

FIRST REGULAR SESSION

# HOUSE BILL NO. 210

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES ROBB (Sponsor) AND STORCH (Co-sponsor).

Pre-filed January 2, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0726L.01I

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### AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to a tax credit for qualified equity investments.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be  
2 known as section 135.662, to read as follows:

**135.662. 1. As used in this section, the following terms mean:**

2 **(1) "Adjusted purchase price", the product of:**

3 **(a) The amount paid to the issuer of a qualified equity investment for such qualified**  
4 **equity investment; and**

5 **(b) The following fraction:**

6 **a. The numerator shall be the dollar amount of qualified low-income community**  
7 **investments held by the issuer in this state as of the credit allowance date during the**  
8 **applicable tax year; and**

9 **b. The denominator shall be the total dollar amount of qualified low-income**  
10 **community investments held by the issuer as of the credit allowance date during the**  
11 **applicable tax year;**

12 **(2) "Applicable percentage", five percent for each of the first three credit allowance**  
13 **dates and six percent for the next four credit allowance dates;**

14 **(3) "Credit allowance date", with respect to any qualified equity investment:**

15 **(a) The date on which such investment is initially made; and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (b) Each of the six anniversary dates of such date thereafter;

17 (4) "Qualified community development entity", the definition given in Section 45D  
18 of the Internal Revenue Code of 1986, as amended; provided that such entity has entered  
19 into an allocation agreement with the community development financial institutions fund  
20 of the United States Treasury Department with respect to credits authorized by Section  
21 45D of the Internal Revenue Code of 1986, as amended;

22 (5) "Long-term debt security", any debt instrument issued by a qualified  
23 community development entity, at par value or a premium, with an original maturity date  
24 of at least seven years from the date of its issuance, with no acceleration of repayment,  
25 amortization, or prepayment features before its original maturity date, and with no  
26 distribution, payment, or interest features related to the profitability of the qualified  
27 community development entity or the performance of the qualified community  
28 development entity's investment portfolio. This subdivision shall not be construed to limit  
29 the holder's ability to accelerate payments on the debt instrument where the issuer has  
30 defaulted on covenants designed to ensure compliance with this section or Section 45D of  
31 the Internal Revenue Code of 1986, as amended;

32 (6) "Qualified active low-income community business", the meaning given such  
33 term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that any  
34 business that derives or projects to derive fifteen percent or more of its annual revenue  
35 from the rental or sale of real estate shall not be deemed a qualified active low-income  
36 community business;

37 (7) "Qualified equity investment", any equity investment in, or long-term debt  
38 security issued by, a qualified community development entity that:

39 (a) Is acquired after August 28, 2007, at its original issuance solely in exchange for  
40 cash;

41 (b) Has at least eighty-five percent of its cash purchase price used by the issuer to  
42 make qualified low-income community investments; and

43 (c) Is designated by the issuer as a qualified equity investment.  
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45 "Qualified equity investment" shall include any investment that does not meet the  
46 provision in paragraph (a) of this subdivision if such investment was a qualified equity  
47 investment in the hands of a prior holder;

48 (8) "Qualified low-income community investment", any capital or equity  
49 investment in, or loan to, any qualified active low-income community business. With  
50 respect to any one qualified active low-income community business, on a collective basis  
51 with all of its affiliates, the maximum amount of investment that any qualified community

52 development entity, on an aggregate basis with all of its affiliates, may use for the  
53 calculation of any numerator described in paragraph (b) of subdivision (1) of subsection  
54 1 of this section shall be ten million dollars;

55 (9) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo,  
56 excluding withholding tax imposed in sections 143.191 to 143.265, RSMo, or otherwise due  
57 under section 375.916, RSMo, or chapter 147, 148, or 153, RSMo;

58 (10) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143,  
59 RSMo, excluding withholding tax imposed in sections 143.191 to 143.265, RSMo, or the tax  
60 imposed in section 375.916, RSMo, or chapter 147, 148, or 153, RSMo.

61 2. For all taxable years beginning on or after January 1, 2008, a taxpayer shall be  
62 allowed a tax credit for qualified equity investments held on a credit allowance date of such  
63 qualified equity investment during the taxable year including such credit allowance date.  
64 The tax credit amount shall be equal to the applicable percentage of the adjusted purchase  
65 price paid to the issuer of such qualified equity investment. The amount of the tax credit  
66 issued shall not exceed the amount of the taxpayer's state tax liability for the tax year for  
67 which the tax credit is claimed. No tax credit issued under this section shall be refundable  
68 or transferable. Tax credits earned by a partnership, limited liability company, S  
69 corporation, or other pass-through entity may be allocated to the partners, members, or  
70 shareholders of such entity for their direct use in accordance with the provisions of any  
71 agreement among such partners, members, or shareholders. Any amount of tax credit that  
72 the taxpayer is prohibited by this section from claiming in a taxable year may be carried  
73 forward to any of the taxpayer's subsequent taxable years. The amount of tax credits that  
74 may be allocated by the department of economic development under this section in each  
75 fiscal year shall not exceed fifteen million dollars.

76 3. The issuer of the qualified equity investment shall certify to the department of  
77 economic development the anticipated dollar amount of such investments to be made in  
78 this state during the first twelve-month period following the initial credit allowance date.  
79 If on the second credit allowance date, the actual dollar amount of such investments is  
80 different than the amount estimated, the department of economic development shall adjust  
81 the credits arising on the second allowance date to account for such difference.

82 4. The department of economic development shall recapture the tax credit allowed  
83 under this section with respect to such qualified equity investment under this section if:

84 (1) Any amount of the federal tax credit available with respect to a qualified equity  
85 investment that is eligible for a tax credit under this section is recaptured under Section  
86 45D of the Internal Revenue Code of 1986, as amended; or

87           (2) The issuer redeems or makes any principal repayment with respect to a  
88 qualified equity investment before the seventh anniversary of the issuance of the qualified  
89 equity investment.

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91 Any tax credit that is subject to recapture shall be recaptured from the taxpayer that  
92 claimed the tax credit on a return.

93           5. The department of economic development shall promulgate rules to implement  
94 the provisions of this section. The rules shall include provisions for recapturing on a scaled  
95 proportional basis, and shall include provisions for administering the allocation of tax  
96 credits issued for qualified equity investments on a first-come-first-served basis. Any rule  
97 or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under  
98 the authority delegated in this section shall become effective only if it complies with and  
99 is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,  
100 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
101 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
102 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,  
103 then the grant of rulemaking authority and any rule proposed or adopted after August 28,  
104 2007, shall be invalid and void.

105           6. Any taxpayer who makes a qualified equity investment before the date the  
106 program in this section terminates under subsection 7 of this section shall be allowed to  
107 claim tax credits relating to such qualified equity investments for each credit allowance  
108 date occurring after such termination date.

109           7. Under section 23.253, RSMo, of the Missouri Sunset Act:

110           (1) The provisions of the new program authorized under this section shall  
111 automatically sunset six years after the effective date of this section unless reauthorized by  
112 an act of the general assembly; and

113           (2) If such program is reauthorized, the program authorized under this section  
114 shall automatically sunset twelve years after the effective date of the reauthorization of this  
115 section; and

116           (3) This section shall terminate on September first of the calendar year immediately  
117 following the calendar year in which the program authorized under this section is sunset.

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