

ACT NUMBER 2012-483

ALABAMA NEW MARKETS DEVELOPMENT ACT

SYNOPSIS: Under existing law, there is no state income tax credit in Alabama for investments in businesses in impoverished and low income communities.

This bill would allow state income and premium tax credits for certain qualified community businesses in low-income communities.

A BILL TO BE ENTITLED AN ACT

Relating to low-income communities; to establish state income, financial institution excise, and premium tax credits for investments in businesses in impoverished and low income communities.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall only apply to those areas within the State of Alabama which qualify as a "low income community" pursuant to Section 45D of the Internal Revenue Code.

Section 2. This act shall be known as the Alabama New Markets Development Act.

Section 3. As used in this act, the following terms shall have the following meanings:

(1) APPLICABLE PERCENTAGE. Zero percent for the first credit allowance date, 8.33 percent for the next six credit allowance dates, for the total of 50 percent.

(2) CREDIT ALLOWANCE DATE. With respect to any qualified equity investment, the date on which such investment is initially made and each of the six anniversary dates of that date thereafter.

(3) DEPARTMENT. The Alabama Department of Commerce (formerly Alabama

Development Office).

(4) LONG-TERM DEBT SECURITY. 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 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 beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under Section 45D, Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the expense of such 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 issuer has defaulted on covenants designed to ensure compliance with this act or Section 45D of the Internal Revenue Code of 1986, as amended.

(5) PURCHASE PRICE. The amount paid to the issuer of a qualified equity investment for that qualified equity investment.

(6) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS. The same meaning given that term in Section 45D(d)(2) of the Internal Revenue Code of 1986, as amended. 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 the qualified community development entity makes the investment or loan, that the business may continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan.

(7) QUALIFIED COMMUNITY DEVELOPMENT ENTITY. The same meaning given that term in Section 45D of the Internal Revenue Code of 1986, as amended; 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 U.S. Treasury Department with respect to credits authorized by Section 45D of the Internal Revenue Code of 1986, as amended, which includes the State of Alabama within the service area set forth in that allocation agreement. The term shall include affiliated entities and subordinate community development entities of any such qualified community development entity.

(8) QUALIFIED EQUITY INVESTMENT. Any equity investment in, or long-term debt security issued by, a qualified community development entity that does all of the following:

- a. Is acquired after the effective date of this act at its original

issuance solely in exchange for cash.

- b. Has at least 85 percent 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 State of Alabama by the first anniversary of the issuance of the qualified equity investment.
- c. Is designated by the issuer as a qualified equity investment under this act and is certified by the department as not exceeding the limitation contained in Section 6. This term includes any qualified equity investment that does not meet the provisions of paragraph a., if the investment was a qualified equity investment in the hands of a prior holder.

(9) QUALIFIED LOW-INCOME COMMUNITY INVESTMENT. Any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in that business, on a collective basis with all of its affiliates that may be counted towards the satisfaction of subdivision (8), shall be ten million dollars (\$10,000,000) whether issued by one or several qualified community development entities.

(10) TAX CREDIT. A credit against the state-distributed portion of the tax otherwise due under Section 27-4A-3, 27-3-29, 40-16-4, 40-18-5, or 40-18-31 of the Code of Alabama 1975. A taxpayer claiming a credit against state premium tax liability earned through a qualified equity investment is not required to pay any additional retaliatory tax levied by law as a result of claiming that credit.

(11) TAXPAYER. Any individual or entity subject to the tax imposed in Section 27-4A-3, 27-3-29, 40-16-4, 40-18-5, or 40-18-31 of the Code of Alabama 1975.

Section 4. The purchaser of the qualified equity investment, or subsequent holder of the qualified equity investment, earns a vested right to a tax credit and shall be entitled to utilize a portion of such tax credit during the taxable year including that credit allowance date equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the tax year for which the tax credit is claimed. The basis of any qualified equity

investment shall be reduced by the amount of any credit determined under this section with respect to such investment.

Section 5. Tax credits claimed under this act shall not be saleable or transferable. Tax credits earned by a partnership, limited liability company, S corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of that entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders. Any amount of tax credit that the taxpayer, or partner, member, or shareholder thereof, is prohibited from claiming in a taxable year may be carried forward to any of the taxpayer's subsequent taxable years.

Section 6. Once the department has certified a cumulative amount of qualified equity investments that can result in the utilization of twenty million dollars (\$20,000,000) of tax credits in any tax year, the department may not certify any more qualified equity investments under Section 7. This limitation shall be based on the scheduled utilization of tax credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

Section 7. (a) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this act shall apply to the department. The qualified community development entity shall submit an application on a form that the department provides that includes all of the following:

- (1) The name, address, tax identification number of the entity, and evidence of the entity's certification as a qualified community development entity.
- (2) A copy of any allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial

Institutions Fund.

- (3) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund.
- (4) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security.
- (5) The name and tax identification number of any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment.
- (6) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment.
- (7) A nonrefundable application fee of five thousand dollars (\$5,000). This fee shall be paid to the department and shall be required of each application submitted.

(b) The department shall review the application and shall independently verify that the above requirements in subsection (a) have been met.

(c) Within 60 days after receipt of a completed application containing the information necessary for the department to certify a potential qualified equity investment, including payment of the application fee, the department shall grant or deny the application in full or in part. If the department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the department and otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application shall remain denied and shall be resubmitted in full with a new submission date.

(d) If the application is deemed complete, the department shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this section, subject to the limitations contained in Section 6. The department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to Section 5, the qualified community development entity shall notify the department of the change.

(e) The department shall establish a date on which it shall first accept applications to certify qualified equity investments which shall be no later than September 1, 2012. The department shall certify applications 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.

(f) Once the department has certified qualified equity investments that, on a cumulative basis, equal the total allowable tax credits under Section 6, the department may not certify any more

qualified equity investments. If a pending request cannot be fully certified, 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.

(g) Within 90 days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment in the amount of the certified amount. The qualified community development entity shall provide the department with evidence of the receipt or issuance of the qualified equity investment, or both, within 30 business days after receipt or issuance, or both. If the qualified community development entity does not issue the qualified equity investment within 180 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 to the department and may be reissued only in accordance with the application process outlined in this section.

Section 8. (a) The Department of Revenue shall recapture, from the taxpayer that claimed or is entitled to claim the credit on a return, the tax credit allowed under this act if, at any time during the seven-year period beginning on the date of the original issue to the qualified equity investment in a qualified community development entity, one of the following occurs:

- (1) Where any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this act is recaptured under Section 45D of the Internal Revenue Code of 1986, as amended, the Department

of Revenue's recapture shall be proportionate to the federal recapture with respect to that qualified equity investment, and may then reallocate the recaptured credits to other qualified taxpayers in the year of recapture, without regard for the annual allocation limitation found in Section 6.

- (2) The Department of Revenue shall recapture any allocated tax credit where the issuer fails to invest at least 85 percent of the purchase price of the qualified equity investment in qualified low-income community investments in the State of Alabama within 12 months of the issuance of the qualified equity investment and fails to maintain such level of investment in qualified low-income community investments in Alabama until the last credit allowance date for the qualified equity investment. An investment shall be considered held by an issuer even if the investment has been sold or repaid; provided that the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment in this state within 12 months of the receipt of that capital. An issuer shall not be required to reinvest capital returned from 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 seventh anniversary of the qualified equity investment's issuance.
- (3) Subject to the reinvestment provisions to avoid recapture in subdivision (2), the issuer shall redeem or make principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment. The department's recapture shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment.

(b) The Department of Revenue shall provide notice in accordance with the procedures outlined in Section 40-2A-7 of the Code of Alabama 1975, to the qualified community development entity of any proposed preliminary assessment of recapture of tax credits pursuant to this act. The entity shall have 90 days to cure any deficiency indicated in the Department of Revenue's preliminary assessment and avoid recapture. If the entity fails or is unable to cure the deficiency within the 90-day period, the Department of

Revenue shall provide the entity and the taxpayer from whom the credit is to be recaptured with a final assessment of recapture in accordance with the procedures stated in Section 40-2A-7 of the Code of Alabama 1975. Any tax credit for which a final assessment has been issued may be recaptured by the Department of Revenue from the taxpayer who claimed the tax credit on a tax return in accordance with the Taxpayers' Bill of Rights and the Uniform Revenue Procedures contained in Chapter 2A of Title 40 of the Code of Alabama 1975.

Section 9. (a) On or before the 30th day prior to the third and sixth anniversaries of the issuance of each qualified equity investment, the issuer of such qualified equity investment shall submit a report on a form that the department provides that includes all of the following:

- (1) The name, address, and tax identification number of the issuer.
- (2) The name, address, and tax identification number of any qualified active low-income community businesses in which the qualified community development has made qualified low-income community investments.
- (3) A certificate executed by an executive officer of the issuer attesting to the number of qualified jobs and corresponding payroll created at the qualified active low-income community business, the average of the salaries of such jobs, and the date each job was created and, if applicable, terminated.
- (4) A certificate executed by an executive officer of the issuer attesting to all of the following:
 - a. The value of buildings and commercial real estate, as recorded in the balance sheet of the qualified active low-income community business.
 - b. State, county, and municipal sales, use, income, and property taxes paid, as recorded in the financial statement of the qualified active low-income community business.
- (5) Further information supporting the creation of such jobs as the department shall request.

(b) The department shall review the report and conduct other investigations as it deems necessary or appropriate to

determine if standards have been met on or prior to the third and sixth anniversary of the issuance of the qualified equity investment.

Section 10. (a) The department may conduct examinations to verify that the tax credits under this act have been received and applied according to the requirements of this act and to verify that no event has occurred that would result in a recapture of tax credits under Section 8.

(b) The department and the Department of Revenue shall prescribe such rules as may be appropriate to carry out their respective duties under this section and may issue advisory letters to individual qualified community development entities and their investors that are limited to the specific facts outlined in an advisory letter request from a qualified community development entity. The rulings cannot be relied upon by any person or entity other than the qualified community development entity that requested the letter and the taxpayers that are entitled to any tax credits generated from investments in the entity.

(c) In rendering advisory letters and making other determinations under this act, to the extent applicable, the department and the Department of Revenue shall look for guidance to Section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder.

(d) If the qualified equity investment in the qualified active low-income community business is used for the development of real estate in the taxable year in which a tax credit has been allocated to a taxpayer and the real estate is placed in service, the qualified community development entity shall deliver to the

department an appraisal prepared by an independent MAI designated and licensed real estate appraiser that includes a valuation and description of the improvements. The department shall provide a copy of the appraisal to the taxing authority responsible for the assessment of ad valorem taxes. Upon notification, the taxing authority responsible for the assessment of ad valorem taxes shall complete a new assessment for the real estate to be used in the assessment of ad valorem taxes for the tax year in which the real estate was placed in service.

Section 11. Notwithstanding the foregoing, no landfill or dump, regardless of nature, toxic substance, trash, waste, household, chemical, or otherwise, shall qualify for any tax credit permitted by this act.

Section 12. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.