Ohio New Markets Tax Credit Program Now Available

For more information regarding the Ohio New Markets Tax Credit program, please contact your Vorys attorney or:

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Effective October 2009, the State of Ohio created its own version of the highly successful and innovative Federal New Markets Tax Credit (FNMTC) program by enacting the Ohio New Markets Tax Credit (ONMTC) program.

Under the FNMTC and the ONMTC programs, investments and small business loans are encouraged in qualified low-income communities in order to create jobs and spur additional economic development. Under the FNMTC program, a 39% tax credit is provided to certain investors over a seven year period. The federal tax credit equals 5% over the first three years and 6% over the last four years. Under the ONMTC program, the total tax credit is also 39% over a seven year period, with no credit for years one and two, 7% in year three and 8% claimed for each of years four through seven.

The basic structure of the FNMTC program offers tax credits, primarily for real estate investments, to taxpayers making qualified equity investments (QEIs) in a Community Development Entity (CDE) which has been rewarded new market tax credit allocations through the Community Development Financial Institutions Fund (CDFI Fund). A CDE's primary mission is to serve or provide investment capital for low-income communities or low-income persons. The CDEs must use "substantially all," meaning at least 85%, of the QEI proceeds to make Qualified Low Income Community Investments (QLICIs) in the form of equity or a loan to Qualified Active Low-Income Community Businesses (QALICBs). In order to be qualified as a QALICB, an entity must meet the following requirements: (i) at least 50% of total gross income derived from the business must be within a low-income community; (ii) at least 40% of services performed must occur in a low-income community; (iii) at least 40% of tangible property must be used within a low-income community; and (iv) less than 5% of the unadjusted basis of the property can be attributable to collectibles or to nonqualified financial property.

The ONMTC program works in tandem with the FNMTC program, as an entity must qualify for FNMTCs in order to receive ONMTCs. However, the ONMTC program does have some unique provisions of note. In particular, the ONMTC program provides that only insurance companies and financial institutions making a QEI on or after January 1, 2010 may claim a 39% non-refundable tax credit over a seven year period based on the "adjusted purchase price" of the QEI. Adjusted purchase price is defined to equal the percentage of the investor's total QEIs made to QALICBs located in the state of Ohio. Specifically excluded from the calculation are QEIs to a QALICB ". . . that derives or projects to derive 15% or more of annual revenue from the rental or sale of real property . . ." Because ONMTCs are designed to specifically focus on job creation and end-user projects, rather than real estate development projects (the most common type of project financed under the FNMTC program), a carve-out allows for special purpose entities to be formed solely to rent or sell the project property to the ultimate user.