

**141.433 Application for New Markets Development Program tax credit.**

- (1) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by KRS 141.434 shall apply to the department. The qualified community development entity shall submit an application on a form that the department provides that shall include but not be limited to:
  - (a) The name, address, tax identification number, and evidence of the certification of the entity as a qualified community development entity;
  - (b) A copy of an allocation agreement executed by the entity or its controlling entity and the Community Development Financial Institutions Fund, which includes the Commonwealth of Kentucky in its service area;
  - (c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;
  - (d) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;
  - (e) The name and tax identification number of any person or entity eligible to utilize tax credits as a result of the issuance of the qualified equity investment;
  - (f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment;
  - (g) A nonrefundable application fee in an amount set by the department. This fee shall be paid to the department and shall be required of each application submitted; and
  - (h) In the case of applications submitted on or after January 1, 2014, the refundable performance fee required by subsection (8) of this section.
- (2) The department shall review applications in the order in which they are received. Within thirty (30) days after receipt of a completed application containing the information necessary for the department to certify a potential qualified equity investment, including the payment of the application fee, the department shall approve or deny the application. If the department intends to deny the application, it shall inform the qualified community development entity, by written notice sent via certified mail and any other such means deemed feasible by the department, of the grounds for the denial. Upon receipt of the notice of intended denial by the qualified community development entity:
  - (a) If the qualified community development entity provides any additional information required by the department or otherwise completes its application within fifteen (15) days, the application shall be considered completed as of the original date of submission, however the department shall have an additional thirty (30) days to either approve or deny the application as completed; or
  - (b) If the qualified community development entity fails to provide the information or complete its application within the fifteen (15) day period, the application shall be deemed denied and must be resubmitted in full with a new

submission date.

- (3) If the application is deemed complete, the department shall certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for tax credits under KRS 141.432 to 141.434, subject to the annual cap limitations contained in KRS 141.434. The department shall provide written notice sent via certified mail and any other means deemed feasible by the department, of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to claim the credits and their respective credit amounts. If the names of the persons or entities that are eligible to claim the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to KRS 141.434, the qualified community development entity shall notify the department of such change.
- (4) Within ninety (90) days after receipt of the notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified purchase price. The qualified community development entity shall provide the department with evidence of the receipt of the cash investment within ten (10) business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within ninety (90) days following receipt of the certification notice, the certification shall lapse, and the entity may not issue the qualified equity investment without reapplying to the department for certification. A certification that lapses shall revert back to the department and may be reissued only in accordance with the application process outlined in this section.
- (5) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day. If a pending request cannot be fully certified because of the limitations contained in KRS 141.434, the department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.
- (6) (a) The department may recapture any portion of a tax credit allowed under this section if:
  1. Any amount of federal tax credit that might be available with respect to the qualified equity investment that generated the tax credit under this section is recaptured under 26 U.S.C. sec. 45D. In such case, the department's recapture shall be proportionate to the federal recapture with respect to the qualified equity investment;
  2. The qualified community development entity redeems or makes a principal repayment with respect to the qualified equity investment that

generated the tax credit prior to the final credit allowance date of the qualified equity investment. In such case, the department's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or

3. The qualified community development entity fails to invest:
  - a. In the case of a qualified equity investment issued prior to January 1, 2014, at least eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth within twenty-four (24) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth until the last credit allowance date for the qualified equity investment; and
  - b. In the case of a qualified equity investment issued on or after January 1, 2014, at least one hundred percent (100%) of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth within twelve (12) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth until the last credit allowance date for the qualified equity investment. In this case, the department's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

For purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, an investment shall be considered held by the qualified community development entity even if the investment has been sold or repaid; provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in this state within twelve (12) months of the receipt of the capital. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the qualified equity investment's final credit allowance date.

- (b) The department shall provide written notice sent via certified mail or other means deemed feasible by the department, to the qualified community development entity of any proposed recapture of tax credits pursuant to this subsection. The entity shall have ninety (90) days to cure any deficiency indicated in the department's original recapture notice and avoid such recapture. If the entity fails or is unable to cure the deficiency within the ninety (90) day period, the department shall provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. Any tax credit for which a final recapture order has been issued shall be recaptured by the department from the taxpayer who claimed the tax credit on a tax return.
- (7) The department shall through administrative regulations promulgated in accordance with KRS Chapter 13A provide rules to implement the provisions of KRS 141.432 to 141.434, and to administer the allocation of tax credits issued for qualified equity investments.
- (8)
  - (a) On or after January 1, 2014, a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by KRS 141.434 shall, as part of the application, pay a refundable performance fee in an amount equal to one-half of one percent (0.5%) of the amount of the equity investment or long-term debt security requested to be certified as a qualified equity investment, not to exceed five hundred thousand dollars (\$500,000).
  - (b) This fee shall be in the nature of a security deposit to ensure compliance on the part of a qualified community development entity. The fee shall be paid to the department and deposited in the New Markets performance guarantee account established by this subsection, and retained there as private funds until compliance with the provisions of this subsection has been established or as otherwise provided by this subsection.
  - (c) The fee may be refunded to the qualified community development entity that submitted it as follows:
    - 1. In the case of any application that is ultimately denied pursuant to subsection (2) of this section, the department shall refund the full amount of the fee submitted with the denied application;
    - 2. In the case of any qualified equity investment that is certified in an amount that is less than the amount requested, due to the limitations contained in KRS 141.434 and pursuant to subsection (5) of this section, the department shall refund a portion of the fee so that only an amount equal to one-half of one percent (0.5%) of the actual certified amount, not to exceed five hundred thousand dollars (\$500,000), is retained; and
    - 3. In the case of any qualified equity investment that is certified as eligible for tax credits, the qualified community development entity may request a refund of the fee no sooner than thirty (30) days after having met all the requirements of this subsection. The refund request shall be made in writing to the department. The department shall review the refund

request within thirty (30) days, and shall either comply with the request and issue the refund of the fee, without interest, if the qualified community development entity has met all the requirements of this subsection, or give written notice to the qualified community development entity that it is noncompliant and subject to possible forfeiture of the fee as provided in this subsection.

- (d) The qualified community development entity shall forfeit the fee to the Commonwealth as follows:
  - 1. The entire amount of the fee shall be forfeited if the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified equity investment certified by the department and receive cash in exchange therefor within ninety (90) days after receipt of the notice of certification; and
  - 2. A portion of the fee shall be forfeited if the qualified community development entity, or any subsidiary qualified community development entity, that issues a qualified equity investment certified by the department fails to meet the percentage investment requirement under subsection (6) of this section by the first credit allowance date of the qualified equity investment. The forfeiture shall be proportionate to the amount of the qualified equity investment that is not invested as required by subsection (6) of this section. Forfeiture of the fee under this subparagraph shall be subject to the ninety (90) day cure period allowed under subsection (6) of this section.
- (e) The amount of the fee that is forfeited pursuant to this subsection shall be transferred from the New Markets performance guarantee account and deposited into the general fund.
- (f)
  - 1. The New Markets performance guarantee account is hereby established as a fiduciary fund within the State Treasury, to be administered by the department solely for the purposes set out in this subsection.
  - 2. Notwithstanding KRS 45.229, moneys in the account shall not lapse but shall be retained in the account at all times except as provided by this subsection.

**Effective:** July 15, 2014

**History:** Amended 2014 Ky. Acts ch. 102, sec. 30, effective July 15, 2014. -- Created 2010 (1st Extra. Sess.) Ky. Acts ch. 2, sec. 17, effective June 4, 2010.