

As Introduced

**129th General Assembly
Regular Session
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H. B. No. 558

Representative Beck

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A B I L L

To amend section 5725.33 of the Revised Code to make 1
various changes to the administration of the New 2
Markets tax credit, including the acceleration of 3
the receipt of New Markets tax credit 4
installments, allowing community development 5
entities to make credit-eligible investments in a 6
low-income community business that derives 15% or 7
more of its annual revenue from renting or selling 8
real estate, eliminating the requirement to 9
calculate adjusted purchase price of investments 10
in calculating the amount of the credit, 11
permitting entities to identify qualifying equity 12
investments from any community development entity, 13
and clarifying that the maximum allowable credit 14
for each investor is \$1 million. 15

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5725.33 of the Revised Code be 16
amended to read as follows: 17

Sec. 5725.33. (A) Except as otherwise provided in this 18
section, terms used in this section have the same meaning as 19
section 45D of the Internal Revenue Code, any related proposed, 20

temporary or final regulations promulgated under the Internal 21
Revenue Code, any rules or guidance of the internal revenue 22
service or the United States department of the treasury, and any 23
related rules or guidance issued by the community development 24
financial institutions fund of the United States department of the 25
treasury, as such law, regulations, rules, and guidance exist on 26
the effective date of the ~~enactment~~ amendment of this section by 27
H. B. 1. of the ~~128th~~ 129th general assembly. 28

As used in this section: 29

(1) ~~"Adjusted purchase price" means the amount paid for 30
qualified equity investments multiplied by the qualified 31
low income community investments made by the issuer in projects 32
located in this state as a percentage of the total amount of 33
qualified low income community investments made by the issuer in 34
projects located in all states on the credit allowance date during 35
the applicable tax year, subject to divisions (B)(1) and (2) of 36
this section.~~ 37

~~(2)~~ "Applicable percentage" means ~~zero~~ five per cent for each 38
of the first ~~two~~ three credit allowance dates, ~~seven per cent for 39
the third credit allowance date,~~ and ~~eight~~ six per cent for the 40
four following credit allowance dates. 41

~~(3)~~(2) "Credit allowance date" means the date, on or after 42
January 1, 2010, a qualified equity investment is made and each of 43
the six anniversary dates thereafter. For qualified equity 44
investments made after ~~the effective date of this section~~ October 45
16, 2009, but before January 1, 2010, the initial credit allowance 46
date is January 1, 2010, and each of the six anniversary dates 47
thereafter is on the first day of January of each year. 48

~~(4)~~ "Qualified active low income community business" excludes 49
any business that derives or projects to derive fifteen per cent 50
or more of annual revenue from the rental or sale of real 51

~~property, except any business that is a special purpose entity 52
principally owned by a principal user of that property formed 53
solely for the purpose of renting, either directly or indirectly, 54
or selling real property back to such principal user if such 55
principal user does not derive fifteen per cent or more of its 56
gross annual revenue from the rental or sale of real property. 57~~

~~(5)(3)~~ "Qualified community development entity" includes only 58
entities: 59

(a) That have entered into an allocation agreement with the 60
community development financial institutions fund of the United 61
States department of the treasury with respect to credits 62
authorized by section 45D of the Internal Revenue Code; 63

(b) Whose service area includes any portion of this state; 64
and 65

(c) That will designate an equity investment in such entities 66
as a qualified equity investment for purposes of both section 45D 67
of the Internal Revenue Code and this section. The investment may 68
be committed from any qualified community development entity. 69

~~(6)(4)~~ "Qualified equity investment" is limited to an equity 70
investment in a qualified community development entity that: 71

(a) Is acquired after ~~the effective date of the enactment of 72
this section~~ October 16, 2009, at its original issuance solely in 73
exchange for cash; 74

(b) Has at least eighty-five per cent of its cash purchase 75
price used by the qualified community development entity to make 76
qualified low-income community investments, provided that in the 77
seventh year after a qualified equity investment is made, only 78
seventy-five per cent of such cash purchase price must be used by 79
the qualified community development entity to make qualified 80
low-income community investments; and 81

(c) Is designated by the issuer as a qualified equity investment. 82
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"Qualified equity investment" includes any equity investment that would, but for division (A)~~(6)~~(4)(a) of this section, be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder. 84
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(B) There is hereby allowed a nonrefundable credit against the tax imposed by section 5725.18 of the Revised Code for an insurance company holding a qualified equity investment on the credit allowance date occurring in the calendar year for which the tax is due. The credit shall equal the applicable percentage of the ~~adjusted purchase price of~~ qualified low-income community investments, subject to divisions (B)(1) and (2) of this section: 89
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(1) For the purpose of calculating the amount of qualified low-income community investments held by a qualified community development entity, an investment shall be considered held by a qualified community development entity even if the investment has been sold or repaid, provided that, at any time before the seventh anniversary of the issuance of the qualified equity investment, the qualified community development entity reinvests an amount equal to the capital returned to or received or recovered by the qualified community development entity from the original investment, exclusive of any profits realized and costs incurred in the sale or repayment, in another qualified low-income community investment within twelve months of the receipt of such capital. If the qualified low-income community investment is sold or repaid after the sixth anniversary of the issuance of the qualified equity investment, the qualified low-income community investment shall be considered held by the ~~qualified~~ qualified community development entity through the seventh anniversary of the qualified equity investment's issuance. 96
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(2) The qualified low-income community investment shall be 114
made in projects located in this state and shall equal the sum of 115
the qualified low-income community investments in each qualified 116
active low-income community business in this state, not to exceed 117
two million five hundred sixty-four thousand one hundred three 118
dollars, in which the qualified community development entity 119
invests, including such investments in any such businesses in this 120
state related to that qualified active low-income community 121
business through majority ownership or control. The credit for the 122
sum of such investments shall not exceed one million dollars. 123

The credit shall be claimed in the order prescribed by 124
section 5725.98 of the Revised Code. If the amount of the credit 125
exceeds the amount of tax otherwise due after deducting all other 126
credits in that order, the excess may be carried forward and 127
applied to the tax due for not more than four ensuing years. 128

By claiming a tax credit under this section, an insurance 129
company waives its rights under section 5725.222 of the Revised 130
Code with respect to the time limitation for the assessment of 131
taxes as it relates to credits claimed that later become subject 132
to recapture under division (E) of this section. 133

(C) The amount of qualified equity investments on the basis 134
of which credits may be claimed under this section and sections 135
5729.16 and 5733.58 of the Revised Code shall not exceed the 136
amount, estimated by the director of development, that would cause 137
the total amount of credits allowed each fiscal year to exceed ten 138
million dollars, computed without regard to the potential for 139
taxpayers to carry tax credits forward to later years. 140

(D) If any amount of the federal tax credit allowed for a 141
qualified equity investment for which a credit was received under 142
this section is recaptured under section 45D of the Internal 143
Revenue Code, or if the director of development determines that an 144
investment for which a tax credit is claimed under this section is 145

not a qualified equity investment or that the proceeds of an 146
investment for which a tax credit is claimed under this section 147
are used to make qualified low-income community investments other 148
than in a qualified active low-income community business, all or a 149
portion of the credit received on account of that investment shall 150
be paid by the insurance company that received the credit to the 151
superintendent of insurance. The amount to be recovered shall be 152
determined by the director of development pursuant to rules 153
adopted under division (E) of this section. The director shall 154
certify any amount due under this division to the superintendent 155
of insurance, and the superintendent shall notify the treasurer of 156
state of the amount due. Upon notification, the treasurer shall 157
invoice the insurance company for the amount due. The amount due 158
is payable not later than thirty days after the date the treasurer 159
invoices the insurance company. The amount due shall be considered 160
to be tax due under section 5725.18 of the Revised Code, and may 161
be collected by assessment without regard to the time limitations 162
imposed under section 5725.222 of the Revised Code for the 163
assessment of taxes by the superintendent. All amounts collected 164
under this division shall be credited as revenue from the tax 165
levied under section 5725.18 of the Revised Code. 166

(E) The tax credits authorized under this section and 167
sections 5729.16 and 5733.58 of the Revised Code shall be 168
administered by the department of development. The director of 169
development, in consultation with the tax commissioner and the 170
superintendent of insurance, pursuant to Chapter 119. of the 171
Revised Code, shall adopt rules for the administration of this 172
section and sections 5729.16 and 5733.58 of the Revised Code. The 173
rules shall provide for determining the recovery of credits under 174
division (D) of this section, division (D) of section 5729.16, and 175
section 5733.58 of the Revised Code, including prorating the 176
amount of the credit to be recovered on any reasonable basis, the 177
manner in which credits may be allocated among claimants, and the 178

amount of any application or other fees to be charged in 179
connection with a recovery. 180

(F) There is hereby created in the state treasury the new 181
markets tax credit operating fund. The director of development is 182
authorized to charge reasonable application and other fees in 183
connection with the administration of tax credits authorized by 184
this section and sections 5729.16 and 5733.58 of the Revised Code. 185
Any such fees collected shall be credited to the fund. The 186
director of development shall use money in the fund to pay 187
expenses related to the administration of tax credits authorized 188
under sections 5725.33, 5729.16, and 5733.58 of the Revised Code. 189

Section 2. That existing section 5725.33 of the Revised Code 190
is hereby repealed. 191