

---

**SUBSTITUTE HOUSE BILL 3175**

---

**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** House Community & Economic Development & Trade (originally sponsored by Representatives Conway, Pettigrew, Chase, Linville, Hasegawa, Fromhold, Sullivan, Skinner, Roach, McIntire, Condotta, Orcutt, Morrell, Ericks, Kelley, Dunn, Kenney, Santos, and Ormsby)

READ FIRST TIME 02/05/08.

1 AN ACT Relating to business and occupation tax incentives to  
2 encourage investment in qualified community development entities;  
3 adding a new section to chapter 82.04 RCW; creating a new section; and  
4 providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.04 RCW  
7 to read as follows:

8 (1) The definitions in this subsection (1) apply throughout this  
9 section unless the context clearly requires otherwise.

10 (a) "Applicable percentage" means zero percent for each of the  
11 first two credit allowance dates, twelve percent for the third and  
12 fourth credit allowance dates, and fifteen percent for the fifth credit  
13 allowance date.

14 (b) "Credit allowance date," with respect to any qualified equity  
15 investment means:

16 (i) The date on which such investment is initially made; and

17 (ii) Each of the six anniversary dates of such date thereafter.

18 (c) "Direct tracing" means the tracking, by accepted accounting

1 methods, of the proceeds of qualified equity investments into qualified  
2 low-income community investments.

3 (d) "Long-term debt security" means any debt instrument issued by  
4 a qualified community development entity, at par value or a premium,  
5 with an original maturity date of at least seven years from the date of  
6 its issuance, with no acceleration of repayment, amortization, or  
7 prepayment features prior to its original maturity date, and with no  
8 distribution, payment, or interest features related to the  
9 profitability of the qualified community development entity or the  
10 performance of the qualified community development entity's investment  
11 portfolio. The foregoing in no way limits the holder's ability to  
12 accelerate payments on the debt instrument in situations where the  
13 issuer has defaulted on covenants designed to ensure compliance with  
14 this section or Title 26 U.S.C. Sec. 45D of the federal internal  
15 revenue code of 1986, as amended.

16 (e) "Purchase price" means the amount paid to the issuer of a  
17 qualified equity investment for such qualified equity investment.

18 (f) "Qualified active low-income community business" is defined as  
19 provided in Title 26 U.S.C. Sec. 45D of the federal internal revenue  
20 code of 1986, as amended, as of January 1, 2008. However, any business  
21 that derives or projects to derive fifteen percent or more of its  
22 annual revenue from the rental or sale of real estate may not be  
23 considered to be a qualified active low-income community business.

24 (g) "Qualified community development entity" is defined as provided  
25 in Title 26 U.S.C. Sec. 45D of the federal internal revenue code of  
26 1986, as amended, as of January 1, 2008, if such entity has entered  
27 into an allocation agreement with the community development financial  
28 institutions fund of the United States treasury department with respect  
29 to credits authorized by Title 26 U.S.C. Sec. 45D of the federal  
30 internal revenue code of 1986, as amended, which includes the state of  
31 Washington within the service area set forth in such allocation  
32 agreement.

33 (h) "Qualified equity investment" means:

34 (i) Any equity investment in, or long-term debt security issued by,  
35 a qualified community development entity that:

36 (A) Is acquired after the effective date of this act at its  
37 original issuance solely in exchange for cash;

1 (B) Has at least eighty-five percent of its cash purchase price  
2 used by the issuer to make qualified low-income community investments;  
3 and

4 (C) Is designated by the issuer as a qualified equity investment  
5 under this subsection (1)(h)(i)(C) and is certified by the department  
6 as not exceeding the limitation contained in subsection (4) of this  
7 section.

8 (ii) "Qualified equity investment" includes any qualified equity  
9 investment that does not meet the provisions of (h)(i) of this  
10 subsection, if such investment was a qualified equity investment in the  
11 hands of a prior holder.

12 (i) "Qualified low-income community investment" means any capital  
13 or equity investment in, or loan to, any qualified active low-income  
14 community business. With respect to any one qualified active low-  
15 income community business, the maximum amount of qualified low-income  
16 community investments made in such business, on a collective basis with  
17 all of its affiliates, must be ten million dollars whether issued to  
18 one or several qualified community development entities.

19 (j) "Tax credit" means a credit against the tax otherwise due under  
20 this chapter.

21 (k) "Taxpayer" means any individual or entity subject to the tax  
22 imposed under this chapter.

23 (2) A taxpayer that makes a qualified equity investment is entitled  
24 to a tax credit against the tax otherwise imposed under this chapter as  
25 follows:

26 (a) On each credit allowance date of a qualified equity investment,  
27 the taxpayer or subsequent holder of the qualified equity investment,  
28 is entitled to a tax credit during the taxable year, which includes the  
29 credit allowance date;

30 (b) The tax credit amount is equal to the applicable percentage  
31 multiplied by the purchase price paid to the issuer of such qualified  
32 equity investment; and

33 (c) The amount of the tax credit claimed may not exceed the amount  
34 of the taxpayer's tax liability under this chapter for the tax year for  
35 which the tax credit is claimed.

36 (3) No tax credit claimed under this section is refundable or  
37 saleable on the open market. Tax credits earned by a partnership,  
38 limited liability company, s-corporation, or other pass-through entity

1 may be allocated to the partners, members, or shareholders of such  
2 entity for their direct use in accordance with the provisions of any  
3 agreement among such partners, members, or shareholders. Any amount of  
4 tax credit that the taxpayer is prohibited from claiming under this  
5 section in a taxable year may be carried forward to any of the  
6 taxpayer's five subsequent taxable years.

7 (4) The department must limit the monetary amount of qualified  
8 equity investments permitted under this section to a level necessary to  
9 limit tax credit utilization at no more than fifteen million dollars of  
10 tax credits in any fiscal year. The limitation on qualified equity  
11 investments must be based on the anticipated utilization of credits  
12 without regard to the potential for taxpayers to carry forward tax  
13 credits to later tax years.

14 (5) The issuer of the qualified equity investment must certify to  
15 the department the anticipated dollar amount of such investments to be  
16 made in this state during the first twelve-month period following the  
17 initial credit allowance date. If on the second credit allowance date,  
18 the actual dollar amount of such investments is different than the  
19 amount estimated, the department shall adjust the credits arising on  
20 the second allowance date to account for such difference.

21 (6)(a) Provided that the proceeds of a qualified equity investment  
22 are invested completely in qualified low-income community investments  
23 in Washington state, the purchase price, for the purpose of calculating  
24 the credit created by this act, is equal to one hundred percent of the  
25 qualified equity investment, regardless of the location of investments  
26 made with the proceeds of other qualified equity investments issued by  
27 the same community development entity.

28 (b) To the extent a portion of a qualified equity investment is not  
29 invested in Washington state, the purchase price is reduced by the same  
30 ratio in (a) of this subsection, independently of the location of  
31 investments made with proceeds of other qualified equity investments  
32 issued by the same community development entity. In such case, the  
33 burden is on the community development entity to establish the extent  
34 to which the qualified equity investments are fully invested in  
35 Washington state, either by establishing that the community development  
36 entity itself invests exclusively in Washington state, or otherwise  
37 establishing, through direct tracing, the portion of a qualified equity  
38 investment invested solely in Washington state.

1 (7) The department must recapture, from the taxpayer that claimed  
2 the credit on a return, the tax credit allowed under this section if:

3 (a) Any amount of the federal tax credit available with respect to  
4 a qualified equity investment that is eligible for a tax credit under  
5 this section is recaptured under Title 26 U.S.C. Sec. 45D of the  
6 federal internal revenue code of 1986, as amended. In such case the  
7 department's recapture must be proportionate to the federal recapture  
8 with respect to such qualified equity investment; or

9 (b) The issuer redeems or makes principal repayment with respect to  
10 a qualified equity investment prior to the seventh anniversary of the  
11 issuance of such qualified equity investment. In such case the  
12 department's recapture must be proportionate to the amount of the  
13 redemption or repayment with respect to the qualified equity  
14 investment, except as provided otherwise in subsection (8) of this  
15 section.

16 (8) The provisions of subsection (7)(b) of this section do not  
17 apply and an investment will be considered held by an issuer, even if  
18 the investment has been sold or repaid, when the issuer reinvests an  
19 amount equal to the capital returned to or recovered by the issuer from  
20 the original investment, exclusive of any profits realized, in another  
21 qualified low-income community investment within twelve months of the  
22 receipt of such capital. An issuer may not be required to reinvest  
23 capital returned from qualified low-income community investments after  
24 the sixth anniversary of the issuance of the qualified equity  
25 investment, the proceeds of which were used to make the qualified low-  
26 income community investment, and the qualified low-income community  
27 investment shall be considered held by the issuer through the seventh  
28 anniversary of the qualified equity investment's issuance.

29 (9)(a) The legislature finds that accountability and effectiveness  
30 are important aspects of setting tax policy. In order to make policy  
31 choices regarding the best use of limited state resources the  
32 legislature needs information on how a tax incentive is used.

33 (b) Except as may be required otherwise by department rule under  
34 (c) of this subsection, a person claiming a tax credit under this  
35 section must file a survey with the department by July 1, 2013. The  
36 survey must include:

37 (i) The amount of tax credit claimed under this section;

1 (ii) The types and locations of projects that were invested in and  
2 the amount of private equity investment leveraged due to the tax  
3 credits claimed under this section; and

4 (iii) Information, as determined by the department, about  
5 employment positions, including but not limited to the number, types,  
6 and salary and wages of jobs created in the low-income community  
7 businesses in which qualified equity investments were made to claim the  
8 tax credits under this section.

9 (c) The department may, as necessary to measure the results of the  
10 tax credit program, request additional information to be submitted with  
11 the survey or more frequent surveys.

12 (d) All information collected under this subsection, except the  
13 amount of the tax credit claimed, is deemed taxpayer information under  
14 RCW 82.32.330. Information on the amount of tax credit claimed is not  
15 subject to the confidentiality provisions of RCW 82.32.330 and may be  
16 disclosed to the public upon request. If the amount of the tax credit  
17 as reported on the survey is different than the amount actually claimed  
18 on the taxpayer's tax returns or otherwise allowed by the department,  
19 the amount actually claimed or allowed may be disclosed.

20 (e) The department shall use the information required under this  
21 subsection to report on the tax credit program authorized under this  
22 section. The department must report to the appropriate committees of  
23 the legislature by December 1, 2013, on:

24 (i) The amount of tax credits taken under this section;

25 (ii) The types and locations of projects that were invested in and  
26 the amount of private equity investment leveraged due to the tax  
27 credits provided under this section;

28 (iii) The effect of the tax credit program on job creation in low-  
29 income community businesses, including the number, types, and salary  
30 and wages of jobs created for Washington residents;

31 (iv) The impact on low-income community business growth and on  
32 capital available for investment in low-income community businesses;  
33 and

34 (v) Such other related factors as the department selects.

35 (10) To claim a credit under this section, a person must  
36 electronically file with the department all returns, forms, and other  
37 information the department requires in an electronic format as provided

1 or approved by the department. Any return, form, or information  
2 required to be filed in an electronic format under this section is not  
3 filed until received by the department in an electronic format.

4 (11) The department may develop rules to implement the provisions  
5 of this section and to administer the allocation of tax credits issued  
6 for qualified equity investments under this section, which must be  
7 conducted on a first-come, first-served basis.

8 NEW SECTION. **Sec. 2.** This act may be known and cited as the  
9 "Washington state new markets development program".

10 NEW SECTION. **Sec. 3.** This act expires December 31, 2013.

--- END ---