

Part III - Administrative, Procedural and Miscellaneous

Tax-exempt Bonds in Certain Disaster Areas

Notice 2010-10

SECTION 1. PURPOSE

This Notice provides guidance on the tax-exempt bond provisions for the Midwestern and Hurricane Ike disaster areas under the Heartland Disaster Tax Relief Act of 2008, Subtitle A of Title VII of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Public Law 110-343, 122 Stat. 3765, enacted on October 3, 2008) (Act) and § 1400N(a) of the Internal Revenue Code (Code), as modified by the Act. This Notice also provides guidance on reimbursement expenditures made with proceeds of tax-exempt bonds issued for Midwestern and Hurricane Ike disaster areas and tax-exempt “Qualified Gulf Opportunity Zone Bonds” issued under § 1400N(a) of the Code. (Except as noted, section references in this Notice are to the Code and the Income Tax Regulations.)

SECTION 2. BACKGROUND

Section 1400N(a) of the Code permits certain tax-exempt bond financing in a Gulf Opportunity Zone, which includes areas in the States of Alabama, Louisiana and Mississippi affected by Hurricane Katrina.

The Act authorizes certain tax-exempt bond financing in a Midwestern disaster area as defined under § 702(b) of the Act which includes certain counties in certain Midwestern States affected by severe storms, tornados, or flooding (Midwestern Disaster Area), and in a Hurricane Ike disaster area as defined under § 704(c) of the Act which includes certain counties in Texas and parishes in Louisiana affected by Hurricane Ike (Hurricane Ike Disaster Area). These disasters are sometimes referred to in this Notice as “Midwestern Disaster” and “Hurricane Ike,” respectively.

Sections 702 and 704 of the Act provide generally that the special provisions for tax-exempt bond financing in the Gulf Opportunity Zone under § 1400N(a) of the Code apply with certain modifications to tax-exempt bond financing in the Midwestern and Hurricane Ike Disaster Areas. Tax-exempt bonds that meet these modified requirements are referred to as “Qualified Midwestern Disaster Area Bonds” or “Qualified Hurricane Ike Disaster Area Bonds” in relevant provisions of § 1400N(a), as modified by the Act.

Previously, in Notice 2008-109, 2008-50 I.R.B. 1282 (December 15, 2008), the Internal Revenue Service (IRS) provided guidance on the counties included within the Midwestern and Hurricane Ike Disaster Areas and the relevant State population

information needed to determine the State volume caps applicable to these disaster area bonds.

Sections 702(d)(1)(A)(i) and 704(a)(1)(A) of the Act generally provide a modified definition of qualified project costs under § 1400N(a)(2)(A)(i) that may be financed with Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds that treat costs as qualified project costs only if: (1) in the case of a project involving a private business use (as defined in § 141(b)(6)), either the person using the property suffered a loss in a trade or business attributable to a Midwestern Disaster or Hurricane Ike or is a person designated for purposes of this section by the Governor of the State in which the project is located as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such a loss, and, (2) in the case of a project relating to public utility property, the project involves repair or reconstruction of public utility property damaged by a Midwestern Disaster or Hurricane Ike.

Sections 702(d)(1)(C) and 704(a)(3) of the Act modify § 1400N(a)(2)(C) to require that Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds be “designated” for volume cap allocation purposes on the basis of providing assistance to areas in the order in which such assistance is most needed.

Certain interpretive questions have arisen under the Act regarding determinations of qualified project costs, designations of areas of greatest need, the scope of gubernatorial discretion on these matters, and the scope of eligible financing

by public utilities with Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds. In addition, certain interpretive questions have arisen on the use of proceeds of Qualified Midwestern Disaster Area Bonds, Qualified Hurricane Ike Disaster Area Bonds and Qualified Gulf Opportunity Zone Bonds issued under § 1400N(a) to finance “reimbursements” of original expenditures previously paid from other sources of funds after the date of the occurrence of the applicable disaster under the general reimbursement expenditure rules for tax-exempt bonds.

SECTION 3. INTERIM GUIDANCE AND RELIANCE

3.1 In General

Pending the promulgation and effective date of future administrative or regulatory guidance, taxpayers may rely on the interim guidance provided in this Notice.

3.2 Certain Determinations of Qualified Project Costs for Projects Involving Private Business Use

In the case of a project involving private business use under § 141(b)(6), for purposes of determining qualified project costs that may be financed with proceeds of Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds under § 1400N(a)(2)(A)(i), as modified by the Act, the determination of whether a loss in a trade or business has been suffered and whether a person is carrying on a trade or business replacing a trade or business with respect to which another person suffered such a loss may be made by the Governor of the State in which the project is located in any reasonable manner as the Governor shall determine in good faith in such

Governor's discretion. In addition, a duly authorized designee of such Governor under applicable State law may make these determinations.

Section 3.3 Qualified Project Costs for Public Utility Property

In the case of a project relating to public utility property, qualified project costs that may be financed with proceeds of Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds include the repair or reconstruction of public utility property (as defined in § 168(i)(10)) damaged by a Midwestern Disaster or Hurricane Ike, as applicable, as provided in § 1400N(a)(2)(A)(i), as modified by the Act. In addition, public utilities may also use proceeds of Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds to finance qualified project costs of projects involving private business use under the first prong of the definition of qualified project costs under § 1400N(a)(2)(A)(i), as modified by the Act, as more particularly described in § 3.2 of this Notice.

Section 3.4 Designations of Areas of Greatest Need

For purposes of the requirement to designate allocations of Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds to provide assistance to areas in the order in which such assistance is most needed under § 1400N(a)(2)(C), as modified by the Act, the Governor of the State in which the Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds are issued or the Bond Commission of such State required to approve such bonds, as applicable under § 1400N(a)(2)(C), may make such designations in any

reasonable manner as such Governor or Bond Commission shall determine in good faith in the discretion of such Governor or Bond Commission, as applicable. In addition, a duly authorized designee of such Governor or Bond Commission under applicable State law may make these determinations.

Section 3.5 Certain Reimbursement Expenditures

The reimbursement expenditure rules under § 1.150-2 of the Income Tax Regulations apply to Qualified Midwestern Disaster Area Bonds, Hurricane Ike Disaster Area Bonds, and Qualified Gulf Opportunity Zone Bonds in the same manner as they apply to exempt facility bonds under § 1.142-4, except that, in the case of these disaster area bonds, issuers are treated as having met the official intent requirement under § 1.150-2(e) for original expenditures paid on or after the date of the occurrence of the applicable disaster (i.e., the Midwestern Disaster, Hurricane Ike, or Hurricane Katrina) and before December 31, 2009. Further, in the case of Qualified Midwestern Disaster Area Bonds, Hurricane Ike Disaster Area Bonds, and Gulf Opportunity Zone Bonds, the maximum reimbursement period under § 1.150-2(d)(2) is treated as ending no earlier than December 31, 2010.

SECTION 4. EFFECTIVE DATE

This Notice is effective on December 18, 2009. This Notice applies to Qualified Midwestern Disaster Area Bonds and Qualified Hurricane Ike Disaster Area Bonds issued after October 3, 2008. In addition, § 3.5 of this Notice on reimbursement

expenditures also applies to Qualified Gulf Opportunity Zone Bonds issued after December 21, 2005.

SECTION 5. DRAFTING INFORMATION

The principal authors of this Notice are Carla A. Young and James A. Polfer, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this Notice, contact James A. Polfer at (202) 622-3980 (not a toll-free call).