

## **NOTICE OF INTENT**

### **Department of Revenue Policy Services Division**

Income and Franchise Tax  
(LAC 61:I.1911)

Under the authority of R.S. 47:6016, R.S. 47:287.785, 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 adopt LAC 61.I.1911.

This Notice of Intent was originally published in the February 2008 issue of the Louisiana Register. However, R.S. 47:6016 was amended in the 2008 Second Extraordinary Session, which occurred before this proposed rule could become final. Therefore, this notice has been revised to reflect the amendments to R.S. 47:6016.

### **Title 61 REVENUE AND TAXATION Part I. Taxes Collected and Administered By the Secretary of Revenue**

#### **Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions**

##### **§ 1911 Louisiana New Markets Tax Credit**

###### **A. Application Process for New Markets Tax Credits**

1. A taxpayer may apply for Louisiana New Markets Tax Credits by submitting a Private Letter Ruling request to the Department of Revenue, Policy Services Division.

2. If a taxpayer is entitled to the credit, a ruling and a Tax Credit Summary Sheet will be issued to the taxpayer.

###### **a. The Tax Credit Summary Sheet will include:**

- i. the Private Letter Ruling number;
- ii. the investor and entity type;
- iii. if the entity is an LLC or partnership, the investor's membership interest;
- iv. the amount invested;
- v. the amount intended to be invested;
- vi. the amount of credits;
- vii. the initial credit allowance date;
- viii. the anniversary dates;
- ix. name of the community development entity;
- x. name of the qualified low-income business, if available; and
- xi. number of credit allowance dates.

b. The Tax Credit Summary Sheet will also include a section that must be updated each time the credit is transferred. This section will include:

- i. the original investor;
- ii. the transferor;
- iii. the transferee;
- iv. all applicable Louisiana tax identification numbers;
- v. the amount of credits previously claimed or sold by transferor and/or investor;
- vi. the transferor's original tax credit balance;
- vii. the transferor's tax credit balance after transfer;
- viii. the amount being transferred;
- ix. nature of transfer, currently available credits or future credits;
- x. if currently available credits, from which credit allowance date; and
- xi. purchase amount.

3. A Louisiana taxpayer that earned the credit must attach the Tax Credit Summary Sheet to their income or franchise tax return to claim the credit.

4. A Louisiana taxpayer that purchases the credit must attach the New Markets Transfer Form, issued by the transferor, to their return to claim the credit. The New Markets Transfer Form is available from the Department's website, [www.revenue.louisiana.gov](http://www.revenue.louisiana.gov).

#### B. Claiming the New Markets Tax Credit

1. New Markets Tax Credits earned by a taxpayer or received by taxpayer by flow-through from a partnership or LLC may be applied as follows.

a. Credits may be applied to the tax year in which the credit allowance date occurred.

b. Credits may not be applied to penalties and interest.

c. Prior year returns that include the credit allowance date may be amended to apply credits.

d. Credits may be applied against taxes paid in a prior year and the taxes paid may be refunded. However, the New Markets Tax Credit is nonrefundable and credits in excess of the tax paid in a prior year can only be carried forward in accordance with R.S. 47:6016(D).

e. Credits from qualified equity investments made on or after April 1, 2008, cannot be claimed on any return or prior year return that was due before 2009.

2. New Markets Tax Credits transferred by sale to a taxpayer may be applied as follows.

a. Credits may be applied to a prior year's outstanding tax liability, including penalties and interest, as provided by R.S. 47:1675(H)(1)(c).

b. A taxpayer that purchases the credits may not amend their prior year returns to claim credits where no liability is currently outstanding and therefore trigger a refund.

c. Credits purchased from qualified equity investments made on or after April 1, 2008, cannot be claimed on any return or prior year return that was due before 2009.

#### C. Limitations on the New Markets Tax Credit

1. New Markets Tax Credits from qualified equity investments issued prior to July 1, 2007, are subject to an annual \$5,000,000 cap applicable to the total New Markets Tax Credits issued for the year. Once the cap is reached, no other credits will be granted that year.

2. New Markets Tax Credits from qualified equity investments issued after July 1, 2007, but before April 1, 2008, are subject to a \$50,000,000 cap on the entire New Markets Credit program.

3. New Markets Tax Credits from qualified equity investments issued after April 1, 2008, shall be allowed as follows:

a. during the period beginning April 1, 2008, and ending December 31, 2008, \$25,000,000;

b. during the period beginning January 1, 2009, and ending December 31, 2009, \$12,500,000 plus any unissued credits from the prior period;

c. during the period beginning January 1, 2010, and ending December 31, 2010, \$12,500,000 plus any unissued credits from the prior periods; and

d. during periods beginning January 1, 2011 and after, credits shall be limited to only unused credits from prior years.

D. Additional Requirements and Limitations for Credits Issued after April 1, 2008, Pursuant to Act 4 of the 2008 Second Extraordinary Session.

1. Private Letter Ruling requests for credits must include in the statements of facts:

a. the name of the original investor;

b. a detailed description and the location of the qualified low-income business;

c. the total amount of the qualified equity investment; and

d. the total amount of Louisiana New Markets Tax Credits earned.

2. To be issued credits on qualified low-income investments that exceed five million dollars, the Department of Economic Development must certify that the qualified low-income investment was made to a business in a targeted industry. Private Letter Ruling requests for credits from qualified low-income investments exceeding five million dollars will be accepted by the Department without certification from the Department of Economic Development if the

taxpayer asserts in the statement of facts that the certification has been requested. However, the Private Letter Ruling will not be issued to the taxpayer until the Department receives a copy of the certification letter from the Department of Economic Development.

E. New Markets Tax Credits Transfer Process

1. Any New Markets Tax Credits not previously claimed by a taxpayer against their income or franchise tax may be transferred or sold.

2. The original investor that is transferring credits must send an updated Tax Credit Summary Sheet separately to the Department of Revenue within 30 days of the sale. The original investor should also include a New Markets Transfer Form with closing documents to the transferee.

3. The transferee must submit the New Markets Transfer Form with their income or franchise tax return to claim the credits.

4. Any transferor, other than the original investor, should use a New Markets Transfer Form to transfer credits to another Louisiana taxpayer and send a copy of the form to the Department within 30 days of the sale.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:6016, R.S.47:287.785, and R.S.47:1511.

HISTORICAL NOTE: Adopted by the Department of Revenue, LR 34:

### **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.

Interested persons may submit written data, views, arguments, or comments regarding this proposed rule to Michael D. Pearson, Director, 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 5:00 p.m., Monday, June 23, 2008. A public hearing will be held on Tuesday, June 24, 2008, at 10:30 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802.

Cynthia Bridges  
Secretary