

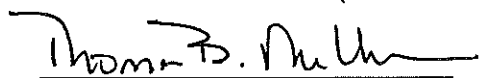
STATEMENT OF EMERGENCY
103 KAR 15:180E

This emergency administrative regulation is being promulgated in order to provide qualified community development entities the forms and procedures necessary when applying for and administering the New Markets Development Program tax credits. KRS 141.432 to KRS 141.434 were amended by HB 445 of the 2014 Regular Session, effective for taxable years beginning on or after January 1, 2014, and the tax credit that may be awarded each year was increased from \$5 million to \$10 million, effective July 15, 2014. An ordinary administrative regulation is not sufficient, because qualified community development entities will be applying for the \$5 million increase in New Markets Development Program tax credits on July 15, 2014. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

06/03/14
Date

06/03/14
Date


Steven L. Beshear, Governor


Thomas B. Miller, Commissioner
Department of Revenue
Finance and Administration Cabinet

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 Office of Income Taxation

4 (Emergency Amendment)

5 103 KAR 15:180E. Kentucky new markets development program tax credit.

6 RELATES TO: KRS 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020,
7 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

8 STATUTORY AUTHORITY: KRS 141.433(7)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a
10 nonrefundable tax credit for a person or entity making a qualified equity investment in a
11 qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7)
12 requires the department to promulgate administrative regulations to implement the provisions of
13 KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified
14 equity investments. This administrative regulation establishes guidelines and the filing
15 requirements of a qualified community development entity (CDE) in order for the department to
16 certify qualified equity investments and to allocate tax credits to a person or entity making a
17 qualified equity investment in a qualified community development entity.

18 Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the
19 department to have an equity investment or long-term debt security certified as a qualified equity
20 investment eligible for the tax credit authorized by KRS 141.434.

1 (2) "Application" means Form 8874(K), Application for Certification of Qualified Equity
2 Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue
3 Form 41A720-S80), that is filed by a CDE with the department for certification as a qualified
4 equity investment.

5 (3) "Applications fee" means a \$1,000 [~~dollars~~] nonrefundable cashier's check that shall
6 be attached to the application at the time of filing with the department.

7 (4) "CDE" means a qualified community development entity as defined by KRS
8 141.432(6).

9 (5) "CDFI Fund" means the U.S. Department of Treasury, Community Development
10 Financial Institutions Fund.

11 (6) "Certified purchase price" means the purchase price of a qualified equity investment
12 contained in the application approved by the department.

13 (7) "Department" means the Kentucky Department of Revenue.

14 (8) "Department's approval" means certified by the department as provided by KRS
15 141.433(3).

16 (9) "Identification number" means the:

17 (a) Social Security Number for an individual;

18 (b) Federal Employer Identification Number for a general partnership, estate, or trust; or

19 (c) Kentucky Corporation/LLET Account Number for a corporation or limited liability
20 pass-through entity.

21 (10) "Long-term debt security" is defined by KRS 141.432(3).

22 (11) "Performance fee" is defined by KRS 141.433(8).

23 (12) "Qualified active low-income community business" is defined by KRS 141.432(5).

1 (13) ~~[(12)]~~ "Qualified community development entity" is defined by KRS 141.432(6).

2 (14) ~~[(13)]~~ "Qualified equity investment" is defined by KRS 141.432(7).

3 (15) ~~[(14)]~~ "Qualified low-income community investment" is defined by KRS
4 141.432(8).

5 (16) ~~[(15)]~~ "Tax credit" is defined by KRS 141.432(9).

6 (17) ~~[(16)]~~ "Taxpayer" is defined by KRS 141.432(10).

7 Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that
8 seeks to have an equity investment or long-term debt security certified by the department as a
9 qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an
10 application with the department.

11 (2) The department shall notify the CDE within thirty (30) days after receipt of the
12 application whether the application is approved or denied.

13 (a) If the department intends to deny the application, the CDE shall be notified in writing
14 by the department of the reason for the denial, and the CDE may correct the application as
15 provided by KRS 141.433(2).

16 (b) If the department determines that the application is in compliance with KRS 141.432
17 to 141.434, a copy of the application shall be returned to the CDE with written notice of the
18 department's approval.

19 (c) 1. The department shall:

20 a. Accept an application on or after July 15, 2014 ~~[(March 1, 2011)]~~, if the application is
21 received via hand-delivery, mail, express mail, or courier; and

22 b. ~~[(b)]~~ Not accept an application received via facsimile, CD-Rom, CD, or electronic
23 means.

1 2. The date that the application is stamped received by the Office of Income Taxation,
2 Division of Corporate Tax, Tax Credits Section, shall be the date that the application is recorded
3 as received pursuant to the provisions of KRS 141.133.

4 3. An application received prior to July 15, 2014 [~~March 1, 2011~~], shall be recorded as
5 received on July 15, 2014 [~~March 1, 2011~~].

6 Section 3. Information Required on or Attached to the Application. The following
7 information shall be required on or attached to the application:

8 (1) The CDE's name, mailing address, identification number, telephone number, and fax
9 number;

10 (2) The name and identification number of the parent company, if the CDE is included in
11 a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

12 (3) The type of entity of the CDE for Kentucky income tax purposes included in the
13 application;

14 (4) The signature of the person completing the application and the date signed;

15 (5) The total number of taxpayers making qualified equity investments;

16 (6) The total amount of qualified equity investments for all taxpayers;

17 (7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C.
18 45D(c);

19 (8) A statement that the entity has received a new markets tax credit allocation from the
20 CDFI Fund which includes the Commonwealth of Kentucky within the service area as set forth
21 in the allocation, and the date of the allocation agreement. A copy of the new markets tax credit
22 allocation agreement shall be attached to the application;

23 (9) Proof of current certification with the CDFI Fund that includes the original

1 application to CDFI and all subsequent updates;

2 (10) A statement of whether the entity's service area is a county, state, multi-state, or
3 national. A map of the service area, articles of organization that describe the service area, bylaws
4 that describe the service area, or other documentation that describes the service area shall be
5 attached to the application;

6 (11) Information regarding the proposed use of the proceeds from the qualified equity
7 investments, including a description of the qualified active low-income community business as
8 provided by KRS 141.432(5);

9 (12) The name, identification number, type of investment (whether debt or equity), and
10 purchase price of the qualified equity investment for each taxpayer making a qualified equity
11 investment;

12 (13) A signed certification indicating that the application has been executed by the
13 executive officer of the CDE, declaring under the penalty of perjury:

14 (a) That the applicant's allocation agreement remains in effect and has not been revoked
15 or canceled by the CDFI Fund; and

16 (b) That the application, including all accompanying documents and statements, is true,
17 correct and complete; ~~and~~

18 (14) The application fee; and [-]

19 (15) The refundable performance fee.

20 Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the
21 approved application is received by the CDE, the CDE shall issue qualified equity investments in
22 exchange for cash in the amount of the certified purchase prices contained in the application.

23 (2) The CDE shall provide the department with evidence of the receipt of the cash for

1 each qualified equity investment by filing with the department Form 8874(K)-A, Notice of
2 Kentucky New Markets Development Program Tax Credit and Certification (Revenue Form
3 41A720-S81).

4 (3) If the department is satisfied that the cash amount of the qualified equity investment
5 was received by the CDE, a copy of Form 8874(K)-A shall be returned to the CDE and taxpayer
6 with the department's written approval, including a statement of the tax credits available to the
7 taxpayer for each of the next seven (7) years.

8 (4) If the department is not satisfied that the cash amount of the qualified equity
9 investment was received by the CDE, the department shall notify the CDE in writing of the
10 reason. If the CDE does not agree with the department's written determination, the CDE may file
11 a protest as provided by KRS 131.110.

12 Section 5. Information Required on or Attached to the Form 8874(K)-A. The following
13 information shall be required on or attached to the Form 8874(K)-A:

14 (1) The CDE's name and identification number;

15 (2) For the taxpayer making the qualified equity investment:

16 (a) The taxpayer's name and address; and

17 (b) The identification number of the taxpayer;

18 (3) The certified purchase price of the qualified equity investment;

19 (4) The date the CDE received cash for the qualified equity investment;

20 (5) The type of taxpayer making the qualified equity investment; and

21 (6) Certification by the executive director of the CDE, declaring under the penalty of
22 perjury that the form, including all accompanying documents and statements, is true, correct and
23 complete.

1 Section 6. New Markets Development Program Tax Credit Recapture. (1) If there is an
2 event as provided by KRS 141.433(6) which would result in the recapture of any portion of the
3 tax credit previously approved:

4 (a) The CDE shall notify the department upon discovery of the event; or

5 (b) The department, upon discovery of the event or after receiving notice from the CDE
6 of the event, shall provide written notice of the proposed recapture to the CDE as provided by
7 KRS 141.433(6)(b).

8 (2) If the entity fails or is unable to cure the deficiency within ninety (90) days after
9 receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the
10 department shall notify the CDE and each taxpayer of the amount of recapture or the balance of
11 the tax credit on Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax
12 Credit Recapture (Revenue Form 41A720-S82).

13 (3) If the taxpayer is a pass-through entity, a Form 8874(K)-B shall also be sent to each
14 partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

15 Section 7. Information Required on the Form 8874(K)-B. The following information
16 shall be required on the Form 8874(K)-B:

17 (1) The CDE's name and identification number;

18 (2) For the taxpayer making the qualified equity investment:

19 (a) The taxpayer's name and address; and

20 (b) The identification number of the taxpayer;

21 (3) The certified purchase price of the qualified equity investment;

22 (4) The date the CDE received cash for the qualified equity investment;

23 (5) The type of taxpayer making the qualified equity investment;

1 (6) The date the tax credit with respect to a qualified equity investment was subject to
2 recapture;

3 (7) An explanation of the recapture;

4 (8) The recapture amount of tax credit or balance of tax credit; and

5 (9) The signature of the authorized department employee and the date.

6 Section 8. Filing Requirements. (1) Form 8874(K)-A.

7 (a) A taxpayer claiming the tax credit shall attach each taxable ~~{tax}~~ year a copy of Form
8 8874(K)-A to the tax return on which the credit is claimed.

9 (b) A partner, member, or shareholder of a taxpayer claiming the tax credit shall attach
10 each taxable ~~{tax}~~ year a copy of the appropriate form listed in this paragraph and incorporated
11 by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which
12 the credit is claimed:

13 1. Schedule K-1, Form 720S ~~{7205}~~ (Revenue Form 41A720S(K-1));

14 2. Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or

15 3. Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1) ~~{41A765-GP(K-1)}~~).

16 (2) Form 8874(K)-B.

17 (a) A taxpayer or a partner, member, or shareholder of a taxpayer having a tax credit
18 recapture shall:

19 1. Attach a copy of Form 8874(K)-B to the tax return for the taxable ~~{tax}~~ year that
20 includes the tax credit recapture date; and

21 2. Enter the recapture on the applicable line of the tax return.

22 (b) A taxpayer or a partner, member, or shareholder of a taxpayer claiming a tax credit
23 shall attach each taxable ~~{tax}~~ year a copy of Form 8874(K)-B to the tax return on which the

1 credit is claimed.

2 Section 9. Incorporation by Reference. (1) The following material is incorporated by
3 reference:

4 (a) Revenue Form 41A720-S80, Application for Certification of Qualified Equity
5 Investments Eligible for Kentucky New Markets Development Program Tax Credit, May 2014
6 ~~{June, 2010}~~;

7 (b) Revenue Form 41A720-S81, Notice of Kentucky New Markets Development
8 Program Tax Credit and Certification, May 2014 ~~{June 2010}~~; and

9 (c) Revenue Form 41A720-S82, Notice of Kentucky New Markets Development
10 Program Tax Credit Recapture, May 2014; ~~{June-2010.}~~

11 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
12 law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, or at
13 any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m.
14 to 4:30 p.m. (37 Ky.R. 1107; Am. 1490; 1625; eff. 2-4-2011.)

Approved:

Thomas B. Miller

Thomas B. Miller, Commissioner
Department of Revenue
Finance and Administration Cabinet

06/03/14

Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 15:180E.

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes guidelines and the filing requirements of a qualified community development entity for taxable years beginning on or after January 1, 2014, when the qualified community development entity is applying for and administering Kentucky New Markets Development Program tax credits.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary in order to incorporate the amended provisions of KRS 141.432 to KRS 141.434 as provided by HB 445 of the 2014 Regular Session which are effective for tax years beginning on or after January 1, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.433(7) provides that the department shall promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation prescribes for taxable years beginning on or after January 1, 2014, forms to be used and procedures to be followed by a qualified community development entity in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment contains updated forms and procedures effective January 1, 2014, to conform with KRS 141.432 to KRS 141.434 that were amended by HB 445 of the 2014 Regular Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation to conform to KRS 141.432 to KRS 141.434 that were amended by HB 445 of the 2014 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 141.433(7) authorizes the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434.

(d) How the amendment will assist in the effective administration of the statutes: For taxable years beginning on or after January 1, 2014, this amendment will provide qualified community development entities forms and procedures to be used in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All qualified community development entities applying for New Markets Development Program tax credits will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For taxable years beginning on or after January 1, 2014, qualified community development entities will use the forms and procedures contained in this administrative regulation when applying for and administering the New Markets Development Program tax credits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not increase the cost of qualified community development entities to administer the New Markets Development Program as provided by KRS 141.432 to KRS 141.434.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The guidance and clarification contained in this amended administrative regulation should reduce the cost of qualified community development entities to administer the New Markets Development Program as provided by KRS 141.432 to KRS 141.434.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the department.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding will be required to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied as this administrative regulation applies to all qualified community development entities applying for New Markets Development Program tax credits as provided by KRS 141.432 to KRS 141.434.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 15:180E.

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 141.433(7).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be collected as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

(d) How much will it cost to administer this program for subsequent years? No costs for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

2014
103 KAR 15:180E
SUMMARY OF FORMS
Incorporated by Reference

1. Revenue Form 41A720-S80, "Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit", effective May 2014, is a three page form used by a qualified community development entity to obtain certification of a qualified equity investment under the provisions of KRS 141.432 to KRS 141.434.

2. Revenue Form 41A720-S81, "Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification", effective May 2014, is a two page form used by a qualified community development entity as evidence of the receipt of cash from a taxpayer in exchange for the taxpayer's qualified equity investment.

3. Revenue Form 41A720-S82, "Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture", effective May 2014, is a two page form used by the department to notify a qualified community development entity and taxpayer of a recapture of a Kentucky New Markets Development Program tax credit.