

1 AN ACT relating to the New Markets Development Program tax credit.

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

3 ➔Section 1. KRS 141.433 is amended to read as follows:

- 4 (1) A qualified community development entity that seeks to have an equity investment  
5 or long-term debt security certified as a qualified equity investment and eligible for  
6 the tax credit permitted by KRS 141.434 shall apply to the department. The  
7 qualified community development entity shall submit an application on a form that  
8 the department provides that shall include but not be limited to:
- 9 (a) The name, address, tax identification number, and evidence of the  
10 certification of the entity as a qualified community development entity;
  - 11 (b) A copy of an allocation agreement executed by the entity or its controlling  
12 entity and the Community Development Financial Institutions Fund, which  
13 includes the Commonwealth of Kentucky in its service area;
  - 14 (c) A certificate executed by an executive officer of the entity attesting that the  
15 allocation agreement remains in effect and has not been revoked or canceled  
16 by the Community Development Financial Institutions Fund;
  - 17 (d) A description of the proposed amount, structure, and purchaser of the equity  
18 investment or long-term debt security;
  - 19 (e) The name and tax identification number of any person or entity eligible to  
20 utilize tax credits as a result of the issuance of the qualified equity investment;
  - 21 (f) Information regarding the proposed use of proceeds from the issuance of the  
22 qualified equity investment;
  - 23 (g) A nonrefundable application fee in an amount set by the department. This fee  
24 shall be paid to the department and shall be required of each application  
25 submitted; and
  - 26 (h) In the case of applications submitted on or after January 1, 2014, the  
27 refundable performance fee required by subsection (8) of this section.

- 1 (2) The department shall review applications in the order in which they are received.  
2 Within thirty (30) days after receipt of a completed application containing the  
3 information necessary for the department to certify a potential qualified equity  
4 investment, including the payment of the application fee, the department shall  
5 approve or deny the application. If the department intends to deny the application, it  
6 shall inform the qualified community development entity, by written notice sent via  
7 certified mail and any other such means deemed feasible by the department, of the  
8 grounds for the denial. Upon receipt of the notice of intended denial by the  
9 qualified community development entity:
- 10 (a) If the qualified community development entity provides any additional  
11 information required by the department or otherwise completes its application  
12 within fifteen (15) days, the application shall be considered completed as of  
13 the original date of submission, however the department shall have an  
14 additional thirty (30) days to either approve or deny the application as  
15 completed; or
- 16 (b) If the qualified community development entity fails to provide the information  
17 or complete its application within the fifteen (15) day period, the application  
18 shall be deemed denied and must be resubmitted in full with a new  
19 submission date.
- 20 (3) If the application is deemed complete, the department shall certify the proposed  
21 equity investment or long-term debt security as a qualified equity investment and  
22 eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap  
23 limitations contained in KRS 141.434. The department shall provide written notice  
24 sent via certified mail and any other means deemed feasible by the department, of  
25 the certification to the qualified community development entity. The notice shall  
26 include the names of those taxpayers who are eligible to claim the credits and their  
27 respective credit amounts. If the names of the persons or entities that are eligible to

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

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

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

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

1 section if:

- 2 1. Any amount of federal tax credit that might be available with respect to  
3 the qualified equity investment that generated the tax credit under this  
4 section is recaptured under 26 U.S.C. sec. 45D. In such case, the  
5 department's recapture shall be proportionate to the federal recapture  
6 with respect to the qualified equity investment;
- 7 2. The qualified community development entity redeems or makes a  
8 principal repayment with respect to the qualified equity investment that  
9 generated the tax credit prior to the final credit allowance date of the  
10 qualified equity investment. In such case, the department's recapture  
11 shall be proportionate to the amount of the redemption or repayment  
12 with respect to the qualified equity investment; or
- 13 3. The qualified community development entity fails to invest:
  - 14 a. In the case of a qualified equity investment issued prior to January  
15 1, 2014, at least eighty-five percent (85%) of the purchase price of  
16 the qualified equity investment in qualified low-income  
17 community investments in qualified active low-income  
18 community businesses located in the Commonwealth within  
19 twenty-four (24) months of the issuance of the qualified equity  
20 investment and maintain this level of investment in qualified low-  
21 income community investments in qualified active low-income  
22 community businesses located in the Commonwealth until the last  
23 credit allowance date for the qualified equity investment; and
  - 24 b. In the case of a qualified equity investment issued on or after  
25 January 1, 2014, at least one hundred percent (100%) of the  
26 purchase price of the qualified equity investment in qualified low-  
27 income community investments in qualified active low-income

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

10 For purposes of calculating the amount of qualified low-income  
11 community investments held by a qualified community development  
12 entity, an investment shall be considered held by the qualified  
13 community development entity even if the investment has been sold or  
14 repaid; provided that the qualified community development entity  
15 reinvests an amount equal to the capital returned to or recovered from  
16 the original investment, exclusive of any profits realized, in another  
17 qualified active low-income community business in this state within  
18 twelve (12) months of the receipt of the capital. *Periodic amounts*  
19 *received during a calendar year as repayment of principal on a loan*  
20 *that is a qualified low-income community investment shall be*  
21 *considered continuously held by a qualified community development*  
22 *entity if the amounts are reinvested in another qualified low-income*  
23 *community investment by the end of the following calendar year.* A  
24 qualified community development entity shall not be required to  
25 reinvest capital returned from qualified low-income community  
26 investments after the sixth anniversary of the issuance of the qualified  
27 equity investment, the proceeds of which were used to make the

1 qualified low-income community investment, and the qualified low-  
2 income community investment shall be considered held by the issuer  
3 through the qualified equity investment's final credit allowance date.

4 (b) The department shall provide written notice sent via certified mail or other  
5 means deemed feasible by the department, to the qualified community  
6 development entity of any proposed recapture of tax credits pursuant to this  
7 subsection. The entity shall have ninety (90) days to cure any deficiency  
8 indicated in the department's original recapture notice and avoid such  
9 recapture. If the entity fails or is unable to cure the deficiency within the  
10 ninety (90) day period, the department shall provide the entity and the  
11 taxpayer from whom the credit is to be recaptured with a final order of  
12 recapture. Any tax credit for which a final recapture order has been issued  
13 shall be recaptured by the department from the taxpayer who claimed the tax  
14 credit on a tax return.

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

19 (8) (a) On or after January 1, 2014, a qualified community development entity that  
20 seeks to have an equity investment or long-term debt security certified as a  
21 qualified equity investment and eligible for the tax credit permitted by KRS  
22 141.434 shall, as part of the application, pay a refundable performance fee in  
23 an amount equal to one-half of one percent (0.5%) of the amount of the equity  
24 investment or long-term debt security requested to be certified as a qualified  
25 equity investment, not to exceed five hundred thousand dollars (\$500,000).

26 (b) This fee shall be in the nature of a security deposit to ensure compliance on  
27 the part of a qualified community development entity. The fee shall be paid to

1 the department and deposited in the New Markets performance guarantee  
2 account established by this subsection, and retained there as private funds  
3 until compliance with the provisions of this subsection has been established or  
4 as otherwise provided by this subsection.

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

- 7 1. In the case of any application that is ultimately denied pursuant to  
8 subsection (2) of this section, the department shall refund the full  
9 amount of the fee submitted with the denied application;
- 10 2. In the case of any qualified equity investment that is certified in an  
11 amount that is less than the amount requested, due to the limitations  
12 contained in KRS 141.434 and pursuant to subsection (5) of this section,  
13 the department shall refund a portion of the fee so that only an amount  
14 equal to one-half of one percent (0.5%) of the actual certified amount,  
15 not to exceed five hundred thousand dollars (\$500,000), is retained; and
- 16 3. In the case of any qualified equity investment that is certified as eligible  
17 for tax credits, the qualified community development entity may request  
18 a refund of the fee no sooner than thirty (30) days after having met all  
19 the requirements of this subsection. The refund request shall be made in  
20 writing to the department. The department shall review the refund  
21 request within thirty (30) days, and shall either comply with the request  
22 and issue the refund of the fee, without interest, if the qualified  
23 community development entity has met all the requirements of this  
24 subsection, or give written notice to the qualified community  
25 development entity that it is noncompliant and subject to possible  
26 forfeiture of the fee as provided in this subsection.

27 (d) The qualified community development entity shall forfeit the fee to the

1 Commonwealth as follows:

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

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

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

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

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

27 ➔Section 2. KRS 141.434 is amended to read as follows:

- 1 (1) There is hereby created a Kentucky New Markets Development Program tax credit.
- 2 (2) A person or entity that makes a qualified equity investment earns a vested right to  
3 the tax credit created by subsection (1) of this section. The amount of the credit  
4 shall be equal to thirty-nine percent (39%) of the purchase price of the qualified  
5 equity investment made by the person or entity claiming the credit. The tax credit  
6 may be utilized as follows:
- 7 (a) The holder of the qualified equity investment on a particular credit allowance  
8 date of the qualified equity investment, whether it be the original purchaser or  
9 subsequent holder of the qualified equity investment, may utilize a portion of  
10 the tax credit against its tax liability for the taxable year that includes the  
11 credit allowance date equal to the applicable percentage for the credit  
12 allowance date multiplied by the purchase price paid for the qualified equity  
13 investment;
- 14 (b) Any tax credit that a taxpayer may not utilize during a particular year may be  
15 carried forward for use in any subsequent tax year; and
- 16 (c) An insurance company claiming a tax credit against the insurance premium  
17 tax is not required to pay additional retaliatory tax levied pursuant to KRS  
18 304.3-270.
- 19 (3) No tax credit claimed under this section may be sold or transferred. Tax credits that  
20 a partnership, limited liability company, S corporation, or other pass-through entity  
21 claims may be allocated to the partners, members, or shareholders of the entity for  
22 their direct use in accordance with the provisions of any agreement among the  
23 partners, members, or shareholders.
- 24 (4) The total amount of tax credits that may be awarded by the department pursuant to  
25 KRS 141.432 to 141.434 shall be limited to twenty million dollars  
26 (\$20,000,000)~~ten million dollars (\$10,000,000)}~~ in each fiscal year. Once the  
27 department has certified a cumulative amount of qualified equity investments that

1           can result in the utilization of this total amount of tax credits in a fiscal year, the  
2           department may not certify any more qualified equity investments. This limitation  
3           on qualified equity investments shall be based on scheduled utilization of tax credits  
4           without regard to the potential for taxpayers to carry forward tax credits to  
5           subsequent tax years.