

106TH CONGRESS
1ST SESSION

S. 1526

To amend the Internal Revenue Code of 1986 to provide a tax credit to taxpayers investing in entities seeking to provide capital to create new markets in low-income communities.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1999

Mr. ROCKEFELLER (for himself, Mr. ROBB, Mr. SARBANES, Mr. KERRY, Mr. KENNEDY, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a tax credit to taxpayers investing in entities seeking to provide capital to create new markets in low-income communities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. NEW MARKETS TAX CREDIT.**

4 (a) IN GENERAL.—Subpart D of part IV of sub-
5 chapter A of chapter 1 of the Internal Revenue Code of
6 1986 (relating to business-related credits) is amended by
7 adding at the end the following new section:

1 **“SEC. 45D. NEW MARKETS TAX CREDIT.**

2 **“(a) ALLOWANCE OF CREDIT.—**

3 “(1) IN GENERAL.—For purposes of section 38,
4 in the case of a taxpayer who holds a qualified eq-
5 uity investment on a credit allowance date of such
6 investment which occurs during the taxable year, the
7 new markets tax credit determined under this sec-
8 tion for such taxable year is an amount equal to 6
9 percent of the amount paid to the qualified commu-
10 nity development entity for such investment at its
11 original issue.

12 “(2) CREDIT ALLOWANCE DATE.—The term
13 ‘credit allowance date’ means, with respect to any
14 qualified equity investment—

15 “(A) the date on which such investment is
16 initially made, and

17 “(B) each of the 6 anniversary dates of
18 such date thereafter.

19 **“(b) QUALIFIED EQUITY INVESTMENT.—**For pur-
20 poses of this section—

21 “(1) IN GENERAL.—The term ‘qualified equity
22 investment’ means any equity investment in a quali-
23 fied community development entity if—

24 “(A) such investment is acquired by the
25 taxpayer at its original issue (directly or

1 through an underwriter) solely in exchange for
2 cash,

3 “(B) substantially all of the proceeds from
4 such investment is used by the qualified com-
5 munity development entity to make qualified
6 low-income community investments, and

7 “(C) such investment is designated for
8 purposes of this section by the qualified com-
9 munity development entity.

10 Such term shall not include any equity investment
11 issued by a qualified community development entity
12 more than 7 years after the date that such entity re-
13 ceives an allocation under subsection (f). Any alloca-
14 tion not used within such 7-year period may be re-
15 allocated by the Secretary under subsection (f).

16 “(2) LIMITATION.—The maximum amount of
17 equity investments issued by a qualified community
18 development entity which may be designated under
19 paragraph (1)(C) by such entity shall not exceed the
20 portion of the limitation amount allocated under
21 subsection (f) to such entity.

22 “(3) SAFE HARBOR FOR DETERMINING USE OF
23 CASH.—The requirement of paragraph (1)(B) shall
24 be treated as met if at least 85 percent of the aggre-
25 gate gross assets of the qualified community devel-

1 opment entity are invested in qualified low-income
2 community investments.

3 “(4) TREATMENT OF SUBSEQUENT PUR-
4 CHASERS.—The term ‘qualified equity investment’
5 includes any equity investment which would (but for
6 paragraph (1)(A)) be a qualified equity investment
7 in the hands of the taxpayer if such investment was
8 a qualified equity investment in the hands of a prior
9 holder.

10 “(5) REDEMPTIONS.—A rule similar to the rule
11 of section 1202(c)(3) shall apply for purposes of this
12 subsection.

13 “(6) EQUITY INVESTMENT.—The term ‘equity
14 investment’ means—

15 “(A) any stock in a qualified community
16 development entity which is a corporation, and

17 “(B) any capital interest in a qualified
18 community development entity which is a part-
19 nership.

20 “(c) QUALIFIED COMMUNITY DEVELOPMENT ENTI-
21 TY.—For purposes of this section—

22 “(1) IN GENERAL.—The term ‘qualified com-
23 munity development entity’ means any domestic cor-
24 poration or partnership if—

1 “(A) the primary mission of the entity is
 2 serving, or providing investment capital for,
 3 low-income communities or low-income persons,

4 “(B) the entity maintains accountability to
 5 residents of low-income communities through
 6 representation on governing or advisory boards
 7 or otherwise, and

8 “(C) the entity is certified by the Secretary
 9 for purposes of this section as being a qualified
 10 community development entity.

11 “(2) SPECIAL RULES FOR CERTAIN ORGANIZA-
 12 TIONS.—The requirements of paragraph (1) shall be
 13 treated as met by—

14 “(A) any specialized small business invest-
 15 ment company (as defined in section
 16 1044(c)(3)), and

17 “(B) any community development financial
 18 institution (as defined in section 103 of the
 19 Community Development Banking and Finan-
 20 cial Institutions Act of 1994 (12 U.S.C. 4702)).

21 “(d) QUALIFIED LOW-INCOME COMMUNITY INVEST-
 22 MENTS.—For purposes of this section—

23 “(1) IN GENERAL.—The term ‘qualified low-in-
 24 come community investment’ means—

1 “(A) any equity investment in, or loan to,
2 any qualified active low-income community busi-
3 ness,

4 “(B) the purchase from another commu-
5 nity development entity of any loan made by
6 such entity which is a qualified low-income com-
7 munity investment if the amount received by
8 such other entity from such purchase is used by
9 such other entity to make qualified low-income
10 community investments,

11 “(C) financial counseling and other serv-
12 ices specified in regulations prescribed by the
13 Secretary to businesses located in, and resi-
14 dents of, low-income communities, and

15 “(D) any equity investment in, or loan to,
16 any qualified community development entity if
17 substantially all of the investment or loan is
18 used by such entity to make qualified low-in-
19 come community investments described in sub-
20 paragraphs (A), (B), and (C).

21 “(2) QUALIFIED ACTIVE LOW-INCOME COMMU-
22 NITY BUSINESS.—

23 “(A) IN GENERAL.—For purposes of para-
24 graph (1), the term ‘qualified active low-income
25 community business’ means, with respect to any

1 taxable year, any corporation or partnership if
2 for such year—

3 “(i) at least 50 percent of the total
4 gross income of such entity is derived from
5 the active conduct of a qualified business
6 within any low-income community,

7 “(ii) a substantial portion of the use
8 of the tangible property of such entity
9 (whether owned or leased) is within any
10 low-income community,

11 “(iii) a substantial portion of the serv-
12 ices performed for such entity by its em-
13 ployees are performed in any low-income
14 community,

15 “(iv) less than 5 percent of the aver-
16 age of the aggregate unadjusted bases of
17 the property of such entity is attributable
18 to collectibles (as defined in section
19 408(m)(2)) other than collectibles that are
20 held primarily for sale to customers in the
21 ordinary course of such business, and

22 “(v) less than 5 percent of the aver-
23 age of the aggregate unadjusted bases of
24 the property of such entity is attributable

1 to nonqualified financial property (as de-
 2 fined in section 1397B(e)).

3 “(B) PROPRIETORSHIP.—Such term shall
 4 include any business carried on by an individual
 5 as a proprietor if such business would meet the
 6 requirements of subparagraph (A) were it incor-
 7 porated.

8 “(C) PORTIONS OF BUSINESS MAY BE
 9 QUALIFIED ACTIVE LOW-INCOME COMMUNITY
 10 BUSINESS.—The term ‘qualified active low-in-
 11 come community business’ includes any trades
 12 or businesses which would qualify as a qualified
 13 active low-income community business if such
 14 trades or businesses were separately incor-
 15 porated.

16 “(3) QUALIFIED BUSINESS.—For purposes of
 17 this subsection, the term ‘qualified business’ has the
 18 meaning given to such term by section 1397B(d);
 19 except that—

20 “(A) in lieu of applying paragraph (2)(B)
 21 thereof, the rental to others of real property lo-
 22 cated in any low-income community shall be
 23 treated as a qualified business if there are sub-
 24 stantial improvements located on such property,

1 “(B) paragraph (3) thereof shall not apply,
2 and

3 “(C) such term shall not include any busi-
4 ness if a significant portion of the equity inter-
5 ests in such business are held by any person
6 who holds a significant portion of the equity in-
7 vestments in the community development entity.

8 “(e) LOW-INCOME COMMUNITY.—For purposes of
9 this section—

10 “(1) IN GENERAL.—The term ‘low-income com-
11 munity’ means any population census tract if—

12 “(A) the poverty rate for such tract is at
13 least 20 percent, or

14 “(B)(i) in the case of a tract not located
15 within a metropolitan area, the median family
16 income for such tract does not exceed 80 per-
17 cent of statewide median family income, or

18 “(ii) in the case of a tract located within
19 a metropolitan area, the median family income
20 for such tract does not exceed 80 percent of the
21 greater of statewide median family income or
22 the metropolitan area median family income.

23 “(2) AREAS NOT WITHIN CENSUS TRACTS.—In
24 the case of an area which is not tracted for popu-
25 lation census tracts, the equivalent county divisions

1 (as defined by the Bureau of the Census for pur-
2 poses of defining poverty areas) shall be used for
3 purposes of determining poverty rates and median
4 family income.

5 “(3) TARGETED POPULATION.—The Secretary
6 may prescribe regulations under which 1 or more
7 targeted populations (within the meaning of section
8 3(20) of the Riegle Community Development and
9 Regulatory Improvement Act of 1974 (12 U.S.C.
10 4702(20))) may be treated as low-income commu-
11 nities. Such regulations shall include procedures for
12 identifying the area covered by any such community
13 for purposes of determining entities which are quali-
14 fied active low-income community businesses with re-
15 spect to such community.

16 “(f) NATIONAL LIMITATION ON AMOUNT OF INVEST-
17 MENTS DESIGNATED.—

18 “(1) IN GENERAL.—There is a new markets tax
19 credit limitation of \$1,200,000,000 for each of cal-
20 endar years 2000 through 2004.

21 “(2) ALLOCATION OF LIMITATION.—The limita-
22 tion under paragraph (1) shall be allocated by the
23 Secretary among qualified community development
24 entities selected by the Secretary. In making alloca-
25 tions under the preceding sentence, the Secretary

1 shall give priority to entities with records of having
2 successfully provided capital or technical assistance
3 to disadvantaged businesses or communities.

4 “(3) CARRYOVER OF UNUSED LIMITATION.—If
5 the new markets tax credit limitation for any cal-
6 endar year exceeds the aggregate amount allocated
7 under paragraph (2) for such year, such limitation
8 for the succeeding calendar year shall be increased
9 by the amount of such excess.

10 “(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

11 “(1) IN GENERAL.—If, at any time during the
12 7-year period beginning on the date of the original
13 issue of a qualified equity investment in a qualified
14 community development entity, there is a recapture
15 event with respect to such investment, then the tax
16 imposed by this chapter for the taxable year in
17 which such event occurs shall be increased by the
18 credit recapture amount.

19 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
20 poses of paragraph (1), the credit recapture amount
21 is an amount equal to the sum of—

22 “(A) the aggregate decrease in the credits
23 allowed to the taxpayer under section 38 for all
24 prior taxable years which would have resulted if

1 no credit had been determined under this sec-
 2 tion with respect to such investment, plus

3 “(B) interest at the overpayment rate es-
 4 tablished under section 6621 on the amount de-
 5 termined under subparagraph (A) for each
 6 prior taxable year for the period beginning on
 7 the due date for filing the return for the prior
 8 taxable year involved.

9 No deduction shall be allowed under this chapter for
 10 interest described in subparagraph (B).

11 “(3) RECAPTURE EVENT.—For purposes of
 12 paragraph (1), there is a recapture event with re-
 13 spect to an equity investment in a qualified commu-
 14 nity development entity if—

15 “(A) such entity ceases to be a qualified
 16 community development entity,

17 “(B) the proceeds of the investment cease
 18 to be used as required of subsection (b)(1)(B),
 19 or

20 “(C) such investment is redeemed by such
 21 entity.

22 “(4) SPECIAL RULES.—

23 “(A) TAX BENEFIT RULE.—The tax for
 24 the taxable year shall be increased under para-
 25 graph (1) only with respect to credits allowed

1 by reason of this section which were used to re-
 2 duce tax liability. In the case of credits not so
 3 used to reduce tax liability, the carryforwards
 4 and carrybacks under section 39 shall be appro-
 5 priately adjusted.

6 “(B) NO CREDITS AGAINST TAX.—Any in-
 7 crease in tax under this subsection shall not be
 8 treated as a tax imposed by this chapter for
 9 purposes of determining the amount of any
 10 credit under this chapter or for purposes of sec-
 11 tion 55.

12 “(h) BASIS REDUCTION.—The basis of any qualified
 13 equity investment shall be reduced by the amount of any
 14 credit determined under this section with respect to such
 15 investment.

16 “(i) REGULATIONS.—The Secretary shall prescribe
 17 such regulations as may be appropriate to carry out this
 18 section, including regulations—

19 “(1) which limit the credit for investments
 20 which are directly or indirectly subsidized by other
 21 Federal benefits (including the credit under section
 22 42 and the exclusion from gross income under sec-
 23 tion 103),

24 “(2) which prevent the abuse of the provisions
 25 of this section through the use of related parties,

1 “(3) which impose appropriate reporting re-
2 quirements, and

3 “(4) which apply the provisions of this section
4 to newly formed entities.”

5 (b) CREDIT MADE PART OF GENERAL BUSINESS
6 CREDIT.—

7 (1) IN GENERAL.—Subsection (b) of section 38
8 of the Internal Revenue Code of 1986 is amended by
9 striking “plus” at the end of paragraph (12), by
10 striking the period at the end of paragraph (13) and
11 inserting “, plus”, and by adding at the end the fol-
12 lowing new paragraph:

13 “(14) the new markets tax credit determined
14 under section 45D(a).”

15 (2) LIMITATION ON CARRYBACK.—Subsection
16 (d) of section 39 of such Code is amended by adding
17 at the end the following new paragraph:

18 “(10) NO CARRYBACK OF NEW MARKETS TAX
19 CREDIT BEFORE JANUARY 1, 2000.—No portion of
20 the unused business credit for any taxable year
21 which is attributable to the credit under section 45D
22 may be carried back to a taxable year ending before
23 January 1, 2000.”

24 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection
25 (c) of section 196 of the Internal Revenue Code of 1986

1 is amended by striking “and” at the end of paragraph (7),
2 by striking the period at the end of paragraph (8) and
3 inserting “, and”, and by adding at the end the following
4 new paragraph:

5 “(9) the new markets tax credit determined
6 under section 45D(a).”

7 (d) CLERICAL AMENDMENT.—The table of sections
8 for subpart D of part IV of subchapter A of chapter 1
9 of the Internal Revenue Code of 1986 is amended by add-
10 ing at the end the following new item:

“Sec. 45D. New markets tax credit.”

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to investments made after Decem-
13 ber 31, 1999.

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