



1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 Office of Income Taxation

4 (Amendment)

5 103 KAR 15:180. Kentucky new markets development program tax credit.

6 RELATES TO: KRS 131.131, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390,  
7 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

8 STATUTORY AUTHORITY: KRS 141.433(7)

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9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.434 establishes a  
10 nonrefundable tax credit for a person or entity making a qualified equity investment in a qualified  
11 community development entity as provided by KRS 141.432(6). KRS 141.433(7) requires the  
12 department to promulgate administrative regulations to implement the provisions of KRS 141.432  
13 to KRS 141.434, and to administer the allocation of tax credits issued for qualified equity  
14 investments. This administrative regulation establishes guidelines and the filing requirements of a  
15 qualified community development entity (CDE) in order for the department to certify qualified  
16 equity investments and to allocate tax credits to a person or entity making a qualified equity  
17 investment in a qualified community development entity.

18 Section 1. Definitions. (1) "Applicant" means a CDE that files an application with the  
19 department to have an equity investment or long-term debt security certified as a qualified equity  
20 investment eligible for the tax credit authorized by KRS 141.434.

1 (2) "Application" means Form 8874(K), Application for Certification of Qualified Equity  
2 Investments Eligible for Kentucky New Markets Development Program Tax Credit (Revenue  
3 Form 41A720-S80), that is published by the department and filed by a CDE with the department  
4 for certification as a qualified equity investment.

5 (3) "Applications fee" means a \$1,000 nonrefundable cashier's check that shall be attached  
6 to the application at the time of filing with the department.

7 (4) "CDE" means a qualified community development entity as defined by KRS  
8 141.432(6).

9 (5) "CDFI Fund" means the U.S. Department of Treasury, Community Development  
10 Financial Institutions Fund.

11 (6) "Certification form" means Form 8874(K)-A, Notice of Kentucky New Markets  
12 Development Program Tax Credit and Certification, that is published by the department and filed  
13 by a CDE certifying to the department receipt of a cash investment.

14 (7) "Certified purchase price" means the purchase price of a qualified equity investment  
15 contained in the application approved by the department.

16 (8) "Department" means the Kentucky Department of Revenue.

17 (9) "Department's approval" means certified by the department as provided by KRS  
18 141.433(3).

19 (10) "Identification number" means the:

20 (a) Social Security Number for an individual;

21 (b) Federal Employer Identification Number for a general partnership, estate, or trust; or

22 (c) Kentucky Corporation/LLET Account Number for a corporation or limited liability  
23 pass-through entity.

1 (11) "Long-term debt security" is defined by KRS 141.432(3).

2 (12) "Notice of recapture" means Form 8874(K)-B, Notice of Kentucky New Markets  
3 Development Program Tax Credit Recapture, that is published by the department and sent to the  
4 CDE and each taxpayer from whom a credit is to be recaptured as a final order of recapture.

5 (13) "Performance fee" is defined by KRS 141.433(8).

6 (14) "Qualified active low-income community business" is defined by KRS 141.432(5).

7 (15) "Qualified community development entity" is defined by KRS 141.432(6).

8 (16) "Qualified equity investment" is defined by KRS 141.432(7).

9 (17) "Qualified low-income community investment" is defined by KRS 141.432(8).

10 (18) "Tax credit" is defined by KRS 141.432(9).

11 (19) "Taxpayer" is defined by KRS 141.432(10).

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12 Section 2. Application for Certification of Qualified Equity Investments. (1) A CDE that  
13 seeks to have an equity investment or long-term debt security certified by the department as a  
14 qualified equity investment eligible for the tax credit permitted by KRS 141.434 shall file an  
15 application with the department.

16 (2) The department shall notify the CDE within thirty (30) days after receipt of the  
17 application whether the application is approved or denied.

18 (a) If the department intends to deny the application, the CDE shall be notified in writing  
19 by the department of the reason for the denial, and the CDE may correct the application as provided  
20 by KRS 141.433(2).

21 (b) If the department finds that the application is in compliance with KRS 141.432 to  
22 141.434, a copy of the application shall be returned to the CDE with written notice of the  
23 department's approval.

1 (c) 1. The department shall:

2 a. Accept an application on or after July 15, 2019,~~[2016,]~~ if the application is received via  
3 hand-delivery, mail, express mail, or courier; and

4 b. Not accept an application received via facsimile, CD-Rom, CD, or electronic means.

5 2. The date that the application is stamped received by the Office of Income Taxation,  
6 Division of Corporate Tax, Tax Credits Section, shall be the date that the application is recorded  
7 as received pursuant to the provisions of KRS 141.133.

8 3. An application received prior to July 15, 2019,~~[2016,]~~ shall be recorded as received on  
9 July 15, 2019.~~[2016.]~~

10 Section 3. Information Required on or Attached to the Application. The following  
11 information shall be required on or attached to the application:

12 ~~(1) The CDE's name, mailing address, identification number, telephone number, and fax~~  
13 ~~number;~~

14 (2) The name and identification number of the parent company, if the CDE is included in  
15 a consolidated corporation income tax return filed with the Commonwealth of Kentucky;

16 (3) The type of entity of the CDE for Kentucky income tax purposes included in the  
17 application;

18 (4) The signature of the person completing the application and the date signed;

19 (5) The total number of taxpayers making qualified equity investments;

20 (6) The total amount of qualified equity investments for all taxpayers;

21 (7) A statement that the entity has been certified as a CDE, as required by 26 U.S.C. 45D(c);

22 (8) A statement that the entity has received a new markets tax credit allocation from the  
23 CDFI Fund which includes the Commonwealth of Kentucky within the service area as set forth in

1 the allocation, and the date of the allocation agreement. A copy of the new markets tax credit  
2 allocation agreement shall be attached to the application;

3 (9) Proof of current certification with the CDFI Fund that includes the original application  
4 to CDFI and all subsequent updates;

5 (10) A statement of whether the entity's service area is a county, state, multi-state, or  
6 national. A map of the service area, articles of organization that describe the service area, bylaws  
7 that describe the service area, or other documentation that describes the service area shall be  
8 attached to the application;

9 (11) Information regarding the proposed use of the proceeds from the qualified equity  
10 investments, including a description of the qualified active low-income community business as  
11 provided by KRS 141.432(5);

12 (12) The name, identification number, type of investment (whether debt or equity), and  
13 purchase price of the qualified equity investment for each taxpayer making a qualified equity  
14 investment;

15 (13) A signed certification indicating that the application has been executed by the  
16 executive officer of the CDE, declaring under the penalty of perjury:

17 (a) That the applicant's allocation agreement remains in effect and has not been revoked or  
18 canceled by the CDFI Fund; and

19 (b) That the application, including all accompanying documents and statements, is true,  
20 correct and complete;

21 (14) The application fee; and

22 (15) The refundable performance fee.

23 Section 4. Proof of Qualified Equity Investments. (1) Within ninety (90) days after the

1 approved application is received by the CDE, the CDE shall issue qualified equity investments in  
2 exchange for cash in the amount of the certified purchase prices contained in the application.

3 (2) The CDE shall provide the department with evidence of the receipt of the cash for each  
4 qualified equity investment by filing with the department a certification form.

5 (3) If the department is satisfied that the cash amount of the qualified equity investment  
6 was received by the CDE, a copy of the certification form shall be returned to the CDE and  
7 taxpayer with the department's written approval, including a statement of the tax credits available  
8 to the taxpayer for each of the next seven (7) years.

9 (4) If the department is not satisfied that the cash amount of the qualified equity investment  
10 was received by the CDE, the department shall notify the CDE in writing of the reason. If the CDE  
11 does not agree with the department's written determination, the CDE may file a protest as provided  
12 by KRS 131.110.

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13 Section 5. New Markets Development Program Tax Credit Recapture. (1) If there is an  
14 event as provided by KRS 141.433(6) which would result in the recapture of any portion of the tax  
15 credit previously approved:

16 (a) The CDE shall notify the department upon discovery of the event; or

17 (b) The department, upon discovery of the event or after receiving notice from the CDE of  
18 the event, shall provide written notice of the proposed recapture to the CDE as provided by KRS  
19 141.433(6)(b).

20 (2) If the entity fails or is unable to cure the deficiency within ninety (90) days after  
21 receiving the department's notice of proposed recapture as provided by KRS 141.433(6)(b), the  
22 department shall notify the CDE and each taxpayer of the amount of recapture or the balance of  
23 the tax credit on a notice of recapture.

- 1 (3) If the taxpayer is a pass-through entity, a notice of recapture shall also be sent to each
- 2 partner, member, or shareholder showing the amount of recapture or the balance of the tax credit.

103 KAR 15:180

APPROVED:

*Daniel Bork/les*  
DANIEL BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

*Sept 14, 2018*  
DATE APPROVED BY AGENCY



## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation will be held on October 24, 2018 at 10:00 a.m. in Room 8A, State Office Building, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments will be accepted through October 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue Tax Policy/Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 15:180

Contact Person: Lisa Swiger  
Phone Number: (502)564-9526  
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides guidance to taxpayer and department to accurately and efficiently comply with the requirements of the new market development program (“NMDP”) tax credit.

(b) The necessity of this administrative regulation: KRS 141.433(7) requires the department to promulgate regulations to administer the NMDP tax credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation complies with the requirements of KRS 141.433(7) and provides guidance required by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides clear instructions for taxpayers wanting to claim the NMDP tax credit and assists department personnel with understanding the detailed compliance requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment only updates the application acceptance date from 2016 to 2019. The NMDP tax credit is administered in allotments of \$10 million per KRS 141.434(4).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: A limited number of sophisticated financial organization taxpayers participate in the NMDP tax credit application process.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This amendment notifies taxpayers of the next application period.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Taxpayers will need to comply with the application time periods in Section 2 of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are incurred by complying with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The NMDP tax credit lowers development costs for taxpayers in certain qualified low-income communities and provides opportunities for small business investment and development.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no additional expenses incurred outside the current department funding and staff to implement this administrative regulation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of

this administrative regulation: Current budgetary funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all eligible taxpayers will follow the same requirements and be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 15:180

Contact Person: Lisa Swiger  
Phone Number: (502)564-9526  
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for the department or any other government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: