State of Minnesota
HOUSE OF REPRESENTATIVES
EIGHTY-EIGHTH SESSION
H. F. No. 2862

03/10/2014 Authored by Davnie, Mahoney, Metsa and Gunther
The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance and Policy

A bill for an act
relating to taxation; establishing a new markets tax credit program; authorizing rulemaking; requiring a report; proposing coding for new law in Minnesota Statutes, chapter 290.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[290.0693] NEW MARKETS TAX CREDIT.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Adjusted purchase price" means the product of:

(1) the amount paid to the issuer of a qualified equity investment for the qualified equity investment; and

(2) the following fraction: (i) the total dollar amount of qualified low-income community investments held by the issuer within the state of Minnesota as of the credit allowance date during the applicable tax year divided by (ii) the total dollar amount of qualified low-income community investments held by the issuer in all states as of the credit allowance date during the applicable tax year.

(c) "Annual allocation authority" means the amount of state new markets tax credit authority the commissioner may distribute on an annual basis to qualified community development entities for projects within the state of Minnesota.

(d) "Applicable percentage" means zero percent for each of the first two credit allowance dates, seven percent for the third credit allowance date, and eight percent for each of the final four credit allowance dates.

(e) "Commissioner" means the commissioner of revenue.

(f) "Credit allowance date" means:

(1) the date on which a qualified equity investment is initially made; and

(2) each of the six anniversary dates thereafter.

(g) "Greater Minnesota" means the area of the state that excludes the metropolitan area, as defined in section 473.121, subdivision 2.

(h) "Investments held by an issuer" means, for purposes of calculating the adjusted purchase price, any capital or equity investment held by an issuer even if the investment has been sold or repaid; provided that the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the return or recovery of the capital investment. For the purposes of this requirement, an issuer is not required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment. The qualified low-income community investment is considered to be held by the issuer through the seventh anniversary of the qualified equity investment's issuance. Periodic amounts received by the issuer during a calendar year as repayment of principal on a loan that is a qualified low-income community investment must be treated as continuously invested in a qualified low-income community investment if the amounts received are reinvested in another qualified low-income community investment by the end of the following calendar year.

(i) "Qualified active low-income community business" has the meaning given in section 45D of the Internal Revenue Code of 1986, as amended.

(j) "Qualified community development entity" has the meaning given in section 45D of the Internal Revenue Code of 1986, as amended; provided that the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department with respect to credits authorized by section 45D of the Internal Revenue Code of 1986, as amended, and includes the state of Minnesota within the service area set forth in the allocation agreement.

(k) "Qualified equity investment" means any equity investment in a qualified community development entity that:

(1) is acquired after January 1, 2013, at its original issuance solely in exchange for cash;

(2) has at least 85 percent of its cash purchase price used by the issuer to make qualified low-income community investments; and

(3) is designated by the issuer as a qualified equity investment under this subdivision and is certified by the commissioner as not exceeding the limitation contained in subdivision 2. The term includes any qualified equity investment that does not meet the

provisions of this paragraph if the investment met the definition of a qualified equity investment while under possession of a prior holder.

(l) "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in the business, on a collective basis with all of its affiliates, that may be used for the calculation of the numerator described in paragraph (b), clause (2), item (i), is $10,000,000, whether issued to one or several qualified community development entities.

(m) "Tax credit" means a credit against the tax otherwise due under this chapter or any gross premiums tax under chapter 297I.

(n) "Taxpayer" means any individual or entity subject to the tax imposed under this chapter or under chapter 297I.

Subd. 2. **Credit allowed; qualification; limitation.** (a) A taxpayer that makes a qualified equity investment is entitled to a tax credit subject to the conditions and limitations provided in this section.

(b) The tax credit amount equals the applicable percentage times the adjusted purchase price paid to the issuer of a qualified equity investment. The amount of the tax credit claimed must not exceed the amount of the taxpayer's state tax liability under this chapter or chapter 297I for the tax year for which the tax credit is claimed. On each credit allowance date of the qualified equity investment the taxpayer, or subsequent holder of the qualified equity investment, is entitled to a tax credit during the taxable year including the credit allowance date. The tax credit is not transferable.

(c) Tax credits earned by a partnership, a limited liability company, an S-corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of the entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders.

(d) Any amount of tax credit that the taxpayer is prohibited by this section from claiming in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable years.

(e) The amount of annual allocation authority permitted under subdivision 5 cannot exceed $25,000,000 per taxable year.

Subd. 3. **Certification.** The issuer of the qualified equity investment must certify to the commissioner the anticipated dollar amount of the investment to be made within the state of Minnesota during the first 12-month period following the initial credit allowance date. If on the subsequent credit allowance dates, the actual dollar amount of the investment is different than the amount certified, the commissioner may adjust the allocation for subsequent taxable years to account for the difference.

Subd. 4. **Credit recapture.** (a) The commissioner shall recapture the tax credit allowed under this section if:

(1) any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under section 45D of the Internal Revenue Code of 1986, as amended; or

(2) the issuer of a qualified equity investment redeems or makes principal repayment prior to the seventh anniversary of the issuance of the qualified equity investment.

(b) Any tax credit that is subject to recapture must be recaptured from the taxpayer that claimed the tax credit on a return.

Subd. 5. **Allocation of credit.** The commissioner shall adopt recapture provisions on a scaled proportional basis to administer the annual allocation authority issued for qualified equity investments. The commissioner shall allocate the credits on a first-come, first-served basis, provided that prior to August 1 of any year, not more than 60 percent of the available annual allocation authority is allocated to qualified equity investments located in either the metropolitan area as defined in section 473.121, subdivision 2, or greater Minnesota. After August 1 of any year, the allocation limitation by geographic area does not apply.

Subd. 6. **Rulemaking.** The commissioner may adopt rules to implement this section. Rules adopted must be, to the greatest extent possible, compatible to applicable credits under section 45D of the Internal Revenue Code of 1986, as amended.

Subd. 7. **Program report.** The commissioner of revenue shall report to the legislature no later than December 31, 2021, regarding the implementation of this tax credit, including an evaluation of the success of the tax credit in the state.

Subd. 8. **Expiration.** This section expires seven taxable years following final enactment, except that the commissioner's authority to allow the credit under subdivision 2 based on certificates that were issued under subdivision 3 before expiration remains in effect through the year following the year in which all certificates have either been canceled or resulted in issuance of credit certificates, or 2028, whichever is earlier. The commissioner shall issue the rules for the implementation of this section so as to allow the commencement of qualified low-income community investments with tax year 2015.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2014.