PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 45D. New markets tax credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the qualified community development entity for such investment at its original issue.

(2) Applicable percentage

For purposes of paragraph (1), the applicable percentage is—

(A) 5 percent with respect to the first 3 credit allowance dates, and

(B) 6 percent with respect to the remainder of the credit allowance dates.

(3) Credit allowance date

For purposes of paragraph (1), the term ''credit allowance date'' means, with respect to any qualified equity investment—

(A) the date on which such investment is initially made, and

(B) each of the 6 anniversary dates of such date thereafter.

(b) Qualified equity investment

For purposes of this section—

(1) In general

The term ''qualified equity investment'' means any equity investment in a qualified community development entity if—

(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

(B) substantially all of such cash is used by the qualified community development entity to make qualified low-income community investments, and

(C) such investment is designated for purposes of this section by the qualified community development entity.

Such term shall not include any equity investment issued by a qualified community development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

(2) Limitation

The maximum amount of equity investments issued by a qualified community development entity which may be designated under paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

(3) Safe harbor for determining use of cash

The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments.

(4) Treatment of subsequent purchasers

The term ''qualified equity investment'' includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

(5) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

(6) Equity investment

The term ''equity investment'' means—

(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

(B) any capital interest in an entity which is a partnership.

(c) Qualified community development entity

For purposes of this section—

(1) In general

The term ''qualified community development entity'' means any domestic corporation or partnership if—

(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons,

(B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and

(C) the entity is certified by the Secretary for purposes of this section as being a qualified community development entity.

(2) Special rules for certain organizations

The requirements of paragraph (1) shall be treated as met by—

(A) any specialized small business investment company (as defined in section 1044(c)(3)),[1] and

(B) any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

(d) Qualified low-income community investments

For purposes of this section—

(1) In general

The term ''qualified low-income community investment'' means—

(A) any capital or equity investment in, or loan to, any qualified active low-income community business,

[1] See References in Text note below.

(B) the purchase from another qualified community development entity of any loan made by such entity which is a qualified low-income community investment,

(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and

(D) any equity investment in, or loan to, any qualified community development entity.

(2) Qualified active low-income community business

(A) In general

For purposes of paragraph (1), the term ''qualified active low-income community business'' means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,

(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community,

(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community,

(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

(B) Proprietorship

Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

(C) Portions of business may be qualified active low-income community business

The term ''qualified active low-income community business'' includes any trades or businesses which would qualify as a qualified active low-income community business if such trades or businesses were separately incorporated.

(3) Qualified business

For purposes of this subsection, the term ''qualified business'' has the meaning given to such term by section 1397C(d); except that—

(A) in lieu of applying paragraph (2)(B) thereof, the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on such property, and

(B) paragraph (3) thereof shall not apply.

(e) Low-income community

For purposes of this section—

(1) In general

The term ''low-income community'' means any population census tract if—

(A) the poverty rate for such tract is at least 20 percent, or

(B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or

(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Subparagraph (B) shall be applied using possessionwide median family income in the case of census tracts located within a possession of the United States.

(2) Targeted populations

The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.

(3) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.

(4) Tracts with low population

A population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of this section if such tract—

(A) is within an empowerment zone the designation of which is in effect under section 1391, and

(B) is contiguous to 1 or more low-income communities (determined without regard to this paragraph).

(5) Modification of income requirement for census tracts within high migration rural counties

(A) In general

In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting ''85 percent'' for ''80 percent''.

(B) High migration rural county

For purposes of this paragraph, the term ''high migration rural county'' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at

least 10 percent of the population of the county at the beginning of such period.

(f) National limitation on amount of investments designated

(1) In general

There is a new markets tax credit limitation for each calendar year. Such limitation is—

(A) $1,000,000,000 for 2001,

(B) $1,500,000,000 for 2002 and 2003,

(C) $2,000,000,000 for 2004 and 2005,

(D) $3,500,000,000 for 2006 and 2007,

(E) $5,000,000,000 for 2008,

(F) $5,000,000,000 for 2009, and

(G) $3,500,000,000 for each of calendar years 2010 through 2019.

(2) Allocation of limitation

The limitation under paragraph (1) shall be allocated by the Secretary among qualified community development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income community investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

(3) Carryover of unused limitation

If the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2024.

(g) Recapture of credit in certain cases

(1) In general

If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Recapture event

For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a qualified community development entity if—

(A) such entity ceases to be a qualified community development entity,

(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

(C) such investment is redeemed by such entity.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Basis reduction

The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of section 1202.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

(2) which prevent the abuse of the purposes of this section,

(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

(4) which impose appropriate reporting requirements,

(5) which apply the provisions of this section to newly formed entities, and

(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.

(Added Pub. L. 106–554, §1(a)(7) [title I, §121(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–605; amended Pub. L. 108–357, title II, §§221(a), (b), 223(a), Oct. 22, 2004, 118 Stat. 1431, 1432; Pub. L. 109–432, div. A, title I, §102(a), (b), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title III, §302, Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–5, div. B, title I, §1403(a), Feb. 17, 2009, 123 Stat. 352; Pub. L. 111–312, title VII, §733(a), (b), Dec. 17, 2010, 124 Stat. 3317, 3318; Pub. L. 112–240, title III, §305(a), (b), Jan. 2, 2013, 126 Stat. 2329; Pub. L. 113–295,

div. A, title I, §115(a), (b), Dec. 19, 2014, 128 Stat. 4014; Pub. L. 114–113, div. Q, title I, §141(a), (b), Dec. 18, 2015, 129 Stat. 3056; Pub. L. 115–141, div. U, title IV, §401(a)(18), (d)(4)(B)(iii), Mar. 23, 2018, 132 Stat. 1185, 1209.)

REFERENCES IN TEXT

Section 1044, referred to in subsec. (c)(2)(A), was repealed by Pub. L. 115–97, title I, §13313(a), Dec. 22, 2017, 131 Stat. 2133.

AMENDMENTS

2018—Subsec. (f)(1)(F). Pub. L. 115–141, §401(a)(18), inserted ‘‘, and’’ at end.

Subsec. (h). Pub. L. 115–141, §401(d)(4)(B)(iii), substituted ‘‘section 1202’’ for ‘‘sections 1202, 1400B, and 1400F’’.

2015—Subsec. (f)(1)(G). Pub. L. 114–113, §141(a), substituted ‘‘for each of calendar years 2010 through 2019’’ for ‘‘for 2010, 2011, 2012, 2013, and 2014’’.

Subsec. (f)(3). Pub. L. 114–113, §141(b), substituted ‘‘2024’’ for ‘‘2019’’.

2014—Subsec. (f)(1)(G). Pub. L. 113–295, §115(a), substituted ‘‘2013, and 2014’’ for ‘‘and 2013’’.

Subsec. (f)(3). Pub. L. 113–295, §115(b), substituted ‘‘2019’’ for ‘‘2018’’.

2013—Subsec. (f)(1)(G). Pub. L. 112–240, §305(a), substituted ‘‘2010, 2011, 2012, and 2013’’ for ‘‘2010 and 2011’’.

Subsec. (f)(3). Pub. L. 112–240, §305(b), substituted ‘‘2018’’ for ‘‘2016’’.

2010—Subsec. (f)(1)(G). Pub. L. 111–312, §733(a), added subpar. (G).

Subsec. (f)(3). Pub. L. 111–312, §733(b), substituted ‘‘2016’’ for ‘‘2014’’.

2009—Subsec. (f)(1)(D). Pub. L. 111–5, §1403(a)(2), substituted ‘‘and 2007,’’ for ‘‘, 2007, 2008, and 2009.’’

Subsec. (f)(1)(E), (F). Pub. L. 111–5, §1403(a)(1), (3), added subpars. (E) and (F).

2008—Subsec. (f)(1)(D). Pub. L. 110–343 substituted ‘‘2008, and 2009’’ for ‘‘and 2008’’.

2006—Subsec. (f)(1)(D). Pub. L. 109–432, §102(a), substituted ‘‘, 2007, and 2008’’ for ‘‘and 2007’’.

Subsec. (i)(6). Pub. L. 109–432, §102(b), added par. (6).

2004—Subsec. (e)(2). Pub. L. 108–357, §221(a), amended heading and text of par. (2) generally, substituting provisions relating to regulations under which 1 or more targeted populations could be treated as low-income communities for provisions authorizing Secretary to designate any area within any census tract as a low-income community if certain conditions were met.

Subsec. (e)(4). Pub. L. 108–357, §221(b), added par. (4).

Subsec. (e)(5). Pub. L. 108–357, §223(a), added par. (5).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, §141(c), Dec. 18, 2015, 129 Stat. 3056, provided that: ‘‘The amendments made by this section [amending this section] shall apply to calendar years beginning after December 31, 2014.’’

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, §115(c), Dec. 19, 2014, 128 Stat. 4014, provided that: ‘‘The amendments made by this section [amending this section] shall apply to calendar years beginning after December 31, 2013.’’

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, §305(c), Jan. 2, 2013, 126 Stat. 2329, provided that: ‘‘The amendments made by this section [amending this section] shall apply to calendar years beginning after December 31, 2011.’’

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §733(c), Dec. 17, 2010, 124 Stat. 3318, provided that: ‘‘The amendments made by this section [amending this section] shall apply to calendar years beginning after 2009.’’

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §102(c), Dec. 20, 2006, 120 Stat. 2934, provided that: ‘‘The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].’’

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §221(c), Oct. 22, 2004, 118 Stat. 1431, provided that:

‘‘(1) TARGETED AREAS.—The amendment made by subsection (a) [amending this section] shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act [Oct. 22, 2004].

‘‘(2) TRACTS WITH LOW POPULATION.—The amendment made by subsection (b) [amending this section] shall apply to investments made after the date of the enactment of this Act [Oct. 22, 2004].’’

Pub. L. 108–357, title II, §223(b), Oct. 22, 2004, 118 Stat. 1432, provided that: ‘‘The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106–554, §1(a)(7) [title I, §121(a)], enacting this section].’’

EFFECTIVE DATE

Section applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a Effective Date of 2000 Amendment note under section 38 of this title.

SAVINGS PROVISION

Amendment by section 401(d)(4)(B)(iii) of Pub. L. 115–141 not applicable to certain obligations issued, DC Zone assets acquired, or principal residences acquired before Jan. 1, 2012, see section 401(d)(4)(C) of Pub. L. 115–141, set out as a note under former section 1400 of this title.

For provisions that nothing in amendment by section 401(d)(4)(B)(iii) of Pub. L. 115–141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115–141, set out as a note under section 23 of this title.

SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION

Pub. L. 111–5, div. B, title I, §1403(b), Feb. 17, 2009, 123 Stat. 352, provided that: ‘‘The amount of the increase in the new markets tax credit limitation for calendar year 2008 by reason of the amendments made by subsection (a) [amending this section] shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

‘‘(1) submitted an allocation application with respect to calendar year 2008, and

‘‘(2)(A) did not receive an allocation for such calendar year, or

‘‘(B) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.’’

GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION

Pub. L. 106–554, §1(a)(7) [title I, §121(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: ‘‘Not later than 120 days after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of the Treasury or the Secretary’s delegate shall issue guidance which specifies—

‘‘(1) how entities shall apply for an allocation under section 45D(f)(2) of the Internal Revenue Code of 1986, as added by this section;

‘‘(2) the competitive procedure through which such allocations are made; and

‘‘(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.’’

AUDIT AND REPORT

Pub. L. 106–554, §1(a)(7) [title I, §121(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: ‘‘Not later than

January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the new markets tax credit program established under section 45D of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all qualified community development entities that receive an allocation under the new markets credit under such section.''

§ 45E. Small employer pension plan startup costs

(a) General rule

For purposes of section 38, in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

(b) Dollar limitation

The amount of the credit determined under this section for any taxable year shall not exceed—

(1) $500 for the first credit year and each of the 2 taxable years immediately following the first credit year, and

(2) zero for any other taxable year.

(c) Eligible employer

For purposes of this section—

(1) In general

The term ''eligible employer'' has the meaning given such term by section 408(p)(2)(C)(i).

(2) Requirement for new qualified employer plans

Such term shall not include an employer if, during the 3-taxable year period immediately preceding the 1st taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

(d) Other definitions

For purposes of this section—

(1) Qualified startup costs

(A) In general

The term ''qualified startup costs'' means any ordinary and necessary expenses of an eligible employer which are paid or incurred in connection with—

(i) the establishment or administration of an eligible employer plan, or

(ii) the retirement-related education of employees with respect to such plan.

(B) Plan must have at least 1 participant

Such term shall not include any expense in connection with a plan that does not have at least 1 employee eligible to participate who is not a highly compensated employee.

(2) Eligible employer plan

The term ''eligible employer plan'' means a qualified employer plan within the meaning of section 4972(d).

(3) First credit year

The term ''first credit year'' means—

(A) the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective, or

(B) at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A).

(e) Special rules

For purposes of this section—

(1) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (*o*) of section 414, shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

(2) Disallowance of deduction

No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).

(3) Election not to claim credit

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

(Added Pub. L. 107–16, title VI, § 619(a), June 7, 2001, 115 Stat. 108; amended Pub. L. 107–147, title IV, § 411(n)(1), Mar. 9, 2002, 116 Stat. 48.)

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–147 substituted ''subsection (m)'' for ''subsection (n)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, as amended, set out as an Effective Date of 2001 Amendment note under section 38 of this title.

§ 45F. Employer-provided child care credit

(a) In general

For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to the sum of—

(1) 25 percent of the qualified child care expenditures, and

(2) 10 percent of the qualified child care resource and referral expenditures,

of the taxpayer for such taxable year.

(b) Dollar limitation

The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

(c) Definitions

For purposes of this section—