

FIRST REGULAR SESSION

SENATE BILL NO. 169

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Pre-filed December 14, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0824S.011

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to the new markets tax credit program.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be known as section 135.662, to read as follows:

135.662. 1. As used in this section, the following terms shall mean:

(1) "Adjusted purchase price", the product of:

(a) The amount paid to the issuer of a qualified equity investment for such qualified equity investment; and

(b) The following fraction:

a. The numerator shall be the dollar amount of qualified low-income community investments held by the issuer in this state as of the credit allowance date during the applicable tax year; and

b. The denominator shall be the total dollar amount of qualified low-income community investments held by the issuer in all states as of the credit allowance date during the applicable tax year;

(2) "Applicable percentage", five percent for each of the first three credit allowance dates and six percent for the next four credit allowance dates;

(3) "Credit allowance date", with respect to any qualified equity investment:

(a) The date on which such investment is initially made; and

(b) Each of the six anniversary dates of such dates thereafter;

(4) "Long-term debt security", any debt instrument issued by a qualified community development entity, at par value or a premium,

22 with an original maturity date of at least seven years from the date of
23 its issuance, with no acceleration of repayment, amortization, or
24 prepayment features prior to its original maturity date, and with no
25 distribution, payment, or interest features related to the profitability
26 of the qualified community development entity or the performance of
27 the qualified community development entity's investment
28 portfolio. The foregoing shall in no way limit the holder's ability to
29 accelerate payments on the debt instrument in situations where the
30 issuer has defaulted on covenants designed to ensure compliance with
31 this section or Section 45D of the Internal Revenue Code of 1986, as
32 amended;

33 (5) "Qualified active low-income community business", the
34 meaning given such term in Section 45D of the Internal Revenue Code
35 of 1986, as amended; provided that any business that derives or projects
36 to derive fifteen percent or more of its annual revenue from the rental
37 or sale of real estate shall not be considered to be a qualified active
38 low-income community business;

39 (6) "Qualified community development entity", the meaning given
40 such term in Section 45D of the Internal Revenue Code of 1986, as
41 amended; provided that such entity has entered into an allocation
42 agreement with the Community Development Financial Institutions
43 Fund of the U.S. Treasury Department with respect to credits
44 authorized by Section 45D of the Internal revenue Code of 1986, as
45 amended;

46 (7) "Qualified Equity Investment", any equity investment in, or
47 long-term debt security issued by, a qualified community development
48 entity that:

49 (a) Is acquired after the effective date of this section at its
50 original issuance solely in exchange for cash;

51 (b) Has at least eighty-five percent of its cash purchase price
52 used by the issuer to make qualified low-income community
53 investments; and

54 (c) Is designated by the issuer as a qualified equity investment.
55 This term shall include any qualified equity investment that does not
56 meet the provisions of paragraph (a) of this subdivision if such
57 investment was a qualified equity investment in the hands of a prior
58 holder;

59 (8) "Qualified low-income community investment", any capital or
60 equity investment in, or loan to, any qualified active low-income
61 community business. With respect to any one qualified active low-
62 income community business, on a collective basis with all of its
63 affiliates, the maximum amount of investment that any qualified
64 community development entity, on an aggregate basis with all of its
65 affiliates, may use for the calculation of any numerator described in
66 Section (1)(b)(i) shall be ten million dollars;

67 (9) "Tax credit", a credit against the tax otherwise due under
68 chapter 143, RSMo, excluding withholding tax imposed in sections
69 143.191 to 143.265, RSMo, or otherwise due under section 375.916, RSMo,
70 or chapter 147, 148, or 153, RSMo;

71 (10) "Taxpayer", any individual or entity subject to the tax
72 imposed in chapter 143, RSMo, excluding withholding tax imposed in
73 sections 143.191 to 143.265, RSMo, or the tax imposed in section 375.916,
74 RSMo, or chapter 147, 148, or 153, RSMo.

75 2. A taxpayer that holds a qualified equity investment on a credit
76 allowance date of such qualified equity investment shall be entitled to
77 a tax credit during the taxable year including such credit allowance
78 date. The tax credit amount shall be equal to the applicable percentage
79 of the adjusted purchase price paid to the issuer of such qualified
80 equity investment. The amount of the tax credit claimed shall not
81 exceed the amount of the taxpayer's state tax liability for the tax year
82 for which the tax credit is claimed. No tax credit claimed under this
83 section shall be refundable or transferable. Tax credits earned by a
84 partnership, limited liability company, s-corporation, or other "pass-
85 through" entity may be allocated to the partners, members, or
86 shareholders of such entity for their direct use in accordance with the
87 provisions of any agreement among such partners, members, or
88 shareholders. Any amount of tax credit that the taxpayer is prohibited
89 by this section from claiming in a taxable year may be carried forward
90 to any of the taxpayer's subsequent taxable years. The amount of tax
91 credits that may be allocated by the department of economic
92 development under this section in each fiscal year shall not exceed
93 fifteen million dollars.

94 3. The issuer of the qualified equity investment shall certify to
95 the department of economic development the anticipated dollar amount

96 of such investments to be made in this state during the first twelve-
97 month period following the initial credit allowance date. If on the
98 second credit allowance date, the actual dollar amount of such
99 investments is different than the amount estimated, the department of
100 economic development shall adjust the credits arising on the second
101 allowance date to account for such difference.

102 4. The department of economic development shall recapture the
103 tax credit allowed under this section with respect to such qualified
104 equity investment under this section if:

105 (1) Any amount of the federal tax credit available with respect
106 to a qualified equity investment that is eligible for a tax credit under
107 this section is recaptured under Section 45D of the Internal Revenue
108 Code of 1986, as amended; or

109 (2) The issuer redeems or makes principal repayment with
110 respect to a qualified equity investment prior to the seventh
111 anniversary of the issuance of such qualified equity investment.

112 Any tax credit that is subject to recapture shall be recaptured from the
113 taxpayer that claimed the tax credit on a return.

114 5. The department of economic development shall promulgate
115 rules to implement the provisions of this section, including recapture
116 provisions on a scaled proportional basis, and to administer the
117 allocation of tax credits issued for qualified equity investments, which
118 shall be conducted on a first-come, first-serve basis. Any rule or
119 portion of a rule, as that term is defined in section 536.010, RSMo, that
120 is created under the authority delegated in this section shall become
121 effective only if it complies with and is subject to all of the provisions
122 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
123 section and chapter 536, RSMo, are nonseverable and if any of the
124 powers vested with the general assembly pursuant to chapter 536,
125 RSMo, to review, to delay the effective date, or to disapprove and annul
126 a rule are subsequently held unconstitutional, then the grant of
127 rulemaking authority and any rule proposed or adopted after August
128 28, 2007, shall be invalid and void.

129 6. Under section 23.253, RSMo, of the Missouri sunset act:

130 (1) The provisions of the new program authorized under this
131 section shall automatically sunset six years after the effective date of
132 this section unless reauthorized by an act of the general assembly; and

133 **(2) If such program is reauthorized, the program authorized**
134 **under this section shall automatically sunset twelve years after the**
135 **effective date of the reauthorization of this section; and**

136 **(3) This section shall terminate on September first of the**
137 **calendar year immediately following the calendar year in which the**
138 **program authorized under this section is sunset.**

139 **However, nothing in this subsection shall preclude a taxpayer who**
140 **makes a qualified equity investment prior to sunset of this section**
141 **under the provision of the Missouri sunset act, section 23.253, RSMo,**
142 **from claiming tax credits relating to such qualified equity investment**
143 **for each credit allowance date.**

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Bill

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