

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

May 19, 2009

Ms. Jacquelyn Brechtel Clarkson  
President of the Council  
City of New Orleans  
City Hall, Suite 2W50  
1300 Perdido Street  
New Orleans, LA 70112

Dear Ms. Clarkson:

Thank you for your letter relating to the low-income housing tax credits (LIHTCs) under the Gulf Opportunity (GO) Zone Act of 2005. First, your letter requests clarification as to whether GO Zone LIHTCs that are allocated within the GO Zone and returned in a subsequent year may be reallocated.

Generally, section 42 of the Internal Revenue Code (Code) authorizes State housing agencies to allocate LIHTCs to qualified low-income housing projects. The amount of LIHTCs that a State housing agency may allocate (the LIHTC ceiling) is generally limited by a statutory formula, discussed below. The GO Zone Act provided additional LIHTC ceiling amount for 2006, 2007, and 2008, for Louisiana, Alabama, and Mississippi in a specified GO Zone area in response to the damage caused by Hurricanes Katrina and Rita.

Section 1400N(c)(1)(A) of the Code, as enacted by the GO Zone Act, increases a State's LIHTC ceiling by the lesser of the amount allocated within the GO Zone or a per capita Gulf Opportunity housing amount. The Joint Committee on Taxation (JCT) Technical Explanation that was contemporaneous with the GO Zone Act makes clear that the "additional credit cap available for States within the Gulf Opportunity Zone for calendar years 2006, 2007 and 2008 may not be carried forward from any year to any other year." JCT, Technical Explanation of the Revenue Provisions of H.R. 4440, The Gulf Opportunity Zone Act of 2005, 109th Cong., 2nd Sess. 12 (2005).

One component of the LIHTC ceiling is the "returned credit" component. Returned credits are those that a State housing agency has allocated to a project but that come back to the State housing agency after the year of allocation because a requirement or condition of receiving the LIHTC was not satisfied, or by agreement of the taxpayer and State housing agency. You have asked for clarification on whether States that had GO Zone LIHTCs returned to them may reallocate those credits in the year of return. In general, returned LIHTCs may be reallocated in the year of return. The JCT Technical Explanation indicates that the portion of the GO Zone "additional credit cap" that is returned to a State housing agency may be reallocated within the GO Zone, i.e. in a parish designated as a disaster area at a requisite level of assistance. Thus, a GO Zone LIHTC that was allocated in 2008 and returned in 2009 may be reallocated within the GO Zone in 2009.

Second, your letter asks whether GO Zone LIHTCs that are returned are encompassed by section 1602 (Division B) of the American Recovery and Reinvestment Act of 2009 (ARRA). Generally, this section provides that the Department of the Treasury shall make a grant to each State housing agency in an amount equal to the State's low-income housing grant election amount. The low-

income housing grant election amount is an amount, as elected by the State housing agency, that does not exceed ten times a certain portion of the State's LIHTC ceiling.

The ARRA indicates that the low-income housing grant election amount is available only for LIHTCs that are determined under section 42 of the Code. Additional LIHTCs that are available under the GO Zone Act are determined under section 1400N(c) of the Code, not section 42. Thus, these additional, GO Zone LIHTCs do not figure in the determination of the low-income housing grant election amount. More specifically, section 1602(b)(1) (Division B) of the ARRA provides that the low-income housing grant election amount includes credits described under section 42(h)(3)(C) of the Code. The additional credit cap under section 1400N(c)(1) is not described in section 42(h)(3)(C). The JCT Technical Explanation of the GO Zone Act supports this reading as it treats returned GO Zone LIHTCs as separate from returned credits under section 42(h)(3)(C). In explaining the stacking rule, the Technical Explanation distinguishes the “additional credit cap” determined under 1400N(c)(1) from the LIHTC ceiling under section 42(h)(3)(C). Therefore, the additional credit cap under section 1400N(c)(1) of the Code, including any returned GO Zone LIHTCs, may not be included in the low-income housing grant election amount under section 1602(b) (Division B) of the AARA.

Hopefully, the foregoing information will afford clarity going forward. We appreciate your commitment to rebuilding affordable low-income housing for the residents of New Orleans.

Sincerely,  
Michael F. Mundaca  
Acting Assistant Secretary (Tax Policy)

cc: Stacey Head, District “B” Councilmember  
Arnie Fielkow, City Council Vice-President  
James Carter, District “C” Councilmember  
Shelley Midura, District “A” Councilmember  
Cynthia Willard-Lewis, District “E” Councilmember