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Overview

This bill creates a new markets tax credit program with maximum credit authority of $300 million to be allocated over three taxable years. This is a nonrefundable 39 percent credit against the income, corporate, or insurance taxes for investments made by investors who receive the tax credits from intermediaries that apply for and receive tax credits from the Department of Employment and Economic Development (DEED). The investments must be made in the types of community businesses that qualify under the federal new markets credit or that DEED determines to be of regional economic significance. Credits are claimed by investors over a seven-year period starting with the year of the investment.

Effective beginning in tax year 2018.

Section

1 **New markets tax credit.** Establishes a new markets tax credit program.

Subd. 1. Definitions. Defines the following terms.

- **Affiliate** means an entity that meets a 50-percent shared ownership test.
- **Applicant** is a qualified community development entity (defined below).
- **Applicable percentage** is used to allocate the 39 percent credit across multiple taxable years. It is five percent for years one to three (15 percent for those three years) and six percent for years four to seven (24 percent for those four years).

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- **Commissioner** is the commissioner of DEED.
- **Greater Minnesota** means the area outside of the seven-county Minneapolis-St. Paul metropolitan area.
- **Internal Revenue Code** means the version of the Internal Revenue Code that applies to the Minnesota income and corporate franchise taxes under chapter 290.
- **Investment held by a QCDE** means any capital or equity investment or loan held by a QCDE. If investments are sold or repaid to QCDE, it must reinvest the amounts within 12 months, except this requirement does not apply after the sixth anniversary of the issuance of the qualified investment.
- **Purchase price** is the amount paid to the QCDE for a qualified equity investment for a tax credit allocation.
- **Qualified active low-income community businesses** are the defined businesses that qualify under the federal new markets credit rules or a project that DEED deems to have regional significance. They exclude businesses engaged in insurance, banking, lending, lobbying, political consulting, operating a private club, golf courses, casinos, liquor stores, suntan facilities, and massage parlors.
- **Qualified community development entity (QCDE)** is defined by reference to federal new markets credit rules. To qualify, an entity must have an agreement with the U.S. Treasury Department allocating it a federal credit for investments located in Minnesota, as well as direct lending experience.
- **Qualified equity investment** means an equity investment in a QCDE after January 1, 2018. The securities must be purchased for cash, all of which is used to invest in qualified, active, low-income community businesses. The investment cannot qualify for federal new markets tax credits if the proceeds are used to make investments in other QCDEs.
- **Qualified low-income community investment** means any investment in or loan to a qualified active low-income community business.
- **Tax credit** means a credit against the individual income, corporate franchise, or insurance premiums taxes.
- **Taxpayer** means an individual or entity subject to the individual income, corporate franchise, or insurance premiums taxes.

Subd. 2. Credit allowed. Allows a 39 percent new markets tax credit to taxpayers making qualified equity investments. The credit is claimed over a period of seven tax years at the rates specified in the definitions. The credit is not refundable (it cannot exceed tax liability) or transferable; however, for investments made by pass-through entities, the credit is allocated among the owners as provided in the agreement. (This effectively allows use of these entities to transfer credits by transferring ownership interests in these entities.) Amounts that exceed the investor's tax liability are permitted a five-year carryover. The maximum amount of credits allowed is $300 million.

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Subd. 3. Certification. Requires QCDEs to certify to DEED the amount of investment expected to be made in the first year after allocation of the credit authority. The maximum amount of certified investments to the same business and its affiliates is limited to $15 million. Certifications not used within a 24-month period lapse and the QCDE must reapply to DEED for new certifications. DEED is allowed to reissue lapsed certifications.

Subd. 4. Amount certified. Directs DEED to certify the $300 million of tax credits over tax years 2017 to 2019, based on a competitive review of the applications for allocations.

Subd. 5. Application. Directs DEED to establish an application form and process and specifies the information required to be included in applications (a completed application with the required information enables applicants to qualify for available allocations under subdivision 6):

(1) the technical expertise of the applicant and its experience using federal or state new markets credits, including in Minnesota (minimum dollar amounts apply with various exceptions and special rules);

(2) whether the proposal ensures the benefits remain in Minnesota;

(3) whether wages and benefits are expected to exceed the poverty guidelines; and

(4) the expected financial contributions from nonstate sources. DEED can establish additional criteria.

Subd. 6. Consideration of application. Directs DEED to grant or deny applications in full or part within 90 days after a completed application is filed. A process is provided for applicants to submit additional information in a 15-day period to demonstrate their applications qualify. DEED is to certify qualifying applications. A $300 million overall tax credit limit applies ($100 million per year for 2018 – 2020). No one applicant and its affiliates can receive more than $100 million of the total. The allocations must be divided equally between the metropolitan area and greater Minnesota.

Subd. 7. Credit recapture. Provides for credit recapture if a federal credit for the investment is also recaptured for one of the following reasons:

- The recipient business (in which the QCDE invested) fails to document that it qualifies under the credit.
- The QCDE loses its federal certification.
- The investment is returned before the end of the 6-year compliance period.

For tax credits for investments that do not receive federal credits, DEED may recapture the credits on the same bases. DEED may also impose a penalty equal to 0.5 percent of the investment for recaptured credits.

Section

Subd. 8. Suballocation. Authorizes a QCDE entity to transfer all or part of its credit allocations to subsidiaries. It must notify DEED within 30 days, and the subsidiary is subject to the same restrictions and rules as the entity.

Subd. 9. Annual reporting. Requires annual reporting to DEED by QCDEs on the characteristics of the businesses invested in, their locations, and the number of jobs created or retained including wage and benefit information.

Subd. 10. Application fees. Requires payment of a $5,000 nonrefundable application fee. The fees must be payable in installments with no more than half of it due with the application and the remaining two quarters due six and nine months after the application is filed. The fees are deposited in a new markets tax credit account in the DEED special revenue fund.

Subd. 11. Administrative fees. Allows DEED to set administrative fees (limited to two percent of the qualified equity investment) that are due when an equity investment is issued. The fees are deposited in a new markets tax credit account in the DEED special revenue fund.

Subd. 12. Administrative expenses. Provides an open appropriation of the amounts in the new markets tax credit account to DEED for program administrative costs.

Subd. 13. Program report. Requires DEED to report to the legislature on the program by December 31, 2024.

Subd. 14. Economic significance determination. Requires DEED to provide a written explanation to the legislative committees with jurisdiction over DEED's programs or its budget promptly after it awards credits to projects that do not meet the federal credit criteria, but which DEED determines to be of "regional economic significance."

Subd. 15. Expiration. Provides the program expires seven years after its enactment, but expiration does not affect the validity of tax credit allocations made, except that they expire at the end of 2031.

2 **New markets credit; individual income and corporate franchise taxes.** Makes conforming changes to the income and corporate franchise tax statute allowing the credit and granting the commissioner of revenue audit powers over the credit.

3 **New markets credit; insurance premiums tax.** Makes conforming changes to the insurance premiums tax statute allowing the credit and provides that the credit does not affect calculation of police and fire aid.