

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 3879

(SENATE AUTHORS: NELSON and Rest)

DATE	D-PG	OFFICIAL STATUS
03/09/2022	5261	Introduction and first reading Referred to Taxes
03/10/2022	5290	Author added Rest

- 1.1 A bill for an act
- 1.2 relating to taxation; income and corporate franchise; establishing a new markets
- 1.3 tax credit program; requiring a report; appropriating money; amending Minnesota
- 1.4 Statutes 2020, section 297I.20, by adding a subdivision; proposing coding for new
- 1.5 law in Minnesota Statutes, chapter 290; proposing coding for new law as Minnesota
- 1.6 Statutes, chapter 116X.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. [116X.01] NEW MARKETS TAX CREDIT.
- 1.9 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
- 1.10 the meanings given.
- 1.11 (b) "Applicable percentage" means zero percent for each of the first two credit allowance
- 1.12 dates and ten percent for each of the final five credit allowance dates.
- 1.13 (c) "CDFI fund" means the Community Development Financial Institutions fund of the
- 1.14 United States Department of the Treasury.
- 1.15 (d) "Credit allowance date" means:
- 1.16 (1) the date on which a qualified equity investment is initially made; and
- 1.17 (2) each of the six anniversary dates thereafter.
- 1.18 (e) "Greater Minnesota allocation" means \$100,000,000 in qualified equity investment
- 1.19 authority to be awarded for investment in qualified active low-income community businesses
- 1.20 with principal business operations in a greater Minnesota county.
- 1.21 (f) "Greater Minnesota county" means any county that is not a metropolitan county.

2.1 (g) "Metropolitan allocation" means \$100,000,000 in qualified equity investment authority
2.2 to be awarded for investment in qualified active low-income community businesses with
2.3 principal business operations in a metropolitan county.

2.4 (h) "Metropolitan county" has the meaning given in section 473.121, subdivision 4.

2.5 (i) "Minnesota qualified community development entity" means a qualified community
2.6 development entity that is or whose controlling entity is headquartered in this state.

2.7 (j) "Internal Revenue Code" has the meaning given in section 290.01, subdivision 31.

2.8 (k) "Principal business operations" means the physical location of a business where at
2.9 least 60 percent of a qualified active low-income community business' employees work or
2.10 where employees that are paid at least 60 percent of the business' payroll work. An
2.11 out-of-state business that has agreed to relocate employees or a Minnesota business that has
2.12 agreed to hire employees using the proceeds of a qualified low-income community investment
2.13 to establish principal business operations in Minnesota is deemed to have principal business
2.14 operations in Minnesota if the business satisfies the requirements of this paragraph within
2.15 180 days of receiving the qualified low-income community investment or another date as
2.16 agreed by the business and the commissioner.

2.17 (l) "Purchase price" means the amount paid to the qualified community development
2.18 entity for a qualified equity investment.

2.19 (m) "Qualified active low-income community business" has the meaning given in section
2.20 45D of the Internal Revenue Code, except that any business that derives or projects to derive
2.21 15 percent or more of its annual revenue from the rental or sale of real estate is not considered
2.22 to be a qualified active low-income community business. This exception does not apply to
2.23 a business that is controlled by or under common control with another business if the second
2.24 business:

2.25 (1) does not derive or project to derive 15 percent or more of its annual revenue from
2.26 the rental or sale of real estate; and

2.27 (2) is the primary tenant of the real estate leased from the initial business.

2.28 A business is deemed a qualified active low-income community business for the duration
2.29 of a qualified low-income community investment if the qualified community development
2.30 entity reasonably expects, at the time it makes the qualified low-income community
2.31 investment, that the business will continue to satisfy the requirements for being a qualified
2.32 active low-income community business throughout the entire period of the qualified
2.33 low-income community investment.

3.1 (n) "Qualified community development entity" has the meaning given in section 45D
3.2 of the Internal Revenue Code, provided that the entity:

3.3 (1) has previously entered into an allocation agreement with the CDFI fund with respect
3.4 to credits authorized by section 45D of the Internal Revenue Code; and

3.5 (2) includes the state within the service area set forth in the allocation agreement.

3.6 (o) "Qualified equity investment" means an equity investment in a qualified community
3.7 development entity, if the equity investment:

3.8 (1) is acquired after the effective date of this section at its original issuance solely in
3.9 exchange for cash;

3.10 (2) has at least 100 percent of its cash purchase price used by the qualified community
3.11 development entity to make qualified low-income community investments in qualified
3.12 active low-income community businesses that have their principal business operations in
3.13 the state of Minnesota; and

3.14 (3) is:

3.15 (i) designated by the qualified community development entity as a qualified equity
3.16 investment under this section; and

3.17 (ii) except for a Minnesota qualified community development entity, is at least 50 percent
3.18 designated by the qualified community development entity as a qualified equity investment
3.19 under section 45D of the Internal Revenue Code.

3.20 An investment that does not qualify under clause (1) is a qualified equity investment if the
3.21 investment met the requirements of this paragraph while under possession of a prior holder.

3.22 (p) "Qualified low-income community investment" means any capital or equity investment
3.23 in, or loan to, any qualified active low-income community business.

3.24 (q) "Tax credit" or "credit" means a credit against the tax imposed by chapter 290 or
3.25 297I.

3.26 (r) "Taxpayer" means a taxpayer as defined in section 290.01, subdivision 6, or a taxpayer
3.27 as defined in section 297I.01, subdivision 16.

3.28 Subd. 2. **Credit allowed; qualification; limitation.** (a) A person or entity earns a vested
3.29 right to a credit against the tax imposed under chapter 290 or 297I, subject to the requirements
3.30 of this subdivision. The credit may be claimed against the tax imposed by chapter 290 or
3.31 297I, but not both.

4.1 (b) The credit equals the applicable percentage for each credit allowance date multiplied
4.2 by the purchase price paid to the qualified community development entity for the qualified
4.3 equity investment.

4.4 Subd. 3. **Application.** (a) A qualified community development entity that seeks to have
4.5 an equity investment designated as a qualified equity investment and eligible for the credit
4.6 under this section shall apply to the commissioner on a form provided by the commissioner
4.7 that includes:

4.8 (1) the name, address, and tax identification number of the applicant, and evidence of
4.9 the applicant's certification as a qualified community development entity by the CDFI fund;

4.10 (2) a copy of the allocation agreement executed by the applicant or its controlling entity,
4.11 and the CDFI fund;

4.12 (3) a certificate executed by an executive officer of the applicant attesting that the
4.13 allocation agreement remains in effect and has not been revoked or canceled by the CDFI
4.14 fund;

4.15 (4) a description of the proposed amount, structure, and purchaser of the equity
4.16 investment;

4.17 (5) the amount of qualified equity investment authority sought under the greater
4.18 Minnesota allocation or the metropolitan allocation, as applicable, which collectively may
4.19 not exceed the applicant or its controlling entity's available qualified equity investment
4.20 authority under section 45D of the Internal Revenue Code multiplied by two, provided this
4.21 limitation does not apply to a Minnesota qualified community development entity;

4.22 (6) if required by clause (5), evidence of the applicant or its controlling entity's available
4.23 qualified equity investment authority under section 45D of the Internal Revenue Code; and

4.24 (7) a nonrefundable application fee of \$5,000 paid to the commissioner to offset costs
4.25 associated with personnel and administrative expenses related to administering the credit.

4.26 (b) The commissioner shall set a date to accept applications not less than 30 days but
4.27 not more than 45 days after the CDFI fund treasury announces allocation awards under a
4.28 notice of funding availability that was published in the Federal Register in November 2022.

4.29 (c) A qualified community development entity may apply for both a greater Minnesota
4.30 allocation and a metropolitan allocation.

4.31 Subd. 4. **Certification of qualified equity investments.** (a) Within 30 days after receipt
4.32 of an application, the commissioner shall grant or deny the application in full or in part. If

5.1 the commissioner denies any part of the application, the commissioner shall inform the
5.2 applicant of the grounds for the denial. If the applicant provides the information required
5.3 by the commissioner or otherwise completes its application within 15 days of the notice of
5.4 denial, the application is deemed complete as of the original date of submission. If the
5.5 applicant fails to provide the requested information or complete its application within the
5.6 15-day period, the applicant must submit a new application.

5.7 (b) If the application is deemed complete, the commissioner shall certify the proposed
5.8 equity investment as a qualified equity investment eligible for a credit under this section.
5.9 The commissioner shall provide written notice of the certification to the qualified community
5.10 development entity. Once the qualified community development entity identifies the
5.11 taxpayers who are allocated credits and their respective credit amounts, the qualified
5.12 community development entity shall provide a notice of allocation to the commissioner,
5.13 and the commissioner shall provide a certification to the qualified community development
5.14 entity and each taxpayer containing the credit amount and utilization schedule for which
5.15 the taxpayer is eligible. If the taxpayer is eligible to utilize the credits change due to a transfer
5.16 of a qualified equity investment or a change in allocation pursuant to paragraph (c), the
5.17 qualified community development entity shall notify the commissioner of the change.

5.18 (c) The commissioner shall certify applications for the greater Minnesota allocation and
5.19 the metropolitan allocation in proportionate percentages based upon the ratio of the amount
5.20 of qualified equity investments requested in applications for each allocation to the total
5.21 amount of qualified equity investments requested in all applications for each allocation
5.22 received on the same day.

5.23 (d) The annual aggregate amount of credits allowed to all certified qualified equity
5.24 investments in greater Minnesota counties is \$50,000,000. The annual aggregate amount
5.25 of credits allowed to all certified equity investments in metropolitan counties is \$50,000,000.
5.26 If a pending request cannot be fully certified, the commissioner shall certify the portion that
5.27 may be certified unless the qualified community development entity elects to withdraw its
5.28 request rather than receive a partial award of qualified equity investment authority.

5.29 (e) An approved applicant may transfer all or a portion of its certified qualified equity
5.30 investment authority to its controlling entity or any affiliate or partner of the controlling
5.31 entity that is also a qualified community development entity if the applicant provides the
5.32 information required in the application with respect to the transferee and the applicant
5.33 notifies the commissioner in the notice required by paragraph (f). Within 30 days after
5.34 receiving notice of certification under paragraph (b), the applicant or transferee shall:

6.1 (1) issue qualified equity investments in an amount equal to the total amount of certified
6.2 qualified equity investment authority;

6.3 (2) receive cash in the amount of the certified qualified equity investment; and

6.4 (3) if the applicant or transferee is not a Minnesota qualified community development
6.5 entity, designate 50 percent of the qualified equity investment authority as a qualified equity
6.6 investment under section 45D of the Internal Revenue Code.

6.7 (f) The qualified community development entity must provide the commissioner with
6.8 evidence of the receipt of the cash investment and, if the qualified community development
6.9 entity is not a Minnesota qualified community development entity, the designation of 50
6.10 percent of the qualified equity investment as a qualified equity investment under section
6.11 45D of the Internal Revenue Code within 35 days after receiving notice of certification. If
6.12 the qualified community development entity does not receive the cash investment, issue the
6.13 qualified equity investment within 30 days following receipt of the certification notice, and
6.14 comply with paragraph (e), clause (3), if applicable, the certification is void. A voided
6.15 certification must be returned to the commissioner and must first be awarded pro rata to
6.16 applicants that received awards of qualified equity investment authority and complied with
6.17 paragraph (e).

6.18 (g) The commissioner shall notify the commissioner of revenue of credits approved
6.19 under this subdivision.

6.20 Subd. 5. **Credit recapture.** (a) The commissioner shall recapture credits allowed under
6.21 this act and future credits are forfeited if:

6.22 (1) any amount of the federal tax credit available with respect to a qualified equity
6.23 investment that is eligible for a credit under this section is recaptured under section 45D of
6.24 the Internal Revenue Code. In that case, the commissioner's recapture shall be proportionate
6.25 to the federal recapture with respect to that qualified equity investment;

6.26 (2) the qualified community development entity redeems or makes principal repayment
6.27 with respect to a qualified equity investment prior to seven years after the date of issuance
6.28 of the qualified equity investment. In that case, the commissioner's recapture shall be
6.29 proportionate to the amount of the redemption or repayment with respect to the qualified
6.30 equity investment; or

6.31 (3) the qualified community development entity fails to invest at least 100 percent of
6.32 the cash purchase price of the qualified equity investment in qualified low-income community
6.33 investments in greater Minnesota counties or metropolitan counties, as applicable, within

7.1 12 months of the issuance of the qualified equity investment and maintains the investment
7.2 in qualified low-income community investments in greater Minnesota counties or
7.3 metropolitan counties, as applicable, until the last credit allowance date for the qualified
7.4 equity investment. A qualified community development entity must use the proceeds of
7.5 qualified equity investments awarded under the greater Minnesota allocation to make
7.6 qualified low-income community investments in qualified active low-income community
7.7 businesses with principal business operations in greater Minnesota counties.

7.8 (b) For purposes of paragraph (a), clause (3), an investment is considered maintained
7.9 by a qualified community development entity even if the investment has been sold or repaid,
7.10 provided that the qualified community development entity reinvests an amount equal to the
7.11 capital returned to or recovered by the qualified community development entity from the
7.12 original investment, exclusive of any profits realized, in another qualified low-income
7.13 community investment in this state as required under the greater Minnesota allocation or
7.14 metropolitan allocation within 12 months after the receipt of that capital. Periodic loan
7.15 repayments received by a qualified community development entity from a qualified active
7.16 low-income community business within a calendar year must be treated as maintained in
7.17 qualified low-income community investments if a qualified community development entity
7.18 reinvests the repayments in qualified low-income community investments by the end of the
7.19 following calendar year.

7.20 (c) A qualified community development entity is not required to reinvest capital returned
7.21 from qualified low-income community investments after the sixth anniversary of the issuance
7.22 of the qualified equity investment, the proceeds of which were used to make the qualified
7.23 low-income community investment, and the qualified low-income community investment
7.24 is considered held by the qualified community development entity through the seventh
7.25 anniversary of the qualified equity investment's issuance.

7.26 (d) With respect to any one qualified active low-income community business, the
7.27 maximum amount of qualified low-income community investments made in that business
7.28 in aggregate with all of its affiliates that may be counted toward the satisfaction of paragraph
7.29 (a), clause (3), is \$10,000,000, whether made by one or several qualified community
7.30 development entities but exclusive of redeemed or repaid qualified low-income community
7.31 investment by the qualified active low-income community business.

7.32 (e) The commissioner shall provide notice to the qualified community development
7.33 entity of any proposed recapture of credits pursuant to this subdivision. The notice must
7.34 specify the conditions under which the deficiency resulting in the proposed recapture occurred
7.35 and state that the credits will be recaptured within 90 days unless the qualified community

8.1 development entity complies with the conditions identified in the notice. If the entity fails
8.2 or is unable to cure the deficiency within the 90-day period, the commissioner shall provide
8.3 the entity and the taxpayer from whom the credit is to be recaptured with a final order of
8.4 recapture. Any credit for which a final recapture order has been issued must be recaptured
8.5 by the commissioner from the taxpayer who claimed the credit on a tax return. The qualified
8.6 equity investment authority of the recaptured credits must be returned to the commissioner
8.7 and must first be awarded pro rata to applicants that have received awards of qualified equity
8.8 investment authority and complied with this subdivision.

8.9 Subd. 6. **Examination and rulemaking.** (a) The commissioner may conduct examinations
8.10 to verify that the credits under this section have been received and applied according to the
8.11 requirements of this section and to verify that no event has occurred that would result in a
8.12 recapture of credits under subdivision 5.

8.13 (b) The commissioner may issue advisory letters to individual qualified community
8.14 development entities and their investors that are limited to the specific facts outlined in an
8.15 advisory letter request from a qualified community development entity. The rulings cannot
8.16 be relied upon by any person or entity other than the qualified community development
8.17 entity that requested the letter and the taxpayers that are entitled to any tax credits generated
8.18 from investments in the entity.

8.19 (c) In rendering advisory letters and making other determinations under this section, to
8.20 the extent applicable, the commissioner shall rely upon guidance to section 45D of the
8.21 Internal Revenue Code and the rules and regulations issued thereunder.

8.22 Subd. 7. **Annual reporting by community development entities.** (a) Each qualified
8.23 community development entity shall submit an annual report to the commissioner within
8.24 120 days after the beginning of each calendar year during the compliance period. No annual
8.25 report is due prior to the first anniversary of the initial credit allowance date. The report
8.26 must include but is not limited to information with respect to all qualified low-income
8.27 community investments made by the qualified community development entity, including:

8.28 (1) the date and amount of, and bank statements or wire transfer reports documenting,
8.29 qualified low-income community investments;

8.30 (2) the name and address of each qualified active low-income community business
8.31 funded by the qualified community development entity, the number of persons employed
8.32 by the business at the time of the initial qualified low-income community investment, and
8.33 a brief description of the business and its financing;

9.1 (3) the number of employment positions maintained by each qualified active low-income
9.2 community business as of the date of the report or the end of the preceding calendar year
9.3 and the average annual salaries of those positions;

9.4 (4) the total number of employment positions created and retained as a result of qualified
9.5 low-income community investments and the average annual salaries of those positions;

9.6 (5) a certification by its chief executive officer or similar officer that no credits have
9.7 been subject to recapture under subdivision 5; and

9.8 (6) any changes with respect to the taxpayers entitled to claim credits with respect to
9.9 qualified equity investments issued by the qualified community development entity since
9.10 its last report pursuant to this section.

9.11 (b) The qualified community development entity is not required to provide the annual
9.12 report set forth in this section for qualified low-income community investments that have
9.13 been redeemed or repaid.

9.14 Subd. 8. **Program report.** If the credit under this section has not been reviewed under
9.15 the provisions of section 3.8855 by December 15, 2031, the commissioner shall report to
9.16 the legislature no later than December 31, 2031, regarding the implementation of the credit
9.17 under this section, including an evaluation of the credit using the components listed in
9.18 section 3.885, subdivision 5.

9.19 Subd. 9. **Expiration.** This section expires for taxable years beginning after December
9.20 31, 2030, except that the commissioner's authority to allow the credit under subdivision 2
9.21 based on certificates that were issued under subdivision 4 before expiration remains in effect
9.22 through the year following the year in which all certificates have either been canceled or
9.23 resulted in issuance of credit certificates, or 2033, whichever is earlier.

9.24 Subd. 10. **Account created; appropriation.** The Minnesota new markets tax credit
9.25 account is created in the fund in the state treasury. The account is administered by the
9.26 commissioner. Application fees required under subdivision 3, paragraph (a), clause (7), are
9.27 appropriated to the commissioner for costs associated with certifying applications and for
9.28 personnel and administrative expenses related to administering the credit under this section.

9.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
9.30 31, 2022.

10.1 Sec. 2. **[290.0693] NEW MARKETS TAX CREDIT.**

10.2 Subdivision 1. **Definitions.** For purposes of this section, terms defined in section 116X.01
10.3 have the meanings given in that section.

10.4 Subd. 2. **Credit allowed.** (a) A taxpayer that makes a qualified equity investment is
10.5 allowed a credit against the tax imposed under this chapter equal to the amount calculated
10.6 under section 116X.01, subdivision 2.

10.7 (b) Tax credits earned by or allocated to a partnership, a limited liability company taxed
10.8 as a partnership, or an S-corporation are passed through to the partners, members,
10.9 shareholders, or owners, respectively, in accordance with the provisions of any agreement
10.10 among such partners, members, shareholders, or owners, or, in the absence of such agreement,
10.11 pro rata to each partner, member, shareholder, or owner based on their share of the entity's
10.12 assets as of the last day of the taxable year. A pass-through of a credit is not considered a
10.13 sale for the purposes of section 116X.01.

10.14 (c) If the amount of the credit under this section exceeds the taxpayer's liability for tax
10.15 under this chapter, the excess is a credit carryover to each of the five succeeding taxable
10.16 years. The entire amount of the excess unused credit for the taxable year must be carried
10.17 first to the earliest of the taxable years to which the credit may be carried and then to each
10.18 successive year to which the credit may be carried. The amount of the unused credit that
10.19 may be added under this paragraph may not exceed the taxpayer's liability for tax, less any
10.20 credit for the current taxable year.

10.21 Subd. 3. **Audit powers.** Notwithstanding the certification eligibility issued by the
10.22 commissioner of employment and economic development under section 116X.01, subdivision
10.23 4, the commissioner may utilize any audit and examination powers under chapter 270C or
10.24 289A to the extent necessary to verify that the taxpayer is eligible for the credit and to assess
10.25 for the amount of any improperly claimed credit.

10.26 Subd. 4. **Sunset.** This section expires at the same time and on the same terms as section
10.27 116X.01, except that the expiration of this section does not affect the commissioner of
10.28 revenue's authority to audit or power of examination and assessment for credits claimed
10.29 under this section.

10.30 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
10.31 31, 2022.

11.1 Sec. 3. Minnesota Statutes 2020, section 297I.20, is amended by adding a subdivision to
11.2 read:

11.3 Subd. 6. **New markets tax credit.** A taxpayer may claim a credit against the premiums
11.4 tax imposed under this chapter equal to the amount calculated under section 116X.01,
11.5 subdivision 2. If the amount of the credit exceeds the liability for tax under this chapter, the
11.6 excess is a credit carryover to each of the five succeeding taxable years. The entire amount
11.7 of the excess unused credit for the taxable year must be carried first to the earliest of the
11.8 taxable years to which the credit may be carried and then to each successive year to which
11.9 the credit may be carried. This credit does not affect the calculation of fire state aid under
11.10 section 477B.03 and police state aid under section 477C.03.

11.11 **EFFECTIVE DATE.** This section is effective for premiums received after December
11.12 31, 2022, and before January 1, 2030.