

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

RELATES TO: KRS 131.131, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D
STATUTORY AUTHORITY: KRS 141.433(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified community development entity as provided by KRS 141.432(6). KRS 141.433(7) requires the department to promulgate administrative regulations to implement the provisions of KRS 141.432 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity investments. This administrative regulation establishes guidelines and the filing requirements of a qualified community development entity (CDE) in order for the department to certify qualified equity investments and to allocate tax credits to a person or entity making a qualified equity investment in a qualified community development entity.

Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the department to have an equity investment or long-term debt security certified as a qualified equity investment eligible for the tax credit authorized by KRS 141.434.

(2) "Application" means Form 8874(K), Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue Form 41A720-S80), that is published by the department and filed by a CDE with the department for certification as a qualified equity investment.

(3) "Application fee" means a \$1,000 nonrefundable cashier's check attached to the application at the time of filing with the department.

(4) "CDE" means a qualified community development entity as defined by KRS 141.432(6).

(5) "CDFI Fund" means the U.S. Department of Treasury, Community Development Financial Institutions Fund.

(6) "Certification form" means Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification, that is published by the department and filed by a CDE certifying to the department receipt of a cash investment.

(7) "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved by the department.

(8) "Department" means the Kentucky Department of Revenue.

(9) "Department's approval" means certified by the department as provided by KRS 141.433(3).

(10) "Identification number" means the:

(a) Social Security Number for an individual;

(b) Federal Employer Identification Number for a general partnership, estate, or trust; or

(c) Kentucky Corporation/LLET Account Number for a corporation or limited liability pass-through entity.

(11) "Long-term debt security" is defined by KRS 141.432(3).

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

(13) "Performance fee" is defined by KRS 141.433(8).

(14) "Qualified active low-income community business" is defined by KRS 141.432(5).

(15) "Qualified community development entity" is defined by KRS 141.432(6).

(16) "Qualified equity investment" is defined by KRS 141.432(7).

(17) "Qualified low-income community investment" is defined by KRS 141.432(8).

(18) "Tax credit" is defined by KRS 141.432(9).

(19) "Taxpayer" is defined by KRS 141.432(10).

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

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

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

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

(c) 1. The department shall:

a. Accept an application on or after July 15, 2019, if the application is received via hand-delivery, mail, express mail, or courier; and

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

2. The date that the application is stamped received by the Office of Income Taxation, Division of Corporation Tax, Tax Credits Section, shall be the date that the application is recorded as received pursuant to the provisions of KRS 141.433.

3. An application received prior to July 15, 2019, shall be recorded as received on July 15, 2019.

Section 3. Information Required on or Attached to the Application. The following information shall be required on or attached to the application:

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

(2) The name and identification number of the parent company, if the CDE is included in a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

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

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

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

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

(7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C. 45D(c);

(8)(a) A statement that:

1. The entity has received a new markets tax credit allocation from the CDFI Fund;

2. Includes the Commonwealth of Kentucky within the service area as set forth in the allocation; and

3. Includes the date of the allocation agreement.

(b) A copy of the new markets tax credit allocation agreement shall be attached to the application;

(9) Proof of current certification with the CDFI Fund that includes the original application to CDFI and all subsequent updates;

(10) A statement of whether the entity's service area is a county, state, multi-state, or national. A map of the service area, articles of organization that describe the service area, bylaws

that describe the service area, or other documentation that describes the service area shall be attached to the application;

(11) Information regarding the proposed use of the proceeds from the qualified equity investments, including a description of the qualified active low-income community business as provided by KRS 141.432(5);

(12) The name, identification number, type of investment (whether debt or equity), and purchase price of the qualified equity investment for each taxpayer making a qualified equity investment;

(13) A signed certification indicating that the application has been executed by the executive officer of the CDE, declaring under the penalty of perjury:

(a) That the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and

(b) That the application, including all accompanying documents and statements, is true, correct and complete;

(14) The application fee; and

(15) The refundable performance fee.

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

(2) The CDE shall provide the department with evidence of the receipt of the cash for each qualified equity investment by filing with the department a certification form.

(3) If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of the certification form shall be returned to the CDE and taxpayer with the department's written approval, including a statement of the tax credits available to the taxpayer for each of the next seven (7) years.

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

Section 5. New Markets Development Program Tax Credit Recapture. (1) If there is an event as provided by KRS 141.433(6) that would result in the recapture of any portion of the tax credit previously approved:

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

(b) The department, upon discovery of the event or after receiving notice from the CDE of the event, shall provide written notice of the proposed recapture to the CDE as provided by KRS 141.433(6)(b).

(2) If the entity fails or is unable to cure the deficiency within ninety (90) days after receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the department shall notify the CDE and each taxpayer of the amount of recapture or the balance of the tax credit on a notice of recapture.

(3) If the taxpayer is a pass-through entity, a notice of recapture shall also be sent to each partner, member, or shareholder showing the amount of recapture or the balance of the tax credit. (37 Ky.R. 1107; 1490; 1625; eff. 2-4-2011; 41 Ky.R. 85; 439; eff. 10-3-2014; 43 Ky.R. 266; eff. 11-4-2016; 45 Ky.R. 1060, 1514; eff. 1-4-2019; TAm eff. 2-7-2019.)