

NOTICE OF INTENT

Department of Revenue Policy Services Division

New Markets Jobs Act—Premium Tax Credit (LAC 61:I.1912)

Under the authority of R.S. 47:6016.1 and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to enact LAC 61:I.1912.

Pursuant to Act 265 of the 2013 Regular Session, the Department proposes to enact LAC 61:I.1912 regarding the Louisiana New Markets Jobs Act.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

§1912. Louisiana New Markets Jobs Act—Premium Tax Credit

A. Premium Tax Credit

1. Louisiana Revised Statute 47:6016.1 authorizes a state premium tax credit to any entity that makes a qualified equity investment. The entity or subsequent holder of the qualified equity investment shall be entitled to use a portion of the credit on each credit allowance date. The credit shall be equal to the applicable percentage for the credit allowance date multiplied by the purchase price or the amount paid for the qualified equity investment.

2. The applicable percent for the first and second credit allowance date is 14 percent. The applicable percentage for the third and fourth credit allowance date is 8.5 percent. The applicable percentage for the fifth, six and seventh credit allowance date is 0.0 percent.

3. The credit allowance date is the date the qualified equity investment is made and the six anniversaries of that date.

4. A qualified equity investment is an equity investment in a qualified community development entity made after August 1, 2013, which in turn is invested into a qualified active low income community business within this state by the first anniversary of the initial credit allowance date.

5. A qualified community development entity and a qualified active low income community business are defined as provided in section 45D of the *Internal Revenue Code* of 1986 as amended or the federal new markets tax credit statute.

6. A qualified low income community investment is any capital or equity investment in, or loan to a qualified active low income community business. The maximum amount of qualified low income community investments that may be received by any qualified active low income community business or its affiliates shall not exceed \$10,000,000. Any portion of an investment in a qualified active low income community business over \$10,000,000 shall not be considered a qualified low income community investment for the purpose of R.S. 47:6016.1 and the portion of the associated investment into the qualified community

development entity shall not be a qualified equity investment for the purpose of R.S.47:6016.1.

7. The tax credit shall be applied against any state premium tax liability incurred under the provisions of R.S. 22:831, 836, 838, and 842.

8. The amount of the credit shall not exceed the amount of state premium tax liability due in a taxable year. The credit may be carried forward for 10 years.

9. Credits issued to pass through entities may be allocated to the partners, members, or shareholders as provided in their operating or special allocation agreements.

10. Credits may only be claimed on returns due on or after January 1, 2014.

B. Certification of the Qualified Equity Investment

1. A qualified community development entity that seeks to have an equity investment designated as a qualified equity investment must apply to the Department of Revenue on a form prescribed by the Department of Revenue and submit a \$500,000 refundable guarantee deposit.

2. In addition to the application, the qualified community development entity must submit:

a. a letter from the United States Department of Treasury Community Development Financial Institutions Fund certifying the community development entity and its service area;

b. a copy of the allocation agreement issued from the Community Development Financial Institutions Fund;

c. a letter from an executive officer of the community development entity certifying that the allocation agreement from the Community Development Financial Institutions Fund is current;

d. a description of the proposed amount, structure, and purchaser of the qualified equity investment;

e. identifying information for any entity that will earn the tax credits;

f. identifying information for any community businesses.

3. Upon request, the qualified community development entity shall submit:

a. a power of attorney designating a representative to be contacted regarding any issues with a pending application;

b. a power of attorney from the investor authorizing the Department of Revenue to disclose their tax credit information to the applicant;

c. certification that the qualified active low income community business and its affiliates will not receive more than \$10,000,000 in qualified low income community investments under R.S. 47:6016.1;

d. special allocation agreements or operating agreements for investors who intend for the tax credits earned to flow through to their member or partners;

e. any other information requested necessary to ensure compliance with R.S. 47:6016.1.

4. Within 30 days of receipt of a completed application the Department of Revenue shall grant or deny the application for designation as a qualified equity investment.

a. If the application is granted, a letter will be issued to the applicant informing them that their application has been granted. Following the grant letter, a second letter will be issued providing for the specific amount of allocation authority that is being granted to the applicant. Lastly, a separate tax credit certification will be issued to the

applicant certifying the credit amount and credit allowance dates. A copy of the tax credit certification will also be submitted to the Department of Insurance.

b. If the application is denied, the Department of Revenue will inform the applicant of the grounds on which the application is being denied and allow 15 business days for the applicant to cure any defects.

c. Ground for denials include, but are not limited to:

i. failure of applicant to submit the \$500,000 deposit;

ii. failure of the applicant to submit any information included in the application;

iii. failure of the applicant to submit any additional information requested by the Department of Revenue which is necessary to ensure compliance.

d. If the applicant cures the defects, the application shall retain its original submission date. If the applicant cannot cure the defect, the application will remain denied and the Department of Revenue will refund the \$500,000 deposit.

5. A qualified community development entity may transfer all or a portion of its designated qualified equity investment or allocation authority to its controlling entity or any other qualified community development entity included in the applicant's allocation agreement with the Community Development Financial Institutions Fund.

6. The \$500,000 deposit will be refunded within 30 days of a request once the qualified community development entity certifies that the qualified equity investment has been made and the qualified low income community investment has been made within one year of the first anniversary date of the qualified equity investment.

a. If the applicant fails to certify receipt of the qualified equity investment within 30 days of the certification by the Department of Revenue, the applicant will forfeit the \$500,000 deposit.

b. If the applicant fails to certify the qualified low income community investment within one year of the first anniversary and the six month cure period, the applicant will forfeit the \$500,000 deposit.

c. A request for return of the deposit may not be made until 30 days after the requirements of Paragraph B.6 of this Section have been met.

7. The application for the designation of a qualified equity investment may be withdrawn by the applicant at any time prior to the granting of the application by the Department of Revenue. If the application is withdrawn, the deposit will also be refunded to the applicant within 30 days of the withdrawal.

C. Tax Credit Sales

1. Tax credits not previously claimed by a taxpayer against its premium tax may be sold to another Louisiana taxpayer.

2. The sale may involve one or more transferees.

3. Joint notice from the transferor and transferee shall be submitted to the Department of Insurance on a form prescribed by the Department of Insurance within 30 days of the sale.

4. Failure to submit the joint notice of transfer shall result in disallowance of the credit until the taxpayer is in full compliance.

5. The carry forward period is not extended by the sale of the credit to another Louisiana taxpayer.

6. To the extent that the transferor did not have rights to claim or use the credit at the time the credit is sold, the Department of Insurance shall either disallow or recapture the credit from the transferee.

7. Credits may not be claimed on returns that were due prior to January 1, 2014.

8. Credits may not be used to settle outstanding tax liabilities for tax periods beginning prior to January 1, 2014.

9. Transfers of ownership of credits through the sale of equity interest in an entity is a sale of the credit. Such transfers shall be treated in the same manner as selling the credits themselves and will require notice to the Department of Insurance in the same manner set forth above.

D. Recapture

1. The Department of Revenue will notify the Department of Insurance of a recapture event.

2. The Department of Insurance shall recapture from the entity that claimed the credit on their return if:

a. any amount of the federal tax credit earned from the qualified equity investment is recaptured pursuant to section 45D of the *Internal Revenue Code*. The amount recaptured shall be in proportion to the federal recapture of the credit.

b. the qualified community development entity fails to invest 100 percent of the purchase price for the qualified equity investment into a qualified active low income community business within one year of initial credit allowance date and maintain this investment throughout the last credit allowance date or compliance period.

3. No recapture shall occur until the qualified community development entity has been given notice of noncompliance by the Department of Revenue and the benefit of 6 months to become compliant.

E. Reporting

1. Within 30 days of the applicant receiving certification for a qualified equity investment, the qualified community development entity must:

a. issue an investment and receive cash for the certified amount;

b. designate the amount as a federal qualified equity investment with the Community Development Financial Institutions Fund;

c. issue Form R-10607 to the investor designating the amount as a state qualified equity investment.

2. Within 5 days of issuing the qualified equity investment, the qualified community development entity will submit:

a. evidence of receipt of cash;

b. a copy of the federal Form 8874A which was issued to the investor;

c. a copy of the state Form R-10607 which was issued to the investor;

d. notice of any transfers of allocation authority as provided in Paragraph B.5.

3. If the requirements of Paragraph E.1 are not met within 30 days of certification of the qualified equity investment, the certification will lapse and the qualified community development entity will have to re-apply to the Department of Revenue for designation of the qualified equity investment.

4. A qualified community development entity that issues a qualified equity investment under R.S. 47:6016.1 shall submit a report to the Department of Revenue within the first 5 business days after the first anniversary date

indicating that 100 percent of the qualified equity investment is invested in a qualified active low income community business in Louisiana.

a. The report shall include a bank statement of the qualified community development entity evidencing each qualified low income community investment.

b. The report shall include evidence that the qualified low income community business was and remains active.

c. The report shall include evidence of the total amount of qualified low income community investments received by the qualified active low income community business under the provisions of R.S. 47:6016.1.

5. A qualified community development entity that issues a qualified equity investment under R.S. 47:6016.1 shall issue an annual report within 45 days of the second compliance year. The report shall include:

a. the number of employment positions created and retained as a result of the qualified low income community investments and their average annual salaries;

b. evidence that the qualified active low income community business remains active; and

c. evidence that the qualified low income community investment remains invested in the qualified active low income community business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 41:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.

2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

5. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Rule will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed amendments will have no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the provider to provide the same level of service;

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written data, views, arguments, or comments regarding this proposed Rule to the Policy Services Division, by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All

comments must be received no later than 5 p.m., January 29, 2015.

Public Hearing

A public hearing will be held on January 30, 2015, at 10 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Tim Barfield

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: New Markets Jobs Act Premium Tax Credit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation costs to the state of the proposed Rule are expected to be minimal and will be absorbed in the existing budget. Local governmental units are not affected by this proposal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The current version of the New Markets Tax Credit program, for which these Rules are being proposed is expected to decrease revenue collections of the state by \$20.075 million during fiscal years ending in 2014 through 2016. An additional \$4.675 million decrease is expected in fiscal year ending 2017 (outside of the horizon of this impact statement). The proposed rule is being promulgated for the implementation of Act 265 of the 2013 Regular Legislative Session, which enacted R.S. 47:6016.1. This statute structures the issuance of \$24.75 million of premium tax credits (essentially New Markets Tax Credits against the premium tax instead of the income tax) in a single allocation on August 1, 2013, and provides that this issue can first be claimed against tax liabilities on tax returns due on or after January 1, 2014. The amount of tax credit that can be taken each year is also structured to be 14 percent of the capital invested in the program in both of the first and second years, and 8.5% in both of the third and fourth years. Thus, FY14 and FY15 are each exposed to \$7.7 million of revenue loss (14 percent of \$55 million of capital each year). FY 16 and FY 17 are each exposed to \$4.675 million of revenue loss (8.5 percent of \$55 million of capital each year). However, FY 14 actual claims were \$7M, which suggests the impact in FY 15 may be about \$700,000 larger than estimated. The proposed Rule should have no impact on the revenue collections of local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Applicants for the tax credit and the low income community businesses that receive capital or loans under the tax credit program are directly affected by this proposal. They are expected to incur costs related to meeting the requirements of this proposal. Qualified active low income community businesses are expected to benefit from loans or investments of a maximum of \$10 million individually, and \$55 million in total. Persons making qualified investments will benefit from the \$24.75 million of state premium tax credits that are expected to be earned. A \$500,000 deposit is required with each application for the credit. If the applicant fails to meet one of two requirements, the deposit is forfeited.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Employment by qualified active low income community businesses that receive capital as a result of this program may increase by an unknown amount. To an unknown extent, competition may be affected between qualified active low income community businesses that receive capital as a result of

this program and their competitors that do not participate in the program.

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