

As Introduced

**130th General Assembly
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H. B. No. 478

Representative Boose

Cosponsor: Representative Blessing

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A B I L L

To amend section 5725.33 of the Revised Code to 1
eliminate the requirement that a taxpayer receive 2
a federal New Markets tax credit in order to 3
qualify for the state New Markets tax credit, to 4
allow taxpayers to claim the credit earlier in the 5
credit schedule, and to allow credit-eligible 6
investments to be made in low-income community 7
businesses that derive 15% or more of annual 8
revenue from the rental or sale of real property. 9

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

Section 1. That section 5725.33 of the Revised Code be 10
amended to read as follows: 11

Sec. 5725.33. (A) Except as otherwise provided in this 12
section, terms used in this section have the same meaning as 13
section 45D of the Internal Revenue Code, any related proposed, 14
temporary or final regulations promulgated under the Internal 15
Revenue Code, any rules or guidance of the internal revenue 16
service or the United States department of the treasury, and any 17
related rules or guidance issued by the community development 18
financial institutions fund of the United States department of the 19

treasury, as such law, regulations, rules, and guidance exist on 20
October 16, 2009. 21

As used in this section: 22

(1) "Adjusted purchase price" means the amount paid for 23
qualified equity investments multiplied by the qualified 24
low-income community investments made by the issuer in projects 25
located in this state as a percentage of the total amount of 26
qualified low-income community investments made by the issuer in 27
projects located in all states on the credit allowance date during 28
the applicable tax year, subject to divisions (B)(1) and (2) of 29
this section. 30

(2) "Applicable percentage" means ~~zero~~ five per cent for each 31
of the first ~~two~~ three credit allowance dates, ~~seven per cent for~~ 32
~~the third credit allowance date,~~ and ~~eight~~ six per cent for the 33
four following credit allowance dates. 34

(3) "Credit allowance date" means the date, on or after 35
January 1, 2010, a qualified equity investment is made and each of 36
the six anniversary dates thereafter. For qualified equity 37
investments made after October 16, 2009, but before January 1, 38
2010, the initial credit allowance date is January 1, 2010, and 39
each of the six anniversary dates thereafter is on the first day 40
of January of each year. 41

(4) ~~"Qualified active low income community business" excludes~~ 42
~~any business that derives or projects to derive fifteen per cent~~ 43
~~or more of annual revenue from the rental or sale of real~~ 44
~~property, except any business that is a special purpose entity~~ 45
~~principally owned by a principal user of that property formed~~ 46
~~solely for the purpose of renting, either directly or indirectly,~~ 47
~~or selling real property back to such principal user if such~~ 48
~~principal user does not derive fifteen per cent or more of its~~ 49
~~gross annual revenue from the rental or sale of real property.~~ 50

~~(5)~~ "Qualified community development entity" includes only 51
entities; 52

~~(a) That that have entered into an allocation agreement with 53
the community development financial institutions fund of the 54
United States department of the treasury with respect to credits 55
authorized by section 45D of the Internal Revenue Code; 56~~

~~(b) Whose and whose service area includes any portion of this 57
state; and 58~~

~~(c) That will designate an equity investment in such entities 59
as a qualified equity investment for purposes of both section 45D 60
of the Internal Revenue Code and this section. 61~~

~~(6)(5)~~ "Qualified equity investment" is limited to an equity 62
investment in a qualified community development entity that: 63

(a) Is acquired after October 16, 2009, at its original 64
issuance solely in exchange for cash; 65

(b) Has at least eighty-five per cent of its cash purchase 66
price used by the qualified community development entity to make 67
qualified low-income community investments, provided that in the 68
seventh year after a qualified equity investment is made, only 69
seventy-five per cent of such cash purchase price must be used by 70
the qualified community development entity to make qualified 71
low-income community investments; and 72

(c) Is designated by the issuer as a qualified equity 73
investment. 74

"Qualified equity investment" includes any equity investment 75
that would, but for division (A)~~(6)(5)~~(a) of this section, be a 76
qualified equity investment in the hands of the taxpayer if such 77
investment was a qualified equity investment in the hands of a 78
prior holder. 79

(B) There is hereby allowed a nonrefundable credit against 80

the tax imposed by section 5725.18 of the Revised Code for an 81
insurance company holding a qualified equity investment on the 82
credit allowance date occurring in the calendar year for which the 83
tax is due. The credit shall equal the applicable percentage of 84
the adjusted purchase price of qualified low-income community 85
investments, subject to divisions (B)(1) and (2) of this section: 86

(1) For the purpose of calculating the amount of qualified 87
low-income community investments held by a qualified community 88
development entity, an investment shall be considered held by a 89
qualified community development entity even if the investment has 90
been sold or repaid, provided that, at any time before the seventh 91
anniversary of the issuance of the qualified equity investment, 92
the qualified community development entity reinvests an amount 93
equal to the capital returned to or received or recovered by the 94
qualified community development entity from the original 95
investment, exclusive of any profits realized and costs incurred 96
in the sale or repayment, in another qualified low-income 97
community investment within twelve months of the receipt of such 98
capital. If the qualified low-income community investment is sold 99
or repaid after the sixth anniversary of the issuance of the 100
qualified equity investment, the qualified low-income community 101
investment shall be considered held by the qualified community 102
development entity through the seventh anniversary of the 103
qualified equity investment's issuance. 104

(2) The qualified low-income community investment made in 105
this state shall equal the sum of the qualified low-income 106
community investments in each qualified active low-income 107
community business in this state, not to exceed two million five 108
hundred sixty-four thousand dollars, in which the qualified 109
community development entity invests, including such investments 110
in any such businesses in this state related to that qualified 111
active low-income community business through majority ownership or 112

control. 113

The credit shall be claimed in the order prescribed by 114
section 5725.98 of the Revised Code. If the amount of the credit 115
exceeds the amount of tax otherwise due after deducting all other 116
credits in that order, the excess may be carried forward and 117
applied to the tax due for not more than four ensuing years. 118

By claiming a tax credit under this section, an insurance 119
company waives its rights under section 5725.222 of the Revised 120
Code with respect to the time limitation for the assessment of 121
taxes as it relates to credits claimed that later become subject 122
to recapture under division (E) of this section. 123

(C) The amount of qualified equity investments on the basis 124
of which credits may be claimed under this section and sections 125
5726.54, 5729.16, and 5733.58 of the Revised Code shall not exceed 126
the amount, estimated by the director of development, that would 127
cause the total amount of credits allowed each fiscal year to 128
exceed ten million dollars, computed without regard to the 129
potential for taxpayers to carry tax credits forward to later 130
years. 131

(D) If any amount of ~~the~~ a federal tax credit allowed for a 132
qualified equity investment for which a credit was received under 133
this section is recaptured under section 45D of the Internal 134
Revenue Code, or if the director of development services 135
determines that an investment for which a tax credit is claimed 136
under this section is not a qualified equity investment or that 137
the proceeds of an investment for which a tax credit is claimed 138
under this section are used to make qualified low-income community 139
investments other than in a qualified active low-income community 140
business, all or a portion of the credit received on account of 141
that investment shall be paid by the insurance company that 142
received the credit to the superintendent of insurance. The amount 143
to be recovered shall be determined by the director of development 144

services pursuant to rules adopted under division (E) of this 145
section. The director shall certify any amount due under this 146
division to the superintendent of insurance, and the 147
superintendent shall notify the treasurer of state of the amount 148
due. Upon notification, the treasurer shall invoice the insurance 149
company for the amount due. The amount due is payable not later 150
than thirty days after the date the treasurer invoices the 151
insurance company. The amount due shall be considered to be tax 152
due under section 5725.18 of the Revised Code, and may be 153
collected by assessment without regard to the time limitations 154
imposed under section 5725.222 of the Revised Code for the 155
assessment of taxes by the superintendent. All amounts collected 156
under this division shall be credited as revenue from the tax 157
levied under section 5725.18 of the Revised Code. 158

(E) The tax credits authorized under this section and 159
sections 5726.54, 5729.16, and 5733.58 of the Revised Code shall 160
be administered by the ~~department of~~ development services agency. 161
The director of development services, in consultation with the tax 162
commissioner and the superintendent of insurance, pursuant to 163
Chapter 119. of the Revised Code, shall adopt rules for the 164
administration of this section and sections 5726.54, 5729.16, and 165
5733.58 of the Revised Code. The rules shall provide for 166
determining the recovery of credits under division (D) of this 167
section and under sections 5726.54, 5729.16, and 5733.58 of the 168
Revised Code, including prorating the amount of the credit to be 169
recovered on any reasonable basis, the manner in which credits may 170
be allocated among claimants, and the amount of any application or 171
other fees to be charged in connection with a recovery. 172

(F) There is hereby created in the state treasury the new 173
markets tax credit operating fund. The director of development 174
services is authorized to charge reasonable application and other 175
fees in connection with the administration of tax credits 176

authorized by this section and sections 5726.54, 5729.16, and 177
5733.58 of the Revised Code. Any such fees collected shall be 178
credited to the fund. The director of development services shall 179
use money in the fund to pay expenses related to the 180
administration of tax credits authorized under sections 5725.33, 181
5726.54, 5729.16, and 5733.58 of the Revised Code. 182

Section 2. That existing section 5725.33 of the Revised Code 183
is hereby repealed. 184