AN ACT relating to the new markets tax credit.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 141.432 is amended to read as follows:

As used in KRS 141.432 to 141.434, unless the context requires otherwise:

(1) ***(a) "Affiliate" shall include:***

1. Any entity, without regard to whether that entity otherwise constitutes a qualified community development entity, that is the initial holder, either directly or through one (1) or more entities organized to serve a special purpose, of a qualified equity investment in a given community development entity; and

2. Any entity, without regard to whether that entity otherwise constitutes a qualified community development entity, that provides insurance or any other form of guaranty to the ultimate recipient of tax credits under KRS 141.434 with respect to a recapture or forfeiture of the tax credits, either directly or through the guaranty of any other economic benefit that is paid in lieu of the tax credits.

(b) The determination of whether an entity is an affiliate shall be made by taking into account all relevant facts and circumstances, including the description of the proposed amount, structure, and initial purchaser of the qualified equity investment required by subsection (1)(d) of Section 2 of this Act. The determination shall assume that the information provided pursuant to subsection (1)(d) of Section 2 of this Act is true and complete as of the date an application is submitted;

(2) "Applicable percentage" means zero percent (0%) for each of the first two (2) credit allowance dates, seven percent (7%) for the third credit allowance date, and eight percent (8%) for the next four (4) credit allowance dates;

(3)~~[(2)]~~ "Credit allowance date" means, with respect to any qualified equity

investment:

(a) The date on which the investment is initially made; and

(b) Each of the six (6) anniversary dates of that date thereafter;

(4) ~~[(3)]~~ "Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven (7) years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period commencing with its issuance and ending on its final credit allowance date in excess of the cumulative operating income, as defined in the regulations promulgated under 26 U.S.C. sec. 45D, of the qualified community development entity for that same period, which shall be calculated prior to giving effect to the expense of the cash interest payments. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with KRS 141.432 to 141.434 or 26 U.S.C. sec. 45D;

(5) ~~[(4)]~~ "Purchase price" means the amount paid to a qualified community development entity that issues a qualified equity investment for the qualified equity investment;

(6) ~~[(5)]~~ "Qualified active low-income community business" has the same meaning given that term in 26 U.S.C. sec. 45D. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes

any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business:

(a) Does not derive or project to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate; and

(b) Is the primary tenant of the real estate leased from the first business;

(7) (a) ~~[(6)]~~ "Qualified community development entity" has the same meaning given that term in 26 U.S.C. sec. 45D; provided that the entity has entered into, or is controlled by an entity that 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 26 U.S.C. sec. 45D, which includes the Commonwealth of Kentucky within the service area set forth in such allocation agreement**.** ~~[;]~~

(b) "Qualified community development entity" shall include:

1. Any subsidiary community development entity; and

2. Any affiliate;

of a qualified community development entity, all of which shall be treated as a single applicant for purposes of Section 2 of this Act;

(8) ~~[(7)]~~ "Qualified equity investment" means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(a) Is acquired after June 4, 2010, at its original issuance solely in exchange for cash;

(b) 1. In the case of a qualified equity investment issued prior to January 1, 2014, has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses

located in the Commonwealth by the second anniversary of the initial credit allowance date; and

2. In the case of a qualified equity investment issued on or after January 1, 2014, has at least one hundred percent (100%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth by the first anniversary of the initial credit allowance date; and

(c) Is designated by the issuer as a qualified equity investment under this subsection and is certified by the department as not exceeding the limitation contained in KRS 141.434. This term shall include any qualified equity investment that does not meet the provisions of paragraph (a) of this subsection if the investment was a qualified equity investment in the hands of a prior holder. The qualified community development entity shall keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community investments in qualified active low-income community businesses in the Commonwealth;

(9) ~~[(8)]~~ "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after June 4, 2010. With respect to any one (1) qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified under KRS 141.433 shall be ***five*** ~~[ten]~~ million dollars ***($5,000,000)*** ~~[($10,000,000)]~~ whether made by one (1) or several qualified community development entities;

(10) ~~[(9)]~~ "Tax credit" means a nonrefundable credit against the taxes imposed by KRS

141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270. For the credit against the taxes imposed by KRS 141.020, 141.040, or 141.0401, the ordering of the credits shall be as provided in KRS 141.0205. An insurance company claiming a tax credit against the insurance premium tax is not required to pay additional retaliatory tax levied pursuant to KRS 304.3-270; and

(11) ~~[(10)]~~ "Taxpayer" means any individual or entity subject to the tax imposed by KRS 141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270.

➔Section 2. KRS 141.433 is amended to read as follows:

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by KRS 141.434 shall apply to the department. The qualified community development entity shall submit an application on a form that the department provides that shall include but not be limited to:

(a) The name, address, tax identification number, and evidence of the certification of the entity as a qualified community development entity;

(b) A copy of an allocation agreement executed by the entity or its controlling entity and the Community Development Financial Institutions Fund, which includes the Commonwealth of Kentucky in its service area***. In the case of applications submitted on or after January 1, 2015, the allocation agreement shall be dated on or after January 1, 2014***;

(c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;

(d) ***In the case of applications submitted on or after January 1, 2015 by qualified community development entities that are not incorporated or***

headquartered in the Commonwealth of Kentucky:

1. Evidence that the applicant or its controlling entity has received more than one (1) allocation of qualified equity investment authority from the Community Development Financial Institutions Fund;

2. Evidence that the applicant, its controlling entity, and subsidiary qualified community development entities of the controlling entity have collectively made at least fifty million dollars ($50,000,000) in qualified low-income community investments under the federal new markets tax credit program and new markets tax credit programs in other states, with a maximum qualified low-income community investment size of five million dollars ($5,000,000) per business; and

3. A certificate executed by an executive officer of the entity committing the entity to use at least one hundred percent (100%) of the proceeds of any qualified equity investment certified under this section to make qualified low-income community investments;

(e) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;

(f)~~[(e)]~~ The name and tax identification number of any person or entity eligible to utilize tax credits as a result of the issuance of the qualified equity investment;

(g)~~[(f)]~~ Information regarding the proposed use of proceeds from the issuance of the qualified equity investment;

(h)~~[(g)]~~ A nonrefundable application fee in an amount set by the department. This fee shall be paid to the department and shall be required of each application submitted; and

(i)~~[(h)]~~ In the case of applications submitted on or after January 1, 2014, the refundable performance fee required by subsection (8) of this section.

(2) The department shall review applications in the order in which they are received. Within thirty (30) days after receipt of a completed application containing the information necessary for the department to certify a potential qualified equity investment, including the payment of the application fee, the department shall approve or deny the application. If the department intends to deny the application, it shall inform the qualified community development entity, by written notice sent via certified mail and any other such means deemed feasible by the department, of the grounds for the denial. Upon receipt of the notice of intended denial by the qualified community development entity:

(a) If the qualified community development entity provides any additional information required by the department or otherwise completes its application within fifteen (15) days, the application shall be considered completed as of the original date of submission, however the department shall have an additional thirty (30) days to either approve or deny the application as completed; or

(b) If the qualified community development entity fails to provide the information or complete its application within the fifteen (15) day period, the application shall be deemed denied and must be resubmitted in full with a new submission date.

(3) If the application is deemed complete, the department shall certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap limitations contained in KRS 141.434. The department shall provide written notice sent via certified mail and any other means deemed feasible by the department, of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to claim the credits and their respective credit amounts. If the names of the persons or entities that are eligible to

claim the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to KRS 141.434, the qualified community development entity shall notify the department of such change.

(4) Within ninety (90) days after receipt of the notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified purchase price. The qualified community development entity shall provide the department with evidence of the receipt of the cash investment within ten (10) business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within ninety (90) days following receipt of the certification notice, the certification shall lapse, and the entity may not issue the qualified equity investment without reapplying to the department for certification. A certification that lapses shall revert back to the department and may be reissued only in accordance with the application process outlined in this section.

(5) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day. If a pending request cannot be fully certified because of the limitations contained in KRS 141.434, the department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(6) (a) The department may recapture any portion of a tax credit allowed under this

section if:

1. Any amount of federal tax credit that might be available with respect to the qualified equity investment that generated the tax credit under this section is recaptured under 26 U.S.C. sec. 45D. In such case, the department's recapture shall be proportionate to the federal recapture with respect to the qualified equity investment;
2. The qualified community development entity redeems or makes a principal repayment with respect to the qualified equity investment that generated the tax credit prior to the final credit allowance date of the qualified equity investment. In such case, the department's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or
3. The qualified community development entity fails to invest:
   a. In the case of a qualified equity investment issued prior to January 1, 2014, at least eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth within twenty-four (24) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth until the last credit allowance date for the qualified equity investment; and
   b. In the case of a qualified equity investment issued on or after January 1, 2014, at least one hundred percent (100%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income

community businesses located in the Commonwealth within twelve (12) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth until the last credit allowance date for the qualified equity investment. In this case, the department's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

For purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, an investment shall be considered held by the qualified community development entity even if the investment has been sold or repaid; provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in this state within twelve (12) months of the receipt of the capital. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the qualified equity investment's final credit allowance date.

(b) The department shall provide written notice sent via certified mail or other means deemed feasible by the department, to the qualified community

development entity of any proposed recapture of tax credits pursuant to this subsection. The entity shall have ninety (90) days to cure any deficiency indicated in the department's original recapture notice and avoid such recapture. If the entity fails or is unable to cure the deficiency within the ninety (90) day period, the department shall provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. Any tax credit for which a final recapture order has been issued shall be recaptured by the department from the taxpayer who claimed the tax credit on a tax return.

(c) Recaptured tax credits and the related qualified equity investment authority shall revert back to the department and shall be reissued:

1. First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to this section; and

2. Second, after complying with subparagraph 1. of this paragraph, in accordance with the regular application process.

(7) The department shall through administrative regulations promulgated in accordance with KRS Chapter 13A provide rules to implement the provisions of KRS 141.432 to 141.434, and to administer the allocation of tax credits issued for qualified equity investments.

(8) (a) On or after January 1, 2014, a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by KRS 141.434 shall, as part of the application, pay a refundable performance fee in an amount equal to~~[one-half of]~~ one percent ***(1%)***~~[(0.5%)]~~ of the amount of the equity investment or long-term debt security requested to be certified as a qualified equity investment~~[, not to exceed five hundred thousand dollars ($500,000)]~~.

(b) This fee shall be in the nature of a security deposit to ensure compliance on the part of a qualified community development entity. The fee shall be paid to the department and deposited in the New Markets performance guarantee account established by this subsection, and retained there as private funds until compliance with the provisions of this subsection has been established or as otherwise provided by this subsection.

(c) The fee may be refunded to the qualified community development entity that submitted it as follows:

1. In the case of any application that is ultimately denied pursuant to subsection (2) of this section, the department shall refund the full amount of the fee submitted with the denied application; ***and***

2.~~[In the case of any qualified equity investment that is certified in an amount that is less than the amount requested, due to the limitations contained in KRS 141.434 and pursuant to subsection (5) of this section, the department shall refund a portion of the fee so that only an amount equal to one-half of one percent (0.5%) of the actual certified amount, not to exceed five hundred thousand dollars ($500,000), is retained; and~~

~~3.~~] In the case of any qualified equity investment that is certified as eligible for tax credits, the qualified community development entity may request a refund of the fee no sooner than thirty (30) days after having met all the requirements of this subsection. The refund request shall be made in writing to the department. The department shall review the refund request within thirty (30) days, and shall either comply with the request and issue the refund of the fee, without interest, if the qualified community development entity has met all the requirements of this subsection, or give written notice to the qualified community development entity that it is noncompliant and subject to possible

forfeiture of the fee as provided in this subsection.

(d) The qualified community development entity shall forfeit the fee to the Commonwealth as follows:

1. The entire amount of the fee shall be forfeited if the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified equity investment certified by the department and receive cash in exchange therefor within ninety (90) days after receipt of the notice of certification; and

2. A portion of the fee shall be forfeited if the qualified community development entity, or any subsidiary qualified community development entity, that issues a qualified equity investment certified by the department fails to meet the percentage investment requirement under subsection (6) of this section by the first credit allowance date of the qualified equity investment. The forfeiture shall be proportionate to the amount of the qualified equity investment that is not invested as required by subsection (6) of this section. Forfeiture of the fee under this subparagraph shall be subject to the ninety (90) day cure period allowed under subsection (6) of this section.

(e) The amount of the fee that is forfeited pursuant to this subsection shall be transferred from the New Markets performance guarantee account and deposited into the general fund.

(f) 1. The New Markets performance guarantee account is hereby established as a fiduciary fund within the State Treasury, to be administered by the department solely for the purposes set out in this subsection.

2. Notwithstanding KRS 45.229, moneys in the account shall not lapse but shall be retained in the account at all times except as provided by this

subsection.

(9) A qualified community development entity, its controlling entity, and its affiliates shall not contract with or otherwise use any third party to manage, control the direction of, or source qualified low-income community investments into qualified low-income community businesses, if that third party is another qualified community development entity or is otherwise performing these functions for another qualified community development entity.

(10) (a) A qualified community development entity that has issued a qualified investment shall submit the following information to the department within thirty (30) calendar days after each credit allowance date:

1. A list of all qualified active low-income community businesses in which it has made a qualified low-income community investment. The list shall describe the type and amount of investment in each business, the address of the principal location of each business, and the industry of the business as identified by the North American Industry Classification System. The list shall also include the number of employment positions created and retained as a result of qualified low-income community investments along with the average salary of each position;

2. Bank records, wire transfer records, or similar documents that provide evidence of the qualified low-income community investments made since the last credit allowance date, and a description of the sources of capital for the qualified low-income community investments made since the last credit allowance date;

3. A verified statement by the chief financial or accounting officer of the community development entity that no redemption or principal repayment was made with respect to the qualified investment since the

previous credit allowance date; and

4. Information relating to any recapture of federal new markets tax credit since the last credit allowance date.

(b) This reporting requirement shall apply to all qualified low-income community investments, including those made prior to the effective date of this Act. The department shall make an annual written report to the Legislative Research Commission, including the names of the qualified community development entities that have had qualified equity investments certified under this section, the amount of the qualified equity investments, and the information submitted pursuant to paragraph (a)1. of this subsection.

➔Section 3. KRS 131.190 is amended to read as follows:

(1) (a) No present or former commissioner or employee of the department~~[of Revenue]~~, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

(b) The prohibition established by paragraph (a) of this subsection does not extend to:

1. Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;

2. Any matter properly entered upon any assessment record, or in any way made a matter of public record;
3. Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
4. Testimony provided by the commissioner or any employee of the department~~[of Revenue]~~ in any court, or the introduction as evidence of returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;
5. Providing an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer;
6. Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820(1). The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this subparagraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars ($10);~~[or]~~

7. Providing information to a licensing agency, the Transportation Cabinet, or the Kentucky Supreme Court under KRS 131.1817***; or***

8. Providing information relating to the Kentucky New Markets Development Program tax credit to the Legislative Research Commission pursuant to subsection (10)(b) of Section 2 of this Act.

(2) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.

(3) Statistics of tax-paid gasoline gallonage reported monthly to the department~~[of Revenue]~~ under the gasoline excise tax law may be made public by the department.

(4) Access to and inspection of information received from the Internal Revenue Service is for department~~[of Revenue]~~ use only, and is restricted to tax administration purposes. Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department~~[of Revenue]~~, or any other person.

(5) Statistics of crude oil as reported to the department~~[of Revenue]~~ under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the department~~[of Revenue]~~ under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Energy and Environment Cabinet, Department for Natural Resources.

(6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only

those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

(7) Notwithstanding any other provision of the Kentucky Revised Statutes, the department may divulge to the applicable school districts on a confidential basis any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617.