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Donna Little
REGULATIONS COMPILER

STATEMENT OF EMERGENCY
103 KAR 15:180E

This emergency administrative regulation is being promulgated in order to provide qualified community development entities procedures necessary when applying for and administering the New Markets Development Program tax credit. $5 million of the $10 million New Markets Development Program credit cap is available for allocation after June 30, 2016. An ordinary administrative regulation is not sufficient, because qualified community development entities will begin applying for the $5 million increase in New Markets Development Program tax credits on July 15, 2016.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

7/13/16
Date

Matthew G. Bevin, Governor

7/13/16
Date

Daniel Bork, Commissioner
Department of Revenue

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 Office of Income Taxation

4 (Emergency Amendment)

5 103 KAR 15:180E. Kentucky new markets development program tax credit.

6 RELATES TO: KRS 131.131, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390,

7 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

8 STATUTORY AUTHORITY: KRS 141.433(7)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a

10 nonrefundable tax credit for a person or entity making a qualified equity investment in a

11 qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7)

12 requires the department to promulgate administrative regulations to implement the provisions of

13 KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified

14 equity investments. This administrative regulation establishes guidelines and the filing

15 requirements of a qualified community development entity (CDE) in order for the department to

16 certify qualified equity investments and to allocate tax credits to a person or entity making a

17 qualified equity investment in a qualified community development entity.

18 Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the

19 department to have an equity investment or long-term debt security certified as a qualified equity

20 investment eligible for the tax credit authorized by KRS 141.434.

1 (2) "Application" means Form 8874(K), Application for Certification of Qualified Equity
2 Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue
3 Form 41A720-S80), that is published by the department and filed by a CDE with the department
4 for certification as a qualified equity investment.
5 (3) "Applications fee" means a $1,000 nonrefundable cashier's check that shall be attached
6 to the application at the time of filing with the department.
7 (4) "CDE" means a qualified community development entity as defined by KRS
8 141.432(6).
9 (5) "CDFI Fund" means the U.S. Department of Treasury, Community Development
10 Financial Institutions Fund.
11 (6) "Certification form" means Form 8874(K)-A, Notice of Kentucky New Markets
12 Development Program Tax Credit and Certification, that is published by the department and filed
13 by a CDE certifying to the department receipt of a cash investment.
14 (7) "Certified purchase price" means the purchase price of a qualified equity investment
15 contained in the application approved by the department.
16 (8)[~~(7)~~] "Department" means the Kentucky Department of Revenue.
17 (9)[~~(8)~~] "Department's approval" means certified by the department as provided by KRS
18 141.433(3).
19 (10)[~~(9)~~] "Identification number" means the:
20 (a) Social Security Number for an individual;
21 (b) Federal Employer Identification Number for a general partnership, estate, or trust; or
22 (c) Kentucky Corporation/LLET Account Number for a corporation or limited liability
23 pass-through entity.

1 (11)[(~~10~~)] "Long-term debt security" is defined by KRS 141.432(3).

2 (12) "Notice of recapture" means Form 8874(K)-B, Notice of Kentucky New Markets
3 Development Program Tax Credit Recapture, that is published by the department and sent to the
4 CDE and each taxpayer from whom a credit is to be recaptured as a final order of recapture.

5 (13)[(~~11~~)] "Performance fee" is defined by KRS 141.433(8).

6 (14)[(~~12~~)] "Qualified active low-income community business" is defined by KRS
7 141.432(5).

8 (15)[(~~13~~)] "Qualified community development entity" is defined by KRS 141.432(6).

9 (16)[(~~14~~)] "Qualified equity investment" is defined by KRS 141.432(7).

10 (17)[(~~15~~)] "Qualified low-income community investment" is defined by KRS 141.432(8).

11 (18)[(~~16~~)] "Tax credit" is defined by KRS 141.432(9).

12 (19)[(~~17~~)] "Taxpayer" is defined by KRS 141.432(10).

13 Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that
14 seeks to have an equity investment or long-term debt security certified by the department as a
15 qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an
16 application with the department.

17 (2) The department shall notify the CDE within thirty (30) days after receipt of the
18 application whether the application is approved or denied.

19 (a) If the department intends to deny the application, the CDE shall be notified in writing
20 by the department of the reason for the denial, and the CDE may correct the application as provided
21 by KRS 141.433(2).

22 (b) If the department finds that the application is in compliance with KRS 141.432 to
23 141.434, a copy of the application shall be returned to the CDE with written notice of the

1 department's approval.

2 (c) 1. The department shall:

3 a. Accept an application on or after July 15, 2016[~~July 15, 2014~~], if the application is

4 received via hand-delivery, mail, express mail, or courier; and

5 b. Not accept an application received via facsimile, CD-Rom, CD, or electronic means.

6 2. The date that the application is stamped received by the Office of Income Taxation,

7 Division of Corporate Tax, Tax Credits Section, shall be the date that the application is recorded

8 as received pursuant to the provisions of KRS 141.133.

9 3. An application received prior to July 15, 2016[~~July 15, 2014~~], shall be recorded as

10 received on July 15, 2016[~~July 15, 2014~~].

11 Section 3. Information Required on or Attached to the Application. The following

12 information shall be required on or attached to the application:

13 (1) The CDE's name, mailing address, identification number, telephone number, and fax

14 number;

15 (2) The name and identification number of the parent company, if the CDE is included in

16 a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

17 (3) The type of entity of the CDE for Kentucky income tax purposes included in the

18 application;

19 (4) The signature of the person completing the application and the date signed;

20 (5) The total number of taxpayers making qualified equity investments;

21 (6) The total amount of qualified equity investments for all taxpayers;

22 (7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C.

23 45D(c);

1 (8) A statement that the entity has received a new markets tax credit allocation from the
2 CDFI Fund which includes the Commonwealth of Kentucky within the service area as set forth
3 in the allocation, and the date of the allocation agreement. A copy of the new markets tax credit
4 allocation agreement shall be attached to the application;
5 (9) Proof of current certification with the CDFI Fund that includes the original
6 application to CDFI and all subsequent updates;
7 (10) A statement of whether the entity's service area is a county, state, multi-state, or
8 national. A map of the service area, articles of organization that describe the service area, bylaws
9 that describe the service area, or other documentation that describes the service area shall be
10 attached to the application;
11 (11) Information regarding the proposed use of the proceeds from the qualified equity
12 investments, including a description of the qualified active low-income community business as
13 provided by KRS 141.432(5);
14 (12) The name, identification number, type of investment (whether debt or equity), and
15 purchase price of the qualified equity investment for each taxpayer making a qualified equity
16 investment;
17 (13) A signed certification indicating that the application has been executed by the
18 executive officer of the CDE, declaring under the penalty of perjury:
19 (a) That the applicant's allocation agreement remains in effect and has not been revoked
20 or canceled by the CDFI Fund; and
21 (b) That the application, including all accompanying documents and statements, is true,
22 correct and complete;
23 (14) The application fee; and

1 (15) The refundable performance fee.

2 Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the
3 approved application is received by the CDE, the CDE shall issue qualified equity investments in
4 exchange for cash in the amount of the certified purchase prices contained in the application.

5 (2) The CDE shall provide the department with evidence of the receipt of the cash for
6 each qualified equity investment by filing with the department a certification form.[~~Form~~
7 ~~8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and~~
8 ~~Certification (Revenue Form 41A720-S81)~~].

9 (3) If the department is satisfied that the cash amount of the qualified equity investment
10 was received by the CDE, a copy of the certification form[~~Form 8874(K)-A~~] shall be returned to
11 the CDE and taxpayer with the department's written approval, including a statement of the tax
12 credits available to the taxpayer for each of the next seven (7) years.

13 (4) If the department is not satisfied that the cash amount of the qualified equity
14 investment was received by the CDE, the department shall notify the CDE in writing of the
15 reason. If the CDE does not agree with the department's written determination, the CDE may file
16 a protest as provided by KRS 131.110.

17 [~~Section 5. Information Required on or Attached to the Form 8874(K)-A. The following~~
18 ~~information shall be required on or attached to the Form 8874(K)-A:~~

19 ~~(1) The CDE's name and identification number;~~

20 ~~(2) For the taxpayer making the qualified equity investment:~~

21 ~~(a) The taxpayer's name and address; and~~

22 ~~(b) The identification number of the taxpayer;~~

23 ~~(3) The certified purchase price of the qualified equity investment;~~

1 ~~(4) The date the CDE received cash for the qualified equity investment;~~

2 ~~(5) The type of taxpayer making the qualified equity investment; and~~

3 ~~(6) Certification by the executive director of the CDE, declaring under the penalty of~~

4 ~~perjury that the form, including all accompanying documents and statements, is true, correct and~~

5 ~~complete.~~]

6 Section 5[~~6~~]. New Markets Development Program Tax Credit Recapture. (1) If there is an

7 event as provided by KRS 141.433(6) which would result in the recapture of any portion of the

8 tax credit previously approved:

9 (a) The CDE shall notify the department upon discovery of the event; or

10 (b) The department, upon discovery of the event or after receiving notice from the CDE

11 of the event, shall provide written notice of the proposed recapture to the CDE as provided by

12 KRS 141.433(6)(b).

13 (2) If the entity fails or is unable to cure the deficiency within ninety (90) days after

14 receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the

15 department shall notify the CDE and each taxpayer of the amount of recapture or the balance of

16 the tax credit on a notice of recapture.[~~Form 8874(K) B, Notice of Kentucky New Markets~~

17 ~~Development Program Tax Credit Recapture (Revenue Form 41A720-S82).~~]

18 (3) If the taxpayer is a pass-through entity, a notice of recapture [~~Form 8874(K) B~~] shall

19 also be sent to each partner, member, or shareholder showing the amount of recapture or the

20 balance of the tax credit.

21 [~~Section 7. Information Required on the Form 8874(K) B. The following information~~

22 ~~shall be required on the Form 8874(K) B:~~

23 ~~(1) The CDE's name and identification number;~~

1 ~~(2) For the taxpayer making the qualified equity investment:~~

2 ~~(a) The taxpayer's name and address; and~~

3 ~~(b) The identification number of the taxpayer;~~

4 ~~(3) The certified purchase price of the qualified equity investment;~~

5 ~~(4) The date the CDE received cash for the qualified equity investment;~~

6 ~~(5) The type of taxpayer making the qualified equity investment;~~

7 ~~(6) The date the tax credit with respect to a qualified equity investment was subject to~~

8 ~~recapture;~~

9 ~~(7) An explanation of the recapture;~~

10 ~~(8) The recapture amount of tax credit or balance of tax credit; and~~

11 ~~(9) The signature of the authorized department employee and the date.~~

12 ~~Section 8. Filing Requirements. (1) Form 8874(K) A.~~

13 ~~(a) A taxpayer claiming the tax credit shall attach each taxable year a copy of Form~~

14 ~~8874(K) A to the tax return on which the credit is claimed.~~

15 ~~(b) A partner, member, or shareholder of a taxpayer claiming the tax credit shall attach~~

16 ~~each taxable year a copy of the appropriate form listed in this paragraph and incorporated by~~

17 ~~reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the~~

18 ~~credit is claimed:~~

19 ~~1. Schedule K-1, Form (Revenue Form 41A720S(K-1));~~

20 ~~2. Schedule K-1, Form 765 (Revenue Form 41A765(K-1)); or~~

21 ~~3. Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1).~~

22 ~~(2) Form 8874(K) B.~~

~~(a) A taxpayer or a partner, member, or shareholder of a taxpayer having a tax credit recapture shall:~~

~~1. Attach a copy of Form 8874(K) B to the tax return for the taxable year that includes the tax credit recapture date; and~~

~~2. Enter the recapture on the applicable line of the tax return.~~

~~(b) A taxpayer or a partner, member, or shareholder of a taxpayer claiming a tax credit shall attach each taxable year a copy of Form 8874(K) B to the tax return on which the credit is claimed.~~

~~Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Revenue Form 41A720 S80, Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit, May 2014;~~

~~(b) Revenue Form 41A720 S81, Notice of Kentucky New Markets Development Program Tax Credit and Certification, May 2014; and~~

~~(c) Revenue Form 41A720 S82, Notice of Kentucky New Markets Development Program Tax Credit Recapture, May 2014;~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

103 KAR 15:180E

Approved:

Daniel Bork

Daniel Bork, Commissioner
Department of Revenue

7/13/16

Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 15:180E.

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes guidelines and the filing requirements of a qualified community development entity for new markets development program applications received on or after July 15, 2016.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary in order to allow application process for community development entities seeking approval for qualified equity investments under the new markets development program tax credit for applications received on or after July 15, 2016.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.433(7) authorizes the Department of Revenue to promulgate administrative regulations in accordance with KRS Chapter 13A to provide rules to implement the provisions of KRS 141.432 to 141.434, and to administer the allocation of tax credits issued for qualified equity investments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation prescribes for applications received on or after July 15, 2016, procedures to be followed by a qualified community development entity in order to certify a qualified equity investment and report a recapture of new markets development program tax credits.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes guidelines and the filing requirements of a qualified community development entity for applications received on or after July 15, 2016.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the filing requirements of a qualified community development entity for applications received on or after July 15, 2016.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 141.433(7) authorizes the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434.

(d) How the amendment will assist in the effective administration of the statutes: For applications received on or after July 15, 2016, this amendment will provide qualified community development entities procedures to be used in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All qualified community development entities applying for new markets development program tax credits on or after July 15, 2016 will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For applications received on or after July 15, 2016, qualified community development entities will use the guidelines contained in this administrative regulation when applying for and administering the new markets development program tax credits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not increase the cost of qualified community development entities to apply for the new markets development program tax credit as provided by KRS 141.432 to KRS 141.434.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The guidance and clarification contained in this amended administrative regulation should simplify the application process for qualified community development entities seeking approval for new markets development program tax credits provided by KRS 141.432 to KRS 141.434.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

(b) On a continuing basis: The department will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the department.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied as this administrative regulation applies to all qualified community development entities applying for new markets development program tax credits on or after July 15, 2016.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 15:180E.

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 141.433(7).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be collected as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

(d) How much will it cost to administer this program for subsequent years? No costs for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation: