Ohio Legislative Service Commission

Bill Analysis

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H.B. 558

129th General Assembly
(As Introduced)

Rep. Beck

BILL SUMMARY

- Conforms Ohio New Markets Tax Credit to similar credits allowed under federal law, expands the class of credit-eligible businesses, and adjusts the amount of credit that may be claimed each year.

CONTENT AND OPERATION

Ohio New Markets Tax Credit

Continuing law authorizes a nonrefundable tax credit with a four-year carryforward against the insurance and financial institution franchise taxes for insurance companies and financial institutions that purchase and hold securities issued by low-income community organizations to finance investments in qualified active low-income community businesses in Ohio. The credit is modeled on the federal New Markets Tax Credit law.

Federal credit

Federal law provides a credit against the federal income tax, totaling 39% of the cost of the investment at original issue, for making qualified equity investments in investment vehicles known as Community Development Entities (CDEs). A CDE is a United States corporation or partnership with the primary mission of serving or providing investment capital for businesses in low-income communities, that maintains accountability to residents of low-income communities through representation by them on the CDE's governing board or an advisory board, and that is certified as a CDE by the Secretary of the Treasury.

A qualified equity investment is the purchase of capital stock or capital interest in a partnership. The credit provided to the investor is applied over a seven-year period. Substantially all of the taxpayer's investment must in turn be used by the CDE to make qualified investments in "low-income communities."[1]

Ohio credit

The current Ohio New Markets Tax Credit totals 39% of the "adjusted purchase price" of qualified equity investments in CDEs that use substantially all of the proceeds to make investments in qualified active low-income community businesses. To obtain the Ohio credit, a person must have qualified for the federal credit by holding a qualified equity investment. Under the Federal program, a CDE can make qualified investments in any state. For purposes of the Ohio credit, the "adjusted purchase price" of qualified investments is the percentage of those investments that are made in businesses located in Ohio. A qualified equity investment is an equity investment in a qualified CDE. An investor eligible to receive tax credits for its investment in a qualified CDE must be an insurance company subject to the state's insurance company franchise taxes or a financial institution subject to the state's corporation franchise tax. To be a qualified equity investment, the equity investment must be acquired after October 16, 2009, for cash, and at least 85% of the purchase price must be used by the issuer to make qualified low-income community investments. The investment may be transferred, so long as the transferee's holding would qualify if the transferee were the purchaser at the original issuance.

Credits must be applied over a seven-year period, beginning on the date a qualified equity investment is made and continuing for the next six anniversary dates.

Under continuing law, the amount of the credit that an insurance company or financial institution holding a qualified equity investment may claim is equal to 39% of the adjusted purchase price of qualified low-income community investments. Under current law, the amount of qualified low-income community investments is the total amount of investments that are invested in qualified low-income community businesses, up to $2,564,000 in a fiscal year. A "qualified active low-income community business" is any partnership or corporation that derives less than 15% of its annual revenue from the rental or sale of real property (except for certain special purpose entities owned by the business and created for the purpose of renting or selling the property back to the tenant) and that, for any tax year, satisfies all of the following:

(1) At least 50% of total gross income of the entity is derived from the active conduct of qualified business within a low-income community;

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[1] 26 U.S.C. 45D (2012).

(2) A substantial portion of the use of the tangible property of the entity (whether owned or leased) is within a low-income community;

(3) A substantial portion of the services performed for the entity by its employees are performed in a low-income community;

(4) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (other than collectibles held primarily for sale in the ordinary course of business);

(5) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property.[2]

Credit allowance dates

The bill accelerates an investor's receipt of credit installments by permitting credits of 5% of qualified equity investments in CDEs for the first three years and 6% for the final four years, compared with the current schedule of 0% in the first two years, 7% in the third year, and 8% in the final four years.[3] This credit allocation is the same credit allocation used in figuring the federal New Markets Tax Credit.[4]

Credit-eligible businesses

The bill allows a CDE to make credit-eligible investments in a low-income community business that derives 15% or more of its annual revenue from renting or selling real estate.[5] Under current law, investments in such businesses would not be counted towards the required investment that would allow an investor to be eligible to claim the Ohio credit. The CDE is required to invest at least 85% of the investment in such businesses (but only 75% in the seventh year).

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[2] 26 U.S.C. 45D (2012). Nonqualified financial property is financial property (debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property) that is not working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less; or accounts or notes receivable acquired in the ordinary course of business for services rendered, or from the sale of stock or inventory in the taxpayer's ordinary course of business.

[3] R.C. 5725.33(A).

[4] 26 U.S.C. 45D.

[5] R.C. 5725.33(A).

Designation of qualifying equity investments

Under current law, a qualified CDE is required to designate equity investments it holds as qualified equity investments for the purpose of qualifying for the federal and Ohio New Markets Tax Credit. The bill permits CDEs to designate as a qualifying equity investment those investments committed from any CDE.[6]

Individual credit limit

Under current law, the maximum allowable credit for each investor is equal to 39% of the maximum qualified equity investment amount of $2,564,000 per fiscal year, or exactly $999,960 per investor. The bill raises the amount of qualified equity investment allowed per investor to $2,564,103, raising the maximum credit amount to $1 million.[7]

Adjusted purchase price

The bill eliminates the requirement that the "adjusted purchase price" of investments be calculated in determining the amount of the credit. However, the bill continues to base the credit on the amount invested in projects located in Ohio.[8]

Conform to federal law

Under current law, any term not otherwise defined or limited by state law has the meaning as defined under federal New Markets Tax Credit law as that law existed on October 16, 2009, the effective date of Am. Sub. H.B. 1 of the 128th General Assembly. The bill conforms Ohio's New Markets Tax Credit law to reflect any changes made to those terms in federal law between October 16, 2009, and H.B. 558's effective date.[9]

HISTORY

ACTION	DATE
Introduced	05-23-12

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[6] R.C. 5725.33(A)(3).

[7] R.C. 5725.33(B)(2).

[8] R.C. 5725.33(A) and (B).

[9] R.C. 5725.33(A).