



Historical Note: This revenue ruling has been revised and superseded. The current version of the revenue ruling has a publication date of October 8, 2009. Private letter rulings that were issued prior to October 8, 2009 may continue to rely on this version of this ruling. All private letter rulings issued after October 8, 2009 must rely on the current version.

**Revenue Ruling
No. 08-011
October 21, 2008**

**Corporation Income Tax, Corporation Franchise Tax, Individual Income Tax
Frequently Asked Questions Regarding Louisiana New Markets Tax Credits**

The purpose of this ruling is to address common issues regarding Louisiana New Markets Tax Credits. The issues and responses detailed below represent the department's position and should serve as guidance to taxpayers applying for and claiming Louisiana New Markets Tax Credits.

The Louisiana New Markets Tax Credit is a credit for persons that have a qualified equity investment in a qualified community development entity (CDE) on the credit allowance date. Among the requirements for a qualified equity investment is that substantially all of the cash must be used by the CDE to make qualified low-income community investments in Louisiana.

1. What qualifies as a "qualified equity investment" under La. R.S. 47:6016?

The Louisiana New Markets Tax Credit piggybacks the Federal New Markets Tax Credit (Federal NMTC). Louisiana Revised Statute 47:6016(B)(4) provides that "[q]ualified equity investment", "qualified low-income community investments", "qualified low-income community business" and "qualified business" shall have the same meaning given to them in Section 45D of the Internal Revenue Code..." and that "[n]o investment shall be considered a "qualified equity investment" unless it has also been designated as a "qualified equity investment" for the same amount and is eligible for tax credits according to the provisions of Section 45D of the Internal Revenue Code." Therefore, Louisiana's determination of a QEI and a "qualified low income community investment" (QLICI) is dependent upon the federal determination and if an investment qualifies as a QEI and QLICI for federal NMTC purposes; the investment qualifies as a QEI and a QLICI under Louisiana law as well.

2. Who is entitled to claim the State New Market Tax Credits (State NMTC)?

Louisiana Revised Statute 47:6016(C) states that any person who holds a QEI on a certain date may claim the State NMTC. Thus, any person who holds a QEI will be entitled to claim the credits as they become available for use on the initial investment date and subsequent credit allowance dates.

3. How are the State NMTCs allocated among the members of an LLC?

An LLC is taxed and treated in the same manner for Louisiana income tax purposes as it is taxed and treated for federal income tax purposes. If the LLC is taxed as a corporation for federal income tax purposes the LLC will be taxed as a corporation for Louisiana income tax purposes. If it is considered a partnership for federal income tax purposes (the most common situation) then it is treated as a partnership for Louisiana income tax purposes.

Furthermore, pursuant to La. R.S. 47:204, items of income, loss, credits and deductions flows through to partners of a partnership as provided in the operating agreement. In the absence of an operating agreement, items of income, loss, credits and deductions flow through pursuant to the partner's distributive share in the partnership. If the LLC's operating agreement provides for special allocations, they will be permitted for Louisiana purposes.

If the LLC is a single member LLC it can elect to be classified as an association or to be disregarded as an entity separate from its owner. Treas. Reg. § 301.7701-3. If the LLC did not elect otherwise, it will be a disregarded entity for federal income tax purposes. If the LLC is a disregarded entity for federal income tax purposes, it will be treated as a disregarded entity for Louisiana income tax purposes as well. Credits earned by a disregarded entity will be considered to be earned by the sole member, who will be entitled to claim the credits as they become available for use on the initial investment date and subsequent credit allowance dates.

4. If new members are admitted to a LLC or if a current member's interest is transferred subsequent to the initial credit allowance date, are the new members entitled to claim State NMTCs?

Any natural or juridical person that owns an interest in an investor in a CDE on a credit allowance date or anniversary date of the initial investment will be allowed to claim a percentage of credits available to the investor in the CDE on that date.

However, if an operating agreement is in effect at the time of the passing of a credit allowance date, the credits will flow through as detailed in the operating agreement.

For example, if the operating agreement provides that 100% of the credits will flow through to a member that has a 1% interest in the LLC or provides that credits shall flow through to the original members which may no longer be members of the LLC, without regard to federal partnership rules regarding special allocations, the credits will flow through as detailed in the operating agreement.

5. May an investor in a CDE or its members transfer to one or more other taxpayers all or part of the State NMTCs to which it is entitled on each credit allowance date?

Louisiana Revised Statute 47:6016(F) provides that any tax credits not previously claimed by any taxpayer against its income or franchise tax may be sold to another Louisiana taxpayer subject to certain conditions. If an investor has credits that it has not previously claimed, they may be sold as provided in the State NMTC statute and regulations promulgated thereunder.

With regard to credits which have already become available to be claimed by virtue of the passing of a credit allowance date, the investor may transfer all or any portion of the credits they are entitled to claim but have not themselves claimed or transferred.

With regard to credits which have not yet become available to be claimed, but which will become available to be claimed upon the arrival of future credit allowance dates, the rights to receive future credits can only be transferred by transfer of an interest in the investor.

When transferring the credits, the transferor must include with their closing documents a New Markets Transfer Form, R-10613, available on the department's web page at www.revenue.louisiana.gov. The transferor must update their New Markets Tax Credit Summary Sheet, which will be issued with their approved application, each time the credit is transferred and send an updated summary sheet to the Department within 30 days of the sale. The transferee must submit the New Market Transfer Form with their return to claim the credits.

6. Must the proceeds from the sale of a member's interest in an investor, who earned State NMTCs, be reinvested in that same investor?

No. Louisiana Revised Statute 47:6016 does not provide that the sales proceeds from the sale of an interest in an investor, who earned State NMTCs, must be reinvested into that same investor.

7. When are the State NMTCs earned?

Louisiana Revised Statute 47:6016 provides that the right to the entire amount of the credit is earned on the initial investment date. However, a natural or juridical person is only entitled to use or claim a percentage (as determined under La. R.S. 47:6016(B)(2)) of the credits earned on the "credit allowance date" as defined by La. R.S. 47:6016(B)(3).

8. Must the holder of the State NMTCs reduce its basis in the investment in a manner similar to the basis reduction required for federal credits by 26 USC §45D(h)?

Basis is not a factor in computing Louisiana income tax liability. However, Louisiana income tax liability does begin with federal items of income and expense. To the extent that the basis reduction provided for in 26 USC 45(h) impacts the investor's federal items of income and expense, this impact will affect the investor's Louisiana income as well. Nevertheless, the basis reduction provided for in 26 USC 45(h) will not affect the availability of Louisiana's New Market Tax Credit.

9. With respect to QEIs made prior to July 2007:

State NMTCs are available to be claimed or transferred on the initial credit allowance dates and six subsequent credit allowance dates. On the first three credit allowance dates, 1% of the credits earned are allowed. On the last four credit allowance dates, 2% of the credits earned are allowed. The department is prohibited from granting more than five million dollars of credits per year.

Louisiana Revised Statute 47:6016(B) also provides for the calculation of the adjusted purchase by stating:

The adjusted purchase price shall mean the product of:

(a) The amount paid to the issuer of the qualified equity investment for such qualified equity investment and which, in turn, has been invested in qualified low-income community investments.

(b) A fraction, the numerator of which is the dollar amount of qualified low-income community investments held by the issuer of the qualified equity investments in the state determined as of the immediately preceding credit allowance date, and the denominator of which is the total dollar amount of qualified low-income community investments made by the issuer determined as of the immediately preceding credit allowance date.

To apply this statute in calculating the investor's adjusted purchase price, the investor must multiply the amount of the qualified equity investment which in turn has been invested in a qualified low income business, by a fraction the numerator of which is composed of the dollar amount of qualified low income community investments held by the issuer of qualified low income investments held in the state as of the immediately preceding credit allowance date. However, the dollar amount of qualified low-income investments held by the investor immediately preceding the credit allowance date is impossible to determine since no investments had been made on the "immediately preceding" credit allowance date.

Similarly, the denominator of the fraction used to determine the investor's adjusted purchase price would be the dollar amount of total qualified low-income investment made by the issuer determined as of the "immediately preceding" credit allowance date. However, the "immediately preceding" credit allowance date is impossible to determine because on the immediately preceding credit allowance date, no investment had been made by the investor.

To illustrate the absurd result of a faithful application of the language of La. R.S. 47:6016(B) prior to the 2007 Regular Session amendments, consider the following example. Investor Corporation invests \$5 million dollars into a "community development entity" (CDE) that will further invest the \$5 million dollars in a "qualified active low-income community business" (QALICB). The investor hopes to earn state NMTCs in return for the investment.

Under La. R.S. 47:6016(B) the first credit allowance date is the date Investor Corporation makes the \$5 million investment. The credit earned on that date is an applicable percentage times the adjusted purchase price.

The adjusted purchase price under the language prior to the amendments of the 2007 Regular Session is the product of \$5 million times a fraction. The numerator of the fraction is dollar amount of QLICB held by CDE in the state, determined as of the *immediately preceding* credit allowance date, and the denominator is the total dollar amount of qualified low-income community investments made by the CDE determined as of the *immediately preceding* credit allowance date.

On the first credit allowance date, which is the date Investor Corporation makes the \$5 million investment, the adjusted purchase price would be \$5 million times a fraction. The fraction would be zero divided by zero, since there was no immediately preceding credit allowance date. In mathematical terms, zero divided by zero is not anything. It is an

“undefined” value. The calculation required by the statute is impossible. Even if the immediately preceding credit allowance date were assumed to be the date of the investment, rather than the preceding credit allowance date, if CDE waits even one day to make the QLICI investment the fraction would still be zero divided by zero.

On the second credit allowance date, which is the anniversary of the date on which the initial investment was made, unless CDE made its QLICI on the day of the initial investment, the fraction would be zero divided by zero again. An investor who took the action for which the Legislature created an incentive would receive none of the incentive.

As a result, applying the fraction to the amount of the QEI, which in turn has been invested in a QALICB by the investor, yields an undefined number. Louisiana Civil Code Article 9 states, “When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.” *Richard v. Hall*, 2003-1488 874 So.2d 131 (La. 4/23/04). In this instance, how to calculate the adjusted purchase price is clear and unambiguous; however, the calculation will yield an undefined amount, which is absurd.

Because application of La. R.S. 47:6016(B)(1), as written, yields an absurd result, “the letter of the law must give way to the spirit of the law and the statute so as to produce a reasonable result.” *Hall*, (874 So.2d 131 (citing *Swat 24*, 2000-1695 808 So.2d). Fortunately, during the 2007 Regular Session, the definition of adjusted purchase price was amended to provide as follows:

(b) A fraction, the numerator of which is the dollar amount of qualified low-income community investments held by the issuer of the qualified equity investment in the state, determined as of the credit allowance date for which the calculation is made, and the denominator of which is the total dollar amount of qualified low income community investments made by the issuer, determined as of the credit allowance date for which the calculation is made. ...

This amendment removed the wording “immediately preceding” from the statute which resulted in an absurd connotation. For the purpose of calculating the adjusted purchase price for credits issued before July 1, 2007, the department will apply the definition of adjusted purchase price as amended in Act 379 of the 2008 Regular Session.

10. With respect to QEIs made after July 2007 and before April 2008:

Louisiana Revised Statute 47:6016 as amended provides that the right to the entire amount of the credit is earned on the initial investment date. However, a natural or juridical person is only entitled to use or claim a percentage (as determined under La.R.S. 47:6016(B)(2)) of the credits earned on the "credit allowance date" as defined by La.R.S. 47:6016(B)(3). Louisiana Revised Statute 47:6016 also provides that on the first and second credit allowance dates, only 10% of the QEI invested on the initial credit allowance date is available to be claimed or transferred. On the third credit allowance date, only 5% of the QEI is available to be claimed or transferred. Additionally, La. R.S. 47:6016(B) as amended provides for the calculation of the adjusted purchase by stating:

The adjusted purchase price shall mean the product of:

(a) The amount paid to the issuer of the qualified equity investment for such qualified equity investment and which, in turn, has been invested in qualified low-income community investments.

(b) A fraction, the numerator of which is the dollar amount of qualified low-income community investments held by the issuer of the qualified equity investment in the state, determined as of the credit allowance date for which the calculation is made, and the denominator of which is the total dollar amount of qualified low income community investments made by the issuer, determined as of the credit allowance date for which the calculation is made. ...

Louisiana Revised Statute 47:6016(B)(1)(b) also provides:

For purposes of the initial credit allowance date only, the issuer of the qualified low-income community investment will be deemed to hold the amount of qualified low-income community investments, both in the state and outside the state, that the issuer projects in the applications for the qualified equity investment submitted pursuant to subsection E of this Section. If the issuer of the qualified equity investment fails to make sufficient investments in the state to match such projections by the first anniversary date of its credit allowance, the state may disallow or recapture a portion of the credits from the holder of the qualified equity investment so that the credit earned for the initial credit allowance date reflects the actual investments made by the issuer.

Lastly, La R.S. 47:6016(B)(1)(c) provides that the maximum amount of qualified low-income community investments that may be issued by a single business shall not exceed \$15 million.

Therefore, the adjusted purchase price is the QEI times a fraction. The numerator of the fraction is dollar amount of QLICI held by an investor in the state, determined as of credit allowance date for which the calculation is made or, for the initial credit allowance date, the dollar amount an investor projects will be made in the state, and the denominator is the total dollar amount of QLICI made by the investor determined as of the credit allowance date for which the calculation is made or, for the initial credit allowance date, the dollar amount an investor projects will be made.

However, sometimes this calculation yields an absurd result. For example, an investor invests in a CDE that issues two separate qualified equity investments: QEI A made on December 23, 2005, \$10 million invested in Louisiana; QEI B made on December 27, 2005, \$5 million invested in Texas. One hundred percent of the QLICIs made from QEI A were invested in Louisiana; however, in the aggregate, the two qualified equity investments were used to fund QLICI both inside and outside of Louisiana.

Applying the statute as written, in order to calculate the initial adjusted purchase price, all of the QLICIs made by the CDE on or before December 23, 2005, (the date the \$10 million investment was made) would have to be considered. Only one of the two qualified equity investments described above (QEI A) was made on or before December

23, 2005. Out of this \$10 million investment, a total of \$10 million in QLICIs were made, all of which were made for use in Louisiana. Thus, again applying the statute as written, to determine the initial adjusted purchase price, the \$10 million investment would be multiplied by a fraction, the numerator of which is \$10 million (the total amount of QLICIs made in Louisiana on or before December 23, 2005) and the denominator of which is \$10 million (the total amount of QLICIs made by the CDE as of December 23, 2005), which amounts to \$10 million multiplied by 100 percent, which equals \$10 million. Therefore, in this instance, the investor's initial adjusted purchase price is 10 million dollars.

However, once \$5 million QEI B is made and the \$5 million QLICI is invested in Texas, then the ratio for QEI A would be reduced applying the current version of the law. The new ratio would be as follows: \$10 million times (\$10 million divided by \$15 million) which is 66 percent. Ten million dollars times 66 percent would be \$6.6 million. Consequently, because QEI B was invested in another state (Texas), the investor's adjusted purchase price for QEI A would only be \$6.6 million even though 100 percent of QEI A (10 million dollars) was made in Louisiana.

Though the law is clear and unambiguous relative to calculating the adjusted price, the result is unfair and absurd. Louisiana Civil Code Article 9 states, "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." *Richard v. Hall*, 2003-1488, 874 So.2d 131 (La. 4/23/04). *Richard v. Hall* also provides that, "the letter of the law must give way to the spirit of the law and the statute so as to produce a reasonable result." (874 So.2d 131, 148 (citing *SWAT 24 Shreveport Bossier, Inc. v. Bond*, 2000-1695, p. 12, 808 So.2d 294, 302 (La. 6/29/01)).

Louisiana Revised Statute 47:6016 provides that the purpose of this legislation is to "encourage and attract private sector capital investment" to certain areas in the state. However, applying the law as written would discourage Louisiana investment because there is no way to ensure and protect their investment. The legislative intent is satisfied by counting only those QLICIs that were made from specific qualified equity investment for which State NMTCs are sought in the calculation of the "adjusted purchase price" under La. R.S. 47:6016(B)(1).

Consequently, the adjusted purchase price will not subsequently be adjusted on any credit allowance date as a result of additional qualified equity investments made by an investor whether such investments are within or outside of Louisiana.

11. With respect to QEI's made after April 2008:

Louisiana Revised Statute 47:6016(C) of the State NMTC statute enables any natural or juridical person that holds a "qualified equity investment, which, in turn, has been invested in a QALICB on a "credit allowance date" to claim a credit against such person's Louisiana income or corporate franchise tax liability for such taxable year. The state NMTC statute itself is modeled upon, and incorporates part of, the federal NMTC. For purposes of calculating the amount of state NMTCs available on a per project basis, Section 6016(B)(1)(c)(ii) of the state NMTC statute imposes a maximum, per project cap of \$5,000,000 in QEI issued on or after April 1, 2008, which amounts to a per project cap

of \$1,250,000 in state NMTCs. In addition, La. R.S. 47:6016(E) of the state NMTC statute (i) limits the aggregate amounts of State NMTCs available to all taxpayers to \$50,000,000 over the life of the program and (ii) requires taxpayers who desire to use the State NMTCs to submit an application for an allocation for the same to the Secretary of the Louisiana Department of Revenue. Louisiana Revised Statute 47:6016(B) as amended provides for the calculation of the adjusted purchase by stating:

The adjusted purchase price shall mean the product of:

(a) The amount paid to the issuer of the qualified equity investment for such qualified equity investment and which, in turn, has been invested in qualified low-income community investments.

(b) A fraction, the numerator of which is the dollar amount of qualified low-income community investments held by the issuer of the qualified equity investment in the state, determined as of the credit allowance date for which the calculation is made, and the denominator of which is the total dollar amount of qualified low income community investments made by the issuer, determined as of the credit allowance date for which the calculation is made.

Louisiana Revised Statute 47:6016(B)(1)(b) also provides:

For purposes of the initial credit allowance date only, the issuer of the qualified low-income community investment will be deemed to hold the amount of qualified low-income community investments, both in the state and outside the state, that the issuer projects in the applications for the qualified equity investment submitted pursuant to subsection E of this Section. If the issuer of the qualified equity investment fails to make sufficient investments in the state to match such projections by the first anniversary date of its credit allowance, the state may disallow or recapture a portion of the credits from the holder of the qualified equity investment so that the credit earned for the initial credit allowance date reflects the actual investments made by the issuer.

Interested parties should contact Policy Services Division at 225-219-2780

Cynthia Bridges
Secretary

By: Nina S. Hunter, Attorney
Policy Services Division

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