IMPOSITION.** (intro.) If the tax imposed on a natural person, married
21 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
22 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),
23 (3q), (3r), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8r), and (9e),

1 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
 2 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
 3 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s.
 4 71.07 (7), is less than the tax under this section, there is imposed on that natural
 5 person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02,
 6 an alternative minimum tax computed as follows:

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

8 71.10 (4) (fm) New markets credit under s. 71.07 (5n).

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

10 71.28 (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, for investments made after December 31, 2010, a claimant may claim
 14 as a credit against the taxes imposed under s. 71.23, up to the amount of the taxes,
 15 the amount of the claimant's qualified equity investment, as certified under s.
 16 560.2065 (2), multiplied by the following percentage:

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

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

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. 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 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
24 under par. (b) shall be reduced by the amount of the credit that is offset against
25 Wisconsin income taxes.

****NOTE: This provision is identical to the provisions related to investments made under the angel and early stage seed investment credits.

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

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

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

7 2. The department of revenue may promulgate rules regarding the recapture
8 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
9 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
10 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
11 same time and in the same manner as the claimant's federal tax credit.

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

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

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

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

18 71.47 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant"
19 means a person who files a claim under this subsection.

20 (b) *Filing claims.* Subject to the limitations provided under this subsection and
21 s. 560.2065, for investments made after December 31, 2010, a claimant may claim
22 as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes,

1 the amount of the claimant's qualified equity investment, as certified under s.
2 560.2065 (2), multiplied by the following percentage: *corresponds*

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

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

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

1 provided under this paragraph is solely responsible for any tax liability arising from
2 a dispute with the department of revenue related to claiming the credit.

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

10 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
11 under par. (b) shall be reduced by the amount of the credit that is offset against
12 Wisconsin income taxes.

X ****NOTE: This provision is identical to the provisions related to investments made
under the angel and early stage seed investment credits.

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

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

17 2. The department of revenue may promulgate rules regarding the recapture
18 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
19 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
20 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
21 same time and in the same manner as the claimant's federal tax credit.

1 3. 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) (b).

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

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

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

7 **76.639 New markets credit. (1) FILING CLAIMS.** Subject to the limitations
8 provided under this section and s. 560.2065, for investments made after December
9 31, 2010, an insurer may claim as a credit against the fees imposed under s. 76.60,
10 76.63, 76.65, 76.66, or 76.67 the amount of the insurer's qualified equity investment,
11 as certified under s. 560.2065 (2), multiplied by the following percentage:

12 (a) For the taxable year that corresponds to the first ² credit allowance ^{date}
13 as defined under 26 USC 45D (a) (3), ^{year} ⁶ percent.

14 (b) 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 date described in
16 subd. 1., ³ percent.

17 **(2) LIMITATIONS.** (a) An insurer may claim the credit under this section
18 regardless of whether the insurer claims a credit under 26 USC 45D.

19 (b) The department of revenue may promulgate rules regarding the recapture
20 of credits claimed under this section, consistent with 26 USC 45D (g). If a claimant's
21 federal tax credit under 26 USC 45D is subject to recapture under 26 USC 45D (g),
22 the claimant's tax credit under this section is subject to recapture at the same time
23 and in the same manner as the claimant's federal tax credit.

1 (c) No credit may be allowed under this section 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) (b).

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

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

11 **560.2065 Certification of qualified equity investments. (1) DEFINITIONS.**

12 In this section:

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

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

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

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

21 (2) CERTIFICATION. The department may do all of the following:

22 (a) Certify a qualified equity investment under this ~~section~~ ^{paragraph} if all of the following
23 apply:

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

1 2. The qualified community development entity identified in subd. 1. applies
2 to the department on a form provided by the department and includes with the
3 application evidence satisfactory to the department that all of the following apply:

4 a. ^{Subject to the limit under sub. (4)(a) ^} Proceeds from the proposed qualified equity investment will be invested in
5 or loaned to a qualified active low-income community business located in this state.

6 b. The proposed qualified equity investment will promote the creation or
7 retention of jobs in this state or will promote other economic development goals
8 established by the department by rule. ^b
_(b)

9 (b) Subject to the limit under sub. (4) ^b certify a person to receive tax benefits
10 ^{paragraph to claim tax credits under ss. 71.07 (5n) ^ 71.28 (5n) ^ 71.47 (5n) ^} under this section if the person applies to the department on a form provided by the
11 department and submits evidence satisfactory to the department that the person
12 made an investment in a qualified equity investment certified under par. (a). _{and ^}
_{76.639}

13 (3) ELIGIBILITY. (a) A qualified equity investment certified under sub. (2) (a)
14 shall be funded by the qualified community development entity that submitted the
15 application under sub. (2) (a) 2. by the last day of the 13th month beginning after the
16 date of certification under sub. (2) (a). The certification of a qualified equity
17 investment that is not funded by the last day of the 13th month beginning after the
18 date of certification under sub. (2) (a) shall expire on the first day of the 14th month
19 beginning after the date of certification.

20 (b) A person certified under sub. (2) (b) is eligible to ^{claim} receive tax credits under
21 ss. 71.07 (5n), 71.28 (5n), 71.47 (5n), and 76.639 in each taxable year in which a credit
22 allowance date falls.

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

INJECT 12-23

1 (5) DUTIES OF THE DEPARTMENT. (a) The department of commerce shall notify
2 the department of revenue of every certification issued under sub. (2) and shall
3 include the date on which any such certification is granted.

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

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

8 1. Deadlines for the submission of an application for certification under this
9 section.

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

12 3. Criteria for reviewing ^{of applications under this section and for} and prioritizing applications for certification ^{received} under
13 ^{sub(2)(a)} ~~this section~~. The criteria under this subdivision shall ^{do all of the following} include economic development
14 goals that are consistent with the provisions of 26 USC 45D.

INSERT 13-15

15 **SECTION 10. Nonstatutory provisions.**

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

20 (b) Using the procedure under section 227.24 of the statutes, the department
21 of commerce may promulgate rules required under section 560.2065 (5) (c) of the
22 statutes, as created by this act, for the period before the effective date of the rules
23 submitted under paragraph (a), but not to exceed the period authorized under section
24 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),
25 and (3) of the statutes, the department is not required to provide evidence that

1 promulgating a rule under this paragraph as an emergency rule is necessary for the
2 preservation of the public peace, health, safety, or welfare and is not required to
3 provide a finding of emergency for a rule promulgated under this paragraph.

4 **SECTION 11. Initial applicability.**

5 (1) This act first applies to taxable years beginning on January 1, 2011.

6 (END)

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

LRBs0232/P4ins
TKK:kjf&wlj:ph

1 **Insert 12-23**

2 (4) LIMITS. (a) A qualified active low-income community business receiving
3 investments, loans, or proceeds from qualified community development entities
4 certified under sub. (2) (a) may receive no more than \$5,000,000 in investments,
5 loans, or proceeds from such qualified community development entities.

6 (b) The aggregate amount of tax benefits that may be claimed under ss. 71.07
7 (5n), 71.28 (5n), 71.47 (5n), and 76.639 by persons certified under sub. (2) (b) for
8 making investments in qualified equity investments certified under sub. (2) (a) is
9 \$10,000,000 in each fiscal year.

10 **Insert 13-15**

11 b. Prioritize applications received under sub. (2) (a) from qualified community
12 development entities proposing qualified equity investments in qualified active
13 low-income community businesses that are owner-occupied businesses not
14 primarily engaged in any of the activities identified under s. 560.205 (1) (g).

15

Kreye, Joseph

From: Friedl, Cathy
Sent: Monday, February 01, 2010 11:03 AM
To: Kreye, Joseph; Oakleaf, Michael P - DOR; Gates-Hendrix, Sherrie L - DOR
Cc: Boldt, Rebecca A - DOR
Subject: Yes, Joe let's make these suggested changes

Thanks everyone for your input and assistance.

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

From: Kreye, Joseph
Sent: Monday, February 01, 2010 10:51 AM
To: Oakleaf, Michael P - DOR; Friedl, Cathy; Gates-Hendrix, Sherrie L - DOR
Cc: Boldt, Rebecca A - DOR
Subject: RE: New Markets Tax Credits with suggested revisions

Thanks Mike.

Cathy, I think the language that Mike is suggesting would work well. Let me know if you want to modify the draft accordingly.

Joe

From: Oakleaf, Michael P - DOR [mailto:Michael.Oakleaf@revenue.wi.gov]
Sent: Mon 2/1/2010 10:45 AM
To: Kreye, Joseph; Friedl, Cathy; Gates-Hendrix, Sherrie L - DOR
Cc: Boldt, Rebecca A - DOR
Subject: RE: New Markets Tax Credits with suggested revisions

The fiscal effect can be controlled by replacing the limit on claiming credits with a limit on certifications by Commerce. Such a limit on certifications could be worded along the lines of "The maximum amount of credit that may be certified in a year is \$10,000,000 inclusive of the amount for all credit allowance dates." That way by the time the seventh year rolls around, the total amount of credit certified for credit allowance dates in a year won't exceed \$10 million.

As I stated previously, we can't control the amount claimed in a given fiscal year, but applying the limit to the amount certified will have the effect of limiting it on an average basis. As long as the certification limits are followed it basically all comes out in the wash - if the claims pile up in one year and exceed the \$10 million threshold, they will necessarily be below the limit in one or more subsequent years because the total is overall limited by the certification process.

As far as whether such a limit on certifications should be for a calendar year or fiscal year, you probably want to ask Zach Brandon or Jim O'Keefe, I don't want to speak for them. The timing of the certifications doesn't affect us much, probably a bigger impact for Commerce and for the people receiving the certifications.

From: Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]
Sent: Monday, February 01, 2010 9:57 AM
To: Friedl, Cathy - LEGIS; Gates-Hendrix, Sherrie L - DOR
Cc: Oakleaf, Michael P - DOR
Subject: RE: New Markets Tax Credits with suggested revisions

02/01/2010

Good morning all,

I'm not in the office this morning, but am monitoring my e-mail. I'm hoping just a minor change in the Commerce language will address this concern. The idea is that this would work like some of the other tax credit programs that Commerce administers.

Mike wrote: "If Commerce allocates \$10 million in credit in 2010, would the credit claims resulting from the 2010 allocation be expected to equal \$0 for tax year 2010 and \$1.667 million in tax years 2011 through 2016? If this is the case, then the limit on credit claims would not be necessary, as this the limit on certifications would limit the fiscal effect over the life of the program to an average of \$10 million per fiscal year, even if credit claims may exceed \$10 million in a given fiscal year."

I think that is the result we are shooting for because I think that's as close as we can get to enforcing that limitation. I don't have access to the draft this morning, but I think a relatively minor change to the draft would take care of that (Mike, if you have a suggestion, please let me know).

As an aside (or something completely different), I know that Angel and Early Stage Seed credit allocations are on a calendar year basis. Would that be easier to control or is that just a different set of concerns?

I'll be monitoring my e-mail this morning and should be in the office around noon.

Joe

From: Friedl, Cathy
Sent: Mon 2/1/2010 9:07 AM
To: Gates-Hendrix, Sherrie L - DOR; Kreye, Joseph
Cc: Oakleaf, Michael P - DOR
Subject: New Markets Tax Credits with suggested revisions

Hi Joe, can you please call Sherrie at DOR and see if we can work out their concerns. Call me too if you have questions.

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

From: Gates-Hendrix, Sherrie L - DOR [mailto:Sherrie.GatesHendrix@revenue.wi.gov]
Sent: Friday, January 29, 2010 4:26 PM
To: Friedl, Cathy
Cc: Oakleaf, Michael P - DOR
Subject: FW: New Markets Tax Credits with suggested revisions

Hi Cathy --

I'm forwarding some thoughts from Mike on the latest draft. This all gets pretty complicated and it's not as easy as it seems like it should be to limit the amount of the fiscal effect by fiscal year since the federal credit it not set up to operate that way. Let us know if you want to discuss this -- hope it's helpful.

The Department would not be able to administer the limit on credit claims in s. 560.206(4)(b). for two reasons:

- 1) The Department does not have the capability to monitor in real time how much of a given credit has been claimed in the fiscal year, and so would not be able to deny claims when they reached the \$10 million limit; and
- 2) The Department has no control over what state fiscal year a taxpayer claims a credit in. For example, a taxpayer with a calendar year taxable year could file a tax year 2010 return, with extensions, any time between January 1 and October 15, 2011, a period that straddles two state fiscal years. The same taxpayer could properly file two years worth of credit

02/01/2010

claims in the same state fiscal year (for example by filing a tax year 2010 return on July 1, 2011 and a tax year 2011 return on June 30, 2012, both of which fall into state fiscal year 2012), which could result in credit claims exceeding the \$10 million threshold.

Even if DOOR had the capability to monitor the amount of credit claims in real time, should a situation as outlined in #2 above occur, the limit as drafted would put DOOR in the position of either denying a claim which Commerce had certified and which a taxpayer has properly claimed, or allowing the claim in violation of the statute. It is also unclear how the \$10 million per fiscal year limitation on certifications by Commerce interacts with the \$10 million per fiscal year limitation on taxpayer claims. Is the limit on certification calculated as \$10 million in total claims for all years for amounts certified in a fiscal year? For example, If Commerce allocates \$10 million in credit in 2010, would the credit claims resulting from the 2010 allocation be expected to equal \$0 for tax year 2010 and \$1.667 million in tax years 2011 through 2016? If this is the case, then the limit on credit claims would not be necessary, as this the limit on certifications would limit the fiscal effect over the life of the program to an average of \$10 million per fiscal year, even if credit claims may exceed \$10 million in a given fiscal year.

From: Friedl, Cathy [mailto:Cathy.Friedl@legis.wisconsin.gov]

Sent: Friday, January 29, 2010 2:21 PM

To: Brandon, Zach - COMMERCE; Gates-Hendrix, Sherrie L - DOR; Oakleaf, Michael P - DOR; O'Keefe, Jim - COMMERCE; Farshad Maltes; Lawrence IV, Wayman C.; Carol Maria; Latona, David; Stricker, John D - COMMERCE; darren.easton@wheda.com

Subject: New Markets Tax Credits with suggested revisions

Hello,

Here's the NMTC draft that incorporates the revisions suggested by some of you. There are some big changes on the limits as well as technical changes suggested by DOR. As always, send your suggestions our way and feel free to forward this to other interested parties.

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

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Kreye, Joseph

From: Gates-Hendrix, Sherrie L - DOR [Sherrie.GatesHendrix@revenue.wi.gov]
Sent: Monday, February 01, 2010 2:00 PM
To: Friedl, Cathy
Cc: Oakleaf, Michael P - DOR; Kreye, Joseph
Subject: FW: any response to Wayman's "unworkable" comment?

Hi Cathy --

Here's Mike's take on this...

The reduction in basis in the sub amendment is the same treatment that the state Angel and Early Stage Seed investment credits use, where the basis in the investment is reduced by the amount of the credit. This is also the exact same treatment of the New Market Tax Credit for federal tax purposes.

Joe could probably comment on this as well.

Sherrie

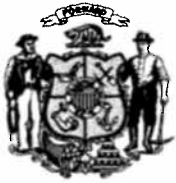
From: Friedl, Cathy [mailto:Cathy.Friedl@legis.wisconsin.gov]
Sent: Monday, February 01, 2010 1:28 PM
To: Gates-Hendrix, Sherrie L - DOR; Oakleaf, Michael P - DOR
Subject: any response to Wayman's "unworkable" comment?

Hi Sherrie and Michael, below is a comment I received this morning from Wayman Lawrence who's very familiar with NMTC. Could you please look at this and/or call him to make sure his concern is worked out?

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

Last draft changes the basis language that has been in from the beginning in section 71.07(5n)(c)(2), section 71.28(5n)(c)(2) and 71.47(5n)(c)(2). If basis is reduced by the state NMTC and serves as a limitation on the amount of credit that can be claimed, the program is unworkable. Who did this?

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stays

1
RMK

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

in Mon 2-1-10

due today

Regen

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.

This bill authorizes the Department of Commerce (Commerce) to certify a qualified equity investment in a QCDE. The bill also authorizes Commerce to certify 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. Commerce may certify up to \$10,000,000 in tax credits in any fiscal year. 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:

1. For the first taxable year, zero percent.
2. For the next six taxable years, 3 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:

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

2 71.07 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant"
3 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, for investments made after December 31, 2010, a claimant may claim
6 as a credit against the taxes imposed under ss. 71.02 and 71.08, up to the amount of
7 the taxes, the amount of the claimant's qualified equity investment, as certified
8 under s. 560.2065 (2), multiplied by the following percentage:

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

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

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

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

1 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
2 under par. (b) shall be reduced by the amount of the credit that is offset against
3 Wisconsin income taxes.

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

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

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

10 2. The department of revenue may promulgate rules regarding the recapture
11 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
12 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
13 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
14 same time and in the same manner as the claimant's federal tax credit.

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

18 **SECTION 2.** 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act
19 28, is amended to read:

20 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
21 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
22 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),
23 (3q), (3r), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8r), and (9e),
24 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
25 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),

1 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s.
2 71.07 (7), is less than the tax under this section, there is imposed on that natural
3 person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02,
4 an alternative minimum tax computed as follows:

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

6 71.10 (4) (fm) New markets credit under s. 71.07 (5n).

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

8 71.28 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant"
9 means a person who files a claim under this subsection.

10 (b) *Filing claims.* Subject to the limitations provided under this subsection and
11 s. 560.2065, for investments made after December 31, 2010, a claimant may claim
12 as a credit against the taxes imposed under s. 71.23, up to the amount of the taxes,
13 the amount of the claimant's qualified equity investment, as certified under s.
14 560.2065 (2), multiplied by the following percentage:

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

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

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

21 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
22 under par. (b) shall be reduced by the amount of the credit that is offset against
23 Wisconsin income taxes.

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

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

10 3. No credit may be allowed under this subsection 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).

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

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

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

16 71.47 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, "claimant"
17 means a person who files a claim under this subsection.

18 (b) *Filing claims.* Subject to the limitations provided under this subsection and
19 s. 560.2065, for investments made after December 31, 2010, a claimant may claim
20 as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes,
21 the amount of the claimant's qualified equity investment, as certified under s.
22 560.2065 (2), multiplied by the following percentage:

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

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

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

23 2. 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

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.

5 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
6 under par. (b) shall be reduced by the amount of the credit that is offset against
7 Wisconsin income taxes.

8 4. 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). If a
14 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
15 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
16 same time and in the same manner as the claimant's federal tax credit.

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

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

21 71.49 (1) (dn) New markets credit under s. 71.47 (5n).

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

23 **76.639 New markets credit. (1) FILING CLAIMS.** Subject to the limitations
24 provided under this section and s. 560.2065, for investments made after December
25 31, 2010, an insurer may claim as a credit against the fees imposed under s. 76.60,

1 76.63, 76.65, 76.66, or 76.67 the amount of the insurer's qualified equity investment,
2 as certified under s. 560.2065 (2), multiplied by the following percentage:

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

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

8 **(2) LIMITATIONS.** (a) An insurer may claim the credit under this section
9 regardless of whether the insurer claims a credit under 26 USC 45D.

10 (b) The department of revenue may promulgate rules regarding the recapture
11 of credits claimed under this section, consistent with 26 USC 45D (g). If a claimant's
12 federal tax credit under 26 USC 45D is subject to recapture under 26 USC 45D (g),
13 the claimant's tax credit under this section is subject to recapture at the same time
14 and in the same manner as the claimant's federal tax credit.

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

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

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

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

2 In this section:

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

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

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

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

11 **(2) CERTIFICATION.** The department may do all of the following:

12 (a) Certify a qualified equity investment under this paragraph if all of the
13 following apply:

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

16 2. The qualified community development entity identified in subd. 1. applies
17 to the department on a form provided by the department and includes with the
18 application evidence satisfactory to the department that all of the following apply:

19 a. Subject to the limit under sub. (4) (a), proceeds from the proposed qualified
20 equity investment will be invested in or loaned to a qualified active low-income
21 community business located in this state.

22 b. The proposed qualified equity investment will promote the creation or
23 retention of jobs in this state or will promote other economic development goals
24 established by the department by rule.

1 (b) Subject to the limit under sub. (4) (b), certify a person under this paragraph
2 to claim tax credits under ss. 71.07 (5n), 71.28 (5n), 71.47 (5n), and 76.639 if the
3 person applies to the department on a form provided by the department and submits
4 evidence satisfactory to the department that the person made an investment in a
5 qualified equity investment certified under par. (a).

6 (3) ELIGIBILITY. (a) A qualified equity investment certified under sub. (2) (a)
7 shall be funded by the qualified community development entity that submitted the
8 application under sub. (2) (a) 2. by the last day of the 13th month beginning after the
9 date of certification under sub. (2) (a). The certification of a qualified equity
10 investment that is not funded by the last day of the 13th month beginning after the
11 date of certification under sub. (2) (a) shall expire on the first day of the 14th month
12 beginning after the date of certification.

13 (b) A person certified under sub. (2) (b) is eligible to claim tax credits under ss.
14 71.07 (5n), 71.28 (5n), 71.47 (5n), and 76.639 in each taxable year in which a credit
15 allowance date falls.

16 (4) LIMITS. (a) A qualified active low-income community business receiving
17 investments, loans, or proceeds from qualified community development entities
18 certified under sub. (2) (a) may receive no more than \$5,000,000 in investments,
19 loans, or proceeds from such qualified community development entities.

20 (b) The ^{maximum} aggregate amount of tax ^{credits} benefits that may be claimed under ss. 71.07
21 (5n), 71.28 (5n), 71.47 (5n), and 76.639 ^{by persons} certified under sub. (2) (b) for
22 making investments in qualified equity investments certified under sub. (2) (a) ^{is}
23 \$10,000,000 in each fiscal year.

*including the amount for all
credit allowance dates*

that may be

1 **(5) DUTIES OF THE DEPARTMENT.** (a) The department of commerce shall notify
2 the department of revenue of every certification issued under sub. (2) and shall
3 include the date on which any such certification is granted.

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

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

8 1. Deadlines for the submission of an application for certification under this
9 section.

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

12 3. Criteria for reviewing applications under this section and for prioritizing
13 applications for certification received under sub. (2) (a). The criteria under this
14 subdivision shall do all of the following:

15 a. Include economic development goals that are consistent with the provisions
16 of 26 USC 45D.

17 b. Prioritize applications received under sub. (2) (a) from qualified community
18 development entities proposing qualified equity investments in qualified active
19 low-income community businesses that are owner-occupied businesses not
20 primarily engaged in any of the activities identified under s. 560.205 (1) (g).

21 **SECTION 10. Nonstatutory provisions.**

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

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

10 **SECTION 11. Initial applicability.**

11 (1) This act first applies to taxable years beginning on January 1, 2011.

12 (END)