

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.

The purpose of this Rule is to provide guidance to taxpayers interested in earning or transferring Louisiana New Markets Tax Credits.

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 a Louisiana new markets tax credit 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 online on the department's website.

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. The credits may be applied to the tax year in which the credit allowance date occurred.

b. The 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. The credits may be applied against taxes paid in the 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 the prior year can only be carried forward in accordance with R.S. 47:6016(D).

2. New markets tax credits transferred by sale to a taxpayer may be applied as follows.

a. The credit 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. Limitations on the New Markets Tax Credit

1. New markets tax credits earned from qualified equity investment issued prior to July 1, 2007, are subject to an annual \$5 million 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 earned from qualified equity investments issued after July 1, 2007, are subject to either the \$50 million cap on the entire new markets credit program or a December 31, 2012, sunset date, whichever comes first. Once the cap is reached or December 31, 2012 occurs, no other credits will be granted.

D. 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 to a Louisiana taxpayer.

2. The original investor, who transfers the credit, 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: Promulgated by the Department of Revenue, Policy Services Division, 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 family earnings and family budget.
5. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.
6. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested person may submit written data, views, arguments, or comments regarding this proposed Rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs, 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., Tuesday, March 25, 2008. A public hearing will be held on Wednesday, March 26, 2008, at 10:30 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Income and Franchise Tax

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

The Fiscal Note on Act 379 of the 2007 Regular Session reported that the Louisiana Department of Revenue would need at least one additional position at an annual cost of approximately \$40,000 to administer the amended program. The Department of Revenue will also need two new forms to facilitate the transfer of the New Markets Tax Credit as described in this proposed rule. The Legislature did not appropriate additional funds to the Louisiana Department of Revenue to administer the proposed changes to the New Markets Tax Credit Program. As such, the Department of Revenue will administer the changes to the program within existing staff and resources. The implementation of this proposed regulation will have no costs to local governmental units.

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

State general fund revenues will decline by approximately the following amounts due to tax credits granted by Act 379 and the proposed rules: Fiscal Year 2007-08 (\$17.95 million), Fiscal Year 2008-09 (\$20.3 million), Fiscal Year 2009-10 (\$11 million), Fiscal Year 2010-11 (\$750,000). The program is fully subscribed, reaching the statutory limit of \$50 million in total credits. There will be no effect on revenue collections of local governmental units as a result of this proposed regulation.

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

The New Markets Tax Credit program exists to create investment into urban and rural low-income areas to help finance community development projects, stimulate economic growth and create jobs. As such, companies operating in these areas within the program requirements will receive a subsidy in the form of a tax credit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Other projects competing for economic resources with projects participating in the program may be adversely affected or face higher costs than otherwise. Companies with participating projects will employ individuals. However, the aggregate level of economy wide employment is not likely to be materially affected.

Cynthia Bridges
Secretary
0802#023

Robert E. Hosse
Staff Director
Legislative Fiscal Office

