

KRS 141.432 to 141.434

DRAFT
6/20/18

NMDP

- ◆ **Only use this package if your entity is a qualified community development entity (CDE) applying or approved for a Kentucky New Markets Development Program tax credit.**
- ◆ **This package contains the following forms and instructions.**
 - **Form 8874(K) "Application for Certification of Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit"**
 - **Form 8874(K)-A "Notice of Kentucky New Markets Development Program Tax Credit and Certification"**
 - **Form 8874(K)-B "Notice of Kentucky New Markets Development Program Tax Credit Recapture"**
 - **Form 8874(K)-C "Kentucky New Markets Development Program Tax Credit Request for Refund of Performance Fee"**

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- 7 Include a nonrefundable application fee of \$1,000 with this application. Payment of the fee must be by cashier's check. A separate check must be issued for the nonrefundable application fee.
- 8 Include a refundable performance fee with this application equal to one-half of one percent (0.5%) of the qualified equity investment requested to be certified, not to exceed \$500,000. Payment of the fee must be by cashier's check. A separate check must be issued for the refundable performance fee.

Under penalties of perjury, I declare that the applicant's allocation agreement remains in effect and has not been revoked or canceled by the CDFI Fund; and that I have examined the application, including all accompanying documents and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

By: _____
Signature of executive officer of CDE Date

Print Name: _____

Title: _____

	Department of Revenue Use Only
The application is approved _____	
The application is not approved (see attached explanation) _____	
By: _____	Date: _____

Mail to Department of Revenue, Division of Corporation Tax, Station 52, 501 High Street, Frankfort, KY 40601-2103.

A qualified community development entity (CDE) that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for the tax credit permitted by KRS 141.434 must file this application, Form 8874(K), with the Kentucky Department of Revenue (department).

The following fees must be included with the application: (i) a nonrefundable application fee (payment must be by cashier's check) of \$1,000 (a separate check made payable to the Kentucky State Treasurer must be issued for the nonrefundable application fee); and (ii) a refundable performance fee (payment must be by cashier's check) equal to one-half of one percent (0.5%) of the qualified equity investment requested to be certified, not to exceed \$500,000 (a separate check made payable to the Kentucky State Treasurer must be issued for the refundable performance fee).

The department will notify you within thirty (30) days after receipt of the application whether the application is approved or denied. If the department intends to deny your application, you will be notified in writing (via certified mail) by the department of the reason for denial. Upon receipt of the notice of denial, the CDE has fifteen (15) days to provide the department with information necessary to correct any deficiencies in the application. Upon receipt of any additional information, the department has an additional thirty (30) days to either approve or deny the application.

If the CDE fails to provide the additional information required by the department or fails to complete its application within the fifteen (15) day period, the application will be deemed denied and must be resubmitted in full with a new submission date. If the application is deemed denied, the department will refund the performance fee in full to the CDE.

If the department determines that the application is in compliance with the provisions of KRS 141.432 to 141.434, a copy of the application will be returned to you (via certified mail) containing the department's approval of the qualified equity investments and taxpayers eligible for tax credits under KRS 141.434. "Department's approval" means the department's certification per KRS 141.433(3) of the proposed equity investments or long-term debt securities as qualified equity investments eligible for tax credits per KRS 141.432 to 141.434. If the tax credits are limited because of the \$10 million tax credit cap per KRS 141.434(4), the department will notify the CDE of the limitation and the CDE may either elect to withdraw its application or receive a partial credit. If the CDE elects to withdraw its application, the department will refund the performance fee in full to the CDE. If the CDE elects to receive a partial credit, the department will refund a portion of the performance fee, whereby only the fee applicable to the certified amount is retained.

If the taxpayers eligible to claim the credits change due to a transfer of a qualified equity investment or a change in an allocation per KRS 141.434(2), the CDE must notify the department of such change.

Within ninety (90) days after receipt of the notice of certification by the department, the CDE will issue the qualified equity investment and receive cash in the amount of the certified purchase price. The CDE will provide the department with evidence of the receipt of the cash within ten (10) business days after receipt. If the CDE does not receive cash in exchange for the total amount of the qualified equity investment within ninety (90) days following receipt of the certification notice from the department, the certification will lapse, and the entity may not issue the qualified equity investment without reapplying to the department for certification. In addition, the entire performance fee will be forfeited.

The CDE must complete Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification, and file a copy with the department for each taxpayer as evidence of the receipt of cash for the qualified equity investment. If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE from the qualified equity investor, the department will return Form 8874(K)-A containing the department's approval of the tax credit to both the CDE and taxpayer.

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Per KRS 141.433(4), cash in the amount of the certified purchase price of the qualified equity investment must be received by the qualified community development entity (CDE) from each taxpayer in exchange for the taxpayer's qualified equity investment within ninety (90) days after receipt of the approved application (Form 8874(K)) by the CDE. The CDE must provide the department with evidence of the receipt of the cash in exchange for the qualified equity investment within ten (10) business days after receipt of the cash. If the CDE does not receive cash in the amount of certified purchase price of the qualified equity investment within ninety (90) days following receipt of the application approved by the department, the certification of the taxpayer will lapse and the CDE may not issue a qualified equity investment without filing a new application with the department.

A CDE must file this form (Form 8874(K)-A) with the department for each taxpayer as evidence of the receipt of the cash for the taxpayer's qualified equity investment.

If the department is satisfied that the cash amount of the qualified equity investment was received by the CDE, a copy of Form 8874(K)-A will be returned to the taxpayer and CDE with the department's approval of the tax credit available to the taxpayer for each of the next seven years.

A taxpayer must attach a copy of the approved Form 8874(K)-A to the tax return each year to claim the tax credit against the taxes imposed by KRS 141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270. For the tax credit against taxes imposed by KRS 141.020, 141.040, or 141.0401, the ordering of the credits will be as provided by KRS 141.0205. An insurance company claiming a tax credit against the insurance premium tax is not required to pay additional retaliatory tax levied pursuant to KRS 304.3-270.

A partner, member, or shareholder claiming the tax credit must attach a copy of Schedule K-1, Form 720S; Schedule K-1, Form 765; or Schedule K-1, Form 765-GP to the tax return each year to claim the tax credit.

If there is an event per KRS 141.433(6) which would result in the recapture of any portion of the tax credit previously approved: (i) the CDE must notify the department upon discovery of such event; or (ii) the department upon discovery of such event or after receiving notice from the CDE of such event must provide written notice (via certified mail) of the proposed recapture to the CDE per KRS 141.433(6)(b).

If the CDE fails or is unable to cure the deficiency per KRS 141.433(6)(b), the department must notify the CDE and each taxpayer of the amount of the recapture or the balance of the tax credit on Form 8874(K)-B.

► See instructions.

A Name of Qualified Community Development Entity (CDE)	B Federal Identification Number of CDE _____	C Kentucky Corporation/LLET Account Number (if applicable) of CDE _____
D Name of taxpayer making the qualified equity investment	E Identification number of taxpayer _____	F Kentucky Corporation/LLET Account Number (if applicable) of taxpayer _____
Number and Street (taxpayer's address)		G Certified purchase price of the taxpayer's qualified equity investment \$ _____
City	State Zip Code	

H Date the CDE received cash for taxpayer's qualified equity investment ____ / ____ / ____ Mo. Day Yr.	I What type of entity is the taxpayer? <input type="checkbox"/> Individual <input type="checkbox"/> Estate <input type="checkbox"/> Trust <input type="checkbox"/> General Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Limited Liability Pass-through Entity
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J Date taxpayer's qualified equity investment was subject to recapture ____ / ____ / ____ Mo. Day Yr.	K Explanation of recapture
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	Original Tax Credit	Decrease of Tax Credit	Balance of Tax Credit	Tax Credit Claimed by Taxpayer
1 Total (add lines 2(a) through 2(g)).....				
2 (a) Year 1.....				
(b) Year 2.....				
(c) Year 3.....				
(d) Year 4.....				
(e) Year 5.....				
(f) Year 6.....				
(g) Year 7.....				

3 If the Tax Credit Claimed by Taxpayer on line 1 is greater than the Balance of Tax Credit on line 1, enter the recapture of the tax credit on this line	
4 If the Balance of Tax Credit on line 1 is greater than the Tax Credit Claimed by Taxpayer on line 1, enter the balance of the tax credit on this line.....	

	Department of Revenue Use Only
Recapture of Tax Credit Amount _____	
By: _____	Date: _____

If there is an event per KRS 141.433(6) which would result in the recapture of any portion of the tax credit previously approved: (i) the qualified community development entity (CDE) must notify the department upon discovery of such event; or (ii) the department upon discovery of such event or after receiving notice from the CDE of such event must provide written notice (via certified mail) of the proposed recapture to the CDE per KRS 141.433(6)(b).

If the CDE fails or is unable to cure the deficiency within ninety (90) days after receiving the department's original notice of recapture per KRS 141.433(6)(b), a copy of this form (Form 8874(K)-B) will be sent by the department to the CDE and each taxpayer showing the amount of the tax credit recapture or balance of the tax credit. If the taxpayer is a pass-through entity, a Form 8874(K)-B will also be sent to each partner, member, or shareholder showing the partner's, member's, or shareholder's tax credit recapture or balance of the tax credit.

If Form 8874(K)-B, Line 3 shows a recapture of tax credit, the taxpayer or a partner, member, or shareholder of a taxpayer must attach a copy of Form 8874(K)-B to the tax return for the tax year that includes the credit recapture date and enter the tax credit recapture on the applicable line of the tax return.

If Form 8874(K)-B, Line 4 shows a tax credit balance, the taxpayer or a partner, member, or shareholder of a taxpayer must attach a copy of Form 8874(K)-B to the tax return each year to claim the tax credit against the taxes imposed by KRS 141.020, 141.040, 141.0401, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, or 304.3-270.

**KENTUCKY NEW MARKETS DEVELOPMENT PROGRAM
TAX CREDIT REQUEST FOR REFUND OF PERFORMANCE FEE**

2018

► See instructions.

A Name of Qualified Community Development Entity (CDE) Number and Street (taxpayer's address) City _____ State _____ Zip Code _____	B Federal Identification Number of CDE _____	C Kentucky Corporation/LLET Account Number (if applicable) of CDE _____ D Certified purchase price of the qualified equity investment \$ _____
E Date of this request for refund of performance fee ____ / ____ / ____ Mo. Day Yr.	F What type of entity is the CDE? <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Pass-through Entity <input type="checkbox"/> General Partnership <input type="checkbox"/> Other _____	

1 Enter the amount of the qualified equity investment certified by the department which the CDE received cash in exchange for qualified equity investment within 90 days after the qualified equity investment was certified	1		00
2 Enter the amount of the qualified equity investment in qualified active low-income community businesses located in the Commonwealth 12 months after the CDE received cash in exchange for the qualified equity investment	2		00
3 Divide line 2 by line 1 and enter the resultant percentage here	3		%
4 Percentage required to be invested outlined under KRS 141.433(6)	4		100%
5 If line 3 is smaller than line 4, subtract line 3 from line 4 and enter the resultant percentage here; otherwise, enter 0%	5		%
6 Enter the refundable performance fee paid by the CDE	6		00
7 Multiply the percentage on line 5 by the amount on line 6, this is the amount of the forfeited performance fee	7		00
8 Subtract the amount on line 7 from the amount on line 6 and enter here; this is the amount of performance fee to be refunded	8		00

Under the penalty of perjury, I declare that I have examined the information on this form, including all accompanying documents and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

By: _____ Date: _____
 Signature of executive officer of CDE

Print name: _____

Title: _____

	Department of Revenue Use Only
A refund of the performance fee is approved in the amount of..... _____	
By: _____	Date: _____

Mail to Department of Revenue, Division of Corporation Tax, Station 52, 501 High Street, Frankfort, KY 40601-2103.

**INSTRUCTIONS—KENTUCKY NEW MARKETS
DEVELOPMENT PROGRAM TAX CREDIT
REQUEST FOR REFUND OF PERFORMANCE FEE**

KRS 141.433(8)(c)3 provides that a qualified community development entity (CDE) may request a refund of the performance fee no sooner than thirty (30) days after having met all the requirements of KRS 141.433(8). The refund request must be made in writing to the department (the submission of this form will comply with this requirement). The department must review the refund request within thirty (30) days, and will either comply with the request and issue the refund of the performance fee, without interest, if the CDE has met all of the requirement of KRS 141.433(8), or give written notice to the CDE that it is noncompliant and subject to possible forfeiture of the fee.

The entire amount of the fee will be forfeited if the CDE, or any subsidiary of the CDE, fail to issue the total amount of qualified equity investment certified by the department and receive cash in exchange therefore within ninety (90) days after receipt of the notice of certification.

A portion of the performance fee will be forfeited if the CDE, or any subsidiary of the CDE, that issues a qualified equity investment certified by the department fails to meet the percentage of investment required by KRS 141.433(6) by the first allowance date of the qualified equity investment. The forfeiture will be proportionate to the amount of the qualified equity investment that is not invested as required by KRS 141.433(6). Forfeiture of the fee will be subject to the ninety (90) day cure period allowed under KRS 141.433(6)(b).

SPECIFIC INSTRUCTIONS

Line 3—Convert Line 3 to a percentage carried out to two decimal places.

In the case of a qualified equity investment issued on or after January 1, 2014, at least **one hundred percent (100%)** of the purchase price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth within twelve (12) months of the issuance of the qualified equity investment and maintain this level of investment in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth until the last credit allowance date for the qualified equity investment. In this case, the department's recapture will be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

REQUIRED ATTACHMENTS

Proof of certification and proof that the requirements under KRS 141.433(8)(d) have been met are required to be included with the submission of this form.