

CAPITAL INVESTMENT BOARD, IOWA[123]

Adopted and Filed

Pursuant to the authority of Iowa Code section 15E.63, the Iowa Capital Investment Board hereby adopts amendments to Chapter 4, "Investment Tax Credits Relating to Investments in a Fund of Funds Organized by the Iowa Capital Investment Corporation," Iowa Administrative Code.

Item 1 amends rule 123—4.2(15E) to provide additional clarification regarding the definitions of "actual return," "scheduled return," and "verified tax credits."

Item 2 amends rule 123—4.5(15E) to provide for the information needed by the Iowa Capital Investment Board to verify the amount of tax credits to be issued related to investments in a Fund of Funds organized by the Iowa Capital Investment Corporation. The amendments also extend the time from 10 days to 30 days for the Board to verify the tax credit, and provide additional clarification on the maturity date to be used when verifying the credits.

Notice of Intended Action was published in IAB Vol. XXXIV; No. 20, p. 1313, on April 4, 2012, as **ARC 0077C**. These amendments were also Adopted and Filed Emergency and were published in IAB Vol. XXXIV; No. 20, p. 1328, on April 4, 2012, as **ARC 0076C**. In response to comments and a request for public hearing, the Board published an Amended Notice of Intended Action in the Iowa Administrative Bulletin on June 13, 2012, as **ARC 0169C**. A public hearing to receive comments was held July 19, 2012.

Comments were received at the Administrative Rules Review Committee meeting on May 7, 2012, and at the public hearing held on July 19, 2012. In addition, the Board received written objections to the rules from the Iowa Capital Investment Corporation and from Regions Bank. Based on these comments and objections, the following change to the Notice has been made:

In Item 2, new subrule 4.5(8) is adopted to reflect that if a contingent or verified tax credit certificate reflects provisions that are inconsistent with the provisions of rule 123—4.5(15E), the provisions in the contingent or verified tax credit certificate will govern over the provisions in the rule. Subrule 4.5(8) reads as follows:

"4.5(8) Notwithstanding anything contained in these rules to the contrary at any time, any contingent tax certificate issued by the board may contain, at the direction of the board, any provisions not inconsistent with Iowa Code chapter 15E, division VII, respecting verification and the process relating thereto that are applicable only to such contingent tax credit certificate, or to the tax credits that may be issued thereunder, and that the board deems appropriate, with such determination to be conclusively established upon, and by, issuance of such certificate. Once so issued, any contingent tax certificate or any verified tax certificate shall be binding on the board and the department of revenue and shall not be modified, terminated, or rescinded. In the event the provisions of a verified tax certificate or a contingent tax certificate are inconsistent with any provision in these rules as in effect at any time, the provisions in the issued verified tax certificate or issued contingent tax certificate shall govern over the inconsistent provisions of these rules."

These amendments are being adopted by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

The Iowa Capital Investment Board adopted these amendments on August 1, 2012.

After analysis and review of this rule making, no impact on jobs has been found at this time.

These amendments are intended to implement Iowa Code sections 15E.63 and 15E.66.

These amendments will become effective September 26, 2012, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule ~~123—4.2(15E)~~, definitions of “Actual return,” “Scheduled return” and “Verified tax credits,” as follows:

“Actual return” means the actual aggregate amount of moneys or the fair market value of property received from a fund of funds by a designated investor, with respect to an investment amount for which a certificate is issued, including amounts received as returns of invested capital or returns on invested capital and amounts received in excess of invested capital, in whatever form received for the period from the date of the closing to the ~~date on which the certificate is redeemed~~ applicable maturity date.

“Scheduled return” means the scheduled return, whether in money or property, (including returns of and returns on investment) with respect to an investment amount associated with a certificate issued to a designated investor in a fund of funds determined in accordance with the limited partnership agreement or the operating agreement of such fund of funds for the period from the date of the closing to the ~~date on which the certificate is redeemed~~ applicable maturity date. If relevant for determining the amount of the scheduled return, the board shall presume that a verified tax credit will be transferred at 100 percent of the amount stated on the verified tax credit. It shall be the burden of a designated investor to show that the verified tax credit cannot be transferred without discounting the amount stated on such credit.

“Verified tax credits” means tax credits that have been verified by the board to the department and to the holder of the certificate that represents such tax credits. In the event that the verified tax credits are different from the amount certified by the Iowa capital investment corporation, the amount verified by the board shall control.

ITEM 2. Amend rule 123—4.5(15E) as follows:

123—4.5(15E) Procedures for verification of tax credits.

4.5(1) At any time after the applicable maturity date for a certificate, the holder may present such certificate to the Iowa capital investment corporation for certification. Within ten days after receipt of such certificate, the Iowa capital investment corporation shall certify to the board the percentage of return for the designated investor for such certificate. If the percentage of return is less than 100 percent, the Iowa capital investment corporation shall certify the resulting total amount of tax credits to be verified for use by the holder of such certificate in accordance with the terms of the limited partnership agreement or the operating agreement of the fund of funds. The Iowa capital investment corporation shall give notice of such percentage of return and such amount of tax credits to the holder of such certificate at the holder’s address as it appears on the certificate register.

4.5(2) The Iowa capital investment corporation, and any entity with which the corporation has entered into agreements pursuant to the investments and financial transactions described in Iowa Code chapter 15E, division VII, shall provide all documents that the board finds are, or may become, necessary for the board to verify the amount of tax credits to be issued pursuant to this chapter. Such documents include but are not limited to the following:

a. Financial transactions related to the Iowa capital investment corporation, the Iowa fund of funds, designated investors, lenders, or portfolio entities.

b. Financial documents, loan agreements, and security instruments to which any of the Iowa capital investment corporation, the Iowa fund of funds, designated investors, lenders, or a portfolio entity is a party.

c. Investment agreements to which any of the Iowa capital investment corporation, the Iowa fund of funds, designated investors, lenders, or a portfolio entity is a party.

d. All legal documents and correspondence related to the documents described in paragraphs 4.5(2) “a” through 4.5(2) “c” to which any of the Iowa capital investment corporation, the Iowa fund of funds, designated investors, lenders, or a portfolio entity is a party.

e. All documents and financial information necessary to calculate the actual return, the scheduled return, and the percentage of return.

f. Any other documents the board deems necessary to assess compliance with Iowa Code chapter 15E, division VII, or this chapter or to correctly verify the amount of tax credits related to a certificate issued pursuant to this chapter.

~~4.5(2)~~ 4.5(3) ~~Within ten days after the certification of the Iowa capital investment corporation to the board of the percentage of return for a certificate,~~ Within 30 days of the receipt of all documents and information pursuant to subrule 4.5(2), the board shall establish and verify the amount of tax credits related to that certificate, if any, that may be initially used in each redemption year so that no more than \$20 million in tax credits, in the aggregate, may become useable to reduce tax liabilities in any fiscal year (provided that such \$20 million limitation shall not limit the carryforward of tax credits otherwise authorized by the Act or these rules). Except to the extent specifically required by the \$20 million annual limitation, all tax credits relating to a verified certificate shall be useable to satisfy tax liabilities for a tax year beginning on or after the maturity date and ending at the expiration of the carryforward period specified in rule 123—4.10(15E).

~~4.5(3)~~ 4.5(4) The board shall issue to the holder of such certificate a verification setting forth (a) the amount of verified tax credits represented by such certificate (if any) and (b) the amount of verified tax credits represented by such certificate that may first become useable to reduce tax liabilities in any redemption year (if any).

~~4.5(4)~~ 4.5(5) If the verified certificate has more than one maturity date, the board shall issue to the holder a certificate for the verified tax credits. The verified certificate will contain no contingencies. The board shall issue one or more balance certificates for any maturity dates for which tax credits are not then being verified.

~~4.5(5)~~ 4.5(6) Certificates being verified for a maturity date shall be verified pro rata with all other certificates being verified for the same maturity date.

~~4.5(6)~~ 4.5(7) If a contingent certificate has more than one maturity date, the most recent maturity date prior to the date on which the certificate was presented to the board for verification shall be the maturity date used for purposes of verification under this rule.

~~4.5(7)~~ 4.5(8) Notwithstanding anything contained in these rules to the contrary at any time, any contingent tax certificate issued by the board may contain, at the direction of the board, any provisions not inconsistent with Iowa Code chapter 15E, division VII, respecting verification and the process relating thereto that are applicable only to such contingent tax credit certificate, or to the tax credits that may be issued thereunder, and that the board deems appropriate, with such determination to be conclusively established upon, and by, issuance of such certificate. Once so issued, any contingent tax certificate or any verified tax certificate shall be binding on the board and the department of revenue and shall not be modified, terminated, or rescinded. In the event the provisions of a verified tax certificate or a contingent tax certificate are inconsistent with any provision in these rules as in effect at any time, the provisions in the issued verified tax certificate or issued contingent tax certificate shall govern over the inconsistent provisions of these rules.

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