S T A T E O F N E W Y O R K

7569

I N S E N A T E

April 22, 2010

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to the new markets development program act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "new markets development program act".

S 2. The tax law is amended by adding a new article 42 to read as follows:

ARTICLE 42

NEW MARKETS DEVELOPMENT PROGRAM

SECTION 3050. DEFINITIONS.

3051. CERTIFICATION OF QUALIFIED EQUITY INVESTMENTS; INVESTMENT ISSUANCE REPORTING.

3052. USE OF PROCEEDS FROM QUALIFIED INVESTMENTS; RECORDKEEPING.

3053. NEW MARKETS TAX CREDIT.

3054. COMMUNITY DEVELOPMENT ENTITY REPORTING AFTER A CREDIT ALLOWANCE DATE; CERTIFICATION OF TAX CREDIT AMOUNT.

3055. ANNUAL REPORTING BY A COMMUNITY DEVELOPMENT ENTITY.

3056. AUDITS AND EXAMINATIONS.

3057. RECAPTURE AND PENALTIES.

S 3050. DEFINITIONS. 1. "CREDIT ALLOWANCE DATE" MEANS:

(A) THE DATE ON WHICH A QUALIFIED EQUITY INVESTMENT IS MADE; AND

(B) EACH OF THE SIX ANNIVERSARIES OF THE CREDIT ALLOWANCE DATE.

2. "LONG-TERM DEBT SECURITY" MEANS A DEBT INSTRUMENT ISSUED BY A QUALIFIED COMMUNITY DEVELOPMENT ENTITY AT PAR VALUE OR A PREMIUM WHICH HAS A MATURITY DATE OF AT LEAST SEVEN YEARS FOLLOWING THE DATE OF ITS ISSUANCE, WITH NO ACCELERATION OF REPAYMENT, AMORTIZATION, OR PREPAYMENT FEATURES PRIOR TO ITS ORIGINAL MATURITY DATE, EXCEPT IN INSTANCES OF DEFAULT.

3. "LOW-INCOME COMMUNITY" MEANS ANY POPULATION CENSUS TRACT WITHIN THE STATE WHERE:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(A) THE POVERTY RATE OF SUCH TRACT IS AT LEAST TWENTY PERCENT; OR
(B) IN THE CASE OF A TRACT THAT IS:
(I) NOT LOCATED WITHIN A METROPOLITAN AREA, THE MEDIAN FAMILY INCOME FOR SUCH TRACT DOES NOT EXCEED EIGHTY PERCENT OF THE STATEWIDE MEDIAN FAMILY INCOME; OR
(II) LOCATED WITHIN A METROPOLITAN AREA, THE MEDIAN FAMILY INCOME FOR SUCH TRACT DOES NOT EXCEED EIGHTY PERCENT OF THE GREATER OF THE STATEWIDE MEDIAN FAMILY INCOME OR THE METROPOLITAN AREA MEDIAN INCOME.
4. "OFFICE" MEANS THE NEW YORK STATE ECONOMIC DEVELOPMENT SERVICES OFFICE WITHIN THE NEW YORK STATE DEPARTMENT OF LABOR.
5. "QUALIFIED EQUITY INVESTMENT" MEANS THE AMOUNT OF CASH PAID TO A QUALIFIED COMMUNITY DEVELOPMENT ENTITY IN EXCHANGE FOR A MEMBERSHIP INTEREST THEREIN.
6. "QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS" MEANS A CORPORATION, INCLUDING A NONPROFIT CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY THAT:
(A) (I) DERIVES AT LEAST FIFTY PERCENT OF ITS TOTAL GROSS INCOME FROM THE ACTIVE CONDUCT OF BUSINESS WITHIN ANY LOW-INCOME COMMUNITY FOR ANY TAXABLE YEAR. THE REQUIREMENTS OF THIS SUBPARAGRAPH ARE MET IF AN ENTITY'S PERCENTAGES PURSUANT TO SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH ARE ABOVE FIFTY PERCENT;
(II) USES AT LEAST FORTY PERCENT OF ITS TANGIBLE PROPERTY, WHETHER OWNED OR LEASED, WITHIN ANY LOW-INCOME COMMUNITY FOR ANY TAXABLE YEAR;
(III) PERFORMS AT LEAST FORTY PERCENT OF ITS SERVICES THROUGH ITS EMPLOYEES IN A LOW-INCOME COMMUNITY FOR ANY TAXABLE YEAR. WHERE ANY ENTITY HAS NO EMPLOYEES, THE REQUIREMENTS OF THIS SUBPARAGRAPH ARE SATISFIED IF EIGHTY-FIVE PERCENT OF AN ENTITY'S TANGIBLE PROPERTY, WHETHER OWNED OR LEASED, IS USED WITHIN ANY LOW-INCOME COMMUNITY FOR ANY TAXABLE YEAR;
(IV) ATTRIBUTES LESS THAN FIVE PERCENT OF THE AVERAGE OF THE AGGREGATE UNADJUSTED BASES OF THE PROPERTY OF THE ENTITY TO COLLECTIBLES, AS DEFINED IN 26 U.S.C. 408 (M) (2), OTHER THAN COLLECTIBLES THAT ARE HELD PRIMARILY FOR SALE TO CUSTOMERS IN THE ORDINARY COURSE OF THE BUSINESS FOR ANY TAXABLE YEAR; AND
(V) ATTRIBUTES LESS THAN FIVE PERCENT OF THE AVERAGE OF THE AGGREGATE UNADJUSTED BASES OF THE PROPERTY OF THE ENTITY TO NONQUALIFIED FINANCIAL PROPERTY, AS DEFINED IN 26 U.S.C. 1397 (E), FOR ANY TAXABLE YEAR.
(B) IS REASONABLY EXPECTED BY A QUALIFIED COMMUNITY DEVELOPMENT ENTITY AT THE TIME OF AN INVESTMENT TO CONTINUE TO SATISFY THE REQUIREMENTS OF PARAGRAPHS (A) AND (C) OF THIS SUBDIVISION FOR THE DURATION OF THE INVESTMENT.
(C) SATISFIES THE REQUIREMENTS OF PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION, AND DOES NOT:
(I) DERIVE OR PROJECT TO DERIVE EIGHTY PERCENT OR MORE OF ITS ANNUAL REVENUE FROM THE RENTAL OR SALE OF RESIDENTIAL REAL ESTATE;
(II) ENGAGE PREDOMINANTLY IN THE DEVELOPMENT OR HOLDING OF INTANGIBLES FOR SALE OR LICENSE;
(III) OPERATE A PRIVATE OR COMMERCIAL GOLF COURSE, COUNTRY CLUB, MASSAGE PARLOR, HOT TUB FACILITY, SUNTAN FACILITY, RACETRACK, GAMBLING FACILITY, OR A STORE THE PRINCIPAL BUSINESS OF WHICH IS THE SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF PREMISES; OR
(IV) ENGAGE PRINCIPALLY IN FARMING AND OWNS OR LEASES ASSETS THE SUM OF THE AGGREGATE UNADJUSTED BASIS OR THE FAIR MARKET VALUE OF WHICH EXCEEDS FIVE HUNDRED THOUSAND DOLLARS.

(D) WILL CREATE OR RETAIN JOBS THAT PAY AN AVERAGE WAGE OF AT LEAST ONE HUNDRED FIFTEEN PERCENT OF THE FEDERAL POVERTY INCOME GUIDELINES FOR A FAMILY OF FOUR.

7. "QUALIFIED COMMUNITY DEVELOPMENT ENTITY" MEANS AN ENTITY THAT:

(A) IS CERTIFIED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY AS A QUALIFIED COMMUNITY DEVELOPMENT ENTITY UNDER 26 U.S.C. 45D; AND

(B) HAS ENTERED INTO, OR IS CONTROLLED BY AN ENTITY THAT HAS ENTERED INTO, AN ALLOCATION AGREEMENT WITH THE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND OF THE UNITED STATES DEPARTMENT OF THE TREASURY WITH RESPECT TO NEW MARKETS TAX CREDITS UNDER 26 U.S.C. 45D AND IS AUTHORIZED TO SERVE BUSINESSES IN THIS STATE UNDER THE AGREEMENT.

8. "QUALIFIED EQUITY INVESTMENT" MEANS AN EQUITY INVESTMENT IN A QUALIFIED COMMUNITY DEVELOPMENT ENTITY THAT:

(A) IS ACQUIRED BY A TAXPAYER AT ITS ORIGINAL ISSUE SOLELY IN EXCHANGE FOR CASH; AND

(B) IS DESIGNATED BY THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY AS A QUALIFIED EQUITY INVESTMENT UNDER THIS PARAGRAPH AND IS APPROVED BY THE OFFICE AS A QUALIFIED INVESTMENT.

9. "QUALIFIED LOW-INCOME COMMUNITY INVESTMENT" MEANS A CAPITAL OR EQUITY INVESTMENT IN, OR LOAN TO ANY QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS THAT IS A LONG-TERM DEBT SECURITY.

S 3051. CERTIFICATION OF QUALIFIED EQUITY INVESTMENTS; INVESTMENT ISSUANCE REPORTING. 1. ELIGIBLE INDUSTRIES. (A) THE OFFICE SHALL APPROVE, UPON APPLICATION, THOSE PROPOSED QUALIFIED EQUITY INVESTMENTS BASED ON ITS DETERMINATION OF THE POTENTIAL IMPACTS AND/OR BENEFITS TO THE STATE, REGIONAL AND LOCAL ECONOMIES OF THE QUALIFIED LOW-INCOME COMMUNITY INVESTMENT TO BE MADE WITH THE PROCEEDS OF THE QUALIFIED EQUITY INVESTMENT.

(B) A QUALIFIED COMMUNITY DEVELOPMENT ENTITY MAY NOT MAKE A QUALIFIED LOW-INCOME COMMUNITY INVESTMENT UNLESS THE OFFICE HAS APPROVED THE APPLICATION FOR THE PROPOSED QUALIFIED EQUITY INVESTMENT.

2. APPLICATION. A QUALIFIED COMMUNITY DEVELOPMENT ENTITY MUST SUBMIT AN APPLICATION TO THE OFFICE TO APPROVE A PROPOSED INVESTMENT AS A QUALIFIED INVESTMENT. THE APPLICATION MUST INCLUDE:

(A) THE NAME, ADDRESS, AND TAX IDENTIFICATION NUMBER OF THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY;

(B) PROOF OF CERTIFICATION AS A QUALIFIED COMMUNITY DEVELOPMENT ENTITY UNDER 26 U.S.C. 45D;

(C) A COPY OF AN ALLOCATION AGREEMENT EXECUTED BY THE ENTITY, OR ITS CONTROLLING ENTITY, AND THE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, WHICH AUTHORIZES THE ENTITY TO SERVE BUSINESSES IN THIS STATE;

(D) A VERIFIED STATEMENT BY THE CHIEF EXECUTIVE OFFICER OF THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY THAT THE ALLOCATION AGREEMENT REMAINS IN EFFECT;

(E) A DESCRIPTION OF THE PROPOSED AMOUNT, STRUCTURE, AND PURCHASER OF THE QUALIFIED EQUITY INVESTMENT;

(F) THE NAME AND TAX IDENTIFICATION NUMBER OF ANY PERSON AUTHORIZED TO CLAIM A TAX CREDIT EARNED AS A RESULT OF THE MAKING OF THE PROPOSED QUALIFIED EQUITY INVESTMENT;

(G) A DETAILED EXPLANATION OF THE PROPOSED USE OF THE PROCEEDS FROM A PROPOSED QUALIFIED INVESTMENT, INCLUDING THE QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS;

(H) A NONREFUNDABLE APPLICATION FEE OF ONE THOUSAND DOLLARS, PAYABLE TO THE OFFICE; AND

(I) A STATEMENT THAT THE ENTITY WILL ONLY MAKE A QUALIFIED LOW-INCOME COMMUNITY INVESTMENT FOR THE PROPOSED USE SET FORTH IN THE APPLICATION AND TO THE QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS IDENTIFIED IN THE APPLICATION.

3. REVIEW. (A) THE OFFICE SHALL REVIEW APPLICATIONS TO APPROVE AN INVESTMENT AS A QUALIFIED INVESTMENT IN THE ORDER RECEIVED. THE OFFICE SHALL APPROVE OR DENY AN APPLICATION WITHIN THIRTY DAYS AFTER RECEIPT.

(B) IF THE OFFICE INTENDS TO DENY THE APPLICATION, THE OFFICE SHALL INFORM THE APPLICANT OF THE BASIS OF THE PROPOSED DENIAL. THE APPLICANT SHALL HAVE FIFTEEN DAYS AFTER IT RECEIVED THE NOTICE OF THE INTENT TO DENY THE APPLICATION TO SUBMIT A REVISED APPLICATION TO THE OFFICE. THE OFFICE SHALL ISSUE A FINAL ORDER APPROVING OR DENYING THE REVISED APPLICATION WITHIN THIRTY DAYS AFTER RECEIPT.

(C) THE OFFICE MAY NOT APPROVE A CUMULATIVE AMOUNT OF QUALIFIED EQUITY INVESTMENTS IN EXCESS OF THE TWO HUNDRED MILLION DOLLAR ANNUAL LIMIT, NOR MORE THAN TEN MILLION DOLLARS IN QUALIFIED LOW-INCOME COMMUNITY INVESTMENT TO ANY ONE QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.

4. APPROVAL. (A) THE OFFICE SHALL PROVIDE A COPY OF THE FINAL ORDER APPROVING AN INVESTMENT AS A QUALIFIED EQUITY INVESTMENT TO THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY AND TO THE DEPARTMENT. THE NOTICE SHALL INCLUDE THE IDENTITY OF THE TAXPAYERS WHO ARE ELIGIBLE TO CLAIM THE TAX CREDITS AND THE AMOUNT THAT MAY BE CLAIMED BY EACH TAXPAYER.

(B) THE OFFICE MAY APPROVE AN APPLICATION FOR LESS THAN THE AMOUNT REQUESTED; AND FOR PART OF THE AMOUNT OF THE PROPOSED INVESTMENT IF THE AMOUNT OF TAX CREDITS AVAILABLE IS INSUFFICIENT.

(C) IF MORE THAN ONE APPLICATION IS FOUND TO COMPLY WITH SUBDIVISION THREE OF THIS SECTION AND THE AMOUNT OF TAX CREDITS AVAILABLE IS INSUFFICIENT FOR ALL OF THE APPLICATIONS, THE TAX CREDITS AVAILABLE TO EACH APPLICANT SHALL BE IN SOME PROPORTION THAT EACH PROPOSED QUALIFIED EQUITY INVESTMENT BEARS TO THE TOTAL QUALIFIED EQUITY INVESTMENT OF ALL OF THE PROPOSED QUALIFIED EQUITY INVESTMENTS.

5. DURATION OF APPROVAL. THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY MUST ISSUE THE QUALIFIED EQUITY INVESTMENT IN EXCHANGE FOR CASH WITHIN NINETY DAYS AFTER IT RECEIVED THE ORDER APPROVING AN INVESTMENT AS A QUALIFIED EQUITY INVESTMENT, OTHERWISE THE ORDER IS VOID.

6. REPORT OF ISSUANCE OF A QUALIFIED INVESTMENT. THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY MUST PROVIDE THE OFFICE WITH EVIDENCE OF THE RECEIPT OF THE CASH IN EXCHANGE FOR THE QUALIFIED INVESTMENT WITHIN THIRTY BUSINESS DAYS AFTER RECEIPT.

S 3052. USE OF PROCEEDS FROM QUALIFIED INVESTMENTS; RECORDKEEPING. 1. A QUALIFIED COMMUNITY DEVELOPMENT ENTITY MAY NOT MAKE A RETURN ON THE QUALIFIED EQUITY INVESTMENT IN EXCESS OF THE ENTITY'S OPERATING INCOME EACH TAXABLE YEAR FOR SIX YEARS FOLLOWING THE ISSUANCE OF THE QUALIFIED EQUITY INVESTMENT.

2. A QUALIFIED COMMUNITY DEVELOPMENT ENTITY SHALL KEEP DETAILED RECORDS SHOWING THE USE OF PROCEEDS FROM QUALIFIED EQUITY INVESTMENTS TO FUND QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS.

3. A QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS, INCLUDING ITS AFFILIATES, MAY NOT RECEIVE MORE THAN TEN MILLION DOLLARS IN QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS UNDER THIS ARTICLE.

S 3053. NEW MARKETS TAX CREDIT. 1. A PERSON OR ENTITY THAT MAKES A QUALIFIED EQUITY INVESTMENT EARNS A VESTED TAX CREDIT PURSUANT TO THIS ARTICLE AGAINST TAXES IMPOSED UNDER ARTICLES NINE-A AND TWENTY-TWO OF THIS CHAPTER EQUAL TO THIRTY-NINE PERCENT OF THE PURCHASE PRICE OF THE QUALIFIED INVESTMENT. THE HOLDER OF A QUALIFIED INVESTMENT MAY CLAIM THE TAX CREDIT AS FOLLOWS:

(A) THE HOLDER MAY APPLY SEVEN PERCENT OF THE QUALIFIED EQUITY INVESTMENT AGAINST ITS TAX LIABILITY IN THE TAX YEAR CONTAINING THE THIRD CREDIT ALLOWANCE DATE.

(B) THE HOLDER MAY APPLY EIGHT PERCENT OF THE QUALIFIED EQUITY INVESTMENT AGAINST ITS TAX LIABILITY IN THE TAX YEARS CONTAINING THE FOURTH THROUGH SEVENTH CREDIT ALLOWANCE DATES.

(C) A TAXPAYER MAY NOT CLAIM A TAX CREDIT IN EXCESS OF THE TAXPAYER'S TAX LIABILITY. IF THE CREDIT GRANTED PURSUANT TO THIS SECTION IS NOT FULLY USED IN ANY SINGLE YEAR BECAUSE OF INSUFFICIENT TAX LIABILITY ON THE PART OF THE TAXPAYER, THE UNUSED AMOUNT MAY BE CARRIED FORWARD FOR A PERIOD NOT TO EXCEED FIVE YEARS. THE CARRYOVER CREDIT MAY BE USED IN A SUBSEQUENT YEAR WHEN THE TAX IMPOSED FOR SUCH YEAR EXCEEDS THE CREDIT FOR SUCH YEAR, AFTER APPLYING THE OTHER CREDITS AND UNUSED CREDIT CARRYOVERS. CARRYOVER CREDIT AMOUNTS SHALL BE TREATED AS UNUSED CREDITS FOR PURPOSES OF THE TRANSFER OF UNUSED CREDITS PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION.

2. A TAX CREDIT EARNED THROUGH THIS SECTION MAY NOT BE SOLD OR TRANSFERRED, EXCEPT AS PROVIDED FOR IN THIS SUBDIVISION.

(A) A PARTNER, MEMBER OR SHAREHOLDER OF A PARTNERSHIP, LIMITED LIABILITY COMPANY, S-CORPORATION, OR OTHER "PASS-THROUGH" ENTITY MAY CLAIM THE TAX CREDIT PURSUANT TO AN AGREEMENT AMONG THE PARTNERS, MEMBERS, OR SHAREHOLDERS. ANY CHANGE IN THE ALLOCATION OF A TAX CREDIT UNDER THE AGREEMENT MUST BE REPORTED TO THE OFFICE AND TO THE DEPARTMENT.

(B) ELIGIBILITY TO CLAIM A TAX CREDIT TRANSFERS TO SUBSEQUENT PURCHASERS OF AN INTEREST IN A PARTNERSHIP, LIMITED LIABILITY COMPANY, S-CORPORATION OR OTHER "PASS-THROUGH" ENTITY ENTITLED TO CLAIM THE TAX CREDIT.

S 3054. COMMUNITY DEVELOPMENT ENTITY REPORTING AFTER A CREDIT ALLOWANCE DATE; CERTIFICATION OF TAX CREDIT AMOUNT. 1. A QUALIFIED COMMUNITY DEVELOPMENT ENTITY THAT HAS ISSUED A QUALIFIED EQUITY INVESTMENT SHALL SUBMIT THE FOLLOWING TO THE OFFICE WITHIN THIRTY DAYS AFTER EACH CREDIT ALLOWANCE DATE:

(A) THE NAME OF THE QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS IN WHICH A QUALIFIED LOW-INCOME COMMUNITY INVESTMENT WAS MADE SINCE THE LAST CREDIT ALLOWANCE DATE. THIS SHALL DESCRIBE THE TYPE AND AMOUNT OF INVESTMENT IN THE BUSINESS AND THE ADDRESS OF THE PRINCIPAL LOCATION OF THE BUSINESS. THIS MUST BE VERIFIED BY THE CHIEF EXECUTIVE OFFICER OF THE COMMUNITY DEVELOPMENT ENTITY.

(B) BANK RECORDS, WIRE TRANSFER RECORDS, OR SIMILAR DOCUMENTS THAT PROVIDE EVIDENCE OF THE QUALIFIED LOW-INCOME COMMUNITY INVESTMENT MADE WITH THE PROCEEDS OF THE QUALIFIED EQUITY INVESTMENT. THE REQUIREMENT PURSUANT TO THIS PARAGRAPH SHALL BE REQUIRED ONLY FOR THE FIRST CREDIT ALLOWANCE DATE.

(C) A VERIFIED STATEMENT BY THE CHIEF FINANCIAL OR ACCOUNTING OFFICER OF THE COMMUNITY DEVELOPMENT ENTITY THAT NO REDEMPTION OR PRINCIPAL REPAYMENT WAS MADE WITH RESPECT TO THE QUALIFIED EQUITY INVESTMENT SINCE THE PREVIOUS CREDIT ALLOWANCE DATE.

(D) INFORMATION RELATING TO THE RECAPTURE OF THE TAX CREDIT SET FORTH PURSUANT TO THIS ARTICLE SINCE THE LAST CREDIT ALLOWANCE DATE.

2. THE OFFICE SHALL CERTIFY IN WRITING TO THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY AND TO THE DEPARTMENT THE AMOUNT OF THE TAX CREDIT AUTHORIZED FOR EACH TAXPAYER ELIGIBLE TO CLAIM THE TAX CREDIT IN THE TAX YEAR CONTAINING THE LAST CREDIT ALLOWANCE DATE.

S 3055. ANNUAL REPORTING BY A COMMUNITY DEVELOPMENT ENTITY. A COMMUNITY DEVELOPMENT ENTITY THAT HAS ISSUED A QUALIFIED INVESTMENT SHALL SUBMIT AN ANNUAL REPORT TO THE OFFICE BY APRIL THIRTIETH AFTER THE END

OF EACH CALENDAR YEAR WHICH INCLUDES A CREDIT ALLOWANCE DATE. THE REPORT SHALL INCLUDE:

1. THE ENTITY'S ANNUAL FINANCIAL STATEMENTS FOR THE PRECEDING TAX YEAR, AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT; AND

2. OTHER INFORMATION AND DOCUMENTATION REQUIRED BY THE OFFICE TO VERIFY CONTINUED CERTIFICATION AS A QUALIFIED COMMUNITY DEVELOPMENT ENTITY UNDER 26 U.S.C. 45D.

S 3056. AUDITS AND EXAMINATIONS. 1. AUDITS. A COMMUNITY DEVELOPMENT ENTITY THAT ISSUES AN INVESTMENT APPROVED BY THE OFFICE AS A QUALIFIED EQUITY INVESTMENT SHALL BE DEEMED A RECIPIENT OF STATE FINANCIAL ASSISTANCE.

2. EXAMINATIONS. THE OFFICE MAY CONDUCT EXAMINATIONS TO VERIFY COMPLIANCE WITH THIS ARTICLE.

S 3057. RECAPTURE AND PENALTIES. 1. NOTWITHSTANDING ANY LAW, RULE OR REGULATION TO THE CONTRARY, THE OFFICE SHALL DIRECT THE DEPARTMENT TO RECAPTURE ALL OR A PORTION OF A TAX CREDIT AUTHORIZED PURSUANT TO THE NEW MARKETS DEVELOPMENT PROGRAM ACT IF ONE OR MORE OF THE FOLLOWING OCCUR:

(A) THE FEDERAL GOVERNMENT RECAPTURES ALL OF THE FEDERAL NEW MARKETS TAX CREDIT. THE RECAPTURE BY THE DEPARTMENT SHALL EQUAL THE RECAPTURE BY THE FEDERAL GOVERNMENT.

(B) THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY REDEEMS OR RETURNS ANY PORTION OF A QUALIFIED EQUITY INVESTMENT BEFORE THE FINAL CREDIT ALLOWANCE DATE.

(C) (I) THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY FAILS TO INVEST AT LEAST EIGHTY-FIVE PERCENT OF THE QUALIFIED EQUITY INVESTMENT IN QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS WITHIN TWELVE MONTHS AFTER THE ISSUANCE OF A QUALIFIED INVESTMENT, OR SUCH LARGER PERCENTAGE AS SET FORTH IN THE ALLOCATION AGREEMENT BETWEEN THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY AND THE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION FUND, ALSO KNOWN AS THE "SUBSTANTIALLY-ALL REQUIREMENT"; OR

(II) THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY FAILS TO MAINTAIN EIGHTY-FIVE PERCENT OF THE QUALIFIED EQUITY INVESTMENT IN QUALIFIED LOW-INCOME COMMUNITY INVESTMENTS UNTIL THE LAST CREDIT ALLOWANCE DATE FOR A QUALIFIED INVESTMENT, OR SUCH LARGER PERCENTAGE AS SET FORTH IN THE ALLOCATION AGREEMENT BETWEEN THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY AND THE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION FUND, ALSO KNOWN AS THE "SUBSTANTIALLY-ALL REQUIREMENT";

FOR THE PURPOSES OF THIS PARAGRAPH, AN INVESTMENT BY A QUALIFIED COMMUNITY DEVELOPMENT ENTITY INCLUDES PRINCIPAL RECOVERED FROM AN INVESTMENT FOR TWELVE MONTHS AFTER ITS RECOVERY OR PRINCIPAL RECOVERED AFTER THE SIXTH CREDIT ALLOWANCE DATE. PRINCIPAL HELD FOR LONGER THAN TWELVE MONTHS OR RECOVERED BEFORE THE SIXTH CREDIT ALLOWANCE DATE IS NOT AN INVESTMENT UNLESS IT IS REINVESTED IN A QUALIFIED LOW-INCOME COMMUNITY INVESTMENT IN SUCH TWELVE MONTH PERIOD.

(D) THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY FAILS TO PROVIDE THE OFFICE WITH INFORMATION, REPORTS OR DOCUMENTATION REQUIRED BY THIS ARTICLE.

(E) THE OFFICE DETERMINES THAT A TAXPAYER RECEIVED TAX CREDITS TO WHICH THE TAXPAYER WAS NOT ENTITLED.

(F) THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY CEASES TO BE CERTIFIED AS SUCH BY THE COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION FUND.

2. THE OFFICE SHALL PROVIDE NOTICE TO THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY AND THE DEPARTMENT OF A PROPOSED RECAPTURE OF A TAX CREDIT. THE ENTITY SHALL HAVE NINETY DAYS FOLLOWING THE RECEIPT OF THE NOTICE TO CURE A DEFICIENCY IDENTIFIED IN THE NOTICE AND AVOID RECAPTURE. THE

OFFICE SHALL ISSUE A FINAL ORDER OF RECAPTURE IF THE ENTITY FAILS TO CURE A DEFICIENCY WITHIN THE NINETY DAY PERIOD. THE FINAL ORDER OF RECAPTURE SHALL BE PROVIDED TO THE ENTITY, THE DEPARTMENT, AND A TAXPAYER OTHERWISE AUTHORIZED TO CLAIM THE TAX CREDIT. RECAPTURED FUNDS SHALL BE DEPOSITED INTO THE GENERAL FUND.

3. IF A QUALIFIED COMMUNITY DEVELOPMENT ENTITY FAILS THE SUBSTANTIALLY-ALL REQUIREMENT, THE FAILURE IS NOT A RECAPTURE EVENT IF THE QUALIFIED COMMUNITY DEVELOPMENT ENTITY CORRECTS THE FAILURE WITHIN SIX MONTHS AFTER THE DATE THE QUALIFIED COMMUNITY ENTITY BECOMES AWARE OR REASONABLY SHOULD HAVE BECOME AWARE OF THE FAILURE. ONLY ONE SUCH CURE IS PERMITTED FOR EACH QUALIFIED EQUITY INVESTMENT DURING THE SEVEN YEAR CREDIT PERIOD.

4. AN ENTITY THAT SUBMITS FRAUDULENT INFORMATION TO THE OFFICE IS LIABLE FOR THE COSTS ASSOCIATED WITH THE INVESTIGATION AND PROSECUTION OF THE FRAUDULENT CLAIM PLUS A PENALTY IN AN AMOUNT EQUAL TO DOUBLE THE TAX CREDITS CLAIMED BY INVESTORS IN THE ENTITY'S QUALIFIED INVESTMENTS. THIS PENALTY IS IN ADDITION TO ANY OTHER PENALTY THAT MAY BE IMPOSED BY LAW.

S 3. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2011.