

David:

Based upon legislative history, I am unable to identify any legal basis for Treasury concluding that GO Zone credits allocated in a prior year cannot not be returned and reallocated in a subsequent year, including calendar year 2009.

My impression is that there has been some confusion at Branch 5 concerning the difference between "carryover" and "return" of GO Zone Credits.

I do not want to beat a dead horse since I highlighted the legislative history from the Blue Book explanation of the Stacking Rule; however, by carefully reviewing the Blue Book as contemporaneous history, you will understand why GO Zone Credits were not subject to "carryover" but were subject to "return" in a subsequent year following their allocation in a prior year.

GO Zone Credits arose only if Credits were allocated to Buildings in the GO Zone: The formula for increasing a State's credit ceiling by the lesser of the Gulf Opportunity housing amount or the amount actually allocated to buildings in the GO Zone meant that GO Zone Credits arose to increase the State's credit ceiling only if housing credits were actually allocated to buildings in the GO Zone in 2006, 2007 or 2008. If no housing credits were allocated to a building in the GO Zone in the calendar year within which the formula operated for increasing the state's credit ceiling, there would be no GO Zone Credits for that year and the State's credit ceiling would not have been increased by Gulf Opportunity housing amount. While this result should have been intuitively obvious under the formula, the Blue Book's explanation of "carryover" may have sown the seeds of doubt about how GO Zone Credits are subject to return in a year subsequent to their actual allocation. This doubt, however, should be erased by a careful review of the pre-GO Zone and GO Zone Stacking Rules.

Returned GO Zone Credits Affect upon Credit Ceiling: The Blue Book's explanation of the pre-GO Zone and Go Zone Stacking Rule, particularly the reference to GO Zone Credits within the parenthetical at page 12 of the Blue Book specifically contemplating the allocation of "(1) the **additional credit cap**, (including any **such credits returned to the state**)," anticipated the return of credits allocated in the GO Zone from a prior year. The inclusion of returned GO Zone Credits for reallocation is supported by the Blue Book's conclusion about the effects of such inclusion of returned GO Zone credits as part of the first required allocation of credits in the GO Zone within the GO Zone Stacking Rule. The Blue Book explained this required Stacking Rule allocation order of returned GO Zone credits as part of the first order of allocation as follows:
"This generally maximizes the total amount of credit (under both otherwise applicable low income housing credit cap **and the additional credit cap for the Gulf Opportunity Zone**) which may be carried forward."

I would appreciate an opportunity to discuss this further if Treasury has any doubts about the legal basis for return/reallocation of GO Zone Credits and their entitlement of monetization under Section 1602