

SENATE BILL NO. 188

BY SENATORS DUPLESSIS, LENTINI, MICHOT, MURRAY, SHEPHERD AND N. GAUTREAUX AND REPRESENTATIVES RICHMOND, K. CARTER, ALARIO, ANDERS, ARNOLD, BALDONE, BARROW, BAYLOR, BURRELL, CAZAYOUX, DANIEL, DARTEZ, FARRAR, FRITH, GRAY, HARRIS, HEATON, HEBERT, HILL, HONEY, HUNTER, JACKSON, JEFFERSON, JOHNS, LAFLEUR, LAFONTA, MARCHAND, MCDONALD, MORRELL, PIERRE, T. POWELL, QUEZAIRE, RITCHIE, ROMERO, GARY SMITH, JACK SMITH, ST. GERMAIN, TOWNSEND AND WILLIAMS

1 AN ACT

2 To amend and reenact R.S. 47:6016, relative to the new markets tax credit; to define certain
3 terms; to increase the amount of the credit; to provide for carrying forward unused
4 credits; to provide for limits on the amount of credits and aggregate credits; to
5 provide for the transfer or sale of the credit; to provide for the promulgation of rules
6 and regulations; to provide for effectiveness; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:6016 is hereby amended and reenacted to read as follows:

9 §6016. New markets tax credit

10 A. The legislature hereby finds and declares that the health, safety, and
11 welfare of the people of the state are dependent upon the continued encouragement,
12 development, growth, and expansion of the private sector within the state, especially
13 increased access to capital in certain disadvantaged areas of the state. Therefore, it
14 is hereby declared that the purpose of this Section is to encourage and attract private
15 sector capital investment to such areas within the state.

16 B. As used in this Section, the following terms shall have the following
17 meanings:

18 (1) "Adjusted purchase price" shall mean the product of:

19 (a) The amount paid to the issuer of a qualified equity investment for such
20 qualified equity investment and which, in turn, has been invested in qualified low-
21 income community investments.

1 (b) A fraction, the numerator of which is the dollar amount of qualified low-
 2 income community investments held by the issuer of the qualified equity investment
 3 in the state, determined as of the ~~immediately preceding~~ credit allowance date **for**
 4 **which the calculation is made**, and the denominator of which is the total dollar
 5 amount of qualified low-income community investments made by the issuer,
 6 determined as of the ~~immediately preceding credit allowance date~~: credit allowance
 7 date **for which the calculation is made. For purposes of the initial credit**
 8 **allowance date only, the issuer of the qualified low-income community**
 9 **investment will be deemed to hold the amount of qualified low-income**
 10 **community investments, both in the state and outside the state, that the issuer**
 11 **projects in the applications for the qualified equity investment submitted**
 12 **pursuant to Subsection E of this Section. If the issuer of the qualified equity**
 13 **investment fails to make sufficient investments in the state to match such**
 14 **projections by the first anniversary of its credit allowance date, the state may**
 15 **disallow or recapture a portion of the credits from the holder of the qualified**
 16 **equity investment so that the credit earned for the initial credit allowance date**
 17 **reflects the actual investments made by the issuer.**

18 (c) **The maximum amount of qualified low-income community**
 19 **investments that may be issued by a single business, on an aggregate basis with**
 20 **all of its affiliates, and be included in the calculation of the fraction described**
 21 **in R.S. 47:6016(B)(1)(b) for qualified equity investments issued after July 1,**
 22 **2007, whether to one or more issuers of qualified equity investments, shall not**
 23 **exceed fifteen million dollars.**

24 (2) "Applicable percentage" means:

25 (a) ~~One~~ **Ten** percent for the first ~~three~~ **two** credit allowance dates.

26 (b) ~~Two~~ **Five** percent with respect to the remainder of the credit allowance
 27 dates.

28 (3) "Credit allowance date" means with respect to any qualified equity
 29 investment: ~~(a) The~~ **the** date on which such investment is initially made **and the first**
 30 **two anniversaries of such date.**

31 ~~(b) Each of the six anniversary dates of such date thereafter.~~

1 (4) "Qualified equity investment", ~~and "qualified low-income community~~
 2 ~~investments",~~ **"qualified low-income community business" and "qualified**
 3 **business"** shall have the same meaning given to them in Section 45D of the Internal
 4 Revenue Code, **including otherwise qualified businesses located in any special**
 5 **GO Zone Targeted Population or similar census tracts approved as eligible for**
 6 **receipt of qualified low-income community investments under Section 45D of**
 7 **the Internal Revenue Code. No investment shall be considered a "qualified**
 8 **equity investment" unless it has also been designated as a "qualified equity**
 9 **investment" for the same amount and is eligible for tax credits according to the**
 10 **provisions of Section 45D of the Internal Revenue Code.** ~~"Qualified low-income~~
 11 ~~community investments" shall also mean investments made in low-income~~
 12 ~~communities as defined in R. S. 51:3084(11)(b).~~

13 C. A natural or juridical person who holds a qualified equity investment
 14 **which, in turn, has been invested in a qualified low-income community**
 15 **investment** on a credit allowance date of such investment which occurs during the
 16 taxable year may claim a credit against the person's Louisiana income or corporation
 17 franchise tax for such taxable year equal to the applicable percentage of the adjusted
 18 purchase price paid to the issuer of such qualified equity investment for such
 19 investment which, in turn, has been invested in qualified low-income community
 20 investments for such credit allowance date.

21 D. The total of all such credits taken by any person under this Section shall
 22 not exceed such person's total combined income and corporation franchise tax
 23 liability for that taxable year. Any credits that are not used in the first taxable year
 24 eligible for use shall carry forward and be eligible for use in future taxable years **for**
 25 **a period not to exceed ten years.**

26 E. The aggregate amount of ~~credits~~ **credit** for all **qualified equity**
 27 **investments issued to taxpayers, after the effective date of the Act which**
 28 **originated as Senate Bill 188 of the 2007 Regular Session of the Legislature,**
 29 ~~during any taxable year~~ **under this Section** shall not exceed five **fifty** million
 30 dollars, **in the aggregate, over the life of the program.** An application for a tax
 31 credit pursuant to this Section shall be submitted to the secretary on forms

1 established by the secretary prior to the use of the credit, and the allocation of tax
2 credits under this Section shall be on a first-come, first-served basis.

3 **(1) All entities taxed as corporations for Louisiana income tax and**
4 **franchise tax purposes shall claim any credit allowed under this Section on their**
5 **corporation income and franchise tax return.**

6 **(2) Individuals, estates, and trusts shall claim any credit allowed under**
7 **this Section on their income tax return.**

8 **(3) Entities not taxed as corporations shall claim any credit allowed**
9 **under this Section on the returns of the partners or members as follows:**

10 **(a) Corporate partners or members shall claim their share of the credit**
11 **on their corporation income tax or franchise tax returns.**

12 **(b) Individual partners or members shall claim their share of the credit**
13 **on their individual income tax or franchise tax returns.**

14 **(c) Partners or members that are estates or trusts shall claim their share**
15 **of the credit on their fiduciary income tax returns.**

16 F. If any amount of the federal tax credit available with respect to a qualified
17 equity investment which is eligible for a credit under this Section is recaptured
18 pursuant to the provisions of Section 45D of the Internal Revenue Code, the
19 Department of Revenue shall have the right to recapture a portion of the credit
20 granted with respect to such qualified equity investment under this Section. The
21 percentage of the credit granted pursuant to this Section that may be recaptured
22 pursuant to this Section shall be equal to the percentage of the total federal credit
23 earned with respect to such qualified equity investment that is recaptured pursuant
24 to Section 45D of the Internal Revenue Code. **(1) Any tax credits not previously**
25 **claimed by any taxpayer against its income or franchise tax may be transferred**
26 **or sold to another Louisiana taxpayer, subject to the following conditions:**

27 **(a) A single transfer or sale may involve one or more transferees. The**
28 **transferee of the tax credits may transfer or sell such tax credits subject to the**
29 **conditions of this Subsection.**

30 **(b) Transferors and transferees shall submit to the Department of**
31 **Revenue in writing, a notification of any transfer or sale of tax credits within**

1 thirty days after the transfer or sale of such tax credits. The notification shall
2 include the transferor's tax credit balance prior to transfer, the transferor's
3 remaining tax credit balance after transfer, all tax identification numbers for
4 both transferor and transferee, the date of transfer, the amount transferred, a
5 copy of the credit certificate price paid by the transferee to the transferor, and
6 any other information required by the Department of Revenue. The notification
7 submitted shall include a processing fee of up to two hundred dollars per
8 transferee.

9 (i) Failure to comply with this Paragraph will result in the disallowance
10 of the tax credit until the taxpayers are in full compliance.

11 (ii) The transfer or sale of this credit does not extend the time in which
12 the credit can be used. The carry forward period for credit that is transferred
13 or sold begins on the date on which the credit was originally earned.

14 (iii) To the extent that the transferor did not have rights to claim or use
15 the credit at the time of the transfer, the Department of Revenue shall either
16 disallow the credit claimed by the transferee or recapture the credit from the
17 transferee.

18 (2) The transferee shall apply such credits in the same manner and
19 against the same taxes as the taxpayer originally awarded the credit.

20 G. In any amount of the federal tax credit available with respect to a
21 qualified equity investment which is eligible for a credit under this Section is
22 recaptured pursuant to the provisions of Section 45D of the Internal Revenue
23 Code, the Department of Revenue shall have the right to recapture a portion of
24 the credit granted with respect to such qualified equity investment under this
25 Section. The percentage of the credit granted pursuant to this Section that may
26 be recaptured shall be equal to the percentage of the total federal credit earned
27 with respect to such qualified equity. In addition, if an issuer of a qualified
28 equity investment that earned credits under this Section fails to maintain
29 qualified low-income community investments in this state in an amount at least
30 equal to the amount used in calculating the credits issued hereunder through
31 the sixth anniversary of the credit allowance date of such qualified equity

1 investment, the Department of Revenue shall have the right to recapture the
2 credits granted with respect to such qualified equity investment under this
3 Section.

4 G.H. The Department of Revenue shall promulgate such rules and regulations
5 as may be necessary to carry out the purposes of this Section, including rules to
6 facilitate the application for and transfer of credits earned pursuant to this Section.

7 H.I. ~~No tax~~ Tax credits shall be allowed for qualified equity investments
8 which, in turn, have been invested in qualified low-income community
9 investments made on and after the earlier of the date the Act which originated
10 as Senate Bill No. 188 of the 2007 Regular Session becomes effective, or July 1,
11 2007, until after ~~August~~ December 31, 2013 2012.

12 Section 2. This Act shall become effective upon the first to occur:

13 (a) The signature by the governor or, if not signed by the governor, upon expiration
14 of the time for bills to become law without signature by the governor, as provided by Article
15 III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently
16 approved by the legislature, this Act shall become effective on the day following such
17 approval.

18 (b) July 1, 2007.

19 (c) Notwithstanding the foregoing, any qualified equity investment issued prior to
20 July 1, 2007, shall be eligible for credits under R.S. 47:6016 in accordance with provisions
21 of such statute without regard to the amendments adopted in this Act.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____