

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1160

Short Title: New Market Tax Credits.

(Public)

Sponsors: Senators Hoyle; Atwater, Cowell, Dalton, and Hartsell.

Referred to: Finance.

March 22, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A STATE NEW MARKET TAX CREDIT TO
3 COMPLEMENT THE FEDERAL TAX CREDIT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 105 of the General Statutes is amended by adding a
6 new Article to read:

"Article 3K.

"New Market Development Program.

9 "**§ 105-129.95. Definitions.**

10 The following definitions apply in this Article:

11 (1) Adjusted purchase price. – The product of the following:

12 a. The amount paid to the issuer of a qualified equity investment
13 for the qualified equity investment.

14 b. A fraction, the numerator of which is the dollar amount of
15 qualified low-income community investments held by the issuer
16 of the qualified equity investments in this State as of the credit
17 allowance date during the applicable tax year and the
18 denominator of which is the total dollar amount of qualified
19 low-income community investments held by the issuer as of the
20 credit allowance date during the applicable tax year. With
21 respect to any one qualified active low-income community
22 business, on a collective basis with all of its affiliates, the
23 maximum amount of investment that any qualified community
24 development entity, on an aggregate basis with all of its
25 affiliates, may use for the calculation of the numerator is ten
26 million dollars (\$10,000,000). For purposes of calculating the
27 amount of qualified low-income community investments held
28 by an issuer, an investment is considered held by an issuer even
29 if the investment has been sold or repaid if the issuer reinvests

1 an amount equal to the capital returned to or recovered by the
2 issuer from the original investment, exclusive of any profits
3 realized, in another qualified low-income community
4 investment within 12 months of the receipt of the capital. An
5 issuer is not required to reinvest capital returned from qualified
6 low-income community investments after the sixth anniversary
7 of the issuance of the qualified equity investment, the proceeds
8 of which were used to make the qualified low-income
9 community investment, and the qualified low-income
10 community investment is considered held by the issuer through
11 the seventh anniversary of the qualified equity investment's
12 issuance.

13 (2) Applicable percentage. – Zero percent (0%) for each of the first two
14 credit allowance dates, seven percent (7%) for the third credit
15 allowance date, and eight percent (8%) for each of the next four credit
16 allowance dates.

17 (3) Credit allowance date. – The date with respect to any qualified equity
18 investment on which the investment is initially made and each of the
19 first six anniversary dates of that date.

20 (4) Qualified community development entity. – Defined in section 45D of
21 the Code; provided that the entity has entered into an Allocation
22 Agreement with the Community Development Financial Institutions
23 Fund of the US Treasury Department with respect to credits authorized
24 by section 45D of the Code.

25 (5) Long-term debt security. – Any debt instrument issued by a qualified
26 community development entity, at par value or a premium, with an
27 original maturity date of at least seven years from the date of its
28 issuance, with no acceleration of repayment, amortization, or
29 prepayment features prior to its original maturity date other than as
30 described in this subdivision, and with no distribution, payment, or
31 interest features related to the profitability of the qualified community
32 development entity or the performance of the qualified community
33 development entity's investment portfolio. A long-term debt security
34 may contain provisions allowing the holder to accelerate payments on
35 the debt instrument in situations where the issuer has defaulted on
36 covenants designed to ensure compliance with this section or section
37 45D of the Code.

38 (6) Qualified active low-income community business. – Defined in section
39 45D of the Code except that the term does not include any business
40 that derives or projects to derive fifteen percent (15%) or more of its
41 annual revenue from the rental or sale of real estate.

42 (7) Qualified equity investment. – Any equity investment in, or long-term
43 debt security issued by, a qualified community development entity that
44 satisfies all of the conditions of this subdivision. The term also

1 includes an investment that fails to satisfy the conditions of
2 sub-subdivision a. of this subdivision if the investment satisfied all of
3 the conditions of this subdivision in the hands of a previous holder.

4 a. It was acquired at its original issuance solely in exchange for
5 cash.

6 b. At least eighty-five percent (85%) of its cash purchase price
7 was used by the issuer to make qualified low-income
8 community investments.

9 c. It is designated by the issuer as a qualified equity investment
10 pursuant to the provisions of this section, regardless of whether
11 it also has been designated as a qualified equity investment
12 under section 45D of the Code.

13 (8) Qualified low-income community investment. – Any capital or equity
14 investment in, or loan to, any qualified active low-income community
15 business.

16 **"§ 105-129.96. New market tax credit.**

17 A taxpayer that holds a qualified equity investment, for which a credit has been
18 allocated under G.S. 105-129.100, on a credit allowance date of the qualified equity
19 investment is allowed a tax credit during the taxable year that includes the credit
20 allowance date. The amount of the tax credit is equal to the applicable percentage of the
21 adjusted purchase price paid to the issuer of the qualified equity investment.

22 **"§ 105-129.97. Taxes credited; carryforward.**

23 (a) Taxes Credited. – The credit allowed under this Article may be claimed
24 against the franchise tax imposed by Article 3 of this Chapter, the income taxes imposed
25 by Article 4 of this Chapter, or the gross premiums tax imposed by Article 8B of this
26 Chapter. The taxpayer may take the credit allowed by this Article against only one of
27 the taxes against which it is allowed. The taxpayer must elect the tax against which a
28 credit will be claimed when filing the return on which it is claimed. This election is
29 binding. Any carryforwards of the credit must be claimed against the same tax.

30 (b) Carryforward. – A credit allowed under this Article may not exceed the
31 amount of the tax against which it is claimed for the taxable year reduced by the sum of
32 all credits allowed, except payment of tax made by or on behalf of the taxpayer. Any
33 unused portion of the credit may be carried forward for the succeeding five years.

34 **"§ 105-129.98. Allocation for pass-through entities.**

35 Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a
36 pass-through entity that qualifies for the credit provided in this Article may allocate the
37 credit among any of its owners in its discretion as long as an owner's adjusted basis in
38 the pass-through entity, as determined under the Code, at the end of the taxable year in
39 which the qualified equity investment was made, is at least forty percent (40%) of the
40 amount of credit allocated to that owner. Owners to whom a credit is allocated are
41 allowed the credit as if they had qualified for the credit directly. A pass-through entity
42 and its owners must include with their tax returns for every taxable year in which an
43 allocated credit is claimed a statement of the allocation made by the pass-through entity

1 and the allocation that would have been required under G.S. 105-131.8 or
2 G.S. 105-269.15.

3 **"§ 105-129.99. Forfeiture.**

4 (a) In General. – A taxpayer forfeits a credit allowed under this Article with
5 respect to a qualified equity investment if either of the following occurs:

6 (1) Any amount of the federal tax credit available with respect to the
7 qualified equity investment that is eligible for a tax credit under this
8 Article is recaptured under section 45D of the Code.

9 (2) The issuer redeems or makes any principal repayment with respect to a
10 qualified equity investment prior to the seventh anniversary of the
11 issuance of the qualified equity investment.

12 (b) Forfeiture for Change in Ownership of a Pass-Through Entity. – If an owner
13 of a pass-through entity that has qualified for the credit allowed under this Article
14 disposes of all or a portion of the owner's interest in the pass-through entity within
15 seven years from the date the qualified equity investment was made and the owner's
16 interest in the pass-through entity is reduced to less than two-thirds of the owner's
17 interest in the pass-through entity at the time the qualified equity investment was made,
18 the owner forfeits a portion of the credit equal to the reduction in ownership. Forfeiture
19 as provided in this subsection is not required if the change in ownership is the result of
20 any of the following:

21 (1) The death of the owner.

22 (2) A merger, consolidation, or similar transaction requiring approval by
23 the shareholders, partners, or members of the taxpayer under
24 applicable State law, to the extent the taxpayer does not receive cash or
25 tangible property in the merger, consolidation, or other similar
26 transaction.

27 (c) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity
28 that forfeits a credit under this section is liable for all past taxes avoided as a result of
29 the credit plus interest at the rate established under G.S. 105-241.1(i), computed from
30 the date the taxes would have been due if the credit had not been allowed. The past
31 taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or
32 owner of a pass-through entity that fails to pay the taxes and interest by the due date is
33 subject to the penalties provided in G.S. 105-236.

34 **"§ 105-129.100. Ceiling and application.**

35 (a) Application. – The issuer of the qualified equity investment must make an
36 application to the Department in which the issuer certifies the anticipated dollar amount
37 of investments to be made in this State during the first 12-month period following the
38 initial credit allowance date. The amounts certified by issuers under this section shall
39 serve as the basis for allocations of credits under this Article. If on the second credit
40 allowance date, the actual dollar amount of the investments is less than the amount
41 estimated, the Department must adjust the credits arising on the third allowance date to
42 account for the difference.

43 (b) Ceiling. – The total amount of all tax credits allowed to taxpayers under this
44 Article for investments made in a calendar year may not exceed ten million dollars

1 (\$10,000,000). The Secretary of Revenue shall calculate the total amount of tax credits
2 anticipated from the applications filed pursuant to subsection (a) of this section. If the
3 total amount of tax credits anticipated for investments made in a calendar year exceeds
4 this maximum amount, the Secretary shall allow a portion of the credits claimed by
5 allocating the maximum amount in tax credits in proportion to the size of the credit
6 claimed by each taxpayer.

7 (c) Notification. – If a credit claimed under this Article is reduced as provided in
8 this section, the Secretary shall notify the taxpayer of the amount of the reduction of the
9 credit on or before December 31 of the year following the calendar year in which the
10 investment was made. The Secretary's allocations based on applications filed pursuant
11 to subsection (a) of this section are final and shall not be adjusted to account for credits
12 applied for but not claimed.

13 **"§ 105-129.101. Reports.**

14 The Department of Revenue must publish by May 1 of each year the following
15 information for the 12-month period ending the preceding December 31:

16 (1) The number of taxpayers that took the credit allowed in this Article.

17 (2) The amount of qualified low-income community investments.

18 (3) The locations with respect to which qualified low-income community
19 investments were made.

20 (4) The total cost to the General Fund of the credits taken.

21 **"§ 105-129.102. Sunset.**

22 This Article is repealed for qualified equity investments made on or after January 1,
23 2011."

24 **SECTION 2.** This act is effective for taxable years beginning on or after
25 January 1, 2007, and applies to qualified equity investments made on or after that date.