

**As Introduced**

**130th General Assembly  
Regular Session  
2013-2014**

**S. B. No. 309**

**Senators Beagle, Tavares**

**Cosponsor: Senator Seitz**

—

**A B I L L**

To amend section 5725.33 of the Revised Code to 1  
modify the qualifications for the New Markets Tax 2  
Credit and the schedule for receiving the credit. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 5725.33 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 5725.33.** (A) Except as otherwise provided in this 6  
section, terms used in this section have the same meaning as 7  
section 45D of the Internal Revenue Code, any related proposed, 8  
temporary or final regulations promulgated under the Internal 9  
Revenue Code, any rules or guidance of the internal revenue 10  
service or the United States department of the treasury, and any 11  
related rules or guidance issued by the community development 12  
financial institutions fund of the United States department of the 13  
treasury, as such law, regulations, rules, and guidance exist on 14  
October 16, 2009. 15

As used in this section: 16

(1) "Adjusted purchase price" means the amount paid for 17  
qualified equity investments multiplied by the qualified 18  
low-income community investments made by the issuer in projects 19

located in this state as a percentage of the total amount of 20  
qualified low-income community investments made by the issuer in 21  
projects located in all states on the credit allowance date during 22  
the applicable tax year, subject to divisions (B)(1) and (2) of 23  
this section. 24

(2) "Applicable percentage" means ~~zero~~ five per cent for each 25  
of the first ~~two~~ three credit allowance dates, ~~seven per cent for~~ 26  
~~the third credit allowance date,~~ and ~~eight~~ six per cent for the 27  
four following credit allowance dates. 28

(3) "Credit allowance date" means the date, on or after 29  
January 1, 2010, a qualified equity investment is made and each of 30  
the six anniversary dates thereafter. For qualified equity 31  
investments made after October 16, 2009, but before January 1, 32  
2010, the initial credit allowance date is January 1, 2010, and 33  
each of the six anniversary dates thereafter is on the first day 34  
of January of each year. For investments made before the effective 35  
date of ...B... of the 130th general assembly that were not 36  
qualified equity investments under the law as it existed at the 37  
time the investment was made but are qualified equity investments 38  
under the amendments made by that act, the initial credit 39  
allowance date is the effective date of that act. 40

(4) ~~"Qualified active low income community business" excludes~~ 41  
~~any business that derives or projects to derive fifteen per cent~~ 42  
~~or more of annual revenue from the rental or sale of real~~ 43  
~~property, except any business that is a special purpose entity~~ 44  
~~principally owned by a principal user of that property formed~~ 45  
~~solely for the purpose of renting, either directly or indirectly,~~ 46  
~~or selling real property back to such principal user if such~~ 47  
~~principal user does not derive fifteen per cent or more of its~~ 48  
~~gross annual revenue from the rental or sale of real property.~~ 49

~~(5) "Qualified community development entity" includes only~~ 50  
~~entities.~~ 51

~~(a) That that have entered into an allocation agreement with~~ 52  
the community development financial institutions fund of the 53  
United States department of the treasury with respect to credits 54  
authorized by section 45D of the Internal Revenue Code; 55

~~(b) Whose and whose service area includes any portion of this~~ 56  
state; and 57

~~(c) That will designate an equity investment in such entities~~ 58  
~~as a qualified equity investment for purposes of both section 45D~~ 59  
~~of the Internal Revenue Code and this section.~~ 60

~~(6)(5)~~ "Qualified equity investment" is limited to an equity 61  
investment in a qualified community development entity that: 62

(a) Is acquired after October 16, 2009, at its original 63  
issuance solely in exchange for cash; 64

(b) Has at least eighty-five per cent of its cash purchase 65  
price used by the qualified community development entity to make 66  
qualified low-income community investments, provided that in the 67  
seventh year after a qualified equity investment is made, only 68  
seventy-five per cent of such cash purchase price must be used by 69  
the qualified community development entity to make qualified 70  
low-income community investments; and 71

(c) Is designated by the issuer as a qualified equity 72  
investment. 73

"Qualified equity investment" includes any equity investment 74  
that would, but for division (A)~~(6)(5)~~(a) of this section, be a 75  
qualified equity investment in the hands of the taxpayer if such 76  
investment was a qualified equity investment in the hands of a 77  
prior holder. 78

(B) There is hereby allowed a nonrefundable credit against 79  
the tax imposed by section 5725.18 of the Revised Code for an 80  
insurance company holding a qualified equity investment on the 81

credit allowance date occurring in the calendar year for which the 82  
tax is due. The credit shall equal the applicable percentage of 83  
the adjusted purchase price of qualified low-income community 84  
investments, subject to divisions (B)(1) and (2) of this section: 85

(1) For the purpose of calculating the amount of qualified 86  
low-income community investments held by a qualified community 87  
development entity, an investment shall be considered held by a 88  
qualified community development entity even if the investment has 89  
been sold or repaid, provided that, at any time before the seventh 90  
anniversary of the issuance of the qualified equity investment, 91  
the qualified community development entity reinvests an amount 92  
equal to the capital returned to or received or recovered by the 93  
qualified community development entity from the original 94  
investment, exclusive of any profits realized and costs incurred 95  
in the sale or repayment, in another qualified low-income 96  
community investment within twelve months of the receipt of such 97  
capital. If the qualified low-income community investment is sold 98  
or repaid after the sixth anniversary of the issuance of the 99  
qualified equity investment, the qualified low-income community 100  
investment shall be considered held by the qualified community 101  
development entity through the seventh anniversary of the 102  
qualified equity investment's issuance. 103

(2) The qualified low-income community investment made in 104  
this state shall equal the sum of the qualified low-income 105  
community investments in each qualified active low-income 106  
community business in this state, not to exceed two million five 107  
hundred sixty-four thousand dollars, in which the qualified 108  
community development entity invests, including such investments 109  
in any such businesses in this state related to that qualified 110  
active low-income community business through majority ownership or 111  
control. 112

The credit shall be claimed in the order prescribed by 113

section 5725.98 of the Revised Code. If the amount of the credit 114  
exceeds the amount of tax otherwise due after deducting all other 115  
credits in that order, the excess may be carried forward and 116  
applied to the tax due for not more than four ensuing years. 117

By claiming a tax credit under this section, an insurance 118  
company waives its rights under section 5725.222 of the Revised 119  
Code with respect to the time limitation for the assessment of 120  
taxes as it relates to credits claimed that later become subject 121  
to recapture under division (E) of this section. 122

(C) The amount of qualified equity investments on the basis 123  
of which credits may be claimed under this section and sections 124  
5726.54, 5729.16, and 5733.58 of the Revised Code shall not exceed 125  
the amount, estimated by the director of development, that would 126  
cause the total amount of credits allowed each fiscal year to 127  
exceed ten million dollars, computed without regard to the 128  
potential for taxpayers to carry tax credits forward to later 129  
years. 130

(D) If any amount of ~~the~~ a federal tax credit allowed for a 131  
qualified equity investment for which a credit was received under 132  
this section is recaptured under section 45D of the Internal 133  
Revenue Code, or if the director of development services 134  
determines that an investment for which a tax credit is claimed 135  
under this section is not a qualified equity investment or that 136  
the proceeds of an investment for which a tax credit is claimed 137  
under this section are used to make qualified low-income community 138  
investments other than in a qualified active low-income community 139  
business, all or a portion of the credit received on account of 140  
that investment shall be paid by the insurance company that 141  
received the credit to the superintendent of insurance. The amount 142  
to be recovered shall be determined by the director of development 143  
services pursuant to rules adopted under division (E) of this 144  
section. The director shall certify any amount due under this 145

division to the superintendent of insurance, and the 146  
superintendent shall notify the treasurer of state of the amount 147  
due. Upon notification, the treasurer shall invoice the insurance 148  
company for the amount due. The amount due is payable not later 149  
than thirty days after the date the treasurer invoices the 150  
insurance company. The amount due shall be considered to be tax 151  
due under section 5725.18 of the Revised Code, and may be 152  
collected by assessment without regard to the time limitations 153  
imposed under section 5725.222 of the Revised Code for the 154  
assessment of taxes by the superintendent. All amounts collected 155  
under this division shall be credited as revenue from the tax 156  
levied under section 5725.18 of the Revised Code. 157

(E) The tax credits authorized under this section and 158  
sections 5726.54, 5729.16, and 5733.58 of the Revised Code shall 159  
be administered by the ~~department of~~ development services agency. 160  
The director of development services, in consultation with the tax 161  
commissioner and the superintendent of insurance, pursuant to 162  
Chapter 119. of the Revised Code, shall adopt rules for the 163  
administration of this section and sections 5726.54, 5729.16, and 164  
5733.58 of the Revised Code. The rules shall provide for 165  
determining the recovery of credits under division (D) of this 166  
section and under sections 5726.54, 5729.16, and 5733.58 of the 167  
Revised Code, including prorating the amount of the credit to be 168  
recovered on any reasonable basis, the manner in which credits may 169  
be allocated among claimants, and the amount of any application or 170  
other fees to be charged in connection with a recovery. 171

(F) There is hereby created in the state treasury the new 172  
markets tax credit operating fund. The director of development 173  
services is authorized to charge reasonable application and other 174  
fees in connection with the administration of tax credits 175  
authorized by this section and sections 5726.54, 5729.16, and 176  
5733.58 of the Revised Code. Any such fees collected shall be 177

credited to the fund. The director of development services shall 178  
use money in the fund to pay expenses related to the 179  
administration of tax credits authorized under sections 5725.33, 180  
5726.54, 5729.16, and 5733.58 of the Revised Code. 181

**Section 2.** That existing section 5725.33 of the Revised Code 182  
is hereby repealed. 183