

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The New Markets Development Program Act is
5 amended by changing Sections 5, 20, 25, 40, and 50 and by
6 adding Sections 43 and 55 as follows:

7 (20 ILCS 663/5)

8 Sec. 5. Definitions. As used in this Act:

9 "Applicable percentage" means 0% for each of the first 2
10 credit allowance dates, 7% for the third credit allowance date,
11 and 8% for the next 4 credit allowance dates.

12 "Credit allowance date" means with respect to any qualified
13 equity investment:

14 (1) the date on which the investment is initially made;
15 and

16 (2) each of the 6 anniversary dates of that date
17 thereafter.

18 "Department" means the Department of Commerce and Economic
19 Opportunity.

20 "Long-term debt security" means any debt instrument issued
21 by a qualified community development entity, at par value or a
22 premium, with an original maturity date of at least 7 years
23 from the date of its issuance, with no acceleration of

1 repayment, amortization, or prepayment features prior to its
2 original maturity date. Cumulative cash payments of interest on
3 the qualified debt instrument during the period commencing with
4 the issuance of the qualified debt instrument and ending with
5 the seventh anniversary of its issuance shall not exceed the
6 sum of such cash interest payments and the cumulative net
7 income of the issuing community development entity for the same
8 period. This definition in no way limits the holder's ability
9 to accelerate payments on the debt instrument in situations
10 where the issuer has defaulted on covenants designed to ensure
11 compliance with this Act or Section 45D of the Internal Revenue
12 Code of 1986, as amended.

13 "Purchase price" means the amount paid to the issuer of a
14 qualified equity investment for that qualified equity
15 investment.

16 "Qualified active low-income community business" has the
17 meaning given to that term in Section 45D of the Internal
18 Revenue Code of 1986, as amended; except that any business that
19 derives or projects to derive 15% or more of its annual revenue
20 from the rental or sale of real estate is not considered to be
21 a qualified active low-income community business. This
22 exception does not apply to a business that is controlled by or
23 under common control with another business if the second
24 business (i) does not derive or project to derive 15% or more
25 of its annual revenue from the rental or sale of real estate
26 and (ii) is the primary tenant of the real estate leased from

1 the initial business. A business shall be considered a
2 qualified active low-income community business for the
3 duration of the qualified community development entity's
4 investment in or loan to the business if the entity reasonably
5 expects, at the time it makes the investment or loan, that the
6 business will continue to satisfy the requirements for being a
7 qualified active low-income community business throughout the
8 entire period of the investment or loan.

9 "Qualified community development entity" has the meaning
10 given to that term in Section 45D of the Internal Revenue Code
11 of 1986, as amended; provided that such entity has entered
12 into, or is controlled by an entity that has entered into, an
13 allocation agreement with the Community Development Financial
14 Institutions Fund of the U.S. Treasury Department with respect
15 to credits authorized by Section 45D of the Internal Revenue
16 Code of 1986, as amended, that includes the State of Illinois
17 within the service area set forth in that allocation agreement.

18 "Qualified equity investment" means any equity investment
19 in, or long-term debt security issued by, a qualified community
20 development entity that:

21 (1) is acquired after the effective date of this Act at
22 its original issuance solely in exchange for cash;

23 (2) with respect to qualified equity investments made
24 before January 1, 2017, has at least 85% of its cash
25 purchase price used by the issuer to make qualified
26 low-income community investments in the State of Illinois.

1 and, with respect to qualified equity investments made on
2 or after January 1, 2017, has 100% of the cash purchase
3 price used by the issuer to make qualified low-income
4 community investments in the State of Illinois; and

5 (3) is designated by the issuer as a qualified equity
6 investment under this Act; with respect to qualified equity
7 investments made on or after January 1, 2017, is designated
8 by the issuer as a qualified equity investment under
9 Section 45D of the Internal Revenue Code of 1986, as
10 amended; and is certified by the Department as not
11 exceeding the limitation contained in Section 20.

12 This term includes any qualified equity investment that
13 does not meet the provisions of item (1) of this definition if
14 the investment was a qualified equity investment in the hands
15 of a prior holder.

16 "Qualified low-income community investment" means any
17 capital or equity investment in, or loan to, any qualified
18 active low-income community business. With respect to any one
19 qualified active low-income community business, the maximum
20 amount of qualified low-income community investments made in
21 that business, on a collective basis with all of its affiliates
22 that may be counted towards the satisfaction of paragraph (2)
23 of the definition of qualified equity investment, shall be
24 \$10,000,000 whether issued to one or several qualified
25 community development entities.

26 "Tax credit" means a credit against any income, franchise,

1 or insurance premium taxes, including insurance retaliatory
2 taxes, otherwise due under Illinois law.

3 "Taxpayer" means any individual or entity subject to any
4 income, franchise, or insurance premium tax under Illinois law.
5 (Source: P.A. 95-1024, eff. 12-31-08.)

6 (20 ILCS 663/20)

7 Sec. 20. Annual cap on credits. The Department shall limit
8 the monetary amount of qualified equity investments permitted
9 under this Act to a level necessary to limit tax credit use at
10 no more than \$20,000,000 of tax credits in any fiscal year.
11 This limitation on qualified equity investments shall be based
12 on the anticipated use of credits without regard to the
13 potential for taxpayers to carry forward tax credits to later
14 tax years.

15 (Source: P.A. 95-1024, eff. 12-31-08; 96-939, eff. 7-1-10.)

16 (20 ILCS 663/25)

17 Sec. 25. Certification of qualified equity investments.

18 (a) A qualified community development entity that seeks to
19 have an equity investment or long-term debt security designated
20 as a qualified equity investment and eligible for tax credits
21 under this Section shall apply to the Department. The qualified
22 community development entity must submit an application on a
23 form that the Department provides that includes:

24 (1) The name, address, tax identification number of the

1 entity, and evidence of the entity's certification as a
2 qualified community development entity.

3 (2) A copy of the allocation agreement executed by the
4 entity, or its controlling entity, and the Community
5 Development Financial Institutions Fund.

6 (3) A certificate executed by an executive officer of
7 the entity attesting that the allocation agreement remains
8 in effect and has not been revoked or cancelled by the
9 Community Development Financial Institutions Fund.

10 (4) A description of the proposed amount, structure,
11 and purchaser of the equity investment or long-term debt
12 security.

13 (5) The name and tax identification number of any
14 taxpayer eligible to utilize tax credits earned as a result
15 of the issuance of the qualified equity investment.

16 (6) Information regarding the proposed use of proceeds
17 from the issuance of the qualified equity investment.

18 (7) A nonrefundable application fee of \$5,000. This fee
19 shall be paid to the Department and shall be required of
20 each application submitted.

21 (8) With respect to qualified equity investments made
22 on or after January 1, 2017, the amount of qualified equity
23 investment authority the applicant agrees to designate as a
24 federal qualified equity investment under Section 45D of
25 the Internal Revenue Code, including a copy of the screen
26 shot from the Community Development Financial Institutions

1 Fund's Allocation Tracking System of the applicant's
2 remaining federal qualified equity investment authority.

3 (b) Within 30 days after receipt of a completed application
4 containing the information necessary for the Department to
5 certify a potential qualified equity investment, including the
6 payment of the application fee, the Department shall grant or
7 deny the application in full or in part. If the Department
8 denies any part of the application, it shall inform the
9 qualified community development entity of the grounds for the
10 denial. If the qualified community development entity provides
11 any additional information required by the Department or
12 otherwise completes its application within 15 days of the
13 notice of denial, the application shall be considered completed
14 as of the original date of submission. If the qualified
15 community development entity fails to provide the information
16 or complete its application within the 15-day period, the
17 application remains denied and must be resubmitted in full with
18 a new submission date.

19 (c) If the application is deemed complete, the Department
20 shall certify the proposed equity investment or long-term debt
21 security as a qualified equity investment that is eligible for
22 tax credits under this Section, subject to the limitations
23 contained in Section 20. The Department shall provide written
24 notice of the certification to the qualified community
25 development entity. The notice shall include the names of those
26 taxpayers who are eligible to utilize the credits and their

1 respective credit amounts. If the names of the taxpayers who
2 are eligible to utilize the credits change due to a transfer of
3 a qualified equity investment or a change in an allocation
4 pursuant to Section 15, the qualified community development
5 entity shall notify the Department of such change.

6 (d) With respect to applications received before January 1,
7 2017, the ~~The~~ Department shall certify qualified equity
8 investments in the order applications are received by the
9 Department. Applications received on the same day shall be
10 deemed to have been received simultaneously. For applications
11 received on the same day and deemed complete, the Department
12 shall certify, consistent with remaining tax credit capacity,
13 qualified equity investments in proportionate percentages
14 based upon the ratio of the amount of qualified equity
15 investment requested in an application to the total amount of
16 qualified equity investments requested in all applications
17 received on the same day.

18 (d-5) With respect to applications received on or after
19 January 1, 2017, the Department shall certify applications by
20 applicants that agree to designate qualified equity
21 investments as federal qualified equity investments in
22 accordance with item (8) of subsection (a) of this Section in
23 proportionate percentages based upon the ratio of the amount of
24 qualified equity investments requested in an application to be
25 designated as federal qualified equity investments to the total
26 amount of qualified equity investments to be designated as

1 federal qualified equity investments requested in all
2 applications received on the same day.

3 (d-10) With respect to applications received on or after
4 January 1, 2017, after complying with subsection (d-5), the
5 Department shall certify the qualified equity investments of
6 all other applicants, including the remaining qualified equity
7 investment authority requested by applicants not designated as
8 federal qualified equity investments in accordance with item
9 (8) of subsection (a) of this Section, in proportionate
10 percentages based upon the ratio of the amount of qualified
11 equity investments requested in the applications to the total
12 amount of qualified equity investments requested in all
13 applications received on the same day.

14 (e) Once the Department has certified qualified equity
15 investments that, on a cumulative basis, are eligible for
16 \$20,000,000 in tax credits, the Department may not certify any
17 more qualified equity investments. If a pending request cannot
18 be fully certified, the Department shall certify the portion
19 that may be certified unless the qualified community
20 development entity elects to withdraw its request rather than
21 receive partial credit.

22 (f) Within 30 days after receiving notice of certification,
23 the qualified community development entity shall (i) issue the
24 qualified equity investment and receive cash in the amount of
25 the certified amount and (ii) with respect to qualified equity
26 investments made on or after January 1, 2017, if applicable,

1 designate the required amount of qualified equity investment
2 authority as a federal qualified equity investment. The
3 qualified community development entity must provide the
4 Department with evidence of the receipt of the cash investment
5 within 10 business days after receipt and, with respect to
6 qualified equity investments made on or after January 1, 2017,
7 if applicable, provide evidence that the required amount of
8 qualified equity investment authority was designated as a
9 federal qualified equity investment. If the qualified
10 community development entity does not receive the cash
11 investment and issue the qualified equity investment within 30
12 days following receipt of the certification notice, the
13 certification shall lapse and the entity may not issue the
14 qualified equity investment without reapplying to the
15 Department for certification. A certification that lapses
16 reverts back to the Department and may be reissued only in
17 accordance with the application process outline in this Section
18 25.

19 (g) Allocation rounds enabled by this Act shall be applied
20 for according to the following schedule:

21 (1) on January 2, 2019, \$125,000,000 of qualified
22 equity investments; and

23 (2) on January 2, 2020, \$125,000,000 of qualified
24 equity investments.

25 (Source: P.A. 95-1024, eff. 12-31-08; 96-939, eff. 7-1-10.)

1 (20 ILCS 663/40)

2 Sec. 40. Recapture. The Department of Revenue shall
3 recapture, from the taxpayer that claimed the credit on a
4 return, the tax credit allowed under this Act if:

5 (1) any amount of the federal tax credit available with
6 respect to a qualified equity investment that is eligible
7 for a tax credit under this Act is recaptured under Section
8 45D of the Internal Revenue Code of 1986, as amended. In
9 that case, the Department of Revenue's recapture shall be
10 proportionate to the federal recapture with respect to that
11 qualified equity investment;

12 (2) the issuer redeems or makes principal repayment
13 with respect to a qualified equity investment prior to the
14 7th anniversary of the issuance of the qualified equity
15 investment. In that case, the Department of Revenue's
16 recapture shall be proportionate to the amount of the
17 redemption or repayment with respect to the qualified
18 equity investment; ~~or~~

19 (3) the issuer fails to invest at least 85% of the cash
20 purchase price of the qualified equity investment with
21 respect to qualified equity investments made before
22 January 1, 2017 and 100% of the cash purchase price of the
23 qualified equity investment with respect to qualified
24 equity investments made on or after January 1, 2017 in
25 qualified low-income community investments in the State of
26 Illinois within 12 months of the issuance of the qualified

1 equity investment and maintain such level of investment in
2 qualified low-income community investments in Illinois
3 until the last credit allowance date for such qualified
4 equity investment; or -

5 (4) with respect to qualified equity investments made
6 on or after January 1, 2017, the issuer violates Section 43
7 of this Act.

8 For purposes of this Section, an investment shall be
9 considered held by an issuer even if the investment has been
10 sold or repaid; provided that the issuer reinvests an amount
11 equal to the capital returned to or recovered by the issuer
12 from the original investment, exclusive of any profits
13 realized, in another qualified low-income community investment
14 in this State within 12 months after the receipt of that
15 capital. An issuer is not required to reinvest capital returned
16 from qualified low-income community investments after the 6th
17 anniversary of the issuance of the qualified equity investment,
18 the proceeds of which were used to make the qualified
19 low-income community investment, and the qualified low-income
20 community investment shall be considered held by the issuer
21 through the 7th anniversary of the qualified equity
22 investment's issuance.

23 The Department of Revenue shall provide notice to the
24 qualified community development entity of any proposed
25 recapture of tax credits pursuant to this Section. The entity
26 shall have 90 days to cure any deficiency indicated in the

1 Department of Revenue's original recapture notice and avoid
2 such recapture. If the entity fails or is unable to cure such
3 deficiency with the 90-day period, the Department of Revenue
4 shall provide the entity and the taxpayer from whom the credit
5 is to be recaptured with a final order of recapture. Any tax
6 credit for which a final recapture order has been issued shall
7 be recaptured by the Department of Revenue from the taxpayer
8 who claimed the tax credit on a tax return.

9 (Source: P.A. 95-1024, eff. 12-31-08.)

10 (20 ILCS 663/43 new)

11 Sec. 43. Prohibited activities and interests. For
12 qualified equity investments made on or after January 1, 2017,
13 no qualified active low-income community business that
14 receives a qualified low-income community investment from a
15 qualified community development entity that issues qualified
16 equity investments under this Act, or any affiliates of such a
17 qualified active low-income community business, may directly
18 or indirectly (i) own or have the right to acquire an ownership
19 interest in a qualified community development entity or member
20 or affiliate of a qualified community development entity,
21 including, but not limited to, a holder of a qualified equity
22 investment issued by the qualified community development
23 entity or (ii) loan to or invest in a qualified community
24 development entity or member or affiliate of a qualified
25 community development entity, including, but not limited to, a

1 holder of a qualified equity investment issued by a qualified
2 community development entity, where the proceeds of such loan
3 or investment are directly or indirectly used to fund or
4 refinance the purchase of a qualified equity investment under
5 this Act. For purposes of this Section, "affiliate" means an
6 entity that directly, or indirectly through one or more
7 intermediaries, controls, is controlled by, or is under common
8 control with another entity. For purposes of this Section, an
9 entity is "controlled by" another entity if the controlling
10 person holds, directly or indirectly, the majority voting or
11 ownership interest in the controlled person or has control over
12 the day-to-day operations of the controlled person by contract
13 or law, provided that a qualified community development entity
14 shall not be considered an affiliate of a qualified active
15 low-income community business solely as a result of its
16 qualified low-income community investment in such business.
17 This Section is not intended to affect ownership or affiliate
18 interests that arise following the sixth anniversary of the
19 issuance of the qualified equity investment.

20 (20 ILCS 663/50)

21 Sec. 50. Sunset. For fiscal years following fiscal year
22 2021 ~~2017~~, qualified equity investments shall not be made under
23 this Act unless reauthorization is made pursuant to this
24 Section. For all fiscal years following fiscal year 2021 ~~2017~~,
25 unless the General Assembly adopts a joint resolution granting

1 authority to the Department to approve qualified equity
2 investments for the Illinois new markets development program
3 and clearly describing the amount of tax credits available for
4 the next fiscal year, or otherwise complies with the provisions
5 of this Section, no qualified equity investments may be
6 permitted to be made under this Act. The amount of available
7 tax credits contained in such a resolution shall not exceed the
8 limitation provided under Section 20. Nothing in this Section
9 precludes a taxpayer who makes a qualified equity investment
10 prior to the expiration of authority to make qualified equity
11 investments from claiming tax credits relating to that
12 qualified equity investment for each applicable credit
13 allowance date.

14 (Source: P.A. 97-636, eff. 6-1-12.)

15 (20 ILCS 663/55 new)

16 Sec. 55. Annual report. Each qualified community
17 development entity shall submit an annual report to the
18 Department within 45 days after the beginning of each calendar
19 year during the compliance period. No annual report shall be
20 due prior to the first anniversary of the initial credit
21 allowance date. The report shall include, but is not limited
22 to, the following:

23 (1) an attestation from an authorized officer of the
24 qualified community development entity that the entity has
25 not been the subject of any investigation by a government

1 agency relating to tax credits or financial services during
2 the preceding calendar year;

3 (2) information with respect to all qualified
4 low-income community investments made by the qualified
5 community development entity, including:

6 (A) the date and amount of, and bank statements or
7 wire transfer reports documenting, such qualified
8 low-income community investments;

9 (B) the name, address, and EIN of each qualified
10 active low-income community business funded by the
11 qualified community development entity, the number of
12 persons employed by such business at the time of the
13 initial investment, and a brief description of the
14 business, the financing, and community benefits of the
15 financing; and

16 (C) the number of employment positions maintained
17 by each qualified active low-income community business
18 as of the date of report or the end of the preceding
19 calendar year and the average annual salaries of such
20 positions; and

21 (D) the total number of employment positions
22 created and retained as a result of qualified
23 low-income community investments and the average
24 annual salaries of those positions; and

25 (3) any changes with respect to the taxpayers entitled
26 to claim tax credits with respect to qualified equity

1 investments issued by the qualified community development
2 entity since its last report pursuant to this Section.

3 The qualified community development entity is not required
4 to provide the annual report set forth in this Section for
5 qualified low-income community investments that have been
6 redeemed or repaid.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.