



Ohio Administrative Code Rule 122:22-1-05 Monitoring and recapture.

Effective: December 24, 2016

(A) The director will monitor compliance of state allocatees with the terms and conditions of allocation agreements and program guidelines. If subsidiary CDE's are parties to an allocation agreement, the director will monitor compliance on a consolidated basis for the total amount of the credit allocation made pursuant to the allocation agreement.

(B) The state allocatee shall notify the director of any notice of recapture or any potential event of recapture pursuant to section 45D(g) of the Internal Revenue Code and section 1.45 D-1(e)(2) of Title 26 of the Code of Federal Regulations, as such federal laws and regulations exist on the effective date of the enactment of section 5725.33 of the Revised Code, October 16, 2009. Such notice shall be given in writing and submitted to the director promptly, but in any event within thirty days of the recapture event.

(C) In the event of any recapture pursuant to section 45D(g) of the Internal Revenue Code and section 1.45D-1(e)(2) of Title 26 of the Code of Federal Regulations, as such federal laws and regulations exist on the effective date of the enactment of section 5725.33 of the Revised Code, October 16, 2009, all new markets tax credits claimed by any taxpayer in respect of each equity investment subject to recapture of federal new markets tax credits shall also be subject to recapture by the state of Ohio. Following receipt of notice by the state allocatee of a recapture event of federal new markets tax credits, the director shall notify the tax commissioner and the superintendent and request that taxes be assessed against each NMTC claimant subject to the jurisdiction of the tax commissioner and the superintendent, respectively, in the aggregate amount of new markets tax credits claimed by each such taxpayer in respect of the affected equity investments and all applicable interest.

(D) In addition to recapture under the circumstances described in paragraph (B) of this rule, new markets tax credits shall be subject to recapture if the director determines that more than fifteen per cent of the proceeds of an investment for which the tax credit is claimed were used other than for qualified low-income community business investments. The director shall notify the state allocatee



in writing if the director identifies any circumstance indicating potential recapture under this paragraph. The state allocatee shall have thirty days after the date of the director's notice to respond in writing. The director shall issue a preliminary written determination, which shall state the director's findings and conclusion on which the recapture determination is based. The state allocatee shall have the right to request within thirty days after the date of the preliminary determination a hearing with the director to refute any of the director's findings and conclusions. Thereafter, the director shall issue a final written determination. If the director determines that a recapture event has occurred, the director shall notify the tax commissioner and the superintendent and request that taxes be assessed against each NMTC claimant subject to the jurisdiction of the tax commissioner and the superintendent, respectively, in the aggregate amount of new markets tax credits claimed by each such taxpayer in respect of the affected equity investments and all applicable interest.