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Senate

State of Minnesota

S.F. No. 3879 – New markets tax credit

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Date: March 16, 2022

This bill provides an income or insurance premium tax credit for contributions made to a Minnesota qualified community development entity that makes a qualified equity investment that is used to low-income community businesses whose principal business operations are located in Minnesota. The credit equals 50 percent of the qualified equity investment, claimed over a seven-year period.

Section 1. New markets tax credit.

Subd. 1. Definitions. Defines terms applicable to the credit. In pertinent part:

Applicable percentage means zero percent for the first two credit allowance dates and ten percent for each of the following five years thereafter.

CDFI Fund means the Community Development Financial Institutions Fund established in the U.S. Treasury, which administers the federal new markets tax credit.

Credit allowance date means the date on which a qualified equity investment is made and each of the six anniversary dates thereafter.

Greater Minnesota allocation means $100 million awarded for investment in qualified active low-income community businesses with principal operations in a greater Minnesota county.

Metropolitan allocation means $100 million awarded for investment in qualified active low-income community businesses with principal operations in a metropolitan county (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington).

Qualified active low-income community business means a corporation or partnership:

- that derives at least 50 percent of its gross income from the active conduct of the business in a low-income community;
- that uses a substantial portion of the entity's tangible property within a low-income community;

- whose employees perform a substantial portion of the entity's services within a low-income community;
- less than 5 percent of average aggregate unadjusted basis of its property attributable to collectibles (i.e., art, rugs or antiques, metals or gems, stamps or coins, or alcoholic beverages);
- has less than 5 percent of average aggregate unadjusted basis of its property attributable to nonqualified financial property (i.e., debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property)
- has not more than 15 percent of its annual revenue derived from the sale or rental of real estate, except for businesses controlled by another business that does not derive 15 percent or more of its annual revenue from the sale or rental of real estate and is the primary tenant of real estate leased from the original business.

Qualified community development entity (QCDE) means a corporation or partnership:

- whose the primary mission is serving, or providing investment capital for, low-income communities or low-income persons;
- that maintains accountability to residents of low-income communities through their representation on a governing board or advisory board to the entity;
- that is certified by the U.S. Secretary of the Treasury for purposes of this section as being a QCDE;
- has entered into an allocation agreement with the CDFI fund that includes Minnesota within the service area set forth in the agreement.

Minnesota qualified community development entity means a QCDE that is or whose controlling entity is headquartered in Minnesota.

Qualified equity investment means an investment:

- that is acquired solely by cash after the effective date of the bill;
- has 100 percent of its cash purchase price used by the QCDE to make qualified low-income community investments in qualified active low-income community businesses that have their principal business location in Minnesota;
- is designated by the QCDE as a qualified equity investment;
- except for a Minnesota QCDE, is at least 50 percent designated by the QCDE under the new market tax credit section of the Internal Revenue Code.

Qualified low-income community investment means any capital or equity investment in or loan to a qualified active low-income community business.

Subd. 2. Credit allowed; qualification; limitation. Allows a credit equal to the applicable percentage for each credit allowance date, multiplied by the purchase price paid to the QCDE for the qualified equity investment. The credit may be claimed against the income and corporate franchise tax or the insurance premiums tax, but not both.

Subd. 3. Application. Requires a CDFE to apply to the commissioner of DEED and specifies the components of the application, which include a $5,000 nonrefundable application fee to offset costs of expenses incurred to administer the credit. Requires the commissioner of DEED to set a date to accept applications not less than 30 days and not more than 45 days after the CDFI fund announces allocation awards. A QCDE may apply for both a greater Minnesota and metropolitan allocation.

Subd. 4. Certification of qualified equity investments. Requires the commissioner of DEED to grant or deny an application in full or in part within 30 days of receipt. If the application is denied in part, the Commissioner must provide the grounds for denial and allow 15 days to correct the application. If the application is complete, the commissioner of DEED must certify in writing the proposed equity investment as a qualified equity investment eligible for the credit. The QCDE must notify the commissioner of DEED of the taxpayers allocated credits and the credit amounts and utilization schedule. For allocations received on the same day, the commissioner of DEED must certify applications for the greater Minnesota and metropolitan allocations in proportion to the amount of qualified equity investments requested for each allocation and the total amount of qualified equity investments in all applications. Allows the transfer of certified quality equity investment authority to a controlling entity under specified circumstances. Requires the QCDE to provide evidence of receipt of the cash investment and the designation of 50 percent of the qualified equity investment under the requirements of the federal new markets tax credit, if the QCDE is not a Minnesota QCDE. Requires the commissioner of DEED to notify the commissioner of revenue of credits approved.

Subd. 5. Credit recapture. Provides the circumstances under which credits are recaptured:

- the federal credit allowed for a qualified equity investment is recaptured;
- the QCDE redeems or makes principal repayment with respect to a QCDE prior to seven years of the date of investment; or
- the QCDE fails to invest at least 100 percent of the cash purchase price of the qualified equity investment in qualified low-income community investments in greater Minnesota or metropolitan counties within 12 months of the issuance of the qualified equity investment and maintains the investment in a qualified low-income community in greater Minnesota or metropolitan counties, as applicable, until the last credit allowance date for the qualified equity investment.

The commissioner of DEED must notify the QCDE of proposed recapture of credits, including the reasons for the proposed recapture, and must allow 90 days for the QCDE to cure the deficiency resulting in the proposed recapture. If, after 90 days, the deficiency has not been cured, the commissioner must issue a final order of recapture. Recaptured credits must be returned to the commissioner and awarded pro rata to applicants that have received qualified equity investment authority.

Subd. 6. Examination and rulemaking. Authorizes the commissioner of DEED to conduct examinations to verify the credits have been applied for and received under the requirements of this section. Authorizes the commissioner of DEED to issue individual QCDE and investor-specific advisory letters and requires the commissioner to rely on guidance provided for the federal new markets tax credit.

Subd. 7. Annual reporting by community development entities. Requires each QCDE to annually submit a report to the commissioner of DEED, which must include information about low-income community investments made and low-income community businesses funded, certification that no credits have been subject to recapture, and any changes regarded taxpayers eligible to claim credits with respect to qualified equity investments issued by the QCDE since its last report.

Subd. 8. Program report. Requires the commissioner of DEED to provide a report on the credit if the credit has not been reviewed by the tax expenditure review commission.

Subd. 9. Account created; appropriation. Establishes the new markets tax credit account in the state treasury. Appropriates application fees required in an earlier section to the commissioner of DEED for expenses associated with administering the credit.

Effective beginning in tax year 2023.

Section 2. New markets tax credit. Authorizes a credit against income and corporate franchise tax equal to the amount calculated under section 1. Provides for allocation of the credit for members, shareholders, or owners of pass-through entities. The credit is nonrefundable but may be carried forward for five years. The commissioner of revenue may use any audit powers under current law to verify eligibility for the credit. Effective beginning in tax year 2023.

Section 3. New markets tax credit. Authorizes a credit against the insurance premiums tax. The credit is nonrefundable but may be carried forward for five years. Effective for premiums received after December 31, 2022, and before January 1, 2030.