

AN ACT relating to the new markets development program tax credit.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 141.432 is amended to read as follows:

As used in KRS 141.432 to 141.434~~], unless the context requires otherwise]~~:

- (1) "Applicable percentage" means zero percent (0%) for each of the first two (2) credit allowance dates, seven percent (7%) for the third credit allowance date, and eight percent (8%) for the next four (4) credit allowance dates;
- (2) "Credit allowance date" means, with respect to any qualified equity investment:
 - (a) The date on which the investment is initially made; and
 - (b) Each of the six (6) anniversary dates of that date thereafter;
- (3) "Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven (7) years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period commencing with its issuance and ending on its final credit allowance date in excess of the cumulative operating income, as defined in the regulations promulgated under 26 U.S.C. sec. 45D, of the qualified community development entity for that same period, which shall be calculated prior to giving effect to the expense of the cash interest payments. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with KRS 141.432 to 141.434 or 26 U.S.C. sec. 45D;
- (4) **"Principal place of business" means the place from which the operations of a qualified community development entity are managed;**
- (5) "Purchase price" means the amount paid to a qualified community development

entity that issues a qualified equity investment for the qualified equity investment;

~~(6)~~~~(5)~~ "Qualified active low-income community business" has the same meaning given that term in 26 U.S.C. sec. 45D. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business:

- (a) Does not derive or project to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate; and
- (b) Is the primary tenant of the real estate leased from the first business;

~~(7)~~~~(6)~~ "Qualified community development entity" **means an entity that is certified by the Secretary of the United States Department of the Treasury as being a qualified community development entity under 26 U.S.C. sec. 45D, and that:**

- ~~(a)~~ ~~[has the same meaning given that term in 26 U.S.C. sec. 45D; provided that the entity]~~ Has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund of the United States **Department of the Treasury, for the year during which the entity submits an application to the department under KRS 141.433,** ~~[Department]~~ with respect to credits authorized by 26 U.S.C. sec. 45D~~[,]~~ which includes the Commonwealth~~[of Kentucky]~~ within the service area set forth in **the**~~[such]~~ allocation agreement; **or**

- (b) Has its principal place of business located in the Commonwealth and**

includes the Commonwealth within its service area;

~~(8)~~~~(7)~~ "Qualified equity investment" means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

- (a) Is acquired after June 4, 2010, at its original issuance solely in exchange for cash;
- (b)
 - 1. In the case of a qualified equity investment issued prior to January 1, 2014, has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth by the second anniversary of the initial credit allowance date; and
 - 2. In the case of a qualified equity investment issued on or after January 1, 2014, has at least one hundred percent (100%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth by the first anniversary of the initial credit allowance date; and
- (c) Is designated by the issuer as a qualified equity investment under this subsection and is certified by the department as not exceeding the limitation contained in KRS 141.434. This term shall include any qualified equity investment that does not meet the provisions of paragraph (a) of this subsection if the investment was a qualified equity investment in the hands of a prior holder. The qualified community development entity shall keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community investments in qualified active low-income community businesses in the Commonwealth;

~~(9)~~~~(8)~~ "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after June 4, 2010. With respect to any one (1) qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified under KRS 141.433 shall be ten million dollars (\$10,000,000) whether made by one (1) or several qualified community development entities;

~~(10)~~~~(9)~~ "Tax credit" means a nonrefundable credit against the taxes imposed by KRS ~~141.020, 141.040, 141.0401,~~ 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, **136.505, 141.020, 141.040 and 141.0401**, or 304.3-270. For the credit against the taxes imposed by:

(a) KRS 136.320 to 136.390, or 304.3-270, the ordering of the credits shall be as provided in Section 5 of this Act;

(b) KRS 136.505, the ordering of the credits shall be as provided in Section 4 of this Act; and

(c) KRS 141.020 ~~or~~ 141.040 ~~and~~ 141.0401, the ordering of the credits shall be as provided in KRS 141.0205~~. An insurance company claiming a tax credit against the insurance premium tax is not required to pay additional retaliatory tax levied pursuant to KRS 304.3-270~~; and

~~(11)~~~~(10)~~ "Taxpayer" means any individual or entity subject to the tax imposed by KRS ~~141.020, 141.040, 141.0401,~~ 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, **136.505, 141.020, 141.040 and 141.0401**, or 304.3-270.

➔Section 2. KRS 141.433 is amended to read as follows:

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by KRS 141.434 shall apply to the department. The

qualified community development entity shall submit an application on a form that the department provides that shall include but not be limited to:

- (a) The name, address, tax identification number, and evidence of the certification of the entity as a qualified community development entity;
- (b) **For a qualified community development entity qualifying under subsection (7)(a) of Section 1 of this Act:**

1. A copy of an allocation agreement executed by the entity or its controlling entity and the Community Development Financial Institutions Fund, **for the year during which the entity is submitting its application,** which includes the Commonwealth ~~of Kentucky~~ in its service area; **and**

~~**2.**~~~~(e)}~~ A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;

~~(c)~~~~(d)}~~ A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;

~~(d)~~~~(e)}~~ The name and tax identification number of any person or entity eligible to utilize tax credits as a result of the issuance of the qualified equity investment;

~~(e)~~~~(f)}~~ Information regarding the proposed use of proceeds from the issuance of the qualified equity investment;

~~(f)~~~~(g)}~~ A nonrefundable application fee in an amount set by the department. This fee shall be paid to the department and shall be required of each application submitted; and

~~(g)~~~~(h)}~~ In the case of applications submitted on or after January 1, 2014, the refundable performance fee required by subsection (8) of this section.

- (2) The department shall review applications in the order in which they are received. Within thirty (30) days after receipt of a completed application containing the information necessary for the department to certify a potential qualified equity investment, including the payment of the application fee, the department shall approve or deny the application. If the department intends to deny the application, it shall inform the qualified community development entity, by written notice sent via certified mail and any other such means deemed feasible by the department, of the grounds for the denial. Upon receipt of the notice of intended denial by the qualified community development entity:
- (a) If the qualified community development entity provides any additional information required by the department or otherwise completes its application within fifteen (15) days, the application shall be considered completed as of the original date of submission, however the department shall have an additional thirty (30) days to either approve or deny the application as completed; or
 - (b) If the qualified community development entity fails to provide the information or complete its application within the fifteen (15) day period, the application shall be deemed denied and must be resubmitted in full with a new submission date.
- (3) If the application is deemed complete, the department shall certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap limitations contained in KRS 141.434. The department shall provide written notice sent via certified mail and any other means deemed feasible by the department, of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to claim the credits and their respective credit amounts. If the names of the persons or entities that are eligible to

claim the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to KRS 141.434, the qualified community development entity shall notify the department of such change.

- (4) Within ninety (90) days after receipt of the notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified purchase price. The qualified community development entity shall provide the department with evidence of the receipt of the cash investment within ten (10) business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within ninety (90) days following receipt of the certification notice, the certification shall lapse, and the entity may not issue the qualified equity investment without reapplying to the department for certification. A certification that lapses shall revert back to the department and may be reissued only in accordance with the application process outlined in this section.
- (5) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day. If a pending request cannot be fully certified because of the limitations contained in KRS 141.434, the department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.
- (6) (a) The department may recapture any portion of a tax credit allowed under this

section if:

1. Any amount of federal tax credit that might be available with respect to the qualified equity investment that generated the tax credit under this section is recaptured under 26 U.S.C. sec. 45D. In such case, the department's recapture shall be proportionate to the federal recapture with respect to the qualified equity investment;
2. The qualified community development entity redeems or makes a principal repayment with respect to the qualified equity investment that generated the tax credit prior to the final credit allowance date of the qualified equity investment. In such case, the department's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or
3. The qualified community development entity fails to invest:
 - a. In the case of a qualified equity investment issued prior to January 1, 2014, at least eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth within twenty-four (24) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth until the last credit allowance date for the qualified equity investment; and
 - b. In the case of a qualified equity investment issued on or after January 1, 2014, at least one hundred percent (100%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income

community businesses located in the Commonwealth within twelve (12) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth until the last credit allowance date for the qualified equity investment. In this case, the department's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

For purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, an investment shall be considered held by the qualified community development entity even if the investment has been sold or repaid; provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in this state within twelve (12) months of the receipt of the capital. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the qualified equity investment's final credit allowance date.

- (b) The department shall provide written notice sent via certified mail or other means deemed feasible by the department, to the qualified community

development entity of any proposed recapture of tax credits pursuant to this subsection. The entity shall have ninety (90) days to cure any deficiency indicated in the department's original recapture notice and avoid such recapture. If the entity fails or is unable to cure the deficiency within the ninety (90) day period, the department shall provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. Any tax credit for which a final recapture order has been issued shall be recaptured by the department from the taxpayer who claimed the tax credit on a tax return.

- (7) The department shall through administrative regulations promulgated in accordance with KRS Chapter 13A provide rules to implement the provisions of KRS 141.432 to 141.434, and to administer the allocation of tax credits issued for qualified equity investments.
- (8)
 - (a) On or after January 1, 2014, a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by KRS 141.434 shall, as part of the application, pay a refundable performance fee in an amount equal to one-half of one percent (0.5%) of the amount of the equity investment or long-term debt security requested to be certified as a qualified equity investment, not to exceed five hundred thousand dollars (\$500,000).
 - (b) This fee shall be in the nature of a security deposit to ensure compliance on the part of a qualified community development entity. The fee shall be paid to the department and deposited in the New Markets performance guarantee account established by this subsection, and retained there as private funds until compliance with the provisions of this subsection has been established or as otherwise provided by this subsection.
 - (c) The fee may be refunded to the qualified community development entity that

submitted it as follows:

1. In the case of any application that is ultimately denied pursuant to subsection (2) of this section, the department shall refund the full amount of the fee submitted with the denied application;
 2. In the case of any qualified equity investment that is certified in an amount that is less than the amount requested, due to the limitations contained in KRS 141.434 and pursuant to subsection (5) of this section, the department shall refund a portion of the fee so that only an amount equal to one-half of one percent (0.5%) of the actual certified amount, not to exceed five hundred thousand dollars (\$500,000), is retained; and
 3. In the case of any qualified equity investment that is certified as eligible for tax credits, the qualified community development entity may request a refund of the fee no sooner than thirty (30) days after having met all the requirements of this subsection. The refund request shall be made in writing to the department. The department shall review the refund request within thirty (30) days, and shall either comply with the request and issue the refund of the fee, without interest, if the qualified community development entity has met all the requirements of this subsection, or give written notice to the qualified community development entity that it is noncompliant and subject to possible forfeiture of the fee as provided in this subsection.
- (d) The qualified community development entity shall forfeit the fee to the Commonwealth as follows:
1. The entire amount of the fee shall be forfeited if the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified equity investment certified by the department and receive cash in exchange

therefor within ninety (90) days after receipt of the notice of certification; and

2. A portion of the fee shall be forfeited if the qualified community development entity, or any subsidiary qualified community development entity, that issues a qualified equity investment certified by the department fails to meet the percentage investment requirement under subsection (6) of this section by the first credit allowance date of the qualified equity investment. The forfeiture shall be proportionate to the amount of the qualified equity investment that is not invested as required by subsection (6) of this section. Forfeiture of the fee under this subparagraph shall be subject to the ninety (90) day cure period allowed under subsection (6) of this section.
- (e) The amount of the fee that is forfeited pursuant to this subsection shall be transferred from the New Markets performance guarantee account and deposited into the general fund.
- (f) 1. The New Markets performance guarantee account is hereby established as a fiduciary fund within the State Treasury, to be administered by the department solely for the purposes set out in this subsection.
2. Notwithstanding KRS 45.229, moneys in the account shall not lapse but shall be retained in the account at all times except as provided by this subsection.

➔Section 3. KRS 141.434 is amended to read as follows:

- (1) There is hereby created a Kentucky New Markets Development Program tax credit.
- (2) A person or entity that makes a qualified equity investment earns a vested right to the tax credit created by subsection (1) of this section. The amount of the credit shall be equal to thirty-nine percent (39%) of the purchase price of the qualified equity investment made by the person or entity claiming the credit. The tax credit

may be utilized as follows:

- (a) The holder of the qualified equity investment on a particular credit allowance date of the qualified equity investment, whether it be the original purchaser or subsequent holder of the qualified equity investment, may utilize a portion of the tax credit against its tax liability for the taxable year that includes the credit allowance date equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid for the qualified equity investment;
 - (b) Any tax credit that a taxpayer may not utilize during a particular year may be carried forward for use in any subsequent tax year; and
 - (c) An insurance company claiming a tax credit against the insurance premium tax is not required to pay additional retaliatory tax levied pursuant to KRS 304.3-270.
- (3) No tax credit claimed under this section may be sold or transferred. Tax credits that a partnership, limited liability company, S corporation, or other pass-through entity claims may be allocated to the partners, members, or shareholders of the entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders.
- (4) The total amount of tax credits that may be awarded by the department pursuant to KRS 141.432 to 141.434 shall be limited to ten million dollars (\$10,000,000) in each fiscal year. Once the department has certified a cumulative amount of qualified equity investments that can result in the utilization of this total amount of tax credits in a fiscal year, the department may not certify any more qualified equity investments. This limitation on qualified equity investments shall be based on scheduled utilization of tax credits without regard to the potential for taxpayers to carry forward tax credits to subsequent tax years.
- (5) Notwithstanding KRS 131.190, the department shall submit a written report to**

the Legislative Research Commission no later than December 1, 2016, and each year thereafter as long as the tax credit is allowed under this section, providing information as follows:

- (a) The number of taxpayers claiming a credit, and the total value of credits claimed, based on tax returns processed during the prior fiscal year and sorted by the type of tax the credits were claimed against;
- (b) The number and total value of qualified equity investments certified, and the number and total value of tax credits awarded, since the initial creation of the tax credit, listed by the year in which the certifications and awards were made and including a description of the yearly scheduled utilization of those credits;
- (c) The name of each qualified community development entity receiving certification of any qualified equity investments since the initial creation of the tax credit, along with the total amount of those certified investments and a description of the proposed use of proceeds from the issuance of those qualified equity investments as submitted by the entity on its application pursuant to subsection (1)(e) of Section 2 of this Act; and
- (d) The number and total value of any tax credits recaptured by the department during the prior fiscal year, with an explanation of the reason for each recapture.

➔SECTION 4. A NEW SECTION OF KRS 136.500 TO 136.575 IS CREATED TO READ AS FOLLOWS:

If a taxpayer is entitled to more than one (1) of the tax credits permitted against the tax imposed by KRS 136.505, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable credits against the tax imposed by KRS 136.505 shall be taken in the following order:

- (a) The Kentucky investment fund act credit permitted by KRS 154.20-258;
- (b) The certified rehabilitation credit permitted by KRS 171.397(1)(a); and
- (c) The new markets development program credit permitted by Section 3 of this Act.

(2) After the application of the nonrefundable credits in subsection (1) of this section, the refundable certified rehabilitation credits permitted by KRS 171.3961 and 171.397(1)(b) shall be taken.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 136 IS CREATED TO READ AS FOLLOWS:

(1) If a taxpayer is entitled to more than one (1) of the tax credits permitted against the taxes imposed by KRS 136.320 to 136.390 or 304.3-270, the priority of application and use of the credits shall be determined as follows:

(a) The nonrefundable credits shall be taken in the following order:

1. The Kentucky investment fund act credit permitted by KRS 154.20-258; and
2. The new markets development program credit permitted by Section 3 of this Act.

(b) After the application of the nonrefundable credits in paragraph (a) of this subsection, the refundable certified rehabilitation credit permitted by KRS 171.3961 and 171.397(1)(b) shall be taken.

(2) A taxpayer claiming a credit against any of the premiums taxes imposed by KRS 136.330 to 136.390 shall not be required to pay additional retaliatory tax imposed by KRS 304.3-270.