WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2009 Assembly Bill 642	Assembly Substitute Amendment 1
***Memo published*: February 24, 2010**	***Contact*: Mary Matthias, Senior Staff Attorney (266-0932)**

2009 ASSEMBLY BILL 642

2009 Assembly Bill 642 (the bill) creates a state tax credit that is modeled after the federal New Markets Tax Credit (NMTC) program codified at 26 U.S.C. s. 45D.

The bill provides that the Department of Commerce (Commerce) may certify a person to receive a tax credit if the person applies to Commerce for certification and includes with the application documentation from the federal Internal Revenue Service indicating that all of the following apply:

- The person made a qualified equity investment in a qualified community development entity (QCDE) (as defined by federal law).
- The QCDE's primary mission is serving, or providing investment capital for, low-income communities or low-income persons in the state.
- The person is eligible to receive the federal NMTC under 26 U.S.C. s. 45D for the qualified equity investment.

A certified person is eligible to receive a tax credit in each taxable year if the person continues to hold the qualified equity investment in the taxable year in which the credit is claimed.

The bill requires that Commerce notify the Department of Revenue (DOR) of every certification issued by Commerce and the date on which any certification is revoked. Commerce must promulgate rules to administer the program, including deadlines for the submission of an application for certification; the period for review of submitted applications, not to exceed 45 days; and criteria for reviewing and prioritizing applications for certification. Commerce may, in consultation with DOR, promulgate rules governing the recapture of tax credits awarded to a certified person.

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ASSEMBLY SUBSTITUTE AMENDMENT 1

Set forth below are the major differences between the bill and Assembly Substitute Amendment 1 (ASA 1).

Cap on Total Amount of Credits

ASA 1 has a $10 million annual cap on credits. The bill has no cap.

Amount of Credit Allowed Per Claimant

The bill provided a total credit of **39%** of the claimant's investment over seven years.

ASA 1 provides a total of **18%** of the claimant's investment over seven years. Under ASA 1, no credit is provided for the first year in which funds are invested.

Eligibility for Credit

ASA 1 requires each investment for which credit is provided under the program to be certified by Commerce. The QCDE must apply to Commerce for certification of the investment. To be certified, an investment must promote the creation or retention of jobs in Wisconsin or promote other economic development goals established by Commerce by rule and the proceeds from the qualified investment must be invested or loaned to a qualified active low-income community business in Wisconsin.

The bill does not require each investment to be certified. Under the bill, a person is eligible for the state credit if: (a) they make an investment in any QCDE that has as its primary mission "serving, or providing investment capital for, low-income communities or persons in Wisconsin;" and (b) the person is eligible to receive the federal NMTC for the investment.

Under ASA 1, the person may claim the credit only if they provide evidence that they made an investment in a qualified equity investment certified by Commerce as described above. The person is not required to be eligible for the federal NMTC for the investment.

Recapture of Tax Credits

The bill provides that Commerce may promulgate administrative rules governing recapture of tax benefits, in consultation with DOR.

ASA 1 provides that DOR may promulgate administrative rules regarding recapture consistent with federal law. If a claimant's federal credit is subject to recapture under federal law, their state tax credit is subject to recapture at the same time and in the same manner.

Limit on Investment or Loans Received by a Single Business

ASA 1 establishes a $5 million limitation in amount of investments, loans, or proceeds that may be received by any active low-income community business under the program.

The bill contains no similar limitation.

Prioritization of Investments

ASA 1 specifies that Commerce must give priority to investments that are in owner-occupied businesses that are not any of the following:

> Primarily engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction, except construction of power production plants that derive energy from a renewable resource.

The bill contains no similar provision.

Initial Applicability

The provisions of the bill first apply to taxable years beginning on January 1, 2010.

The provisions of ASA 1 first apply to taxable years beginning on January 1, 2011.

Legislative History

Assembly Bill 642 was introduced on January 4, 2010 by Representative Barca; cosponsored by Senator Coggs. ASA 1 was offered by Representative Barca on February 9, 2010.

On February 17, 2010, the Assembly Committee on Jobs, the Economy, and Small Business recommended adoption of ASA 1 on a vote of Ayes, 7; Noes, 5, and recommended passage of the bill, as amended, on a vote of Ayes, 11; Noes, 1

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