

STATE OF KANSAS
STATE BANK COMMISSIONER
SPECIAL ORDER 2021-1
Tax Equity Finance Transactions

This Special Order is issued this 2nd day of August, 2021, by the State Bank Commissioner (Commissioner).

WHEREAS, the Office of the Comptroller of the Currency has adopted a final rule on April 1, 2021, at 85 Fed. Reg. 83,686, enacting 12 C.F.R. § 7.1025, and under the new rule, a nationally chartered bank may under certain circumstances engage in tax equity finance transactions that are deemed functionally equivalent to a loan; and

WHEREAS, Kansas state-chartered banks are not currently permitted to engage in tax equity finance transactions; and

WHEREAS, K.S.A. 9-1715, as amended, grants the Commissioner the power to authorize Kansas state-chartered banks to engage in any activity in which such banks could engage were they operating as a national bank; and

WHEREAS, the Commissioner deems the issuance of this Special Order to be reasonably required to preserve the welfare of state banks and to promote the competitive equality of state banks and other insured depository institutions;

IT IS THEREFORE ORDERED, subject to the limitations and conditions set forth in this Special Order, a Kansas state-chartered bank is hereby authorized to engage in tax equity finance transactions that would be permissible for a nationally chartered bank under 12 C.F.R. § 7.1025 as enacted on April 1, 2021; and

IT IS FURTHER ORDERED, a Kansas state-chartered bank engaging in tax equity finance transactions shall limit the total dollar amount of tax equity finance transactions undertaken pursuant to this Special Order to no more than five percent of its capital, as defined in K.S.A. 9-1104(a)(2), as amended, unless the Commissioner determines by written approval that a higher aggregate limit will not pose an unreasonable risk to the bank and that the tax equity finance transactions in the bank's portfolio will not be conducted in an unsafe or unsound manner; however, in no case may a bank's total dollar amount of tax equity finance transactions undertaken pursuant to this section exceed 15 percent of its capital; and

IT IS FURTHER ORDERED, a Kansas state-chartered bank engaging in tax equity finance transactions shall provide written notification to the Commissioner prior to engaging in each tax equity finance transaction and shall include the bank's evaluation of the risks posed by the transaction; and

IT IS FURTHER ORDERED, tax equity finance transactions engaged in by Kansas state-chartered banks shall be subject to the substantive legal requirements of a loan, including the lending limits prescribed by K.S.A. 9-1104, as amended, and applicable federal requirements; and

IT IS FURTHER ORDERED, the authority to engage in tax equity finance transactions under this Special Order is separate from, and does not limit, other investment authorities available to Kansas state-chartered banks; and

IT IS FURTHER ORDERED pursuant to K.S.A. 9-1715(b), as amended, the terms of this Special Order shall take effect on August 2, 2021, and shall remain in full force and effect until amended or revoked by the State Bank Commissioner.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David L. Herndon", written over a horizontal line.

STATE BANK COMMISSIONER
David L. Herndon