

Contents

CHAPTER 1	15
History of New Markets Tax Credit and Comparable Programs	15
§1.01 Introduction	15
§1.02 Small Business Investment Company Act.....	15
§1.03 Low-Income Housing Tax Credit Program	16
§1.04 Community Development Corporations Tax Credit Pilot Program	17
§1.05 The New Markets Tax Credit Program: Implementation	17
§1.06 New Markets Tax Credits and Community Reinvestment Act Investing.....	18
[1] Lending Test	18
[2] Investment Test.....	19
[3] Other CRA Issues	19
§1.07 More Effective New Markets Program	20
CHAPTER 2.....	23
General Operation of the New Markets Tax Credit.....	23
§2.01 Introduction	23
§2.02 Basic Structure of the New Markets Tax Credit	23
§2.03 Defining the Taxpayer.....	26
§2.04 NMTC structures	26
[1] Leveraging Approach.....	27
[2] Special Allocation Approach	27
§2.05 Qualified Community Development Entity.....	27
[1] Statutory Requirements for a Community Development Entity.....	28
[2] Automatic Qualification.....	29
[3] Profit Motive of a CDE.....	30
§2.06 Qualified Equity Investments	31
[1] Statutory Requirements	31
[2] Revenue Ruling 2003-20	33
[3] Look-back Rule	34
[4] Substantially All Test.....	35
[5] Designated Investments	38
§2.07 Qualified Low-Income Community Investments	38
[1] Statutory Requirements	38
[2] Reserves.....	42
[3] Reinvestment Requirement.....	42
§2.08 Qualified Active Low-Income Community Business.....	43
[1] Statutory Requirements	43
§2.09 Timing of the Tax Credits – Credit Allowance Date	57
§2.10 Credit Recapture.....	57
[1] Statutory Requirements	58
§2.11 General Waiver Authority	59
§2.12 Allocation Agreement.....	59
§2.13 Reporting Requirements.....	60
[1] Notifications to Investors.....	61
[2] Internal Revenue Service Reporting Obligations	61
[3] CDFI Fund Reporting Obligations	61
§2.14 Basis Reduction Requirements.....	62
§2.15 Anti-Abuse Rule	62
§2.16 Alternative Minimum Tax (AMT) Implications.....	63
[1] Alternative Minimum Tax.....	63
[2] New Markets Tax Credit.....	63
§2.17 Passive Activity Rules	64

§2.18 Limitation on Deductions Allocable to Property Used by Governments or Other Tax-Exempt Entities	65
§2.19 Mandate to Issue Regulations	65
[1] Statutory Requirements	65
CHAPTER 3.....	67
The Allocation Process and Priorities for Tax Credits	67
§3.01 Allocation Process -- Introduction	67
§3.02 Statutory Preferences	68
§3.03 Legislative History	69
§3.04 Statutory Priorities	69
§3.05 New Market Tax Credit Allocation Application.....	70
[1] Business Strategy	70
[2] Community Impact	71
[3] Management Capacity	72
[4] Capitalization Strategy.....	72
§3.06 Evaluation Process for an Allocation of New Markets Tax Credits	73
CHAPTER 4.....	77
Qualified Community Development Entities.....	77
§4.01 Introduction	77
§4.02 Requirements and Characteristics	77
[1] Statutory Requirements for a Community Development Entity.....	77
[2] Automatic Qualification.....	78
[3] CDEs with Subsidiaries	78
[4] Specialized CDEs	79
[5] Limitations of a CDE.....	79
§ 4.03 Eligibility and Certification	80
[1] Primary Mission Test	80
[2] Accountability Test	81
[3] Concept of Service Areas.....	82
[4] Targeted Accountability	83
[5] What is Representative?	84
[6] Facts and Circumstances.....	84
§4.04 Reporting Requirements	84
[1] Levels of Reporting	84
[2] Certain Reporting Requirements to Investors.....	85
§4.05 Choosing the Right Kind of CDE.....	86
[1] Use of a Corporate Entity	86
[2] Using a Partnership or Limited Liability CDE.....	86
[3] Choosing a CDE – Investor Flexibility	87
[4] Choosing a CDE – Investment Flexibility.....	88
CHAPTER 5.....	89
Recapture of New Markets Tax Credits.....	89
§ 5.01 Introduction	89
[1] Calculating the Recapture Cost and the Tax Benefit Rule.....	89
[2] Investor Reporting Requirements.....	90
[3] Comparison of NMTCs to LIHTC	90
§5.02 Statutory Recapture Events	91
[1] Entity Ceases to be a CDE.....	91
[2] CDE Ceases to Use Substantially all of the Assets of the Investor’s QEI for QLICI	92
[3] Not Initially Qualifying for the NMTC	94
[4] Reinvestment and the Substantially All Test	101
[5] Causes of Recapture Associated with the Reinvestment Requirement	102

§5.03 Investor's QEI is Redeemed by the CDE	103
[1] Equity investment in a C corporation	103
[2] Equity investment in an S corporation.....	104
[3] Capital interest in a partnership	104
[4] Issues with Redemption.....	105
§5.04 Termination of a Partnership CDE under Section 708(b)(1)(B).....	105
§5.05 Conclusions	106
[1] How will the Current Recapture Rules Affect NMTC Investments?	106
CHAPTER 6.....	107
Generally Accepted Accounting Principles for New Markets Tax Credits.....	107
§6.01 Introduction	107
§6.02 Consolidated Method.....	107
§6.03 Equity Method	108
§6.04 Cost Method	108
§6.05 Effective Yield Method.....	109
§6.06 Impairment	109
§6.07 Consolidation of Variable Interest Entities.....	110
§6.08 Accounting for the New Market Tax Credit	111
§6.09 Deferred Tax Liabilities.....	112
§6.10 Below-Market Interest Rates Loan.....	112
CHAPTER 7	115
Partnership Allocation Rules	115
§7.01 Introduction	115
§7.02 Theoretical Foundation for the Allocation Rules	115
§7.03 When Reallocation of NMTC Might Occur	117
§7.04 Partnership Allocations – Introduction to the Technical Rules	117
§7.05 Related Party Loans	118
§7.06 NMTC Allocations	118
[1] Introduction	118
[2] Technical Basis for Allocation	119
§7.07 Partner Non-Recourse Loans	124
§7.08 Substantial Economic Effect – §704(b)	125
§7.09 Alternative Economic Test	126
§7.10 Application of the General Allocation Rules	127
§7.11 Non-Recourse Deductions	128
§7.12 Application of the Minimum Gain Chargeback	128
§7.13 Partner Non-Recourse Loans	129
§7.14 <i>De Minimis</i> Rule.....	129
§7.15 Non-Recourse Debt – Basis Rules	130
§7.16 Recourse Deductions	130
§7.17 Deficit Restoration Obligation.....	130
APPENDIX A	131
Internal Revenue Code Sections.....	131
§45D 12/23/2004 New markets tax credit.....	133
§168 (e)(2) Accelerated cost recovery system.....	149
§267(b) Losses, expenses, and interest with respect to transactions between related taxpayers	155
§301(c) Distribution of property	163
§302(a) Distributions in redemption of stock.....	167
§351(g)(2) Transfer to corporation controlled by transferor	173
§408(m)(2) Individual retirement accounts.....	181
§707(b)(1) Transactions between partner and partnership	185

§1044(c)(3) Rollover of publicly traded securities gain into specialized small business investment companies	189
§1202 Partial exclusion for gain from certain small business stock	193
§1397C(d)(e) Enterprise zone business defined	205
§1400B Zero percent capital gains rate	211
§1400F Renewal community capital gain	217
§6621 Determination of rate of interest.....	223
APPENDIX B	229
Final Treasury Regulations	231
Amendments to New Markets Tax Credit Regulations (08-11-2008)	247
APPENDIX C	265
Congressional Reports	265
Committee Reports	267
Summary of Community Renewal Tax Relief Act of 2000.....	275
General Explanation	279
Fiscal Impact of the New Markets Tax Credit Program	285
GAO Report to Congressional Committees on the New Markets Tax Credit Program	289
APPENDIX D	377
Internal Revenue Service Guidance.....	377
IRS Notice 2002-64: NMTC Not Limited by Other Federal Tax Benefits, (09/20/2002).....	379
IRS Revenue Ruling 2003-20: Leverage Fund Ruling, (01/23/2003).....	383
IRS Notice 2003-64: Use of Intermediaries, (09/08/2003)	389
Notice 2006-60: Designation of Certain Targeted Populations (06/30/2006)	393
Notice 2006-67: GO Zone Bonus Depreciation (09/01/2006)	409
Notice 2007-4: Transition Relief for Certain Partnerships and Other Pass-Through Entities Under §470 (12/14/2006)	431
Notice 2007-18: Definition of Party and Allocation of Net Income or Proceeds for Purposes of Section 4965 (02/07/2007)	437
Rev. Proc. 2007-20: Exceptions to Reportable Transaction Disclosure Rules Under Section 1.6011-4(b)(4) (01/26/2007)	447
Notice 2007-36: GO Zone Bonus Depreciation Additional Guidance (04/23/2007)	453
Notice 2008-25: GO Zone Bonus Depreciation Capture (02/11/2008)	467
IRS Form 8874: New Markets Credit (January 2007).....	485
IRS Form 8874-A: Notice of Qualified Equity Investment for New Markets Credit (March 2007)	489
IRS Form 8874-B: Notice of Recapture Event for New Markets Credit (March 2007)	493
APPENDIX E	497
CDFI Fund.....	497
CDE Certification Application (07/2005).....	499
CDE Certification Q&A Document (07/2005)	521
APPENDIX F.....	533
Notice of Application Availability	533
Sixth Round NMTC Announcement (12/18/2007)	535
Notice of Allocation Availability (Fed. Reg. 12/28/2007).....	539
2008 NMTC Application	553
2008 NMTC Application Instructions	629
2008 NMTC Allocation Application Q&A Document.....	651
Debriefing Document	685
2007 Allocation Agreement.....	693
List of 2007 NMTC Allocatees	737
List of 2006 NMTC Allocatees	743
List of 2005 NMTC Allocatees	751

List of 2003-2004 NMTC Allocatees 757
List of 2001-2002 NMTC Allocatees 763
APPENDIX G..... 769
Community Reinvestment Act..... 769
New Markets Tax Credits: Unlocking Investment Potential 771
OCC Interpretive Letter #984: Treatment of NMTC Investments Under CRA, (12/17/2003) 797
 New Markets Tax Credit Program 799
 Community Reinvestment Act 800
 Discussion 801
OCC Interpretive Letter #996: National Bank is authorized to Acquire Non-Controlling Interest in an LLC
That Generates NMTCs, (07/06/2004) 803
APPENDIX H..... 811
Sample GAAP Schedules 813
APPENDIX I 825
New Markets Tax Credit Resources 825
APPENDIX J..... 831
Index 831

