

Part III - Administrative, Procedural, and Miscellaneous

Gulf Opportunity Zone Bonds, Gulf Opportunity Zone Advance Refunding Bonds, and Gulf Tax Credit Bonds

Notice 2006-41

SECTION 1. PURPOSE

This notice provides guidance with respect to the information reporting requirements applicable to Gulf Opportunity Zone Bonds, Gulf Opportunity Zone Advance Refunding Bonds, and Gulf Tax Credit Bonds issued pursuant to § 1400N of the Internal Revenue Code. This notice also provides additional guidance with respect to the credit rate and arbitrage requirements applicable to Gulf Tax Credit Bonds and with respect to the treatment of the credit by holders of Gulf Tax Credit Bonds.

SECTION 2. INTRODUCTION

Section 101 of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135 (the Act), added §§ 1400M and 1400N to the Internal Revenue Code. Section 1400M(1) defines the term Gulf Opportunity Zone (“GO Zone”) as that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

In general, § 1400N authorizes the states of Alabama, Louisiana and Mississippi to issue: (1) certain exempt facility bonds and qualified mortgage bonds pursuant to § 1400N(a) (“Gulf Opportunity Zone Bonds”), (2) advance refunding bonds pursuant to

§ 1400N(b) (“Gulf Opportunity Zone Advance Refunding Bonds”) and (3) tax credit bonds pursuant to § 1400N(l) (“Gulf Tax Credit Bonds”). Gulf Opportunity Zone Bonds and Gulf Opportunity Zone Advance Refunding Bonds must be issued before January 1, 2011. Gulf Tax Credit Bonds must be issued before January 1, 2007.

SECTION 3. BACKGROUND

3.01 Gulf Opportunity Zone Bonds

Section 1400N(a)(1) provides that any qualified Gulf Opportunity Zone Bond described in § 1400N(a)(2)(A)(i) shall be treated as an exempt facility bond and any qualified Gulf Opportunity Zone Bond described in § 1400N(a)(2)(A)(ii) shall be treated as a qualified mortgage bond.

Section 1400N(a)(2) defines a qualified Gulf Opportunity Zone Bond as any bond issued as part of an issue if (1) 95 percent or more of the net proceeds (as defined in § 150(a)(3)) of such issue are to be used for qualified project costs, or such issue meets the requirements of a qualified mortgage issue, except as otherwise provided in § 1400N(a); (2) such bond is issued by the State of Alabama, Louisiana or Mississippi or any political subdivision thereof; (3) such bond is designated for purposes of § 1400N(a) either by the Governor of such State, or in the case of a bond which is required under State law to be approved by the bond commission of such state, by such bond commission; (4) the bond is issued after December 21, 2006, and before January 1, 2011; and (5) no portion of the proceeds of such issue is to be used to provide any property described in § 144(c)(6)(B). Section 144(c)(6)(B) states that no portion of the proceeds of such issue is to be used to provide (including the provision of land for) any

private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

Section 1400N(a)(4) defines qualified project costs as the cost of any qualified residential rental project (as defined in § 142(d)) located in the GO Zone, the cost of acquisition, construction, reconstruction and renovation of nonresidential real property (including fixed improvements associated with such property) located in the GO Zone, and the cost of acquisition, construction, reconstruction and renovation of public utility property (as defined in § 168(i)(10)) located in the GO Zone.

Section 1400N(a)(3)(B) provides that Gulf Opportunity Zone Bonds shall not be used for movable fixtures and equipment.

Section 1400N(d)(2)(B)(ii) provides that the special depreciation allowance (or “bonus depreciation”) provided for under § 1400N(d)(1) is not available for Qualified Gulf Opportunity Zone property (as defined in § 1400N(d)(2)) if any portion of such property is financed with the proceeds of any obligation, including Gulf Opportunity Zone Bonds, the interest on which is exempt from tax under § 103.

3.02 Gulf Opportunity Zone Advance Refunding Bonds

Section 1400N(b)(1) permits the issuance of Gulf Opportunity Zone Advance Refunding Bonds to provide one additional advance refunding of bonds described in § 1400N(b)(3) under the applicable rules of § 149(d) between December 21, 2005, and January 1, 2011, if the Governor of the State designates the Gulf Opportunity Zone Advance Refunding Bonds for purposes of § 1400N(b) and the requirements of

§ 1400N(b)(5) are met. A bond is described under § 1400N(b)(3) if such bond was outstanding on August 28, 2005, and is issued by the State of Alabama, Louisiana, or Mississippi or a political subdivision thereof.

Section 1400N(b)(2) provides that with respect to bonds described in § 1400N(b)(3) that are exempt facility bonds described in paragraph (1) or (2) of § 142(a), Gulf Opportunity Zone Advance Refunding Bonds may be issued to provide one advance refunding under the applicable rules of § 149(d) (notwithstanding § 149(d)(2)) after December 21, 2005, and before January 1, 2011, if the Governor of the State designates the Gulf Opportunity Zone Advance Refunding Bonds for purposes of § 1400N(b) and the requirements of § 1400N(b)(5) are met.

Section 1400N(b)(5) provides that the requirements of § 1400N(b)(5) are met with respect to any advance refunding of a bond described in § 1400N(b)(3) if: (1) no advance refundings of such bond would be allowed under the Internal Revenue Code on or after August 28, 2005; (2) the Gulf Opportunity Zone Advance Refunding Bonds is the only other outstanding bond with respect to the refunded bond; and (3) the requirements of § 148 are met with respect to all bonds issued under § 1400N(b).

Section 1400N(b)(6) provides that § 1400N(b) does not apply to any advance refunding of a bond which is issued as part of an issue if any portion of the proceeds of such issue (or any prior issue) was or (is to be) used to provide any property described in § 144(c)(6)(B).

3.03 Gulf Tax Credit Bonds

Section 1400N(l)(1) provides that a taxpayer that holds a Gulf Tax Credit Bond

on one or more credit allowance dates of the bond occurring during any taxable year is allowed as a credit against Federal income tax for the taxable year an amount equal to the sum of the credits determined under § 1400N(l)(2) with respect to such dates.

In general, § 1400N(l)(2)(B) provides that the annual credit determined with respect to any Gulf Tax Credit Bond is the product of the credit rate determined by the Secretary for the day on which such bond was sold, multiplied by the outstanding face amount of the bond. Under § 1400N(l)(2)(C), with respect to any Gulf Tax Credit Bond, the Secretary shall determine daily or cause to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary estimates will permit the issuance of Gulf Tax Credit Bonds with a specified maturity or redemption date without discount and without interest cost to the issuer.

Section 1400N(l)(4)(A) provides that a Gulf Tax Credit Bond means any bond issued as part of an issue if: (1) the bond is issued by the State of Alabama, Louisiana or Mississippi; (2) 95 percent or more of the proceeds of the issue are to be used to pay principal, interest, or premiums on qualified bonds issued by such State or any political subdivision of such State, or to make a loan to any political subdivision of such State to pay principal, interest or premiums on qualified bonds issued by such subdivision; (3) the Governor of such State designates such bond for purposes of §1400N(l); (4) the bond is a general obligation of such State and is in registered form (within the meaning of § 149(a)); (5) the maturity of such bond does not exceed 2 years; and (6) the bond is issued after December 31, 2005, and before January 1, 2007.

Section 1400N(l)(4)(D) provides that a bond that is part of an issue of Gulf Tax Credit Bonds shall not be treated as a Gulf Tax Credit Bond unless, with respect to the issue of which the bond is a part, the issuer satisfies the arbitrage requirements of § 148 with respect to the proceeds of the issue and any loans made with such proceeds.

Section 1400N(l)(5)(A) provides that the term qualified bond for purposes of § 1400N(l) means any obligation of a State or political subdivision thereof which was outstanding on August 28, 2005. Sections 1400N(l)(5)(B), (C), and (D) further provide that such term does not include any private activity bond, any bond with respect to which there is any outstanding refunded or refunding bond during the period in which a Gulf Tax Credit Bond is outstanding with respect to such bond, or any bond issued as part of an issue if any portion of the proceeds of such issue was (or is to be) used to provide any property described in § 144(c)(6)(B).

Section 1400N(l)(6) provides that the amount of credit allowed to a taxpayer under § 1400N(l) (determined without regard to § 1400N(l)(3)) shall be treated as interest and included in the gross income of the taxpayer.

Section 1400N(l)(7)(D) requires issuers of Gulf Tax Credit Bonds to submit reports similar to the reports required under § 149(e) for tax-exempt State or local bonds. Section 149(e) generally requires issuers of tax exempt bonds to file an information return with the Secretary not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond is issued.

SECTION 4. INFORMATION REPORTING

4.01. Information Reporting for Gulf Opportunity Zone Bonds

In order to satisfy the information reporting requirement of § 149(e) with respect to Gulf Opportunity Zone Bonds issued pursuant to § 1400N(a), in addition to completing the Form 8038, *Information Return for Tax- Exempt Private Activity Bond Issues*, in accordance with the instructions, issuers should: (1) write or type “Filed in Accordance with Notice 2006-41 - Gulf Opportunity Zone Bonds” at the top of the Form 8038; (2) complete Part II of the Form 8038 by checking the box on Line 11(m)(other) for exempt facility bonds or Line 20 for qualified mortgage bonds, writing “Gulf Opportunity Zone Bonds” in the space provided for the bond description, and entering the amount of the bonds in the Issue Price column; and (3) attach a copy of the document used by the Governor or the State Bond Commissioner to designate the bonds as Gulf Opportunity Zone Bonds.

4.02. Information Reporting for Gulf Zone Advance Refunding Bonds

In order to satisfy the information reporting requirement of § 149(e) with respect to Gulf Opportunity Zone Advance Refunding Bonds issued pursuant to § 1400N(b), in addition to completing either the Form 8038, *Information Return for Tax- Exempt Private Activity Bond Issues*, Form 8038-G, *Information Return for Tax-Exempt Governmental Obligations*, or Form 8038-GC, *Information Return for Small Tax-Exempt Governmental Bond Issues, Leases and Installment Sales*, as appropriate, in accordance with the instructions for refunding bonds, issuers should (1) write or type “Filed in Accordance with Notice 2006-41 - Gulf Opportunity Zone Advance Refunding Bonds” at the top of the Form 8038, 8038-G or 8038-GC and (2) attach a copy of the document used by the Governor to designate the bonds as Gulf Opportunity Zone Advance Refunding Bonds.

4.03 Information Reporting for Gulf Tax Credit Bonds

Section 1400N(l)(7)(D) requires issuers of Gulf Tax Credit Bonds to submit reports similar to the reports required under § 149(e) for tax-exempt State or local bonds. In order to satisfy this requirement, in addition to completing the Form 8038-G, *Information Return for Tax-Exempt Governmental Obligations*, in accordance with the instructions, issuers should: (1) write or type “Filed in Accordance with Notice 2006-41 - Gulf Tax Credit Bonds” at the top of the Form 8038-G; (2) complete Part II of Form 8038-G by checking the box on Line 18 (Other), writing “Gulf Tax Credit Bonds” in the space provided for the bond description, and entering the amount of the bonds in the Issue Price column; and (3) attach a copy of the document used by the Governor to designate the bonds as Gulf Tax Credit Bonds.

SECTION 5. CREDIT RATE FOR GULF TAX CREDIT BONDS

The credit rate for an issue of Gulf Tax Credit Bonds is the applicable Gulf Tax Credit Bond credit rate published each business day by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: <http://www.publicdebt.treas.gov>. The applicable Gulf Tax Credit Bond credit rate shall be applied to an issue of Gulf Tax Credit Bonds on the day the issue is sold. For this purpose, the issue is sold on the first day there is binding, written contract for the sale or exchange of the bonds. The credit rates will be determined by the Treasury Department based on its estimate of the yield on outstanding AA rate corporate bonds of a similar maturity for the business day immediately prior to the date on which the issue is sold.

SECTION 6. ARBITRAGE REQUIREMENTS FOR GULF TAX CREDIT BONDS

Section 1400N(l)(4)(D) generally provides that the arbitrage requirements of § 148 applicable to tax-exempt State or local bonds apply to Gulf Tax Credit Bonds and any loans made with the proceeds of such bonds. In applying § 148 to Gulf Tax Credit Bonds the following special rules apply--

(1) The credit allowed under § 1400N(l)(1) shall be disregarded for purposes of computing the yield on the issue under § 1.148-4;

(2) Section 148(b)(3) (relating to exception to the definition of "investment property" for certain tax-exempt bonds) shall not apply.

SECTION 7. TREATMENT OF CREDIT BY HOLDERS OF GULF TAX CREDIT BONDS

The following rules are applicable to holders of Gulf Tax Credit Bonds:

(1) The holder of a Gulf Tax Credit Bond must treat the bond as if it pays qualified stated interest (within the meaning of § 1.1273-1(c)) on each credit allowance date. Thus, for example, if the holder uses an accrual method of accounting, the holder must accrue as interest income the amount of the credit over each period that ends on a credit allowance date.

(2) If a holder holds a Gulf Tax Credit Bond on a credit allowance date but cannot use all or a portion of the credit to reduce its income tax liability (for example, because the limitation in § 1400N(l)(3) applies), the holder is allowed a deduction for the taxable year that includes the credit allowance date (or, at the option of the holder, the next succeeding taxable year). The amount of the deduction is equal to the amount of the unused credit deemed paid on each credit allowance date during the taxable year.

(3) If a person is a partner in a partnership, a beneficiary of an estate or trust, a shareholder in an S corporation, or the owner of an interest in another pass-through entity except for a regulated investment company (collectively, pass-through entity), and the pass-through entity owns a Gulf Tax Credit Bond, then the amount of the credit under § 1400(l)(1) allowed to such person for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such entity) equal to the amount of tax attributable to that portion of the person's taxable income in such year that is allocable or apportionable to the person's interest in such entity.

SECTION 8. DRAFTING INFORMATION

The principal authors of this notice are Timothy L. Jones and Aviva M. Roth of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice contact Timothy L. Jones or Aviva M. Roth at (202) 622-3980 (not a toll-free call).