

§5219-HH. New markets capital investment credit

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Applicable percentage" means 0% for each of the first 2 credit allowance dates, 7% for the 3rd credit allowance date and 8% for the next 4 credit allowance dates. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

B. "Authority" means the Finance Authority of Maine. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

C. "Commissioner" means the Commissioner of Administrative and Financial Services. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

D. "Credit allowance date" means, with respect to any qualified equity investment, the date on which the investment is initially made and each of the 6 anniversary dates of the date thereafter. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

E. "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 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 adopted pursuant to the Code, Section 45D, of the qualified community development entity for the same period prior to giving effect to interest expense on such debt instrument. This paragraph does not limit the holder's ability to accelerate payments on the debt instrument in situations when the qualified community development entity has defaulted on covenants designed to ensure compliance with this section; section 191, subsection 2, paragraph SS; section 2533; and Title 10, section 1100-Z or the Code, Section 45D. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

F. "Purchase price" means the amount of the investment in the qualified community development entity for the qualified equity investment. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

G. "Qualified active low-income community business" has the same meaning as in the Code, Section 45D and includes any entity making an investment under this section if, for the most recent calendar year ending prior to the date of the investment:

(1) At least 50% of the total gross income of the entity was derived from the active conduct of business activity of the entity within any municipality where the average annual unemployment rate for that year was higher than the state average unemployment rate;

(2) A substantial portion of the use of the tangible property of the entity was within any location of the State where the average annual unemployment rate for that year was higher than the state average unemployment rate; or

(3) A substantial portion of the services performed by the entity by its employees was performed in a municipality where the average annual unemployment rate for that year was higher than the state average unemployment rate. [PL 2013, c. 331, Pt. C, §37 (AMD); PL 2013, c. 331, Pt. C, §41 (AFF).]

H. "Qualified community development entity" has the same meaning as in the Code, Section 45D, except that the entity must have entered into or be controlled by or under common control of an entity that has entered into an allocation agreement with the Community Development Financial

Institutions Fund of the United States Department of the Treasury with respect to credits authorized by the Code, Section 45D. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

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

(1) Has at least 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 State by the 2nd anniversary of the initial credit allowance date;

(2) Is acquired after December 31, 2011 at its original issuance solely in exchange for cash; and

(3) Is designated by the issuer as a qualified equity investment and is certified by the authority pursuant to Title 10, section 1100-Z, subsection 3, paragraph G. "Qualified equity investment" includes any qualified equity investment that does not meet the provisions of Title 10, section 1100-Z, subsection 3, paragraph G 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 State. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

J. "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after September 28, 2011. Except as otherwise provided in this paragraph, with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made with the proceeds of qualified equity investments that have been certified under Title 10, section 1100-Z, subsection 3, paragraph G is \$10,000,000 per project constructed, maintained or operated by the qualified active low-income community business whether made by one or several qualified community development entities. With respect to investments in a qualified active low-income community business that is a manufacturing or value-added production enterprise, the limit on the qualified low-income community investment is \$40,000,000 per project constructed, maintained or operated by the qualified active low-income community business. For the purposes of this paragraph, with respect to projects to which the \$10,000,000 limitation applies, "project" includes all land, buildings, structures, machinery and equipment located at the same location and constructed, maintained or operated by the qualified active low-income community business. For the purposes of this paragraph, with respect to projects to which the \$40,000,000 limitation applies, "project" means, and refers separately to, each manufacturing or value-added production facility that projects to create or retain more than 200 jobs, including the land, buildings, structures, machinery and equipment functionally related to, and integrated with, the manufacturing or production process conducted on the site of that facility. "Project" does not mean or include the component pieces of an integrated manufacturing or production process conducted on the site of a particular facility. "Qualified low-income community investment" does not include a capital or equity investment made after November 9, 2015 if more than 5% of the investment is used to refinance costs, expenses or investments incurred or paid by the qualified active low-income community business or a party related to the qualified active low-income community business prior to the date of the qualified low-income community investment; make equity distributions from the qualified active low-income community business to its owners; acquire an existing business or enterprise in the State; or pay transaction fees. [PL 2017, c. 339, §1 (AMD).]

[PL 2017, c. 339, §1 (AMD).]

2. Credit allowed. A person that holds a qualified equity investment certified by the authority pursuant to Title 10, section 1100-Z, subsection 3, paragraph G on a credit allowance date that falls

within the taxable year is allowed a credit equal to the applicable percentage that applies to the credit allowance date multiplied by the purchase price paid for the qualified equity investment. Notwithstanding any other provision of law, other than the recapture provisions of subsection 7, the person, and any subsequent person, that is the holder of the credit certificate issued by the authority for a qualified equity investment is entitled, in the aggregate, to the entire 39% credit amount computed with respect to the 7 credit allowance dates. In no event may the credit amount in the aggregate exceed 39% for any single qualified equity investment certified by the authority.

[PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

3. Memorandum of agreement.

[PL 2017, c. 375, Pt. G, §2 (RP).]

4. Carry-over to succeeding year. Any unused portion of the credit may be carried over to the following taxable year or years, except that the carry-over period for unused credit amounts may not exceed 20 years.

[PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

5. Pass-through entity; allocation of the credit. Credits allowed pursuant to this section to a partnership, limited liability company, S corporation or other similar pass-through entity must be allocated to the partners, members, shareholders or other owners in accordance with section 5219-G or pursuant to an executed agreement among the partners, members or shareholders or other owners documenting an alternate allocation method.

[PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

6. Credit refundable. The credit allowed under this section is refundable.

[PL 2017, c. 170, Pt. E, §8 (AMD).]

6-A. Interest inapplicable. Notwithstanding any provision of this Title to the contrary, interest does not accrue during any period of delay as the result of the fiscal year credit limit imposed by Title 10, section 1100-Z, subsection 4 of any payment to a taxpayer pursuant to this section.

[PL 2019, c. 401, Pt. C, §13 (NEW).]

7. Recapture of credits. The State Tax Assessor may recapture all of the credit allowed under this section if:

A. Any amount of federal tax credits available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under the Code, Section 45D. In such a case, the recapture must be proportionate to the federal recapture with respect to the qualified equity investment; [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

B. 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 a case, the recapture must be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

C. The qualified community development entity fails to invest at least 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 State within 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 State until the last credit allowance date for 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 is considered held by the qualified community development entity even if the investment has been sold or repaid as long as 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 12 months of the receipt of the capital. A qualified community development entity may not be required to reinvest capital returned from qualified low-income community investments after the 6th 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 is considered to be held by the issuer through the qualified equity investment's final credit allowance date. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

The qualified community development entity must be provided 90 days to cure any deficiency indicated in the authority's original recapture notice and avoid such recapture. If the entity fails or is unable to cure the deficiency within the 90-day period, the assessor shall provide the qualified community development entity and the person from whom the credit is to be recaptured with a final order of recapture. Any amount of tax credits for which a final recapture order has been issued must be recaptured from the person that actually claimed the tax credit. [PL 2011, c. 548, §33 (NEW); PL 2011, c. 548, §35 (AFF).]

SECTION HISTORY

PL 2011, c. 548, §33 (NEW). PL 2011, c. 548, §35 (AFF). PL 2011, c. 657, Pt. P, §1 (AMD). PL 2013, c. 75, §1 (AMD). PL 2013, c. 331, Pt. C, §37 (AMD). PL 2013, c. 331, Pt. C, §41 (AFF). PL 2017, c. 170, Pt. E, §8 (AMD). PL 2017, c. 339, §1 (AMD). PL 2017, c. 375, Pt. G, §2 (AMD). PL 2019, c. 401, Pt. C, §13 (AMD).

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