

Neb. Rev. Stat. §§ 77-1101 to 77-1119

77-1101. Act, how cited.

Sections 77-1101 to 77-1119 shall be known and may be cited as the New Markets Job Growth Investment Act.

Source:Laws 2012, LB1128, § 1.

77-1102. Definitions, where found.

For purposes of the New Markets Job Growth Investment Act, the definitions in sections 77-1103 to 77-1112 apply.

Source:Laws 2012, LB1128, § 2.

77-1103. Applicable percentage, defined.

Applicable percentage means zero percent for the first two credit allowance dates, seven percent for the third credit allowance date, and eight percent for the next four credit allowance dates.

Source:Laws 2012, LB1128, § 3.

77-1104. Credit allowance date, defined.

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

- (1) The date on which such investment is initially made; and
- (2) Each of the six anniversary dates of such date thereafter.

Source:Laws 2012, LB1128, § 4.

77-1105. Letter ruling, defined.

Letter ruling means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

Source:Laws 2012, LB1128, § 5.

77-1106. Long-term debt security, defined.

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 seven years after the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date that exceed the cumulative operating income

as defined by regulations adopted under section 45D of the Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the expense of such cash interest payments. This in no way limits the holder's ability to accelerate payments on the debt instrument if the issuer has defaulted on covenants designed to ensure compliance with this section or section 45D of the code.

Source:Laws 2012, LB1128, § 6.

77-1107. Purchase price, defined.

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

Source:Laws 2012, LB1128, § 7.

77-1108. Qualified active low-income community business, defined.

Qualified active low-income community business has the meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. 1.45D-1. 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. The term excludes any business that derives or projects to derive fifteen percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business (1) does not derive or project to derive fifteen percent or more of its annual revenue from the rental or sale of real estate and (2) is the primary tenant of the real estate leased from the first business.

Source:Laws 2012, LB1128, § 8.

77-1109. Qualified community development entity, defined.

Qualified community development entity has the meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended, if such entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by section 45D of the code which includes the State of Nebraska within the service area set forth in such allocation agreement. The term includes affiliated entities and subordinate community development entities of any such qualified community development entity.

Source:Laws 2012, LB1128, § 9.

77-1110. Qualified equity investment, defined.

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

- (a) Is acquired after January 1, 2012, at its original issuance solely in exchange for cash;
 - (b) Has at least eighty-five percent of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date;
 - (c) Is designated by the issuer as a qualified equity investment; and
 - (d) Is certified by the Tax Commissioner as not exceeding the limitation contained in section 77-1115.
- (2) The term includes any qualified equity investment that does not meet the requirements of subdivision (1)(a) of this section if such investment was a qualified equity investment in the hands of a prior holder.

Source:Laws 2012, LB1128, § 10.

77-1111. Qualified low-income community investment, defined.

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 such business, on a collective basis with all of its affiliates, shall be ten million dollars whether issued to one or several qualified community development entities.

Source:Laws 2012, LB1128, § 11.

77-1112. Tax credit, defined.

Tax credit means a credit against the tax otherwise due under the Nebraska Revenue Act of 1967 or sections 44-101 to 44-165, 77-907 to 77-918, or 77-3801 to 77-3807.

Source:Laws 2012, LB1128, § 12.

Cross References

- **Nebraska Revenue Act of 1967**, see section 77-2701.

77-1113. Vested tax credit; utilization.

A person or entity that acquires a qualified equity investment earns a vested tax credit against the tax imposed by the Nebraska Revenue Act of 1967 or sections 44-101 to 44-165, 77-907 to 77-918, or 77-3801 to 77-3807 that may be utilized as follows:

- (1) On each credit allowance date of such qualified equity investment such acquirer, or subsequent holder of the qualified equity investment, shall be entitled to utilize a portion of such tax credit during the taxable year that includes such 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 such qualified equity investment; and

(3) The amount of the tax credit claimed shall not exceed the amount of the taxpayer's tax liability for the tax year for which the tax credit is claimed.

Any taxpayer that claims a tax credit shall not be required to pay any additional retaliatory tax under section 44-150 as a result of claiming such tax credit.

Source:Laws 2012, LB1128, § 13.

Cross References

- **Nebraska Revenue Act of 1967**, see section 77-2701.

77-1114. Tax credit; not refundable or transferable; allocation; carry forward.

No tax credit claimed under the New Markets Job Growth Investment Act shall be refundable or transferable. Tax credits earned by a partnership, limited liability company, subchapter S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with any agreement among such partners, members, or shareholders. Any amount of tax credit that the taxpayer is prohibited from claiming in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable years.

Source:Laws 2012, LB1128, § 14.

77-1115. Tax Commissioner; limit tax credit utilization.

The Tax Commissioner shall limit the monetary amount of qualified equity investments permitted under the New Markets Job Growth Investment Act to a level necessary to limit tax credit utilization in any fiscal year at no more than fifteen million dollars of new tax credits. Such limitation on qualified equity investments shall be based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

Source:Laws 2012, LB1128, § 15.

77-1116. Qualified community development entity; application; form; contents; Tax Commissioner; grant or deny; notice of certification; lapse of certification; when.

(1) 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 the New Markets Job Growth Investment Act shall apply to the Tax Commissioner. The qualified community development entity shall submit an application on a form that the Tax Commissioner provides that includes:

(a) Evidence of the entity's certification as a qualified community development entity, including evidence of the service area of the entity that includes this state;

(b) A copy of the allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund referred to in section 77-1109;

(c) 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 referred to in section 77-1109;

(d) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;

(e) Identifying information for any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment;

(f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment; and

(g) A nonrefundable application fee of five thousand dollars.

(2) Within thirty days after receipt of a completed application containing the information necessary for the Tax Commissioner to certify a potential qualified equity investment, including the payment of the application fee, the Tax Commissioner shall grant or deny the application in full or in part. If the Tax Commissioner denies any part of the application, the Tax Commissioner 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 Tax Commissioner or otherwise completes its application within fifteen days after 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 fifteen-day period, the application remains denied and must be resubmitted in full with a new submission date.

(3) If the application is deemed complete, the Tax Commissioner shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits, subject to the limitations contained in section 77-1115. The Tax Commissioner 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 77-1114, the qualified community development entity shall notify the Tax Commissioner of such change.

(4) The Tax Commissioner shall certify qualified equity investments in the order applications are received. 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 Tax Commissioner 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.

(5) Once the Tax Commissioner has certified qualified equity investments that, on a cumulative basis, are eligible for the maximum limitation contained in section 77-1115, the Tax Commissioner may not certify any more qualified equity investments for that fiscal year. If a pending request cannot be fully certified, the Tax Commissioner shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(6) Within thirty 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 shall provide the Tax Commissioner with evidence of the receipt of the cash investment within ten business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within thirty days after receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Tax Commissioner for certification. A certification that lapses reverts back to the Tax Commissioner and may be reissued only in accordance with the application process outlined in this section.

Source:Laws 2012, LB1128, § 16.

77-1117. Recapture of tax credit.

The Tax Commissioner shall recapture, from the taxpayer that claimed the credit on a return, the tax credit allowed under the New Markets Job Growth Investment 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 section is recaptured under section 45D of the Internal Revenue Code of 1986, as amended. In such case the state's recapture shall be proportionate to the federal recapture with respect to such qualified equity investment;

(2) The issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh credit allowance date. In such case recapture shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment; or

(3) The issuer fails to invest and satisfy the requirements of subdivision (1)(b) of section 77-1110 and maintain such level of investment in qualified low-income community investments in Nebraska until the last credit allowance date for the 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 if 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 within twelve months of the receipt of such capital. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth credit allowance date, 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 seventh credit allowance date.

Source:Laws 2012, LB1128, § 17.

77-1118. Recapture of tax credit; notice of noncompliance; cure period.

The enforcement of section 77-1117 shall be subject to a six-month cure period. No recapture under section 77-1117 shall occur until the qualified community development entity has been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

Source:Laws 2012, LB1128, § 18.

77-1119. Tax Commissioner; issue letter rulings; request; refusal to issue for good cause; letter ruling; effect.

(1) The Tax Commissioner shall issue letter rulings regarding the tax credit program authorized under the New Markets Job Growth Investment Act subject to the terms and conditions set forth in rules and regulations.

(2) The Tax Commissioner shall respond to a request for a letter ruling within sixty days after receipt of such request. The applicant may provide a draft letter ruling for the Tax Commissioner's consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the issuance of the letter ruling. The Tax Commissioner may refuse to issue a letter ruling for good cause, but shall list the specific reasons for refusing to issue the letter ruling. Good cause includes, but is not limited to:

(a) The applicant requests the Tax Commissioner to determine whether a statute is constitutional or a rule or regulation is lawful;

(b) The request involves a hypothetical situation or alternative plans;

(c) The facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling; or

(d) The issue is currently being considered in a rulemaking procedure, contested case, or other agency or judicial proceeding that may definitely resolve the issue.

(3) A letter ruling shall bind the Tax Commissioner until such time as the taxpayer or its shareholders, members, or partners, as applicable, claim all of such tax credits on a tax return which is the topic of the letter ruling, subject to the terms and conditions set forth in rules and regulations. The letter ruling shall apply only to the applicant.

(4) In rendering letter rulings and making other determinations under this section, to the extent applicable, the Tax Commissioner shall look for guidance to section 45D of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder. The Tax Commissioner may adopt and promulgate rules and regulations to carry out this section.

Source:Laws 2012, LB1128, § 19.