

NOTICE OF INTENT

Department of Revenue Policy Services Division

New Markets Tax Credit (LAC 61:I.1911)

Under the authority of R.S. 47:6016, R.S. 47:287.785, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61.I.1911.

The purpose of this notice is to provide guidance and to detail the process of applying for, claiming and transferring the Louisiana new markets tax credit.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

§1911. Louisiana New Markets Tax Credit

A. Application Process for New Markets Tax Credits

1. A taxpayer may apply for Louisiana new markets tax credits by submitting a new markets tax credit application to the Special Programs Division of the Louisiana Department of Revenue. The form R-10609 is available online on the department's website. Applications for new markets tax credits will be processed in the order received.

2. If a taxpayer is entitled to the credit, a new market tax credit summary sheet will be issued to the taxpayer. The summary sheet will contain a tracking number.

3. The new market tax credit summary sheet will also contain a transfer section that must be updated each time the taxpayer transfers their credit. The taxpayer must send an updated new market tax credit summary sheet to notify the department of revenue of the sale within 30 days of the sale.

4. The taxpayer must attach the new market tax credit summary sheet to their income or franchise tax return to claim the credit.

B. Applying the New Markets Tax Credit

1. New markets tax credits earned by a taxpayer or received by a taxpayer by flow-through from a partnership or LLC may be applied as detailed in Revenue Ruling 08-011-A and as explained below.

a. Credits may be applied to the tax year in which the credit allowance date occurred.

b. Credits may not be applied to penalties and interest.

c. Prior year returns that include the credit allowance date may be amended to apply credits earned that year.

d. Credits may be applied against taxes paid in a prior year and the taxes paid may be refunded. However, the new markets tax credit is nonrefundable and credits in excess of the tax paid in a prior year can only be carried forward in accordance with R.S. 47:6016(D).

e. Credits from qualified equity investments made on or after April 1, 2008, cannot be claimed on any return or prior year return that was due before December 31, 2008.

d. Credits from qualified equity investments made on or after December 1, 2009 cannot be claimed on any

return or prior year return that was due before December 31, 2010.

2. New markets tax credits transferred by sale to a taxpayer may be applied as detailed in Revenue Ruling 08-011-A and as explained below.

a. Credits may be applied to a prior year's outstanding tax liability, including penalties and interest, as provided by R.S. 47:1675(H)(1)(c).

b. A taxpayer that purchases the credits may not amend their prior year returns to claim credits where no liability is currently outstanding and therefore trigger a refund.

c. Credits purchased from qualified equity investments made on or after April 1, 2008, cannot be claimed on any return or prior year return that was due before December 31, 2008.

d. Credits purchased from qualified equity investment made on or after December 1, 2009, cannot be claimed on any return or prior year return that was due before December 31, 2010.

C. Limitations on the New Markets Tax Credit

1. New markets tax credits earned from qualified equity investments issued prior to July 1, 2007, are subject to an annual \$5,000,000 cap applicable to all new markets tax credits issued for that year by the department. Once the cap is reached, no other credits will be granted for that year.

2. New markets tax credits from qualified equity investments issued after July 1, 2007, but before April 1, 2008, are subject to a \$50,000,000 cap on the entire new markets credit program.

3. New markets tax credits from qualified equity investments issued after April 1, 2008, shall be allowed as follows:

a. during the period beginning April 1, 2008, and ending December 31, 2008, \$25,000,000;

b. during the period beginning January 1, 2009, and ending November 30, 2009, \$12,500,000 plus any unissued credits from the prior period;

c. during the period beginning December 1, 2009 and ending December 31, 2010, \$12,500,000 plus any unissued credits from the prior periods; and

d. during periods beginning January 1, 2011 and after, credits shall be limited to only unused credits from prior years.

D. Additional Requirements and Limitations for Credits

1. To be issued credits on qualified low-income investments that exceed seven million five hundred thousand dollars, the Department of Economic Development must certify that the qualified low-income investment was made to a business in a targeted industry. Request for new markets tax credits from qualified low-income investments exceeding seven million five hundred thousand dollars will be accepted by the department without certification from the Department of Economic Development if the taxpayer asserts in their application that certification has been requested. However, the new markets tax credit certification will not be issued to the taxpayer until the department receives the certification from the Department of Economic Development or the certification is not denied by the Department of Economic Development with 60 days of the request, whichever occurs first.

E. New Markets Tax Credits Transfer Process

1. Any new markets tax credits not previously claimed by a taxpayer against their income or franchise tax may be transferred or sold.

2. The original investor that is transferring credits must send an updated new market tax credit summary sheet within 30 days of the sale. The original investor should also include a new markets transfer form R-10613 with closing documents to the transferee. The new markets transfer form is available from the department's website.

3. The transferee must submit the new markets transfer form with their income or franchise tax return to claim the credits.

4. Any transferor, other than the original investor, should use a new markets transfer form to transfer credits to another Louisiana taxpayer and send a copy of the form to the department within 30 days of the sale.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:6016, R.S.47:287.785, and R.S.47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 37:

Family Impact Statement

The proposed adoption of LAC 61:III.1527 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D).

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Revenue has conducted a regulatory flexibility analysis and found that the proposed adoption of this Rule will have negligible impact on small businesses.

Public Comments

Interested persons may submit written data, views, arguments, or comments regarding this proposed rule to Shone Pierre, Assistant Secretary Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be received no later than 5 p.m., Wednesday, January 26, 2011.

Public Hearing

A public hearing will be held on Thursday, January 27, 2010, at 1 p.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: New Markets Tax Credit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed adoption of LAC 61:I.1911 is intended to provide guidance and to detail the process of applying for, claiming and transferring the Louisiana New Markets Tax Credit. Act 4 of the 2008 2nd Extraordinary Session amended R.S. 47:6016 to add an additional \$50 million in aggregate tax credit over the life of the New Markets Tax Credit program, but restricted the amounts to the following each calendar year: \$25 million through 2008, \$12.5 million during 2009, and \$12.5 million during 2010. Current law provides that credits issued can only be taken against tax liabilities in the following percentages over three years: 10% 1st year, 10% 2nd year, and 5% the 3rd year. The proposed adoption of LAC 61:I.1911 will result in no implementation costs to state or local governmental units as any administrative expenses are already included in the Departmental budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The New Market Tax Credit program is not currently issuing new credits but state revenue is still being impacted by the payout from credits already issued. This proposed rule is being published to clarify the process for future appropriations and satisfy the statutory requirements of Act 4 of the 2008 2nd Extraordinary Session. Based on the fiscal note prepared for Act 4, state general fund revenues were expected to decline as a result of tax credits approximately by the following amounts: Fiscal Year 2010-11 (\$15 million), Fiscal Year 2011-12 (\$7.5 million), and Fiscal Year 2012-13 (\$2.5 million). The fiscal note assumed that all credits were claimed and represented the maximum exposure to the state by allowing the program cap to be reached each year. Actual claims have validated these estimates, and the payout schedule is proceeding as expected, barring any unforeseen recaptures. There have been no additional funds appropriated to this program since Act 4 of the 2008 2nd Extraordinary Session.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The New Markets Tax Credit program is intended to stimulate investment into urban and rural low-income areas to assist in financing community development projects, stimulate economic growth and create jobs. Companies choosing to operate in these areas in accordance with NMTC program requirements will receive a subsidy in the form of a tax credit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule may increase employment in the approved areas and will provide a competitive advantage to those obtaining the credits.

Cynthia Bridges
Secretary
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Robert E. Hosse
Staff Director
Legislative Fiscal Office

