



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **COMMUNITY DEVELOPMENT EQUITY TAX CREDIT ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to May 6, 2022. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## COMMUNITY DEVELOPMENT EQUITY TAX CREDIT ACT

### Table of Contents

Section	Page
<b>INTERPRETATION</b>	<b>5</b>
1. Definitions.....	5
<b>COMMUNITY ECONOMIC-DEVELOPMENT BUSINESSES</b>	<b>7</b>
2. Application for registration.....	7
3. Criteria for eligibility.....	7
4. Revocation of certificate of registration.....	8
5. Prohibited use of funds.....	9
6. Tax-credit certificate.....	10
7. Payment to Minister where no entitlement and repayment.....	11
8. Joint and several liability for repayment.....	12
<b>GENERAL</b>	<b>12</b>
9. Register.....	12
10. Filing of returns with Minister.....	12
11. Maintenance and location of records.....	12
12. Examination of affairs.....	13
13. Investigations.....	13
14. Deemed refusals.....	14
15. Extension of time.....	14
16. Offences and penalty.....	14
17. Regulations.....	15
<b>CONSEQUENTIAL AMENDMENTS</b>	<b>15</b>
18. Income Tax Act.....	15





## COMMUNITY DEVELOPMENT EQUITY TAX CREDIT ACT

### CHAPTER C-13.01

### INTERPRETATION

#### 1. Definitions

##### (1) In this Act

- (a) “**active business**” means a business carried on in Canada, other than a specified investment business or a personal services business as defined in the *Income Tax Act* (Canada) or a specified investment business employing directly or indirectly with an affiliated corporation five or more people;
- (b) “**affiliate**”, where used to indicate the relationship between bodies corporate, means any body corporate where
  - (i) one body corporate is the subsidiary of the other or both are subsidiaries of the same body corporate,
  - (ii) each body corporate is controlled by the same person, the same group of persons or one or more members of an associated group of persons,
  - (iii) each body corporate was controlled, directly or indirectly in any manner whatever, by a person and the person who so controlled one of the bodies corporate was related to the person who so controlled the other, and either of these persons owned, in respect of each body corporate, not less than twenty-five per cent of the issued shares of any class, other than a specified class, of the capital stock thereof,
  - (iv) one of the bodies corporate was controlled, directly or indirectly in any manner whatever, by a person and that person was related to each member of a group of persons that so controlled the other body corporate, and that person owned, in respect of the other body corporate, not less than twenty-five per cent of the issued shares of any class, other than a specified class, of the capital stock thereof, or
  - (v) each of the bodies corporate was controlled directly or indirectly in any manner whatever, by a related group and each of the members of one of the related groups was related to all of the members of the other related group, and one or more persons who were members of both related groups, either alone or together, owned, in respect of each body corporate, not less than twenty-five per cent of the issued shares of any class, other than a specified class, of the capital stock thereof;
- (c) “**association**” means an association as defined in the *Co-operative Associations Act* R.S.P.E.I. 1988, Cap. C-23;
- (d) “**community economic-development business**” means a company or association that is registered by the Minister under section 2;

- (e) “**community economic-development plan**” means a community economic-development plan containing the information prescribed by the regulations;
- (f) “**company**” means a company incorporated under the *Business Corporations Act* R.S.P.E.I. 1988, Cap. B-6.01, or under Part I of the *Companies Act* R.S.P.E.I. 1988, Cap. C-14, which has its head office in Prince Edward Island and which is a taxable corporation;
- (g) “**eligible investment**” means
  - (i) in the case of a taxable corporation, fully paid, newly issued voting common shares of the corporation, issued on or before February 28, 2027, that are non-redeemable and non-retractable, are non-convertible, are not restricted in profit sharing or participation upon dissolution and are not eligible for a tax credit allowed pursuant to the *Income Tax Act* (Canada) or a deduction from income pursuant to that Act other than a deduction pursuant to subsection 146(5) of that Act, and
  - (ii) in the case of an association, a share issued, on or before February 28, 2027, that, if it were the only share owned by the member, would entitle a member to vote in the affairs of the co-operative, and that is not eligible for a tax credit allowed pursuant to the *Income Tax Act* (Canada) or a deduction from income pursuant to that Act other than a deduction pursuant to subsection 146(5) of that Act,but does not include a replacement share;
- (h) “**eligible investor**” means an individual who is, at the time of investment,
  - (i) a resident of the Province, and
  - (ii) at least nineteen years of age;
- (i) “**Minister**” means the Minister of Finance or a person designated by the Minister to perform certain duties assigned to the Minister pursuant to this Act;
- (j) “**replacement share**” means a share issued as part of a specified issue where the purchaser has, at any time between the date this Act comes into force and February 28, 2027, disposed of a share of any class of the community economic-development business;
- (k) “**specified issue**” means
  - (i) in the case of a community economic-development business that is a company, the issue of shares, as defined by subclause (g)(i), to an eligible investor at any time between the date of registration and the date of expiration of the certificate of registration, and
  - (ii) in the case of a community economic development business that is an association, the issue of shares, as defined by subclause (g)(ii), to a member of the association, or individual who will be a member of the association immediately after the issue, at any time between the date of registration and the date of expiration of the certificate of registration;
- (l) “**Superintendent**” means the Superintendent of Securities as defined in the *Securities Act* R.S.P.E.I. 1988, Cap. S-3.1;
- (m) “**taxable corporation**” means a taxable corporation incorporated pursuant to the laws of Prince Edward Island, another province or Canada that has its head office in Prince Edward Island.

**Exclusion from eligible investment**

- (2) Notwithstanding clause 1(1)(g), an eligible investment does not include a share that, in the opinion of the Minister, is or will be issued as a result of a transaction or event or a series of

transactions or events the main purpose of which is to claim the tax credit pursuant to this Act. 2010,c.6,s.1; 2012,c.17,s.2; 2015,c.28,s.3; 2019,c.27,s.5(2); 2021,c.31,s.1.

## COMMUNITY ECONOMIC-DEVELOPMENT BUSINESSES

### 2. Application for registration

- (1) A company or an association that intends to make a specified issue of shares and that meets the criteria set out in subsection (2) may apply for registration as a community economic-development business under this Act by delivering to the Minister, in a form acceptable to the Minister, an application including
  - (a) the financial statements of the company or association for the preceding taxation year;
  - (b) a copy of the constitution of the company or association;
  - (c) a copy of the community economic-development plan of the company or association;
  - (d) any information prescribed by the regulations; and
  - (e) such other information that the Minister may require in order to determine compliance with this Act and the regulations.

#### Registration

- (2) The Minister shall register the company or association as a community economic-development business, with conditions that the Minister considers appropriate, on being satisfied that
  - (a) the company or association meets the eligibility criteria set out in section 3;
  - (b) the specified issue complies with the spirit and intent of this Act and the regulations;
  - (c) the constitution of the company or association provides that no individual is a specified shareholder of the company or association as that term is defined by section 248 of the *Income Tax Act* (Canada) and as if the reference to 10% in that definition were read as a reference to 20%;
  - (d) the specified issue complies with the provisions of the *Securities Act* or such part of that Act, or such regulations or rules made under that Act, as may be prescribed; and
  - (e) any other prescribed conditions for the registration are met.

#### Certificate of registration

- (3) Where the Minister registers a community economic-development business, the Minister shall issue a certificate of registration to the community economic-development business.

#### Approval to raise capital

- (4) The certificate of registration constitutes approval, as at the date of registration, for the community economic-development business to raise the amount of equity capital referred to in the application. 2010,c.6,s.2.

### 3. Criteria for eligibility

The criteria referred to in clause 2(2)(a) concerning the eligibility of a company or association for registration as a community economic-development business are

- (a) in the case of a company, that the company has authorized capital consisting of at least one class of voting equity shares;

- (b) that at least seventy-five per cent of wages and salaries are paid in the Province;
- (c) that the company or association has assets or revenues of less than three million dollars, including assets and revenues of its affiliates;
- (d) in the case of a company,
  - (i) that all or substantially all of the fair market value of the property of the company is attributable to property used in an active business or shares of a body corporate where all or substantially all of the fair market value of the property of that body corporate is attributable to property used in an active business, or
  - (ii) that the company has a constitution that restricts the company to making specified investments in eligible local business entities in accordance with its community economic-development plan;
- (e) in the case of an association, that the association carries on business or operations in any activity prescribed by regulation or has a constitution that restricts the association to investing in eligible investments of an association that carries on business or operations in any activity prescribed by regulation;
- (f) that the company or association is not a business incorporated for the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor; and
- (g) that none of the officers and directors of the company or the association are officers or directors of any other company or association that is currently not in compliance with this Act or the regulations. *2010,c.6,s.3; 2011,c.2,s.1.*

#### **4. Revocation of certificate of registration**

- (1) The Minister may, at any time after a certificate of registration has been issued to a community economic-development business, revoke the certificate if, in the opinion of the Minister, the community economic-development business has not complied with any provision of this Act and the regulations, or the spirit and intent of this Act and the regulations, or has caused any of the following transactions or events to occur:
  - (a) in the case of the community economic-development business that is a company, the community economic-development business has issued shares of the same or substantially the same class as the shares issued as part of the specified issue, at any time after the date this Act comes into force and before February 28, 2027, to an individual for an unreasonably low cost per right to vote such that the eligible investor is unable to exercise any real influence in the management of the corporation;
  - (b) the community economic-development business has misrepresented any information to the Minister either knowingly or through circumstances amounting to gross negligence;
  - (c) the community economic-development business has used the proceeds raised by the specified issue for any use prohibited by section 5;
  - (d) the community economic-development business relocates out of the Province unless it would otherwise continue to qualify for registration;
  - (e) the community economic-development business sells assets whose original book value of purchase when deducted from the total book value of the assets of the community economic-development business impinges on the capital raised under this Act;
  - (f) any other transaction or event prescribed by the regulations.



**Payment of amount equal to tax credit**

- (2) Where the Minister revokes a certificate of registration at any time after a specified issue has occurred, the community economic-development business shall pay to the Minister an amount equal to the aggregate of the amounts of tax credits issued in respect of the specified issue.

**No issue of tax-credit certificates**

- (3) Where the Minister has revoked a certificate of registration before the specified issue has occurred, the Minister shall not issue the tax-credit certificates referred to in section 6.

**Surrender of certificate of registration**

- (4) Upon meeting all requirements of the Minister and the Superintendent of Securities, a community economic-development business may surrender its certificate of registration to the Minister and on such surrender it ceases to be a community economic-development business. *2010, c.6, s.4; 2021, c.31, s.2.*

**5. Prohibited use of funds**

- (1) A community economic-development business or its affiliates shall not use the funds raised by a specified issue to which tax credits have been or are entitled to be claimed pursuant to section 36.1 of the *Income Tax Act* R.S.P.E.I. 1988, Cap. I-1
- (a) for lending;
  - (b) for acquiring securities, unless the securities are eligible investments in a taxable corporation or association that meets the criteria set out in subsection (2);
  - (c) for making payments with respect to the payment of dividends to or the repayment of shareholder debt to a director, officer or shareholder of the community economic-development business or an associate of the director, officer or shareholder of the community economic-development business;
  - (d) for purchasing services or assets provided by the Government or an agency or corporation of the Government, where
    - (i) those services or assets are to be used in all or in part in a business or activity that is the same or similar to the activity previously carried on by the Government or the agency or corporation of the Government, and
    - (ii) the corporation has received, either directly or indirectly, any financial assistance from any government, municipality or public authority with respect to the acquisition of those services or assets;
  - (e) as part of a transaction or series or transactions directly or indirectly involving
    - (i) the redemption or purchase of previously issued shares of the community economic-development business or an affiliate of the community economic-development business,
    - (ii) the retirement of any part of a liability of a shareholder of the community economic-development business or an affiliate of the community economic-development business,
    - (iii) the payment of dividends, or
    - (iv) the funding of all or part of the purchase by the community economic-development business of all or substantially all of the assets of an existing proprietorship, partnership, joint venture, trust or company, except a proprietorship, partnership, joint venture, trust or company that is in receivership or in bankruptcy where an eligible investor or group of investors

did not own at any time more than ten per cent of the voting shares of the proprietorship, partnership, joint venture, trust or company that is in receivership or in bankruptcy;

- (f) for the funding of all or part of the purchase by the community economic-development business of any services or assets at a price that is greater than the fair market value of the services or assets purchased; or
- (g) for any other prescribed purposes.

**Criteria for eligibility**

- (2) The criteria referred to in clause (1)(b) respecting a taxable corporation or an association in which eligible investments may be made are
  - (a) in the case of a taxable corporation, that the taxable corporation has authorized capital consisting of at least one class of voting equity shares;
  - (b) that at least seventy-five per cent of the salaries and wages of the taxable corporation or association are paid in the Province;
  - (c) that the taxable corporation or the association, and its affiliates, have fewer than the equivalent of 500 full-time employees, calculated in accordance with the regulations;
  - (d) that the taxable corporation or the association has assets calculated in the prescribed manner of less than \$65,000,000, including assets of its affiliates;
  - (e) repealed by 2021,c.31,s.3;
  - (f) that all or substantially all of the fair market value of the property of the taxable corporation or the association is attributable to property used in an active business or shares of another
    - (i) association that meets the criteria set out in clauses (b), (c), (d) and (e), or
    - (ii) taxable corporation that meets the eligibility criteria set out in clauses (a), (b), (c), (d) and (e);
  - (g) in the case of an association, that the association undertakes or carries on business or operations in any activity prescribed by regulation;
  - (h) that the taxable corporation or the association is not a business incorporated for the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor; and
  - (i) that none of the officers and directors of the taxable corporation or the association are officers or directors of any other taxable corporation or association that is currently not in compliance with this Act or the regulations. *2010,c.6,s.5; 2011,c.2,s.2; 2016,c.37,s.1; 2021,c.31,s.3; 2022,c.62,s.11.*

**6. Tax-credit certificate**

- (1) Where a community economic-development business has made a specified issue, the community economic-development business shall apply to the Minister within the time specified by the regulation in a form acceptable to the Minister for a tax-credit certificate entitling each of the eligible investors in the community economic-development business to a tax credit pursuant to section 36.1 of the *Income Tax Act* equal to thirty-five per cent of the amount received by the community economic-development business, in that calendar year or within sixty days of the end of the calendar year, for shares issued to those eligible investors before March 1 of the immediately following year, which shall be no later than 2027, as part of the specified issue by the community economic-development business.

**Issuance of tax-credit certificate amount**

- (2) Subject to subsection (3), the Minister shall issue a tax-credit certificate in the amount referred to in subsection (1) to the eligible investors in a community economic-development business, unless the Minister considers that the community economic-development business or its directors, officers or shareholders are conducting its business or affairs in a manner that is contrary to the spirit and intent of this Act and the regulations.

**No issuance of tax-credit certificate under subsection (2)**

- (3) The Minister shall not issue a tax-credit certificate pursuant to subsection (2) unless the Minister is satisfied that
- (a) the community economic-development business and its eligible investors are complying with this Act and the regulations;
  - (b) other than where prescribed, the shares do not constitute a type of security that entitles the holder, in respect of the acquisition of those shares,
    - (i) to claim a tax credit pursuant to the *Income Tax Act* or the *Income Tax Act* (Canada), other than pursuant to section 36.1 of the *Income Tax Act*, against income tax payable,
    - (ii) to claim a deduction from income pursuant to the *Income Tax Act* or the *Income Tax Act* (Canada), other than pursuant to subsection 146(5) of the *Income Tax Act* (Canada), or
    - (iii) to receive any other financial assistance from any government, municipality or public authority;
  - (c) no tax credit has previously been allowed for those shares pursuant to the *Income Tax Act* or the *Income Tax Act* (Canada);
  - (d) the aggregate of all entitlements in respect of the eligible investor for all tax-credit certificates applied for in the year does not exceed the amount, if any, prescribed by the regulations;
  - (d.1) the aggregate of entitlements in respect of the eligible investor for all tax-credit certificates applied for beginning January 1, 2022, does not exceed \$56,000;
  - (e) the aggregate of all tax credits issued pursuant to this Act for the year does not exceed the amount prescribed by the regulations; and
  - (f) any other prescribed conditions have been met. *2010,c.6,s.6; 2021,c.31,s.4.*

**7. Payment to Minister where no entitlement and repayment**

- (1) Where an individual has received, directly or indirectly, the benefit of a tax credit in respect of which the person is not entitled, the amount of the benefit is payable forthwith by that person to the Minister.

**Repayment to Minister on disposition of share**

- (2) A person who disposes of a share within five years from the date of registration under subsection 2(3) by the community economic-development business for the specified issue, shall repay to the Minister
- (a) an amount equal to the tax credits received in respect of these shares, including interest thereon where prescribed by regulation; or
  - (b) a lesser amount determined pursuant to the regulations in prescribed circumstances.

**Remitting credit to Minister on repurchase of shares not permitted**

- (3) Where a community economic-development business has repurchased shares in a transaction not permitted by this Act or the regulations, the community economic-development business shall withhold the amount of the credit and remit it along with details of the transaction to the Minister.

**Monthly withholding**

- (4) Where a community economic-development business has repurchased shares in a transaction not permitted by this Act or the regulations in the event of a conversion of a registered retirement savings plan to a registered retirement investment fund or annuity, the community economic-development business shall withhold a monthly prorated amount of the credit and remit it to the Minister. *2010,c.6,s.7.*

**8. Joint and several liability for repayment**

Where a director or officer of a community economic-development business, a member of a group that controls the community economic-development business or a shareholder that controls the community economic-development business permits or acquiesces to a transaction or event or a series of transactions or events that the person knew or ought to have known at that time would cause the certificate of registration of the community economic-development business to be revoked, that person is jointly and severally liable for the repayment pursuant to subsection 7(2). *2010,c.6,s.8.*

## GENERAL

**9. Register**

The Minister shall maintain a register containing the information prescribed by the regulations and the register shall be open for public inspection during normal business hours at places in the Province determined by the Minister. *2010,c.6,s.9.*

**10. Filing of returns with Minister**

Within 180 days after the end of each of the fiscal years commencing after the end of the fiscal year of its registration pursuant to this Act, a community economic-development business shall file annually and for five years after the issue of tax-credit certificates to individuals under this Act a return with the Minister setting out the information prescribed by the regulations. *2010,c.6,s.10; 2019,c.27,s.5(3).*

**11. Maintenance and location of records**

- (1) A community economic-development business shall maintain records in such form and containing such information as the Minister considers necessary to determine that this Act and the regulations are being complied with.

**Location of records**

- (2) A community economic-development business shall keep the records at its records office or at such other place in the Province that is approved by the Minister. *2010,c.6,s.11.*

**12. Examination of affairs**

- (1) The Minister, or a person designated by the Minister, may, during normal business hours, make an examination of the affairs of a community economic-development business for the purpose of determining compliance with this Act and the regulations.

**Examination and copies of records**

- (2) The Minister or person making the examination pursuant to this section is entitled, for the purpose of determining compliance with this Act and the regulations, to examine the records and securities of a community economic-development business and make copies of those records and securities. *2010,c.6,s.12.*

**13. Investigations**

- (1) The Minister, by order, may appoint a person to make whatever investigation the Minister considers appropriate for the administration of this Act and, in the order, shall determine the scope of the investigation.

**Court Order**

- (2) On the application of the Minister or the investigator appointed pursuant to subsection (1), and on being satisfied by information on oath that it is necessary and in the public interest for any purpose relating to an investigation pursuant to subsection (1), the Supreme Court may make an order authorizing the investigator
- (a) to enter into the premises or on the land of a person at any reasonable time for the purpose of carrying out an inspection or examination;
  - (b) to require the production of any records, securities or things and to inspect or examine them; and
  - (c) on giving a receipt, to remove any records, securities or things inspected or examined pursuant to clause (b) for further inspection or examination.

**Application for court order**

- (3) An application for an order pursuant to subsection (2) shall be made in the prescribed manner.

**Hearing**

- (4) An application for an order pursuant to subsection (2) may be
- (a) made ex parte; and
  - (b) heard in camera,

unless the Supreme Court otherwise directs.

**Inspection or examination**

- (5) Inspection or examination pursuant to subsection (2) shall be completed as soon as practicable and the records, securities or things shall be promptly returned to the person who produced them.

**Withholding or destroying information**

- (6) No person shall
- (a) withhold, destroy, conceal or refuse to give any information; or
  - (b) fail to produce any record, security or thing
- that is reasonably required pursuant to this section by the investigator. *2010,c.6,s.13.*

**14. Deemed refusals**

- (1) Where the Minister does not register a company or association, issue a tax-credit certificate or authorize a payment pursuant to this Act, for which application is made, within 90 days after receipt of the application, the Minister is deemed to have refused it.

**Calculations may be based on projections**

- (2) A calculation or determination pursuant to this Act or the regulations may be based on projections that the Minister considers to be appropriate.

**Debt due to the Government**

- (3) An amount required to be paid to the Minister pursuant to this Act is a debt due to the Government. *2010, c.6, s.14; 2022, c.62, s.11.*

**15. Extension of time**

The Minister may extend, with or without conditions, the date of expiration of the certificate of registration of a specified issue or the time limits for meeting the investment requirements of the regulations and may grant an extension notwithstanding that the time limit to be extended has expired. *2010, c.6, s.15.*

**16. Offences and penalty**

- (1) Every person who
- (a) makes or assists in making a statement in any document or information required to be filed or furnished pursuant to this Act or the regulations to the Minister or to a person conducting an examination, inquiry or investigation pursuant to section 13 that, at the time and in the light of the circumstances under which the statement is made, is false or misleading with respect to a material fact or that omits to state a material fact, the omission of which makes that statement false or misleading;
  - (b) willfully withholds, destroys or conceals a record or security referred to in subsection 13(2);
  - (c) impedes the investigator from entering premises pursuant to clause 13(2)(a);
  - (d) authorizes, permits or acquiesces in respect of a share purchase, transfer or redemption that is contrary to a provision of this Act or the regulations;
  - (e) contravenes section 11 or subsection 13(6); or
  - (f) fails to comply with section 10,

is guilty of an offence and liable on summary conviction to a fine of not more than \$2,000 or to imprisonment for not more than one year, or to both fine and imprisonment.

**Liability of corporations, associations, directors and officers**

- (2) Where a community economic-development business is guilty to an offence pursuant to subsection (1),
- (a) the community economic-development business is liable on summary conviction to a fine of not more than \$20,000; and
  - (b) every director or officer of the community economic-development business who authorized, permitted or acquiesced in the offence is guilty of an offence and is liable on summary conviction to the penalties provided for the offence whether or not the community economic-development business has been prosecuted or convicted.

**False or misleading statements, defence**

- (3) A person is not guilty of an offence pursuant to this section in relation to a statement made if the person did not know that the statement was false or misleading and, in the exercise of reasonable diligence, could not have known that the statement was false or misleading. *2010,c.6,s.16.*

**17. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) prescribing forms for the purpose of this Act;
- (b) governing any matter that may be prescribed pursuant to this Act;
- (c) requiring any person to supply information or returns respecting any matter required in assessing compliance with this Act;
- (d) establishing periods of time to be taken into account in calculations or determinations pursuant to this Act or the regulations, and varying periods set by this Act;
- (e) defining any word or expression used but not defined in this Act; and
- (f) to carry out effectively the purpose of this Act. *2010,c.6,s.17.*

## CONSEQUENTIAL AMENDMENTS

**18. Income Tax Act**

This section made consequential amendments to another Act. The amendments have been incorporated into that Act.