

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. **688**

02/09/2015 Authored by Albright, Mahoney, Davids, Kresha, Persell and others

The bill was read for the first time and referred to the Committee on Greater Minnesota Economic and Workforce Development Policy

1.1 A bill for an act
1.2 relating to taxation; income; establishing a new markets tax credit program;
1.3 authorizing rulemaking; requiring a report; appropriating money; amending
1.4 Minnesota Statutes 2014, section 297I.20, by adding a subdivision; proposing
1.5 coding for new law in Minnesota Statutes, chapter 290; proposing coding for
1.6 new law as Minnesota 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
1.10 have the meanings given.

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

1.14 (c) "Applicant" means a qualified community development entity as defined in
1.15 paragraph (m).

1.16 (d) "Applicable percentage" means five percent for each of the first three credit
1.17 allowance dates and six percent for each of the final four credit allowance dates.

1.18 (e) "Commissioner" means the commissioner of employment and economic
1.19 development.

1.20 (f) "Credit allowance date" means:

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

1.22 (2) each of the six anniversary dates thereafter.

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

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

(i) "Investments held by an issuer" means any capital or equity investment or loan held by an issuer, even if the qualified low-income community 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 quality 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 shall be treated as continuously invested in a qualified low-income community business if the amounts received are reinvested in another qualified low-income community business within 12 months.

(j) "Issuer" means a qualified community development entity or its subsidiary community development entity that applies for an allocation of state tax credit authority which it issues to taxpayers for their qualified equity investment in a qualified community development entity pursuant to this section.

(k) "Purchase price" means the amount paid by an investor as a qualified equity investment to the issuer in exchange for a tax credit allocation.

(l) "Qualified active low-income community business" has the meaning given in section 45D of the Internal Revenue Code. The term does not include:

(1) any trade or business engaged in insurance, banking, lending, lobbying, political consulting, or leisure; or

(2) any trade or business activity consisting of the operation of any private or commercial golf course, country club, suntan facility, hot tub facility, massage parlor, race track, or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(m) "Qualified community development entity" has the meaning given in section 45D of the Internal Revenue Code; provided that the entity:

(1) has previously 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;

(2) includes the state within the service area set forth in the allocation agreement; and

(3) has direct lending experience serving businesses in disadvantaged communities in the state and a primary mission of economic development.

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

(1) is acquired after January 1, 2015, at its original issuance solely in exchange for cash;

(2) has at least 95 percent of its cash purchase price used by the issuer to make initial qualified low-income community investments with reinvestments required to be made in Minnesota at a minimum of 85 percent of the amount returned or recovered by the issuer;

(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; and

(4) not more than five percent of the qualified equity investment is held as a loan loss reserve.

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

(p) "Tax credit" means a credit against the tax otherwise due under chapter 290 or any gross premiums tax under chapter 297I.

(q) "Taxpayer" means any individual or entity subject to the tax imposed under chapter 290 or 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 39 percent of the state tax credit authority allocated pursuant to this section and assigned to a qualified equity investment. The amount of the tax credit claimed must not exceed the amount of the taxpayer's state tax liability under chapter 290 or 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 entity 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.

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

4.4 (e) The amount of allocation authority under this subdivision cannot exceed a
4.5 cumulative outstanding and unused allocation of \$300,000,000.

4.6 Subd. 3. **Certification.** The issuer of the qualified equity investment must certify to
4.7 the commissioner the anticipated dollar amount of the investment to be made within the
4.8 state of Minnesota during the first 12-month period following the initial credit allowance
4.9 date.

4.10 Subd. 4. **Amount certified.** The commissioner shall certify up to \$300,000,000 in
4.11 tax credit authority over a three-year period for taxable years beginning after December
4.12 31, 2014. The commissioner shall certify allocations of tax credit to issuers based on a
4.13 competitive review of applications received by the commissioner using criteria established
4.14 in subdivision 5.

4.15 Subd. 5. **Application.** (a) The commissioner shall develop an application form
4.16 calling for information necessary to evaluate Minnesota benefits from tax credit projects.

4.17 (b) Prior to allocating state tax credits to an issuer under this subdivision, the
4.18 commissioner shall consider the following:

4.19 (1) whether the qualified community development entity has demonstrated
4.20 experience providing capital or technical assistance to disadvantaged businesses or
4.21 communities in the state;

4.22 (2) the extent to which an applicant demonstrates direct experience in asset and
4.23 risk management and in fulfilling government compliance requirements, particularly for
4.24 tax credit program compliance;

4.25 (3) the extent to which an applicant demonstrates a capitalization strategy that
4.26 ensures that the economic benefit of the tax credit remains in the state;

4.27 (4) the extent to which the applicant establishes standards for wages and benefits
4.28 exceeding federal poverty guidelines and includes a means by which to monitor and
4.29 measure ongoing compliance with those standards;

4.30 (5) in circumstances where the state allocation is paired with a federal new market tax
4.31 allocation, the extent to which the applicant develops evaluation criteria and tools to assess
4.32 the extent to which the state allocation is necessary to produce the community benefit to
4.33 be provided through financing of the qualified active low-income community business;

4.34 (6) the financial contributions expected to be made to the project from nonstate
4.35 sources; and

4.36 (7) any other criteria the commissioner deems necessary.

5.1 Subd. 6. **Credit recapture.** (a) The commissioner shall recapture the tax credit
5.2 allowed under this section if any amount of the federal tax credit available with respect to
5.3 a qualified equity investment that is eligible for a tax credit under this section is recaptured
5.4 under section 45D of the Internal Revenue Code.

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

5.7 Subd. 7. **Allocation of credit.** The commissioner shall allocate the credits based on
5.8 criteria in subdivision 5, provided that a proportional allocation of the available annual
5.9 allocation authority is allocated to qualified equity investment located in greater Minnesota
5.10 as defined in subdivision 1, paragraph (g).

5.11 Subd. 8. **Suballocation.** An approved qualified community development entity may
5.12 transfer all or a portion of its qualified equity investment authority from its qualified
5.13 community development entity to a subsidiary qualified community development entity
5.14 provided that the qualified community development entity provides written notification
5.15 to the commissioner within 30 days of the transfer. The subsidiary shall be subjected
5.16 to the same rules, requirements, and limitations applicable to the qualified community
5.17 development entity.

5.18 Subd. 9. **Annual reporting by community development entities.** (a) A community
5.19 development entity that has issued a qualified equity investment must submit an annual
5.20 report to the commissioner within 180 days after the end of the fiscal year of a community
5.21 development entity which includes a credit allowance date. The report shall include
5.22 information on investments made in the preceding year, including but not limited to the
5.23 following:

5.24 (1) the identity of the types of industries, identified by the North American Industry
5.25 Classification System Code, in which a qualified low-income community investment
5.26 were made;

5.27 (2) the names of the counties in which the qualified active low-income community
5.28 businesses are located which received qualified low-income community investments;

5.29 (3) the number of jobs created and retained by qualified active low-income
5.30 community businesses receiving qualified low-income community investments, including
5.31 verification that the average wages and benefits paid to full-time employees, based on an
5.32 hourly wage for a 40-hour work week, meet or exceed 105 percent of the federal poverty
5.33 income guidelines for a family of four; and

5.34 (4) other information and documentation required by the commissioner to verify
5.35 continued certification as a qualified community development entity under United States
5.36 Code, title 26, section 45D.

(b) Within 120 days after the end of the applicant's fiscal year which includes a credit allowance date, an applicant must submit annual financial statements for the preceding tax year in a form established by the commissioner.

Subd. 10. **Application fees; fund created.** A nonrefundable application fee shall be submitted by the qualified community development entity at the time the application is submitted and shall be equal to an amount as published in the Minnesota new markets tax credit program application. The commissioner may allow up to 25 percent of the fee to be submitted up to 180 days following the allocation award and up to 25 percent of the fee to be submitted up to 270 days following the allocation award. Application fees are deposited in the new market tax credit administration account in the special revenue fund.

Subd. 11. **Administrative fees.** Upon the issuance of a qualified equity investment by a qualified community development entity, an administrative fee in an amount determined by the commissioner and published in the allocation agreement will be deposited in the new markets tax credit administration account in the special revenue fund.

Subd. 12. **Administrative expenses.** Amounts in the new markets tax credit administration account are appropriated annually to the commissioner for administrative expenses related to administering the new markets tax credit in this section.

Subd. 13. **Program report.** The commissioner shall report to the legislature no later than December 31, 2022, regarding the implementation of this tax credit, including an evaluation of the success of the tax credit in the state.

Subd. 14. **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 2029, whichever is earlier. The commissioner may 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.

Sec. 2. [290.0693] NEW MARKET TAX CREDIT.

Subdivision 1. **Definition.** For purposes of this section, "qualified equity investment" has the meaning given in section 116X.01, subdivision 1.

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

7.1 Subd. 3. **Audit powers.** Notwithstanding any issuance of credit by the
7.2 commissioner of employment and economic development under section 116X.01, the
7.3 commissioner may utilize any audit and examination powers under chapter 270C or 289A
7.4 to the extent necessary to verify that the taxpayer is eligible for the credit and to assess for
7.5 the amount of any improperly claimed credit.

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

7.8 Sec. 3. Minnesota Statutes 2014, section 297I.20, is amended by adding a subdivision
7.9 to read:

7.10 Subd. 4. **New markets tax credit.** (a) For purposes of this subdivision, "qualified
7.11 equity investment" has the meaning given in section 116X.01, subdivision 1.

7.12 (b) An insurance company that makes a qualified equity investment may claim a
7.13 credit against the premiums tax imposed under this chapter equal to the amount provided
7.14 under section 116X.01, subdivision 2.

7.15 (c) This credit does not affect the calculation of police and fire aid under section
7.16 69.021.