



2009 SENATE BILL 461

January 14, 2010 - Introduced by Senators COGGS, KREITLOW and HOLPERIN, cosponsored by Representatives BARCA, GARTHWAITE, ZIGMUNT, HILGENBERG, RADCLIFFE, CLARK, PASCH, MOLEPSKE JR., RIPP, DEXTER, BERCEAU and SINICKI. Referred to Committee on Economic Development.

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

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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.

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (b) *Filing claims.* Subject to the limitations provided under this subsection and
5 s. 560.2065, a claimant may claim as a credit against the taxes imposed under s.
6 71.23, up to the amount of the taxes, the amount the claimant paid to a qualified
7 community development entity, as defined under 26 USC 45D (c), for a qualified
8 equity investment, as defined under 26 USC 45D (b), at its original issue, multiplied
9 by the following percentage:

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (b) *Filing claims.* Subject to the limitations provided under this subsection and
10 s. 560.2065, a claimant may claim as a credit against the taxes imposed under s.
11 71.43, up to the amount of the taxes, the amount the claimant paid to a qualified
12 community development entity, as defined under 26 USC 45D (c), for a qualified
13 equity investment, as defined under 26 USC 45D (b), at its original issue, multiplied
14 by the following percentage:

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

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

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

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

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

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

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1 between the claimant and the transferee of the interest that specifies that the
2 claimant, not the transferee, is the person entitled to claim the credit.

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

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

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

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

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

11 **76.639 New markets credit. (1) FILING CLAIMS.** Subject to the limitations
12 provided under this section and s. 560.2065, an insurer may claim as a credit against
13 the fees imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.27 the amount the insurer
14 paid to a qualified community development entity, as defined under 26 USC 45D (c),
15 for a qualified equity investment, as defined under 26 USC 45D (b), at its original
16 issue, multiplied by the following percentage:

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

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

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

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

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

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

9 In this section:

10 (a) “Credit allowance date” means a credit allowance date as defined under 26
11 USC 45D (a) (3).

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

14 (c) “Qualified equity investment” means a qualified equity investment as
15 defined under 26 USC 45D (b).

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

18 (a) The person applies to the department for certification under this section and
19 includes with the application documentation from the federal internal revenue
20 service indicating that all of the following apply:

21 1. The person made a qualified equity investment in a qualified community
22 development entity described in subd. 2.

23 2. The qualified community development entity’s primary mission is serving,
24 or providing investment capital for, low-income communities or low-income persons
25 in this state.

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1 3. The person is eligible to receive new markets tax credits under 26 USC 45D
2 for the qualified equity investment described in subd. 1.

3 (b) The department verifies the information submitted under par. (a).

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

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

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

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

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

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

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

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

