

**EXECUTIVE BRANCH**  
**(20 ILCS 663/) New Markets Development Program Act.**

(20 ILCS 663/1)

Sec. 1. Short title. This Act may be cited as the New Markets Development Program Act.

(Source: P.A. 95-1024, eff. 12-31-08.)

(20 ILCS 663/5)

Sec. 5. Definitions. As used in this Act:

"Applicable percentage" means 0% for each of the first 2 credit allowance dates, 7% for the third credit allowance date, and 8% for the next 4 credit allowance dates.

"Credit allowance date" means with respect to any qualified equity investment:

(1) the date on which the investment is initially made; and

(2) each of the 6 anniversary dates of that date thereafter.

"Department" means the Department of Commerce and Economic Opportunity.

"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 7 years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. Cumulative cash payments of interest on the qualified debt instrument during the period commencing with the issuance of the qualified debt instrument and ending with the seventh anniversary of its issuance shall not exceed the sum of such cash interest payments and the cumulative net income of the issuing community development entity for the same period. This definition in no way limits 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.

"Purchase price" means the amount paid to the issuer of a qualified equity investment for that qualified equity investment.

"Qualified active low-income community business" has the meaning given to that term in Section 45D of the Internal Revenue Code of 1986, as amended; except that any business that derives or projects to derive 15% or more of its annual revenue from the rental or sale of real estate is not considered to be a qualified active low-income community business. This exception does not apply to a business that is controlled by or under common control with another business if the second business (i) does not derive or project to derive 15% or more of its annual revenue from the rental or sale of real estate and (ii) is the primary tenant of the real estate leased from the initial business. 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.

"Qualified community development entity" has the meaning given to that term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that such 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, that includes the State of Illinois within the service area set forth in that allocation agreement.

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

- (1) is acquired after the effective date of this Act at its original issuance solely in exchange for cash;
- (2) has at least 85% of its cash purchase price used by the issuer to make qualified low-income community investments in the State of Illinois; and
- (3) 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 20.

This term includes any qualified equity investment that does not meet the provisions of item (1) of this definition if the investment was a qualified equity investment in the hands of a prior holder.

"Qualified low-income community investment" means 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 paragraph (2) of the definition of qualified equity investment, shall be \$10,000,000 whether issued to one or several qualified community development entities.

"Tax credit" means a credit against any income, franchise, or insurance premium taxes otherwise due under Illinois law.

"Taxpayer" means any individual or entity subject to any income, franchise, or insurance premium tax under Illinois law.

(Source: P.A. 95-1024, eff. 12-31-08.)

(20 ILCS 663/10)

Sec. 10. Credit established. A person or entity that makes a qualified equity investment earns a vested right to tax credits as follows:

- (1) on each credit allowance date of the qualified equity investment, the purchaser of the qualified equity investment, or subsequent holder of the qualified equity investment, is entitled to a tax credit during the taxable

year including that credit allowance date;

(2) the tax credit amount shall be equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment; and

(3) the amount of the tax credit claimed shall not exceed the amount of the State tax liability of the holder, or the person or entity to whom the credit is allocated for use pursuant to Section 15, for the tax year for which the tax credit is claimed.

A company doing insurance business in this State claiming a tax credit against insurance premium taxes payable pursuant to Section 409 of the Illinois Insurance Code is not required to pay any additional retaliatory tax imposed pursuant to Section 444 or 444.1 of the Illinois Insurance Code related to that claim for a tax credit.

(Source: P.A. 95-1024, eff. 12-31-08.)

(20 ILCS 663/15)

Sec. 15. Transferability. No tax credit claimed under this Act shall be refundable or saleable on the open market. 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 5 subsequent taxable years.

(Source: P.A. 95-1024, eff. 12-31-08.)

(20 ILCS 663/20)

Sec. 20. Annual cap on credits. The Department shall limit the monetary amount of qualified equity investments permitted under this Act to a level necessary to limit tax credit use at no more than \$20,000,000 of tax credits in any fiscal year. This limitation on qualified equity investments shall be based on the anticipated use of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

(Source: P.A. 95-1024, eff. 12-31-08; 96-939, eff. 7-1-10.)

(20 ILCS 663/25)

Sec. 25. Certification of qualified equity investments.

(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 Section shall apply to the Department. The qualified community development entity must submit an application on a form that the Department provides that includes:

(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 the 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 \$5,000. This fee shall be paid to the Department and shall be required of each application submitted.

(b) Within 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 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 or 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 remains denied and must be resubmitted in full with a new submission date.

(c) 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 20. 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 15, the qualified community development entity shall notify the Department of such change.

(d) 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.

(e) Once the Department has certified qualified equity investments that, on a cumulative basis, are eligible for \$20,000,000 in tax credits, 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.

(f) Within 30 days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity must provide the Department with evidence of the receipt of the cash investment within 10 business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within 30 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 reverts back to the Department and may be reissued only in accordance with the application process outline in this Section 25.

(Source: P.A. 95-1024, eff. 12-31-08; 96-939, eff. 7-1-10.)

(20 ILCS 663/40)

Sec. 40. Recapture. The Department of Revenue shall recapture, from the taxpayer that claimed the credit on a return, the tax credit allowed under this Act if:

(1) 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. In that case, the Department of Revenue's recapture shall be proportionate to the federal recapture with respect to that qualified equity investment;

(2) the issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the 7th anniversary of the issuance of the qualified equity investment. In that case, the Department of Revenue's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or

(3) the issuer fails to invest at least 85% of the cash purchase price of the qualified equity investment in qualified low-income community investments in the State of Illinois within 12 months of the issuance of the qualified equity investment and maintain such level of investment in qualified low-income community investments in Illinois until the last credit allowance date for such qualified

equity investment.

For purposes of this Section, 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 after the receipt of that capital. An issuer is not required to reinvest capital returned from qualified low-income community investments after the 6th 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 7th anniversary of the qualified equity investment's issuance.

The Department of Revenue shall provide notice to the qualified community development entity of any proposed recapture of tax credits pursuant to this Section. The entity shall have 90 days to cure any deficiency indicated in the Department of Revenue's original recapture notice and avoid such recapture. If the entity fails or is unable to cure such deficiency with 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 order of recapture. Any tax credit for which a final recapture order has been issued shall be recaptured by the Department of Revenue from the taxpayer who claimed the tax credit on a tax return.

(Source: P.A. 95-1024, eff. 12-31-08.)

(20 ILCS 663/45)

Sec. 45. Examination and Rulemaking.

(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 40.

(b) Neither the Department nor the Department of Revenue shall have the authority to promulgate rules under the Act, but the Department and the Department of Revenue shall have the authority to 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. Such 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 such entity. For purposes of this subsection, "rules" is given the meaning contained in Section 1-70 of the Illinois Administrative Procedure Act.

(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.  
(Source: P.A. 95-1024, eff. 12-31-08.)

(20 ILCS 663/50)

Sec. 50. Sunset. For fiscal years following fiscal year 2017, qualified equity investments shall not be made under this Act unless reauthorization is made pursuant to this Section. For all fiscal years following fiscal year 2017, unless the General Assembly adopts a joint resolution granting authority to the Department to approve qualified equity investments for the Illinois new markets development program and clearly describing the amount of tax credits available for the next fiscal year, or otherwise complies with the provisions of this Section, no qualified equity investments may be permitted to be made under this Act. The amount of available tax credits contained in such a resolution shall not exceed the limitation provided under Section 20. Nothing in this Section precludes a taxpayer who makes a qualified equity investment prior to the expiration of authority to make qualified equity investments from claiming tax credits relating to that qualified equity investment for each applicable credit allowance date.

(Source: P.A. 97-636, eff. 6-1-12.)

(20 ILCS 663/75)

Sec. 75. (Amendatory provisions; text omitted).

(Source: P.A. 95-1024, eff. 12-31-08; text omitted.)

(20 ILCS 663/99)

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 95-1024, eff. 12-31-08.)