

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 41

**Senators Beagle, Tavares
Cosponsors: Senators LaRose, Eklund, Williams**

A BILL

To amend section 5725.33 of the Revised Code to
modify the qualifications for the New Markets
Tax Credit and the schedule for receiving the
credit. 1
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5725.33 of the Revised Code be
amended to read as follows: 5
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Sec. 5725.33. (A) Except as otherwise provided in this
section, terms used in this section have the same meaning as
section 45D of the Internal Revenue Code, any related proposed,
temporary or final regulations promulgated under the Internal
Revenue Code, any rules or guidance of the internal revenue
service or the United States department of the treasury, and any
related rules or guidance issued by the community development
financial institutions fund of the United States department of
the treasury, as such law, regulations, rules, and guidance
exist on October 16, 2009. 7
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As used in this section: 17

(1) "Adjusted purchase price" means the amount paid for 18

qualified equity investments multiplied by the qualified low- 19
income community investments made by the issuer in projects 20
located in this state as a percentage of the total amount of 21
qualified low-income community investments made by the issuer in 22
projects located in all states on the credit allowance date 23
during the applicable tax year, subject to divisions (B) (1) and 24
(2) of this section. 25

(2) "Applicable percentage" means ~~zero five~~ per cent for 26
each of the first ~~two three~~ credit allowance dates, ~~seven per~~ 27
~~cent for the third credit allowance date,~~ and ~~eight six~~ per 28
cent for the four following credit allowance dates. 29

(3) "Credit allowance date" means the date, on or after 30
January 1, 2010, a qualified equity investment is made and each 31
of the six anniversary dates thereafter. For qualified equity 32
investments made after October 16, 2009, but before January 1, 33
2010, the initial credit allowance date is January 1, 2010, and 34
each of the six anniversary dates thereafter is on the first day 35
of January of each year. For investments made before the 36
effective date of ...B... of the 131st general assembly that 37
were not qualified equity investments under the law as it 38
existed at the time the investment was made but are qualified 39
equity investments under the amendments made by that act, the 40
initial credit allowance date is the effective date of that act. 41

(4) ~~"Qualified active low income community business"~~ 42
~~excludes any business that derives or projects to derive fifteen~~ 43
~~per cent or more of annual revenue from the rental or sale of~~ 44
~~real property, except any business that is a special purpose~~ 45
~~entity principally owned by a principal user of that property~~ 46
~~formed solely for the purpose of renting, either directly or~~ 47
~~indirectly, or selling real property back to such principal user~~ 48

~~if such principal user does not derive fifteen per cent or more of its gross annual revenue from the rental or sale of real property.~~

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

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

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

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

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

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

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

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

"Qualified equity investment" includes any equity investment that would, but for division (A) ~~(6)~~ (5) (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.

(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:

(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 community development entity through the seventh anniversary of the qualified equity investment's issuance.

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

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

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

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

(D) If any amount of ~~the~~ a federal tax credit allowed for a qualified equity investment for which a credit was received under this section is recaptured under section 45D of the

Internal Revenue Code, or if the director of development 138
services determines that an investment for which a tax credit is 139
claimed under this section is not a qualified equity investment 140
or that the proceeds of an investment for which a tax credit is 141
claimed under this section are used to make qualified low-income 142
community investments other than in a qualified active low- 143
income community business, all or a portion of the credit 144
received on account of that investment shall be paid by the 145
insurance company that received the credit to the superintendent 146
of insurance. The amount to be recovered shall be determined by 147
the director of development services pursuant to rules adopted 148
under division (E) of this section. The director shall certify 149
any amount due under this division to the superintendent of 150
insurance, and the superintendent shall notify the treasurer of 151
state of the amount due. Upon notification, the treasurer shall 152
invoice the insurance company for the amount due. The amount due 153
is payable not later than thirty days after the date the 154
treasurer invoices the insurance company. The amount due shall 155
be considered to be tax due under section 5725.18 of the Revised 156
Code, and may be collected by assessment without regard to the 157
time limitations imposed under section 5725.222 of the Revised 158
Code for the assessment of taxes by the superintendent. All 159
amounts collected under this division shall be credited as 160
revenue from the tax levied under section 5725.18 of the Revised 161
Code. 162

(E) The tax credits authorized under this section and 163
sections 5726.54, 5729.16, and 5733.58 of the Revised Code shall 164
be administered by the ~~department of development services~~ 165
agency. The director of development services, in consultation 166
with the tax commissioner and the superintendent of insurance, 167
pursuant to Chapter 119. of the Revised Code, shall adopt rules 168

for the administration of this section and sections 5726.54, 169
5729.16, and 5733.58 of the Revised Code. The rules shall 170
provide for determining the recovery of credits under division 171
(D) of this section and under sections 5726.54, 5729.16, and 172
5733.58 of the Revised Code, including prorating the amount of 173
the credit to be recovered on any reasonable basis, the manner 174
in which credits may be allocated among claimants, and the 175
amount of any application or other fees to be charged in 176
connection with a recovery. 177

(F) There is hereby created in the state treasury the new 178
markets tax credit operating fund. The director of development 179
services is authorized to charge reasonable application and 180
other fees in connection with the administration of tax credits 181
authorized by this section and sections 5726.54, 5729.16, and 182
5733.58 of the Revised Code. Any such fees collected shall be 183
credited to the fund. The director of development services shall 184
use money in the fund to pay expenses related to the 185
administration of tax credits authorized under sections 5725.33, 186
5726.54, 5729.16, and 5733.58 of the Revised Code. 187

Section 2. That existing section 5725.33 of the Revised 188
Code is hereby repealed. 189