



MATTHEW G. BEVIN
Governor

**FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
OFFICE OF TAX POLICY AND REGULATION**
501 HIGH STREET
MAIL STATION 1
FRANKFORT, KENTUCKY 40601
Phone (502) 564-3226
Fax (502) 564-3875

WILLIAM M. LANDRUM III
Secretary

DANIEL P. BORK
Commissioner

KY-PLR-19-10

November 5, 2019

LEGEND

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Census Tract =

Federal QEI =

Invest Fund 1 =

Invest Fund 2 =

Investee =

Project =

State QEI 1 =

State QEI 2 =

State QEI 3 =

State Loan 1 =

State Loan 2 =

State Loan 3 =

Sub-CDE 1 =

Sub-CDE 2 =

Sub-CDE 3 =

Dear :

This letter is in response to your request for a private letter ruling dated October 16, 2019, (the "Request Letter") regarding a proposed stacked leverage structure Kentucky New Markets Tax Credit ("NMTC") transaction. A copy of the Request Letter is attached as Exhibit A to this Letter.

FACTS

The substantial facts and details of your proposed stacked leverage structure NMTC transaction are contained in your Request Letter and are not repeated here. The facts assume that Form 8874(K)-A will be timely filed with the Kentucky Department of Revenue ("KDOR") to verify the receipt of the applicable cash purchase price for the qualified equity investments.

LAW

Kentucky Revised Statutes KRS 141.432, 141.433, and 141.434 (collectively the "KY NMTC Act") establish the parameters of the New Markets Development Program Tax Credit in Kentucky. Kentucky Administrative Regulation 103 KAR 15:180 contains information about the administration of the credit.

Section 45D of the Internal Revenue Code of 1986, as amended, (the "Federal NMTC Act") establishes the parameters of the new markets tax credit at the federal level.

CONCLUSION

KDOR reviewed the Request Letter, and makes the following conclusions exclusively for the proposed NMTC transaction based on the facts represented in your Request Letter:

1. Sub-CDE 1, Sub-CDE 2, and Sub-CDE 3 are each qualified community development entities as defined under KRS Section 141.432(6).
2. Invest Fund 1's capital contribution of Amount 1 to Sub-CDE 1 is the Purchase Price as defined by KRS Section 141.432(4) for a qualified equity investment as defined under KRS Section 141.432(7).
3. Invest Fund 1's capital contribution of Amount 1 to Sub-CDE 2 is the Purchase Price as defined by KRS Section 141.432(4) for a qualified equity investment as defined under KRS Section 141.432(7).
4. Amount 1 of Invest Fund 2's Amount 2 capital contribution to Sub-CDE 3 is the Purchase Price as defined by KRS Section 141.432(4) for a qualified equity investment as defined under KRS Section 141.432(7).

5. By making State Loan 1 in the manner set forth in the Request Letter, Sub-CDE 1 will be treated as making a qualified low-income community investment as defined in KRS Section 141.432(8) provided that (i) Sub-CDE 1 makes a loan to Invest Fund 2 in the aggregate amount of Amount 1, (ii) Invest Fund 2 makes the Federal QEI/State QEI 3 in Sub-CDE 3, and (iii) Sub-CDE 3 makes the loans described in the Request Letter to Investee. Furthermore, assuming the Closing Date occurs within 12 months of the issuance of State QEI 1, 100% of the proceeds of the State QEI 1 are directly traceable to Investee, and the State QEI 1 investment is maintained throughout the Kentucky 7-Year Compliance Period, then 100% of the proceeds of State QEI 1 will be treated as used by Sub-CDE 1 to make State Loan 1 in the form of a loan in the aggregate amount of Amount 1 to Investee.
6. By making State Loan 2 in the manner set forth in the Request Letter, Sub-CDE 2 will be treated as making a qualified low-income community investment as defined in KRS Section 141.432(8) provided that (i) Sub-CDE 2 makes a loan to Invest Fund 2 in the aggregate amount of Amount 1, (ii) Invest Fund 2 makes the Federal QEI/State QEI 3 in Sub-CDE 3, and (iii) Sub-CDE 3 makes the loans described in the Request Letter to Investee. Furthermore, assuming the Closing Date occurs within 12 months of the issuance of State QEI 2, 100% of the proceeds of the State QEI 2 are directly traceable to Investee, and the State QEI 2 investment is maintained throughout the Kentucky 7-Year Compliance Period, then 100% of the proceeds of State QEI 2 will be treated as used by Sub-CDE 2 to make State Loan 2 in the form of a loan in the aggregate amount of Amount 1 to Investee.
7. By making State Loan 3 in the manner set forth in the Request Letter, Sub-CDE 3 will be treated as making a qualified low-income community investment as defined in KRS Section 141.432(8) provided that Sub-CDE 3 makes the loans described in the Request Letter to Investee. Furthermore, assuming the Closing Date occurs within 12 months of the issuance of State QEI 3, 100% of the proceeds of the State QEI 3 are directly traceable to Investee, and the State QEI 3 investment is maintained throughout the Kentucky 7-Year Compliance Period, then 100% of the proceeds of State QEI 3 will be treated as used by Sub-CDE 3 to make State Loan 3 in the form of a loan in the aggregate amount of Amount 1 to Investee.
8. The Census Tract will be treated as being in a low-income community for the purposes of the KY NMTC Act for the entire Kentucky 7-Year Compliance Period if at the time the State Loans are closed and funded, the Census Tract is identified under the CDFI Fund's Information and Mapping System ("CIMS") as being in a low-income community for purposes of the Federal NMTC Act.
9. The loan proceeds of each of the State Loans will not constitute "nonqualified financial property" of Investee so long as the proceeds are expended within 12 months on the Project and related costs.

10. Investee will be treated as a qualified active low-income community business ("QALICB") within the definition of KRS Section 141.432(5) for the duration of the Sub-CDEs investment in or loan to the QALICB based on the representations from Sub-CDEs that they reasonably expect the QALICB to continue to satisfy the eligibility requirements to be a QALICB throughout the entire period of the investment or loan, including the control or common control requirements and the primary tenant with less than 15% of annual revenues from the rental or sale of real estate requirement.
11. Invest Fund 1 will be entitled to receive Kentucky NMTCs in the aggregate amount of Amount 3 that it may allocate to its member(s) in accordance with Invest Fund 1's operating agreement.
12. Invest Fund 2 will be entitled to receive Kentucky NMTCs in the aggregate amount of Amount 4 that it may allocate to its member(s) in accordance with Invest Fund 2's operating agreement.
13. The fact that the cash proceeds of both State Loan 1 and State Loan 2 made by Sub-CDE 1 and Sub-CDE 2 into Invest Fund 2 fund Amount 5 of the Federal QEI made by Invest Fund 2 into Sub-CDE 3 and the fact that the cash proceeds of State QEI 3 are part of the federal qualified low-income community investment from Sub-CDE 3 to Investee, is consistent with the purpose of the Kentucky NMTC Act and does not affect the conclusion above.

This guidance is limited to the specific transaction in the Request Letter, and is based solely upon the information presented in the Request Letter. Additional facts or changes in the new markets tax credit law could change some or all of our answers. Guidance does not constitute a final ruling, order, or determination of KDOR. Therefore, KDOR's guidance cannot be appealed to the Kentucky Claims Commission, Tax Appeals. In addition, a taxpayer may not file a protest based on issuance of KDOR guidance. If a taxpayer disagrees with KDOR guidance, the taxpayer may file a return contrary to KDOR guidance and may seek a refund for any overpayment or may protest an assessment issued by KDOR because of the filing per KRS 131.110.

If you have any questions, please do not hesitate to contact me. Thank you for the opportunity to be of assistance to you.

With kind regards,

 Expired certificate

X 

J. Todd Renner, CPA, CGMA
Executive Director
Signed by: todd.renner@ky.gov