

BILL ANALYSIS

C.S.H.B. 2459
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The federal New Markets Tax Credit Program permits capital investors, known as community development entities, to receive a credit against their federal income taxes for making qualified equity investments in designated low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit equals six percent annually. A condition of the program is that investors may not redeem their investments prior to the conclusion of the seven-year period.

C.S.H.B. 2459 provides for a state matching program for community development entities already approved by and receiving a tax credit through the federal New Markets Tax Credit Program for qualified equity investments in designated low income Texas communities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 2459 amends the Tax Code and the Insurance Code to add temporary provisions, set to expire on December 31, 2013, relating to franchise tax and insurance premium tax credits for business development in low-income communities. The bill limits to \$40 million the maximum total amount of tax credits that an entity subject to either tax may claim in a state fiscal year, not including any carryforward amounts. The bill requires the comptroller of public accounts to prescribe by rule procedures by which the comptroller may allocate such tax credits under the temporary provisions of the two codes. The bill specifies that an entity qualifies for and is entitled to a credit on a tax report if the entity purchases a qualified equity investment from a qualified community development entity and holds the qualified equity investment on a credit allowance date that occurs during the period on which the report is based. The bill provides that such an entity may claim a credit for not more than seven consecutive reports beginning with the report based on the period during which the taxable entity first holds the investment on a credit allowance date.

C.S.H.B. 2459 specifies that, with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified by the comptroller, is \$20 million whether made by one or several qualified community development entities. The bill establishes the method of calculating the amount of the tax credit a taxable entity may claim on one report and prohibits the total credit claimed for a report, including the amount of any carryforward credit, from exceeding the amount of tax due after any other applicable credits. The bill authorizes an entity, if it is eligible for a tax credit that exceeds such a limitation, to carry the unused credit forward

for not more than five consecutive reports. The bill specifies that a carryforward is considered to be the remaining portion of a credit that cannot be claimed in the current year because of such a limitation, and that a carryforward is added to the next year's credit in determining whether the limitation is met for that year. The bill specifies that a credit carryforward from a previous report is considered to be used before the current year credit and prohibits a carryforward from being added to any subsequent year's credit for the purpose of determining a limitation.

C.S.H.B. 2459 requires the entity, for the initial and each succeeding report in which a credit is claimed, to file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the taxable entity is eligible for the credit. The bill specifies that the burden of establishing entitlement to and the value of the credit is on the entity. The bill prohibits an entity from conveying, assigning, or transferring a tax credit to another entity unless all of the assets of the first entity, including the entity's qualified equity investment to which the credit relates, are conveyed, assigned, or transferred in the same transaction. The bill provides that a tax credit earned by a partnership, limited liability company, S corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of that entity and claimed in accordance with the provisions of any agreement among the partners, members, or shareholders.

C.S.H.B. 2459 requires a qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for tax credits to apply to the comptroller. The bill requires the qualified community development entity to submit an application on a form provided by the comptroller and prescribes the required contents of the form. The bill requires the application to be accompanied by a nonrefundable application fee of \$5,000, to be paid to the comptroller, and provides that the fee is required for each application submitted. The bill requires the comptroller to grant or deny the application in full or in part within 15 days after the receipt of a completed application containing the information necessary for the comptroller to certify a potential qualified equity investment, including the payment of the application fee. The bill requires the comptroller, if the comptroller denies any part of the application, to inform the qualified community development entity of the grounds for the denial. The bill requires the application to be considered completed as of the original date of submission if the qualified community development entity provides any additional information required by the comptroller or otherwise completes its application within 15 days of the notice of denial. The bill requires the application to remain denied and to be resubmitted in full with a new submission date if the qualified community development entity fails to provide the information or complete its application within the 15-day period. The bill requires the comptroller, if the application is considered complete, to certify the proposed equity investment or long-term debt security as a qualified equity investment and as eligible for tax credits, subject to the prescribed \$40 million limitation. The bill requires the comptroller to provide written notice of the certification to the qualified community development entity, and requires the notice to include the names of those taxable entities who are eligible to claim the credits, if known, and their respective credit amounts. The bill requires the qualified community development entity to notify the comptroller if the names of the taxable entities identified as eligible to claim the credits change due to transfer of a qualified equity investment or a change in an allocation.

C.S.H.B. 2459 requires the qualified community development entity, within 30 days after receiving notice of certification, to issue a qualified equity investment and receive cash in the amount of the certified purchase price. The bill requires the qualified community development entity to provide the comptroller with evidence of the receipt of the cash investment within 10 business days after receipt. The bill requires that the certification lapse if the qualified community development entity does not receive the cash investment and issue the qualified equity investment within 30 days, and in such a case prohibits the entity from issuing the qualified equity investment without reapplying to the comptroller for certification. The bill provides that a certification that lapses reverts back to the comptroller and may be reissued only in accordance with the prescribed application process. The bill requires the comptroller to

certify the qualified equity investments in the order applications are received by the comptroller. The bill prescribes procedures for accepting the applications based on the order of receipt, and procedures for handling applications received on the same day. The bill requires the comptroller, if a pending request cannot be fully certified because of the \$40 million limitation, to certify the portion that may be certified, unless the qualified community development entity elects to withdraw its request, rather than receive partial credit.

C.S.H.B. 2459 prohibits a qualified community development entity, on a collective basis with all of its affiliated entities listed in its allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury or subsidiaries of those entities, from requesting certification for a qualified equity investment that would entitle the purchaser of the qualified equity investment to have allocated to the purchaser at any time more than 30 percent of the total value of the tax credits that may be claimed under the bill's provisions. The bill authorizes such a qualified community development entity, alone or collectively, to request certification for a qualified equity investment that would entitle the purchaser of the qualified equity investment to have allocated to the purchaser at any time more than 30 percent of the total value of the tax credits that may be claimed, if certain prescribed conditions are met.

C.S.H.B. 2459 authorizes the comptroller to recapture a portion of a tax credit if certain specified conditions apply. The bill requires the qualified community development entity to keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of the proceeds into qualified low-income community businesses in Texas. The bill requires an investment, for purposes of calculating the amount of qualified low-income community investments held by a qualified community development entity, to be considered held by the qualified community development entity even if the investment has been sold or repaid, provided that the qualified community development entity reinvests an amount equal to the capital returned to or recovered from the original investment, exclusive of any profits realized, in another qualified active low-income community business in Texas within 12 months of the receipt of the capital. The bill prohibits a qualified community development entity from being required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and provides that the qualified low-income community investment shall be considered held by the issuer through the qualified equity investment's final credit allowance date. The bill includes provisions relating to the comptroller's proportionate recapture of a tax credit in certain situations. The bill requires the comptroller to provide notice to the qualified community development entity of any proposed recapture of tax credits. The bill requires that the entity have 90 days to cure any deficiency indicated in the comptroller's original recapture notice and to thereby avoid the recapture. The bill requires the comptroller, if the entity fails or is unable to cure the deficiency within the 90-day period, to provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. The bill requires that any tax credit for which a final recapture order has been issued be recaptured by the comptroller from the taxpayer who claimed the tax credit on a tax return.

C.S.H.B. 2459 specifies that an entity claiming an insurance premium tax credit provisions is not required to pay any additional retaliatory tax as a result of claiming the credit.

C.S.H.B. 2459 defines, in the Tax Code and the Insurance Code, "credit allowance date," "long-term debt security," "purchase price," "qualified active low-income community business," "qualified community development entity," "qualified equity investment," and "qualified low-income community investment," and defines, in the Insurance Code, "state premium tax liability."

C.S.H.B. 2459 provides that the expiration of these temporary provisions does not affect a credit that was established due to the purchase of a qualified equity investment that was made before

the date of expiration. The bill authorizes a taxable entity that has any unused credits established under its provisions, including any carryforward credits, to continue to apply those credits on or with each consecutive report until the date the credit would have expired if the bill's provisions had not expired.

EFFECTIVE DATE

January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2459, in provisions defining "qualified active low income community business," removes a specification included in the original that the term excludes any business that derives or projects to drive 15 percent or more of its annual revenue from the rental or sale of real estate but that the exclusion does not apply to a business that is controlled by, or under common control with, another business, if the second business does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate and the second business is the primary tenant of the real estate leased from the first business.

C.S.H.B. 2459 adds a provision, not in the original, making qualification for and entitlement to a credit on a report contingent not only on the taxable entity holding a qualified equity investment on a credit allowance date that occurs during the period on which the report is based, as in both the original and substitute, but contingent also on the taxable entity purchasing that qualified equity investment from a qualified community development entity.

C.S.H.B. 2459 differs from the original by increasing from \$10 million to \$20 million the maximum amount of qualified low-income community investments that may be made on a collective basis in any one qualified active low-income community business.

C.S.H.B. 2459 differs from the original by adding, in the provision prohibiting a taxable entity from conveying, assigning, or transferring a credit to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction, that such assets include the taxable entity's qualified equity investment to which the credit relates, whereas the original does not make that clarification.

C.S.H.B. 2459 differs from the original by making certain changes, in an itemization regarding names and tax identification numbers, to the required contents of the form provided by the comptroller that a qualified community development entity must submit in applying to have an equity investment or long-term debt certified as a qualified equity investment and as eligible for tax credits. The substitute differs from the original, in provisions requiring the comptroller to provide written notice of the certification of proposed equity investment or long-term debt security as a qualified equity investment and as eligible for tax credits, by making technical and corrective changes including requiring inclusion in the notice of the names of those who are eligible to claim the credit only if those names are known.

C.S.H.B. 2459 adds provisions not included in the original prohibiting a qualified community development entity, on collective basis with certain affiliated entities or subsidiaries of those entities, from requesting certification for a qualified equity investment that would entitle the purchaser of the investment to have allocated to the purchaser at any time more than 30 percent of the total value of the tax credits that may be claimed. The substitute adds provisions also establishing an exception to that prohibition.

C.S.H.B. 2459, in the provisions amending the Insurance Code, adds a definition, not included in the original, of "state premium tax liability." The substitute, also in amendments to that code, adds a provision not in the original to specify that an entity claiming an insurance premium tax credit is not required to pay any additional retaliatory tax as a result of claiming the credit.

C.S.H.B. 2459 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions and by making conforming changes.