

TEB Phase II - Lesson 11

Qualified Tax Credit Bonds

Overview

Introduction

Qualified tax credit bonds (QTCBs) are bonds issued under section 54A that allow a credit to investors that hold such bond on one or more of the quarterly credit allowance dates.

In lieu of receiving interest, holders of qualified tax credit bonds receive a tax credit that accrues quarterly.

The provisions of Section 301 of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71 (2010) (enacted March 18, 2010 (the “HIRE Act”) described more fully in this lesson), authorizes issuers of certain QTCBs to elect irrevocably to receive federal direct payments of refundable tax credits instead of the federal tax credits that otherwise would be allowed to investors of certain qualified tax credit bonds. Holders of these specified tax credit bonds (STCBs) or “direct-pay” tax credit bonds receive taxable interest on the bonds paid by the issuer.

Continued on next page

Overview, Continued

Objectives

At the end of this lesson you will be able to:

- Identify and define each type of qualified tax credit bond
- Explain the requirements of each type of qualified tax credit bond
- Describe expenditure(s) of bond proceeds related to qualified tax credit bonds
- Describe qualified purpose related to qualified tax credit bonds
- Describe credit rate, amount of credit, credit allowance date and maturity limitations
- Describe the special requirements of each type of specified tax credit bond
- Identify rules found in other sections of the Code that apply to each type of qualified tax credit bond

Continued on next page

Overview, Continued

Contents

This lesson contains the following topics:

Topic	Page
Overview	1
Part I: General Qualifications	4
Section 1: General Requirements	5
Section 2: Tax Credit Allowed	14
Section 3: Direct Pay Subsidy Option	22
Part II: Specific Requirements	28
Section 1: Qualified Forestry Conservation Bonds	29
Section 2:	33
Part 1 -- Clean Renewable Energy Bonds	35
Part2 -- New Clean Renewable Energy Bonds	46
Section 3: Qualified Energy Conservation Bonds	53
Section 4:	60
Part 1 -- Old Qualified Zone Academy Bonds	62
Part 2 -- New Qualified Zone Academy Bonds	75
Section 5: Qualified School Construction Bonds	81
Summary	87

Part I: General Qualifications

Overview

Introduction Part I of this lesson covers the general requirements which apply to all qualified tax credit bonds. Part II of this lesson will discuss the specific requirements which apply to specific types of bond issuances.

In this Part This part contains the following topics:

Topic	Page
Section 1: General Requirements	5
Section 2: Tax Credit Allowed	14
Section 3: Direct Pay Subsidy Option	22

Section 1: General Requirements

Overview

Introduction

Section 54A provides the general requirements relating to the following QTCBs:

- Qualified Forestry Conservation Bonds
- New Clean Renewable Energy Bonds (New CREBs)
- Qualified Energy Conservation Bonds (QECBs)
- Qualified Zone Academy Bonds (QZABs)
- Qualified School Construction Bonds (QSCBs)

All of these QTCBs, except Qualified Forestry Conservation Bonds, may elect to apply section 6431(f) to receive a direct payment subsidy instead of a tax credit. These are the STCBs or direct pay tax credit bonds.

Section 54 contains the requirements relating to (old) CREBs.

Section 1397E contains the requirements relating to (old) QZABs (issued on or before October 3, 2008).

In this Section

This section contains the following topics:

Topic	Page
Overview	5
Definition of Qualified Tax Credit Bond	6
Special Rules Relating to Expenditures	7
Maturity Limitation	9
Rules Relating to Arbitrage	10
Conflicts of Interest Prohibition	11
Reporting Requirements	12
Other Information	13

Definition of Qualified Tax Credit Bond under Section 54A

What is QTCB?

Section 54A was added by section 15316 of the Food Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (2008) (the “2008 Food Act”). Section 54A provides the general program requirements and operating rules for qualified tax credit bonds.

Section 54A(d) provides the term “qualified tax credit bond” to mean a:

- A. qualified forestry conservation bond (QFCB)- § 54B
- B. new clean renewable energy bond (NCREB)- § 54C
- C. qualified energy conservation bond (QECB)- § 54D
- D. qualified zone academy bond (QZAB)- § 54E, or
- E. qualified school construction bond (QSCB)- § 54F

which is part of an issue that meets the requirements of paragraphs (2) regarding expenditures, (3) information reporting, (4) arbitrage, (5) maturity limitations, and (6) prohibitions against financial conflicts of interest of § 54A(d).

Special Rules Relating to Expenditures

General Rule

An issuance shall be treated as meeting the requirements of § 54A(d)(2) if on the issuance date, the issuer reasonably expects:

- 100 percent or more of the “**available project proceeds**” to be spent for one or more “**qualified purposes**” within the 3-year period beginning on such date of issuance, and
 - A binding commitment with a third party to spend at least 10 percent of such “**available project proceeds**” will be incurred within the 6-month period beginning on such date of issuance.
-

Available Project Proceeds Defined

Section 54A(e)(4) defines “available project proceeds” to mean:

(a) the excess of the:

- Proceeds from the sale of an issue, over
- Issuance costs financed by the issue (to the extent that such costs do not exceed two percent of such proceeds), **and**

(b) the proceeds from any investment of the excess described above

Qualified Purpose Defined

Section 54A(d)(2)(C) defines “qualified purpose” as the purpose specified within each QTCB section. In the case of a:

- Qualified forestry conservation bond (QFCB), the purpose as specified in § 54B(e)
- New clean renewable energy bond (NCREB), the purpose as specified in § 54C(a)(1)
- Qualified energy conservation bond (QECB), the purpose as specified in § 54D(a)(1)
- Qualified zone academy bond (QZAB), the purpose as specified in § 54E(a)(1)
- Qualified school construction bond (QSCB), the purpose as specified in § 54F(a)(1)

The specific requirements of each of these types of issuances are fully described in Part II of this lesson.

Continued on next page

Special Rules Relating to Expenditures, Continued

Failure to Spend Bond Proceeds within 3 Years

Section 54A(d)(2)(B)(i) provides that to the extent available project proceeds are not spent by the end of the expenditure period for one or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period.

The amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under § 142.

Expenditure Period Defined

Section 54A(d)(2)(B)(ii) defines expenditure period as the 3-year period beginning on the date of issuance including any extensions.

Extending the Expenditure Period

Section 54A(d)(2)(B)(iii) provides that the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

An extension may only be granted upon submission of a request prior to the expiration of the expenditure period.

Reimbursement of Prior Expenditures

Section 54A(d)(2)(D) provides that available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, only if:

- Prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,
 - Not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and
 - The reimbursement is made not later than 18 months after the date the original expenditure is paid.
-

Maturity Limitation

Maturity Limitation

Section 54A(d)(5) provides that an issuance shall be treated as meeting the requirements of § 54A(d) if the maturity of any bond which is part of such issue does not exceed the **maximum term** determined by the Secretary under § 54A(d)(5)(B).

Maximum Term

Section 54A(d)(5)(B) states during each calendar month, the Secretary shall determine the maximum term permitted pursuant to §54A(d)(5)(B) for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

The maximum term is published by the Bureau of Public Debt on its internet site for State and Local Governments at: <https://www.treasurydirect.gov/govt/rates/rates.htm>

Rules Relating to Arbitrage

General Rule Issuers of QTCBs under § 54A are required to comply with the arbitrage provisions of § 148 with respect to the proceeds of the issue.

See § 54A(d)(4)(A)

Investments during Expenditure Period An issue shall not be treated as failing to meet the requirements of §148, by reason of any investment of “available project proceeds” during the “expenditure period.”

See §54A(d)(4)(B)

Reserve Fund An issue shall not be treated as failing to meet the requirements of §148, by reason of any fund which is expected to be used to repay such issue if:

- i. such fund is funded at a rate not more rapid than equal annual installments,
- ii. such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and
- iii. the yield on such fund is not greater than the discount rate determined with respect to the “Maturity Limitation” (under § 54A(d)(5)(B) Maximum Term) with respect to the issue.

See § 54A(d)(4)(C).

Sinking Fund Yield The permitted sinking fund yield is determined under §54A(d)(5)(B) by using a rate equal to 110 percent of the long-term adjusted AFR, compounded semi-annually, for the month in which the bond is sold.

The IRS publishes the long-term adjusted AFR, compounded semi-annually, each month in a revenue ruling published in the Internal Revenue Bulletin. The Bureau of Public Debt publishes the permitted sinking fund yield for each month on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>.

Conflicts of Interest Prohibition

**Prohibition on
Financial
Conflicts of
Interest**

Section 54A(d)(6) provides that an issue shall be treated as meeting the requirement if the issuer certifies that:

- Applicable state and local law requirements governing conflicts of interest are satisfied with respect to such issue, and
 - If the Secretary prescribes additional conflicts of interest rules governing the appropriate Member of Congress, federal, state, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.
-

Reporting Requirements

Information Reporting

Section 54A(d)(3) provides that an issuer of a “**qualified tax credit bond**” shall submit reports similar to those reports required under §149(e).

A Form 8038-TC, *Information Return for Tax Credit Bonds and Specified Tax Credit Bonds* was developed for this purpose and all tax credit bonds and specified tax credit bonds are currently required to file this information report on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond was issued. Prior to its availability, tax credit bonds were reported on Form 8038.

Other Information

Davis Bacon Application

H.R. Conf. Rep. 111-16,111th Cong., 1st Sess. (February 12, 2009)
SEC. 1601 at p. 250 Application of Certain Labor Standards to
Projects Financed with Certain Tax-Favored Bonds.

Subchapter IV of Chapter 31 of the Title 40, United States Code, shall
apply to projects financed with the proceeds of any:

- New CREB as defined in § 54C,
- QECB as defined in § 54D,
- QZAB as defined in § 54E,
- QSCB as defined in § 54F

of the Internal Revenue Code of 1986, issued after the date of
enactment of this act.

Other Definitions

Section 54A(e)(2) defines Bond as any obligation.

Section 54A(e)(3) defines state to include the District of Columbia
and any possession of the United States.

Section 2: Allowable Tax Credit

Overview

Introduction Generally, the holder of a qualified tax credit bond on one or more credit allowance dates during the taxable year shall be allowed a credit against the holder's income tax for the taxable year.

See § 54A(a) and (b).

In this Section This section contains the following topics:

Topic	Page
Overview	14
Tax Credit Amount	15
Credit Stripping	18

Tax Credit Amount

**How Much is
the Credit?**

In general, the amount of the tax credit allowed with respect to a qualified tax credit bond is determined by reference to § 54A(b).

Section 54A(b)(2) provides that the “annual credit” is the product of the applicable credit rate multiplied by the outstanding face amount of the bond

The “applicable credit rate” is defined as the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond. See § 54A(b)(3).

The applicable credit rate for a particular bond issuance is published by the Bureau of Public Debt on its Internet site for state and local governments at: <https://www.treasurydirect.gov/govt/rates/rates.htm>. This webpage allows a search of historic as well as current QTCB rates. (For further information regarding the methodology and procedures the Treasury Department uses to determine these credit rates, see Notice 2009-15, I.R.B. 2009-6 (February 9, 2009)).

Once the amount of the annual credit is determined under § 54A(b)(2), the “amount of credit” with respect to any “credit allowance date” for a qualified tax credit bond determined under § 54A(b)(1) is 25 percent of the annual credit amount.

Continued on next page

Tax Credit Amount, Continued

Credit Allowance Date

Section 54A(e) defines the term “credit allowance date” to mean each:

- March 15
 - June 15
 - September 15
 - December 15
 - The last day the bond is outstanding.
-

Tax Credit Amount Included in Income

Section 54A(f) provides that the allowance of the credit under § 54A(a) shall be treated as interest which is includible in gross income of the holder.

Special Rule for Issuance and Redemption

Section 54A(b)(4) provides a special rule for QTCBs issued, redeemed or maturing between credit allowance dates. In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under § 54A(b)(4) with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

Carryover of Unused Tax Credit Amount

Section 54A(c)(2) provides if the credit allowable under subsection § 54A(a) exceeds the limitation imposed by § 54A(c)(1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) of § 54A for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

Continued on next page

Tax Credit Amount, Continued

Limitation Based on Amount of Tax

Section 54A(c) provides that the amount of credit allowed (under §54A(a)) for any taxable year shall not exceed the excess of the:

- Sum of the regular tax liability (under § 26(b)) plus
 - Alternative minimum tax liability under § 55, over the
 - Sum of the credits allowable under § 54A(c) (other than subparts C and J and this subpart).
-

Rules Impacting Holders

S Corporations and Partnerships -- § 54A(g) provides that in the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed to the shareholders shall be treated as a distribution.

Investment Trust -- § 54A(h) provides that if any tax credit bond is held by a real estate investment trust, the credit determined pursuant to § 54A(a) shall be allowed to beneficiaries of such trust (and any gross income included under § 54A(f) with respect to such credit shall be distributed to such beneficiaries) under procedures prescribed by the Secretary.

Credit Stripping

Credit May Be Stripped

Section 54A(i)(1) provides generally that under regulations, there may be a separation, including at issuance, of the ownership of a qualified tax credit bond and the entitlement to a credit under § 54A with respect to the bond. In the case of such separation, the credit is allowed to the person who, on the credit allowance date, holds the instrument evidencing the entitlement to the credit.

Section 54A(i)(2) provides that, in the case of such a separation, the rules of § 1286 are to apply to the qualified tax credit bond as if it were a stripped bond and to the credit as if it were a stripped coupon.

Notice 2010-28, IRB 2010-15 (April 12, 2010) provides guidance, on which taxpayers may rely, as to the expected content of regulations to be issued with stripping transactions involving qualified tax credit bonds.

Definitions

“Stripping transaction” means a transaction that results in the separation in ownership between any credit coupon with respect to a qualified tax credit bond for any credit allowance date that has not yet occurred and any right to receive cash (whether stated principal or stated interest) that has not yet become payable.

“Credit coupon” means the right to receive a tax credit under section 54A with respect to a qualified tax credit bond on a credit allowance date.

A credit coupon with respect to a qualified tax credit bond that has undergone a stripping transaction is a **“stripped credit coupon.”**

Mere participation in bonds (a transaction with respect to a particular bond in which the post-transaction future rights, that is, rights to cash that is not yet payable and credits whose credit allowance dates have not yet occurred, reflect a pro rata division of all the pre-transaction future rights) are not stripping transactions.

Continued on next page

Credit Stripping, Continued

**Requirements
to Receive
Stripped Credit**

A taxpayer who holds a stripped credit coupon on a credit allowance date is allowed the tax credit only if all of the following requirements are satisfied:

- 1) The bond is part of a strippable issue.
- 2) The stripped credit coupon is either a whole credit coupon or a proportional share of a whole credit coupon.

If a person holds any other division (non-proportional share) of a whole credit coupon, including any direct or indirect division or modification of a whole credit coupon effected through a partnership, trust, or other investment arrangement that, in substance, causes the person to hold a variable share of the whole credit coupon, then no tax credit is allowed with respect to that interest in the credit coupon.

- 3) The taxpayer holds the stripped credit coupon in an account with:
 - A broker (defined in § 6045(c)(1)); or
 - Any other person to the extent provided by the Commissioner in published guidance.

Continued on next page

Credit Stripping, Continued

Strippable Issue

The term "**strippable issue**" means an issue of qualified tax credit bonds that complies with all of the following requirements:

- On or before the date of issue, the issuer must include a statement in the bond documents that the issue of qualified tax credit bonds is strippable. For an issue of qualified tax credit bonds issued before March 31, 2010, this designation could be effected on or before May 17, 2010.
- The issuer must identify the issue of qualified tax credit bonds as a strippable issue on the first information return (Form 8038-TC) filed with respect to the issue. Except for an issue of qualified tax credit bonds that is issued before March 31, 2010, the identification may not be on an amended information return.
- The issue must be issued in registered form. "Registered form" means that all rights to stated principal, stated cash interest, and tax credits under the bond may be transferred only through book entry on the registration books of the issuer or an agent or nominee (or chain of nominees). A bond is not considered to be in registered form unless book entries are maintained in a manner that makes all the entries available for inspection upon request by the Commissioner or his designees.
- A CUSIP number must be assigned to the issue. A separate CUSIP number must be assigned to all rights to receive tax credits on each credit allowance date. Additionally, at least one separate CUSIP number must be assigned to all rights to receive cash (whether stated principal or stated interest) with respect to the issue.

Treatment Of A Stripping Transaction

Except to the extent that a provision of Notice 2010-28 explicitly provides otherwise, subsections (a), (b), and (e) of § 1286 apply to stripping transactions involving qualified tax credit bonds. In applying these provisions of § 1286, the allowance of a credit is treated in the same manner as a cash payment of stated interest on the credit allowance date.

Notice 2010-28 provides examples of accounting for stripping transaction, including the allocation of basis in the components.

Continued on next page

Credit Stripping, Continued

Aggregation and Other Rules

If, on a single date, a taxpayer purchases (including a purchase under § 1286(b)(4)), as part of a single transaction or series of related transactions, more than one component (stated principal, stated cash interest, or credit coupons) of a qualified tax credit bond that has been subject to a stripping transaction, then for purposes of §§ 1271 through 1286, the taxpayer must treat the components so purchased as a single debt instrument (the aggregated debt instrument) that was newly issued on the purchase date. However, unless the taxpayer purchases all of the then-outstanding components of a qualified tax credit bond, none of the payments on the aggregated debt instrument is treated as qualified stated interest under Regulations § 1.1273-1(c).

Section 3: Direct Pay Subsidy Option

Overview

Introduction The Hiring Incentives to Restore Employment Act of 2010 (HIRE Act), enacted on March 18, 2010, provides an option for issuers of certain qualified tax credit bonds to irrevocably elect under § 6431 to issue the bonds as specified tax credit bonds (STCBs) with a direct payment of a refundable tax credit, in the same manner as the Build America Bonds direct pay subsidy. (Note the Build America tax credit bonds are included in the separate Build America Bond lesson.) The issuer of these STCBs will receive a tax benefit from the federal government equal to a portion of the interest payment on the bonds. Bondholders will receive a taxable interest payment from the issuer instead of a tax credit.

In this Section This section contains the following topics:

Topic	Page
General Explanation	23
Direct Pay Subsidy Amount	25

General Explanation

General Explanation of Provision

Instead of federal tax credits allowed under § 54A, the holder of a **STCB** receives a bond on which the interest is fully taxable.

The provisions of section 301 of the HIRE Act, added subsection (f) to § 6431 authorizing issuers of qualified tax credit bonds to elect irrevocably to issue “**specified tax credit bonds**,” that allow the issuer to receive cash subsidy payments from the federal government equal to a portion of the interest payable on such bonds. .

Issuance of STCBs with a direct pay subsidy option became available March 18, 2010; however, the current availability is dependent upon carryover provisions and legislative action discussed in Part II: Specific Requirements for each of the STCBs.

STCB Defined

The term “**specified tax credit bond**” means any “**qualified tax credit bond**” under § 54A(d) if such bond is a:

- New clean renewable energy bond (“**New CREB**”), the purpose as specified in §54C,
- Qualified energy conservation bond (“**QECB**”), the purpose as specified in §54D,
- Qualified zone academy bond (“**QZAB**”), the purpose as specified in §54E (only for bonds issued under the 2009 and 2010 volume caps), or
- Qualified school construction bond (“**QSCB**”), the purpose as specified in §54F, **and**

...the issuer of such bond makes an irrevocable election to have § 6431(f)(3) apply.

Continued on next page

General Explanation, Continued

STCB Tax Treatment

In the case of any “**specified tax credit bond**,”

- Such bond shall be treated as a qualified bond for purposes of § 6431.
 - Section 6431(a) allowing the credit shall be applied to specified tax credit bonds without regard to the requirement in that subsection that the bonds be issued before 1/1/2011.
 - The interest on any such bond shall be includible in gross income.
 - No credit shall be allowed under § 54A with respect to such bond.
 - Any payment made under § 6431(b) shall not be includible as income.
 - The deduction otherwise allowed to the issuer of such bond, with respect to interest paid under such bond, shall be reduced by the amount of the payment made under § 6431(f) with respect to such interest.
-

Direct Pay Subsidy Amount

Direct Pay Refundable Credit Amount

Section 6431(f)(1) provides that the amount of the payment determined under § 54A(b) with respect to any interest payment due under such bond shall be equal to the lesser of the amount of interest:

- Payable under such bonds on such interest payment date, or
- Which would have been payable under such bond on such date if such interest were determined at the “**applicable credit rate**” determined under §54A(b)(3).

For QZABs and QSCBs, the federal subsidy direct payment is equal to the lesser of 100 percent of the:

- Actual interest payments on the bonds, or
- Interest that would have been payable on the bonds at the “applicable credit rate.”

Section 6431(f)(3) reduces the subsidy for New CREBs and QECBs, to the lesser of:

- 100 percent of the actual interest payments on the bonds, or
- 70 percent of the interest that would have been payable on the bonds at the “applicable credit rate.”

See Notice 2010-35, *Direct Payment Subsidy Option for Certain Qualified Tax Credit Bonds*. This notice provides guidance on STCBs and includes information on maximum maturity, credit rate, sinking fund yield calculation, information reporting and eligible expenditures.

Applicable Credit Rate

The applicable credit rate is determined by the Secretary and posted by the Bureau of Public Debt on its Internet site for state and local governments: at <https://www.treasurydirect.gov/govt/rates/rates.htm> as of the first day there is a binding contract for the sale or exchange of the bond.

Continued on next page

Direct Pay Subsidy Amount, Continued

Refundable Credit Payment Procedures

As with Build America Bonds and Recovery Zone Economic Development Bonds, issuers of Specified Tax Credit Bonds are required to submit to the IRS Form 8038 CP to request payment of a refundable credit.

For fixed rate bonds, the due date is 45 days before the applicable interest payment date but may not be filed more than 90 days before the relevant interest payment date. Upon timely receipt, the refundable credit payment is made contemporaneously with the applicable interest payment date.

For variable rate bonds, the refundable credit is paid on a quarterly reimbursement basis for interest paid by the issuer during the quarter that includes the interest payment date to which the return requesting such payment relates. The due date is the 45th date after the last interest payment for the quarter for which reimbursement is requested. However, if the issuer knows the payment at least 45 days before the interest payment date, Form 8038 CP may be filed with the same time frame as for fixed rate bonds.

Note: Form 8038-TC must be filed at least 30 days prior to filing Form 8038-CP.

Continued on next page

Direct Pay Subsidy Amount, Continued

Statute

As stated in PMTA 2014-04, “A claim for credit or refund of the refundable credit for qualified bonds must be filed within 3 years from the time the Form 8038-CP was filed or 2 years from the time the issuer made the bond interest payment, whichever of such periods expires later. Because Forms 8038-CP can function as both a return and a claim for refund, an initial Form 8038-CP filed more than 3 years after the date of the bond interest payment date may be timely for purposes of section 6511(a), but the amount of the credit or refund will be limited, pursuant to section 6511(b)(2)(A), to the amount of the bond interest payment made within 3 years of the date the form was filed.”

Sequestration

The Balanced Budget and Emergency Deficit Control Act of 1985, as amended, mandates certain automatic budget reductions, which include reductions to refundable credits paid under IRC 6431. The sequester reduction is applied to amounts claimed by an issuer on Form 8038 CP which result in a payment on or after March 1, 2013. As determined by the Office of Management and Budget, the reduction from March 1, 2013, to September 30, 2013, was 8.7 percent. Refund payments processed October 1, 2013 through September 30, 2014, were reduced by the 2014 sequestration rate of 7.2 percent. Refund payments processed October 1, 2014 through September 30, 2015, were reduced by the 2015 sequestration rate of 7.3 percent. Beginning October 1, 2015, through September 30, 2016, refund payments will be reduced by the 2016 sequestration rate of 6.8 percent. The sequestration rate will be applied unless and until a law is enacted that cancels or otherwise impacts the sequester, at which time the sequestration rate is subject to change.

Part II: Specific Requirements

Overview

Introduction Part II of this lesson covers the specific requirements which apply to specific types of qualified tax credit bonds.

In this Part This part contains the following topics:

Topic	Page
Section 1: Qualified Forestry Conservation Bonds (54B)	29
Section 2:	33
Part 1 --Clean Renewable Energy Bonds (54)	35
Part 2 --New Clean Renewable Energy Bonds (54C)	46
Section 3: Qualified Energy Conservation Bonds (54D)	53
Section 4:	60
Part 1--(Old) Qualified Zone Academy Bonds (1397E)	62
Part 2--(New) Qualified Zone Academy Bonds (54E)	75
Section 5: Qualified School Construction Bonds (54F)	81

Section 1

Qualified Forestry Conservation Bonds

Overview

Background

Qualified forestry conservation bonds were enacted by Section 15316 of the 2008 Food Act.

Section 54B specifies the requirements for qualified forestry conservation bonds and § 54 A(d) provides that qualified forestry conservation bonds are qualified tax credit bonds.

Contents

This module contains the following topics:

Topic	Page
Overview	29
Definitions	30
Limitations on Bond Issuance	31
Special Arbitrage Rule	32

Definitions

Qualified Forestry Conservation Bond

Section 54B provides that the term “**qualified forestry conservation bond**” means any bond issued as part of an issue if:

- 100 percent of the available project proceeds of the issue are to be used for one or more qualified forestry conservation purposes.
 - The bonds are issued by a qualified issuer.
 - The issuer designates the bonds as qualified forestry conservation bonds.
-

Qualified Forestry Conservation Purpose

Section 54B(f) defines the term “**qualified forestry conservation purpose**” as the acquisition by a state or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in § 150(a)(4)) from an unrelated person of forest land that meets all of the following:

- Some portion of the land acquired must be adjacent to United States Forest Service Land.
 - At least half of the land acquired must be transferred to the United States Forest Service at no net cost to the United States and not more than half of the land acquired may either remain with or be conveyed to a state.
 - All of the land must be subject to a native fish habitat conservation plan approved by the United States Fish and Wildlife Service.
 - The amount of acreage acquired must be at least 40,000 acres.
-

Qualified Issuer

Section 54B(f) defines the term “**qualified issuer**” as a:

- State or any political subdivision or instrumentality thereof, or
 - 501(c)(3) organization (as defined in § 150 (a)(4))
-

Limitations on Bond Issuance

Limitations on Bond Issuance

There is a national qualified forestry conservation bond limitation of \$500,000,000.

The maximum amount of bonds which an issuer may designate as qualified forestry conservation bonds is subject to the issuer specific allocations pursuant to § 54B(d).

Allocations by Secretary

The Secretary shall allocate the amount of the national qualified forestry conservation bond limitation among qualified forestry conservation purposes as the Secretary determines to ensure that all limitation is allocated within 24 months after May 22, 2008.

The Secretary shall solicit applications for allocations of this bond limitation not later than 90 days after May 22, 2008. See Notice 2008-70, 2002-2 C.B. 575 (August 22, 2008).

Bond Allocation as Tax Payment

A qualified issuer of qualified forestry conservation bonds that receives an allocation to issue such bonds may elect to be treated as having made a payment against the tax imposed by the Code, for the taxable year preceding the taxable year in which the allocation is received, in an amount equal to 50 percent of the amount of such allocation. § 54B(h)(1).

The Secretary shall not use the payment of tax described in the preceding paragraph as an offset or credit against any tax liability of the qualified issuer but shall refund such payment to such issuer.

No election under this subsection shall take effect unless the qualified issuer certifies to the Secretary that any payment of tax refunded to the issuer under this subsection will be used exclusively for 1 or more qualified forestry conservation purposes. If the qualified issuer fails to use any portion of such payment for such purpose, the issuer shall be liable to the United States in an amount equal to such portion, plus interest at the overpayment rate under § 6621 for the period from the date such portion was refunded to the date such amount is paid. Except as described herein, the payment described in § 54B(h)(1) shall not be taken into account in determining any amount of interest.

Special Arbitrage Rule

**Special
Arbitrage Rule**

Section 54A(d)(4)(C), the special rule for reserve funds, shall not apply to qualified forestry conservation bonds.

Section 2

Clean Renewable Energy Bonds

Overview

Introduction

Clean renewable energy bonds (CREBs) were created to provide governmental bodies and cooperative electric companies with access to interest free capital for certain qualifying renewable energy facilities.

CREBs were initially authorized by the Energy Policy Act of 2005 (the “2005 Act”) and were codified in § 54. New clean renewable energy bonds (New CREBs) were initially authorized by the Energy Improvement and Extension Act of 2008 (the 2008 Act) and are codified in § 54C.

There are some significant differences between the two CREB programs. When analyzing a clean renewable energy bond transaction, it is important to determine if you are dealing with CREB or New CREB. Below is a handy reference table to aid you in identifying CREB types and the applicable tax code provision:

Date of Issuance	Type of CREB	Applicable Provision
January 1, 2006 to December 31, 2009	CREB	54
October 4, 2008 and thereafter	New CREB	54C, 54A

Continued on next page

Overview, Continued

Contents

This section contains the following topics:

Topic	Page
Overview	33
Part 1: Clean Renewable Energy Bonds	35
Part 2: New Clean Renewable Energy Bonds	46

Part 1

Clean Renewable Energy Bonds

Overview

Background

Section 1303 of the Energy Tax Incentives Act of 2005, Pub. L. No. 109-58 (2005 Act) added § 54 which authorizes up to \$800,000,000 of tax credit bonds to be issued by qualified issuers to finance certain renewable energy projects described in § 45(d).

The enactment of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922 (2006) (the 2006 Act) increased the national volume cap for CREBs from \$800,000,000 to \$1,200,000,000 and extended the deadline for issuance of all CREBs allocations through December 31, 2008. The enactment of the Energy Improvement and Extension Act of 2008 on October 3, 2008, further extended the issuance date for all CREBs through December 31, 2009.

In this Part

This part contains the following topics:

Topic	Page
Overview	35
Introduction	36
Definitions	37
Limitations on Bond Issuance	38
Expenditure Requirements	39
Credit Allowance	41
Maximum Maturity	43
Other Rules	44

Introduction

Statute

Section 54 (d) provides that the term “clean renewable energy bond” means any bond issued as part of an issue if:

- The bond is issued by a **qualified issuer** pursuant to an allocation by the Secretary to such issuer of a portion of the national clean renewable energy bond limitation.
- 95 percent or more of the proceeds of such issue are to be used for capital expenditures incurred by **qualified borrowers** for one or more **qualified projects**.
- The qualified issuer designates such bond for purposes of § 54 and the bond is in registered form.
- The bond issue meets the rules relating to expenditures set forth in § 54(h).

Guidance

IRS Notices applicable to CREBs include:

- Notice 2005-98 solicits applications for allocations of the CREB bond limitation and provides guidance on the requirements of an eligible project for designation as a qualified project.
 - Notice 2006-7 provides additional guidance with respect to facilities that may be financed with the proceeds of CREBs and with regard to the entities that may own facilities financed by CREBs as well as eligible issuers of CREBs.
 - Notice 2007-26 solicits applications for allocations of the CREB national volume cap and provides additional interim guidance for CREBs. (Modified and superseded Notice 2005-98.)
 - Notice 2007-56 changes the address for submission of applications for allocations of the national CREB volume cap allocations.
-

Definitions

Qualified Issuer Section 54(j)(4) defines the term “**qualified issuer**” as a:

- “**Clean renewable energy bond lender**” (i.e. a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender),
 - “**Cooperative electric company**” (i.e. a mutual or cooperative electric company described in IRC § 501 (c)(12) or IRC § 1381 (a)(2)(C), or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act), or
 - “**Governmental body**” (i.e. any state, territory, possession of the United States, the District of Columbia, Indian tribal government, and any political subdivision thereof).
-

Qualified Borrower

Section 54(j)(5)) defines the term “**qualified borrower**” as a:

- Cooperative electric company described in IRC § 501 (c)(12) or IRC § 1381 (a)(2)(C), or
 - Governmental body.
-

Qualified Project

Section 54(d)(2)(a) defines the term “**qualified project**” as any qualified facility (determined under IRC § 45 (d) without regard to paragraph (10) and to any placed in service date) owned by a qualified borrower.

Qualified Facilities under § 45(d), include wind facilities, open and closed loop biomass facilities, geothermal or solar energy facilities, small irrigation power facilities, landfill gas facilities, trash facilities, marine and hydrokinetic renewable energy facilities, refined coal production facilities, and qualified hydropower facilities.

Limitations on Bond Issuance

Limitations on Bond Issuance

CREBs were initially added to § 54 by the 2005 Act with an initial total national volume cap of \$800 million to finance eligible clean renewable energy projects and delegated to the Secretary of the Treasury the authority to allocate that volume cap. Section 54(f)(2) provided that the Secretary could allocate no more than \$500 million of that volume cap to qualified projects of qualified borrowers that were governmental bodies. Section 54 originally applied to CREBs issued after December 31, 2005 and before January 1, 2008.

Section 202 of the 2006 Act, amended § 54 in three respects:

- First, the 2006 Act increased the total national volume cap for CREBs from \$800 million to \$1.2 billion.
- Second, the 2006 Act extended the expiration date for the issuance of CREBs under the total authorized national volume cap of \$1.2 billion from December 31, 2007, to December 31, 2008.
- Third, the 2006 Act increased the maximum allocations or reallocations to qualified borrowers which are governmental bodies from \$500 million to \$750 million (with the balance to be allocated to cooperative electric companies).

Allocation by the Secretary

Section 54(f)(1) provides the national CREB limitation of \$1,200,000,000. § 54(f)(2) provides that the Secretary shall allocate the amount described in § 54(f)(1) except that the Secretary may not allocate more than \$750 million to finance qualified projects of qualified borrowers which are governmental bodies. Notices 2005-98 and 2007-26 solicited applications for volume cap and set forth the form and procedures for such applications.

Expenditure Requirements

General Expenditure Requirements

Section 54(h) provides that an issue shall be treated as meeting the requirements of § 54(h)(1) if , as of the date of issuance, the qualified issuer reasonably expects:

- At least 95 percent of the proceeds are to be spent for one or more qualified projects within the 5-year period beginning on the date of issuance of the clean energy bond,
 - A binding commitment with a third party to spend at least 10 percent of the proceeds of such issue will be incurred within the 6-month period beginning on the date of issuance of the clean energy bond or, in the case of a clean energy bond the proceeds of which are to be loaned to two or more qualified borrowers, such binding commitment will be incurred within the 6-month period beginning on the date of the loan of such proceeds to a qualified borrower, and
 - Such projects will be completed with due diligence and the proceeds of such issue will be spent with due diligence.
-

Extension of Expenditure Period

Extension of expenditure period may be possible if qualified issuer files a request for extension prior to the expiration of the expenditure period. The Secretary may extend such period if the qualified issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related projects will continue to proceed with due diligence.

See § 54(h)(2).

Failure to Spend Proceeds

To the extent that less than 95 percent of proceeds are spent 5 years from date of issuance, or by the close of an extended period, the qualified issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. The amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as pursuant to § 142.

See § 54(h)(3).

Continued on next page

Expenditure Requirements, Continued

Reimbursement Section 54(d)(2)(C) provides that a CREB may be issued to reimburse a qualified borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if:

- Prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a clean renewable energy bond,
 - Not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and
 - The reimbursement is made not later than 18 months after the date the original expenditure is paid.
-

Credit Allowance

In General

If a taxpayer holds a CREB on one or more credit allowance dates of the bond during any taxable year, a credit shall be allowed against the tax imposed on such taxpayer for the taxable year in an amount equal to the sum of the credits determined pursuant to § 54(b).

Amount of Credit

The amount of the credit determined pursuant to § 54(b) on a credit allowance date for a CREB is 25 percent of the annual credit determined with respect to such bond.

The annual credit determined with respect to any CREB 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.
-

Credit Rate

The Secretary shall determine a credit rate which shall apply to a CREB issue on the first day there is a binding, written contract for the sale or exchange of the CREBs. The credit rate for any day is the credit rate which the Secretary determines will permit the issuance of CREBs with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The credit rate of a CREB issue is published by the Treasury at the following website:

http://www.treasurydirect.gov/govt/rates/rates_irstcb.htm .

Continued on next page

Credit Allowance, Continued

Credit Allowance Date

Section 54(b)(4) designates the following as credit allowance dates:

- March 15
 - June 15
 - September 15
 - December 15
 - The last day on which the bond is outstanding
-

Special Rule for Issuance and Redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

See § 54(b)(5).

Limitation on Credit

Section 54(c) provides that for any taxable year, the credit allowed pursuant to § 54(a) for a CREB shall not exceed the excess of:

- The sum of the regular tax liability (as defined in § 26 (b)) plus the tax imposed by § 55, over
 - The sum of the credits allowable under this part (other than subparts C and J and this subpart.)
-

Maximum Maturity

Maximum Maturity

During each calendar month the Secretary shall determine the maximum maturity of a CREB issued during the following calendar month. The maximum term of the bonds shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. If the term so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

See § 54(e).

Other Rules

Special Rules for Arbitrage

Section 54(i) states that issuers of CREBs are required to comply with the arbitrage provisions of § 148 with respect to the proceeds of the issue.

Refinancing

Section 54(d)(2)(B) provides that a qualified project, in which 95 percent or more of the proceeds of the issue were used for capital expenditures incurred by qualified borrowers, may be refinanced with proceeds of a CREB only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred by a qualified borrower after the date of enactment of § 54.

Change in Use

If 95 percent or more of the proceeds of a CREB issue are to be used for capital expenditures incurred by qualified borrowers for one or more qualified projects, the proceeds of the CREB issue shall not be treated as used for a qualified project to the extent that a qualified borrower or qualified issuer takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken to prevent CREBs from failing to meet the requirements of § 54 in the event such actions occur.

Notice 2007-26 clarified that a “deliberate action” will have the same meaning as used in Treas. Reg. § 1.141-2(d)(3). Except that § 54 will be substituted for § 141 in Treas. Reg. § 1.141-2(d)(3)(i). Treas. Regs. are expected to provide that a deliberation action that would otherwise cause an issue of CREBs to fail to meet the requirements of § 54(d)(1)(B) will not be treated as a deliberate action if the issuer take a remedial action which meets the requirements specified in the Temporary Treas. Regs. Additionally, the Temporary Treas. Regs. are anticipated to contain a redemption or defeasance remedial action and an alternative use of disposition proceeds remedial action similar to but not identical to, the remedial actions contained in Treas. Regs. §§ 1.141-12(d) and 1.141-12(e).

Continued on next page

Other Rules, Continued

**Pooled
Financing**

No portion of a pooled financing bond may be allocable to any loan unless the borrower has entered into a written loan commitment for such loan prior to the issue date of the CREB issue.

See § 54(k)

**Ratable
Principal
Amortization**

A bond shall not be treated as a CREB unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

§ 54(1)(4)

**Partnerships,
S Corporations
and other Pass
Through
Entities**

Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of § 41(g) shall apply with respect to the credit allowable under subsection § 54 (a).

With respect to a basis adjustment, a bond held by a partnership or an S corporation, will follow rules similar to the rules under § 1397E(l).

Reporting

Issuers of CREBs shall submit reports similar to reports required under § 49(e).

**Termination of
Issuance
Authority**

CREBs may not be issued after December 31, 2009.

Part 2

New Clean Renewable Energy Bonds

Overview

Introduction

New CREBs are a type of qualified tax credit bond authorized pursuant to §§ 54C and 54A(d), enable qualified issuers to finance capital expenditures incurred for qualified renewable energy facilities. At the same time, New CREB bondholders are granted a tax-credit against their federal income tax liability (including alternative minimum tax liability) rather than tax-exempt interest.

New CREBs may be issued as of October 4, 2008, forward.

In this Part

This part contains the following topics:

Topic	Page
Overview	46
Introduction	47
Definitions	48
Limitations on Bond Issuance	50
Reduced Credit	52

Introduction

Background

Section 107 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110-343, 122 Stat. 3765 (2008) (the “2008 Energy Act”) added § 54C.

Section 107(b) of the 2008 Energy Act amended § 54A(d)(1) of the Code to provide that the term qualified tax credit bond, in part, means a New CREB that is part of an issue that meets the requirements of § 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions on financial conflicts of interest, respectively.

Section 107(d) of the 2008 Energy Act provides that amendments to the Code made by § 107 of the 2008 Energy Act apply to obligations issued after October 3, 2008.

New CREBS are subject to the requirements of both §§ 54A and 54C.

See Notice 2015-12, 2015-10 I.R.B. 700 (March 10, 2015).

Guidance

- Notice 2015-12 solicits applications for the remaining available amount of national limitation (volume cap) for New CREBS under 54C(a). The available amount includes amounts previously allocated under Notice 2009-33, 2009-1 C.B. 865 (April 27, 2009) and Announcement 2010-54, 2010-38 I.R.B. 386 (September 20, 2010). Notice 2015-12 provides guidance on (1) application requirements and forms for requests for volume cap allocations and (2) the method the Department of the Treasury and IRS will use to allocate the remaining volume cap.
 - Applicable interim guidance for New CREBs is provided in Notice 2015-12, Notice 2009-33, and Notice 2010-35, 2010-19 I.R.B. 660 (May 10, 2010), and, to the extent not inconsistent with §§ 54A and 54C, taxpayers may also rely on Notice 2006-7, 2006-1 C.B. 559 (March 6, 2006), and Notice 2007-26, 2007-14 I.R.B. 870 (April 2, 2007).
-

Definitions

New Clean Renewable Energy Bond

Section 54C(a) defines the term “**new clean renewable energy bond**” as any bond issued as part of an issue if:

- 100 percent of the available project proceeds of the issue are to be used for capital expenditures incurred by governmental bodies, public power providers, or cooperative electric companies for one or more qualified renewable energy facilities,
 - The bond is issued by a qualified issuer, and
 - The issuer designates such bond for purposes of § 54C.
-

Qualified Renewable Energy Facility

Section 54C(d)(1) defines the term “**qualified renewable energy facility**” as:

- A qualified facility (as determined pursuant to § 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date), and
 - Owned by a public power provider, a governmental body, or a cooperative electric company.
-

Continued next page

Definitions, Continued

Qualified Issuer	Section 54C(d)(6) defines the term “qualified issuer” as: • A public power provider, (i.e. a state utility with a service obligation as such terms are defined in Federal Power Act § 217 (as effective on October 3, 2008), • A cooperative electric company, (i.e. a mutual or cooperative electric company described in § 501 (c)(12) or § 1381 (a)(2)(C), or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act), • A governmental body, (i.e. any State, territory, possession of the United States, the District of Columbia, Indian tribal government, and any political subdivision thereof), • A clean renewable energy bond lender, or (i.e. a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender), or • A not-for- profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.
-------------------------	---

Qualified Owner	Sections 54C(d)(2), (3), and (4) respectively define a qualified owner of a qualified renewable energy facility as a: • Public power provider • Cooperative electric company • A governmental body
------------------------	---

Qualified Renewable Energy Facility	Section 54C(d)(1) defines the term “qualified renewable energy facility” as any qualified facility (determined under § 45 (d) without regard to 45(d) (8) and (10) thereof and to any placed in-service date) owned by a qualified borrower.
--	--

Limitations on Bond Issuance

Limitations on Bond Issuance

Issuers may not issue New CREBS in an aggregate face amount which is greater than the amount allocated to such issuer pursuant to the allocation provisions of § 54C(c).

Section 107 (a) of the Energy Improvement Extension Act of 2008 added Section 54C to the Code to provide for a volume cap of 800 million for New CREBS to finance qualified renewable energy facilities.

Section 1111 of the American Recovery and Reinvestment Act of 2009 amended IRC 54C to increase the volume cap for New CREBS to 2.4 billion.

Restrictions on Allocation

The national New CREBS bond limitation of \$2.4 billion shall be allocated by the Secretary as provided below:

- Not more than 32 1/3 percent thereof may be allocated to qualified projects of public power providers
 - Not more than 33 1/3 percent thereof may be allocated to qualified projects of governmental bodies
 - Not more than 33 1/3 percent thereof may be allocated to qualified projects of cooperative electric companies
-

Continued on next page

Limitations on Bond Issuance, Continued

Allocation by the Secretary

The amount of available issuance authority for new clean renewable energy bonds shall be allocated by the Secretary upon determining the qualified projects of public power providers, governmental bodies and electric cooperatives which are appropriate for receiving an allocation of issuance capacity.

In order to obtain an allocation of volume cap for New CREBs a qualified issuer must have submitted an application to the IRS, which identified the qualified owner, qualified project, plan of financing, and information regarding any prior allocations.

In the same manner CREB allocations were made, New CREB allocations of volume cap were allocated by project and were done by the IRS Tax Exempt Bond staff.

New CREB Issuance Deadline

Under Notice 2015-12, an allocation of New CREB volume cap is valid for 180 days after the date of the allocation letter

Reduced Credit

Reduced Credit Amount	Section 54C(b) provides that the annual credit determined under § 54A(b) with respect to any New CREB shall be 70 percent of the amount so determined.
------------------------------	--

Section 3

Qualified Energy Conservation Bonds

Overview

Introduction

Section 301(a) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Division C of Pub. L. 110-343 122 Stat. 1365 (2008) (Act) added new § 54D to provide program provisions for qualified energy conservation bonds (QECB).

Among other amendments, the Act amended § 54A to provide the term “qualified tax credit bond” which means, in part, a qualified energy conservation bond that is part of an issue that meets the requirements of §§ 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest.

In this Section

This section contains the following topics:

Topic	Page
Overview	53
Introduction	54
Definitions	55
Limitations on Bond Issuance	57
Special Rules	59

Introduction

Background

Qualified Energy Conservation Bonds were intended to provide a vehicle to finance certain qualified conservation purposes.

Section 301(a) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Division C of Pub. L. 110-343 122 Stat. 1365 (2008) (2008 Tax Extenders Act) enacted October 3, 2008 added new § 54D to provide program provisions for qualified energy conservation bonds (QECBs).

Among other amendments, the Act amended § 54A to provide the term “qualified tax credit bond” which means, in part, a qualified energy conservation bond that is part of an issue that meets the requirements of §§ 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest.

Definitions

Qualified Energy Conservation Bond

Qualified energy conservation bond means any bond issued as part of an issue if:

- 100 percent of the available project proceeds are to be used for one or more “qualified conservation purposes,”
- The bond is issued by a State or local government, and
- The issuer designates such bond as a qualified energy conservation bond.

See § 54D(a).

Continued on next page

Definitions, Continued

Qualified Energy Conservation Purpose

Section 54D(a)(1) provides that a **qualified conservation purpose** is:

Capital expenditures incurred for purposes of:

- Reducing energy consumption in publicly-owned buildings by at least 20 percent,
- Implementing green community programs,
- Rural development, or
- Any qualified facility as determined under § 45(d).

Expenditures with respect to research facilities, and research grants, to support research in:

- Development of cellulosic ethanol or other nonfossil fuels
- Technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels
- Increasing the efficiency of existing technologies for producing nonfossil fuel
- Automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation or technologies to reduce energy use in buildings
- Mass commuting facilities and related facilities that reduce the consumption of energy

Demonstration projects designed to promote commercialization of:

- Green building technology
 - Conversion of agricultural waste for use in the production of fuel
 - Advanced battery manufacturing technologies
 - Technologies to reduce peak use of electricity or technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity
 - Public education campaigns to promote energy efficiency
-

Limitations on Bond Issuance

Limitations on Bond Issuance

Section 54D(c) provides the maximum face amount of QECBs which may be designated under § 54D(a) by any issuer shall not exceed the portion of the volume cap allocated to such issuer under § 54D(e).

National Volume Cap Limitations

QECB's were initially authorized with a total national bond volume cap of \$800,000,000 under § 54D(d). Section 1112 of Title 1 of Division B of the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, 123 Stat. 115 (2009) amended § 54D(d) by increasing the volume cap limitation by striking \$800,000,000 and inserting \$3,200,000,000.

Notice 2009-29, 2009-16 I.R.B. 849 (April 20, 2009), setting forth the allocation for 2009, clarified that the amendment was effective for QECB's issued after October 3, 2008, the date QECB's were enacted.

Population for Allocation Purposes

Section 54D(g), provides that the population of any state or local government shall be determined as provided in § 146 (j).

In determining the population of any county, § 54D(g) provides that any population of a county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

For purposes of § 54D(g), an Indian tribal government shall be treated in the same manner as a large local government, **except that:**

- Indian tribal governments shall be treated for purposes of § 54D(e) as located within a state to the extent the population of such government as resides within such state, and
 - Any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which § 103 (a) applies.
-

Continued on next page

Limitations on Bond Issuance, Continued

Allocation of Issuance Capacity

The Department of Treasury allocates the national bond volume cap among the states in proportion to the population of the states.

Notice 2009-29 sets forth the allocation of the national QECB volume cap to states and U.S. possessions and providing interim guidance.

Section 54D(e)(2)(A) provides that in the case of any state where there is a “large local government,” defined in § 54D(e)(2)(C) as any municipality or county having a population of 100,000 or more, each such local government shall be allocated a portion of the state’s volume cap allocation which bears the same ratio to the state’s allocation as the population of such large local government bears to the population of such state.

Unused issuance capacity allocated to a large local government may be reallocated by such local government to the state in which such local government is located.

Any allocation of issuance capacity to a state or large local government shall be allocated by such state or large local government to issuers within the state so that not less than 70 percent of the allocation to such State or large local government is used to issue bonds which are not private activity bonds. Section 54D(e)(3).

QECBs issued to provide loans, grants, or other repayment mechanisms for capital expenditures to implement green community programs are not treated as private activity bonds for purposes of the allocation restriction in § 54D(e)(3).

Carryover and Termination

Unused QECB volume cap may be carried forward indefinitely and the QECB bond program does not have a specified termination date.

Continued on next page

Special Rules

Special Rules for Private Activity Bonds

In the case of any QECBs which are also private activity bonds, the term “qualified conservation purposes” shall not include any expenditure which is not a capital expenditure.

Section 4

Qualified Zone Academy Bonds

Overview

Introduction

Qualified Zone Academy Bonds (also known as QZABs) provide local educational agencies with capital intended to be interest free to finance renovation of school buildings, equipment, technology, and develop curricula and train teachers.

QZABs were initially created by the Taxpayer Relief Act of 1997 (Section 226 of H.R. 2014) and were codified in IRC §1397E. Between 1997 and 2008 qualified zone academy bonds were authorized by Congress on an annual basis (hereafter referred to as Old QZABs).

In 2008, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Pub L. 110-343)(2008 Tax Extenders Act) expanded and extended the existing qualified zone academy bond program and made it a qualified tax credit bond under section 54A(d) and 54E. (hereafter referred to as New QZABs)

Continued on next page

Overview, Continued

Introduction (continued)

QZABs under § 1397E are discussed in Part I. QZABs under §§ 54A and 54E are discussed in Part II. While Old QZABs and New QZABs are very similar, the sections of the Code applicable to each are different. When analyzing a qualified zone academy bond transaction it is important to determine the date of issue of the bond in order to apply the correct tax code sections to your analysis. Below is a handy reference table to aid you in identifying applicable Code provisions and regulations. For more detailed information on effective dates of QZAB regulations, see § 1397E-1(m).

Date of Issuance of Qualified Zone Academy Bonds	Applicable Code Provisions	Applicable Regulations
August 5, 1997 to September 13, 2007 (Old QZABs)	1397E	1.1397E-1 Final Regulations and 1.1397E-1T Temporary Regulations
September 14, 2007 to October 3, 2008 (Old QZABs)	1397E	1.1397E-1 Final Regulations and 1.1397E-1T Temporary Regulations which became final on July 30, 2010.
October 4, 2008 and thereafter (New QZABs)	54E, 54A(d)	Except as provided in Notice 2009-30 or to the extent not inconsistent with 54A and 54E the Final Regulations published on July 30, 2010, apply to New QZABs.

In this Section This section contains the following topics:

Topic	Page
Overview	60
Part 1: Old Qualified Zone Academy Bonds	62
Part 2: New Qualified Zone Academy Bonds	75

Part 1

Qualified Zone Academy Bonds under § 1397E

(Old QZABs)

Overview

Overview Old QZABs were created by the Taxpayer Relief Act of 1997 (Pub. L. 105-34) and were codified in §1397E. Between 1997 and 2008 qualified zone academy bonds were authorized by Congress on an annual basis.

Applicable Regulations Temporary Treasury regulations (T.D. 8755, 1998-1 C.B. 653) interpreting § 1397E were published on January 7, 1998 (63 FR 671), and amended on July 1, 1999 (T.D. 8826, 1999-2 C.B. 107 [64 FR 35573]).

Final Treasury regulations under section 1397E (T.D. 8903, 2000-2 C.B. 352) were published on September 26, 2000 (65 FR 57732) (the First Final Regulations).

On March 26, 2004, a notice of proposed rulemaking (REG-121475-03, 2004-1 C.B. 793) was published in the Federal Register (69 FR 15747) (the 2004 Proposed Regulations).

On July 16, 2007 the IRS issued temporary regulations under T.D. 9339, 2007-2 C.B. 437, which were published in the Federal Register (72 FR 38767) and which became effective as of September 14, 2007 (the 2007 Temporary Regulations). The 2004 Proposed Regulations were withdrawn and the 2007 Temporary Regulations were proposed instead.

On July 10, 2010, the IRS issued final regulations and removed the 2007 Temporary Regulations under T.D. 9495, 2010-43 C.B. 477, which were published in the Federal Register (75 FR 44901) and which became effective retroactive as of September 14, 2007.

Continued on next page

Overview, Continued

Contents

This part contains the following topics:

Topic	Page
Overview	62
Introduction	64
Definitions	65
Private Business Use and Term Requirements	68
Limitations on Bond Issuance	69
Expenditure Rules for Bond Proceeds	70
Reporting Requirements	71
Allowable Credit	72
Other Information	74

Introduction

Introduction

Old QZABs were authorized by Congress on an annual basis to:

- Renovate, rehabilitate, and repair public school buildings
- Invest in equipment and technology for schools
- Develop curricula
- Train teachers

The program was created as tax credit program which provided the holders of the bonds with a federal income tax credit instead of interest payments. The tax credit received was based on a tax credit rate set by the Treasury. This program also encouraged schools and businesses to cooperate in ways that expanded student learning and helped prepare students for college and to compete in the workforce.

Definitions

Qualified Zone Academy Bond

Section 1397E (d) provides that the term “**qualified zone academy bond**” means any bond issued as part of an issue if:

- 95 percent or more of the proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,
- The bond is issued by a state or local government within the jurisdiction of which such academy is located,
- The issuer –
 - designates such bond for purposes of §1397E
 - certifies that it has written assurances that the private business contribution requirement of §1397E(d)(2) is met, and
 - certifies it has the written approval of the eligible local education agency for such bond issue
- The term of each bond which is part of the issue does not exceed the maximum term permitted pursuant to §1397E(d)(3), and
- The bond issue meets requirements relating to expenditures (§1397E(f)), arbitrage (§1397E(g)) and reporting (§1397E(h)).

Qualified Purpose

The term “**qualified purpose**” means, with respect to any qualified zone academy –

- Rehabilitating or repairing the public school facility in which the academy is established
- Providing equipment for use at such academy
- Developing course materials for education to be provided at such academy
- Training teachers and other school personnel in such academy

See § 1397E(d)(5).

Continued on next page

Definitions, Continued

Eligible Local Education Agency

The term "**eligible local education agency**" means any local educational agency as defined in section 8101 of the Elementary and Secondary Education Act of 1965.

See § 1397E(d)(4)(B).

Qualified Zone Academy

Section 1397E(d)(4)(A) provides that the term "**qualified zone academy**" means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if –

- Such public school or program is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,
 - Students in such public school or program will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,
 - The comprehensive education plan of such public school or program is approved by the eligible local education agency, **AND**, either
 - o Such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after August 5, 1997, **OR**
 - o there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program will be eligible for free or reduced-cost lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 USCS §§1751 et seq.).
-

Continued on next page

Definitions, Continued

Other Definitions

Section 1397E (i) sets forth several definitions to be used for purposes of §1397E.

“Credit allowance date” means, with respect to any issue, the last day of the 1-year period beginning on the date of issuance of such issue and the last day of each successive 1-year period thereafter.

"Bond" includes any obligation.

"State" includes the District of Columbia and any possession of the United States.

Private Business Use and Term Requirements

Private Business Contribution Requirement

The private business contribution requirement of § 1397E (d)(2) is met with respect to any QZAB issue, if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

For purposes of the private business requirement the term "**qualified contribution**" means any contribution of –

- Equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),
- Technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,
- Services of employees as volunteer mentors, internships, field trips, or other educational opportunities outside the academy for students, or
- Any other property or service specified by the eligible local education agency.

See § 1397E(d)(2).

Term Requirement

During each calendar month, the Secretary determined the maximum term permitted for QZABs issued during the following calendar month. Such maximum term was the term which the Secretary estimated would result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of the bond.

Such present value was determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which were issued during the month. If the term as so determined was not a multiple of a whole year, such term shall be rounded to the next highest whole year.

Limitations on Bond Issuance

Limitations on Bond Issuance

The national qualified zone academy bond limitation for calendar years 1998 to 2007 was \$400,000,000 each year.

The national zone academy bond limitation related to QZABs for a calendar year was allocated by the Secretary among the states on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a state under the preceding sentence was allocated by the state education agency to qualified zone academies within such state.

The maximum aggregate face amount of bonds issued during any calendar year which was designated with respect to any qualified zone academy could not exceed the limitation amount allocated to such QZABs for such calendar year.

Carryover of Unused Limitation

Pursuant to § 1397E(e)(4), in any calendar year if the:

- Limitation amount for any state, exceeded
- Amount of QZABs issued during such year within such state,

...**then** the limitation amount for such state for the following calendar year shall be increased by the amount of such excess.

Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. A limitation amount shall be treated as used on a first-in first-out basis.

Expenditure Rules for Bond Proceeds

Expenditure Rules

Section 1397E(f) provides that the issuer must reasonably expect, as of the date of issuance, to spend available project proceeds as follows:

- At least 95 percent of the proceeds of are to be spent for one or more qualified purposes with respect to qualified zone academies within the 5-year period beginning on the date of issuance of the bonds,
 - A binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the bonds, and
 - Such qualified purposes will be completed with due diligence and the proceeds of such issue will be spent with due diligence.
-

Extension

Extension of expenditure period may be possible if issuer files a request for extension prior to the expiration of the expenditure period. The Secretary may extend such period if the issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related purpose will continue to proceed with due diligence.

Failure to Expend

To the extent less than 95 percent of proceeds are not spent 5 years from date of issuance, or an extension, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. The amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under § 142.

Reporting Requirements

Section 149(e) Issuers of QZABs are subject to the information reporting requirements of § 149(e).

Allowable Credit

Credit to Holders

Section 1397E(a) provides that in the case of an eligible taxpayer (defined as a bank, an insurance company, a corporation actively engaged in the business of lending money (see § 1397E(d)(6)) who holds a QZAB on the credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by the Code for such taxable year, the amount determined under § 1397E(b).

Amount of the Credit

The amount of the credit for QZABs was determined pursuant to §1397E(b)(1) as the amount equal to the product of the:

- Credit rate determined by the Secretary under § 1397E(b)(2) for the month in which such bond was issued, multiplied by
- Face amount of the bond held by the taxpayer on the credit allowance date.

During each calendar month, the Secretary determined a credit rate which applied to QZABs issued during the following calendar month. The credit rate for any month was the percentage which the Secretary estimated would permit the issuance of qualified zone academy bonds without discount and without interest cost to the issuer.

Limitation

The credit allowed for QZABs for any taxable year shall not exceed the excess of:

- The sum of the regular tax liability (as defined in § 26(b)) plus the tax imposed by § 55, over
 - The sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits, and subpart H thereof).
-

Allowable Credit, Continued

Treatment of Credit

The credit allowed to a taxpayer who is a holder of QZABs is:

- Included in their gross income § 1397E(j)
- Treated as a nonrefundable bondholder credit § 1397E(k)

In the case of a QZAB held by an S corporation which is an eligible taxpayer:

- Each shareholder shall take into account such shareholder's pro rata share of the credit, and
 - No basis adjustments to the stock of the corporation shall be made under § 1367 on account of this section.
-

Other Information

**Special Rules
for Arbitrage**

Issuers of QZABs are required to comply with the arbitrage provisions of §148 with respect to the proceeds of the issue.

See § 1397E(h).

**Termination of
Issuance
Authority**

Section 1397E shall not apply to any obligation issued after the date of enactment of the *Tax Extenders and Alternative Minimum Tax Relief Act of 2008* (2008 Act) (October 3, 2008).

Part 2

Qualified Zone Academy Bonds under § 54E (New QZABs)

Introduction

Background The 2008 Tax Extenders Act added new § 54E which provides revised program provisions for QZABs in lieu of the existing provisions under § 1397E effective for obligations issued after October 3, 2008.

Regulations Notice 2009-30 clarifies that § 1.1397-1 (Final Regulations) and 1.1397-1T Temporary Regulations issued under § 1397E apply to QZABs issued under § 54E except as provided in the Notice or to the extent inconsistent with §§ 54A and 54E. Final Regulations published July 2010 state that except to the extent inconsistent with the successor statutory provisions for QZABs in §§ 54A and 54E and public administrative or regulatory guidance under those provisions, issuers and taxpayers may apply these regulations to QZABs issued under §§ 54E and 54A sold after October 3, 2008. However, for a Specified Tax Credit Bond (STCB) where the issuer has elected § 6431, issuers and taxpayers may not apply the remedial action provisions under paragraph (h)(8).

In this Part This part contains the following topics:

Topic	Page
Introduction	75
Definitions	76
Private Business Contribution Requirement	78
Limitations on Bond Issuance	79

Definitions

Qualified Zone Academy Bond

Section 54A(d)(1)(D) provides that the term qualified tax credit bond shall mean a “qualified zone academy bond.”

Section 54E(a) defines the term “qualified zone academy bond” as any bond issued as part of an issue if:

- 100 percent of the available project proceeds of the issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,
 - The bond is issued by a state or local government within the jurisdiction where such academy is located, and
 - The issuer:
 - Designates such bond as a qualified zone academy bond,
 - Certifies that it has written assurances that the private business contribution requirement of § 54E(b) will be met with respect to such academy, and
 - Certifies that it has the written approval of the eligible local education agency for such bond issuance.
-

Qualified Purpose

The term “qualified purpose” means, with respect to any qualified zone academy:

- Rehabilitating or repairing the public school facility in which the academy is established,
- Providing equipment for use at such academy,
- Developing course materials for education to be provided at such academy, and
- Training teachers and other school personnel in such academy

See § 54E(d)(3).

Continued on next page

Definitions, Continued

Qualified Zone Academy

Section 54E(d)(1) defines the term “qualified zone academy” as any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if:

- Such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for college and the workforce,
- Students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,
- The comprehensive education plan of such public school or program is approved by the eligible local education agency, AND either
 - such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), OR
 - there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act, 42 USC §§ 1751 et seq.

Eligible Local Education Agency

For purposes of New QZABs, the term “eligible local education agency” means any local educational agency as defined in § 8101 of the Elementary and Secondary Education Act of 1965.

See § 54E(d)(2).

Private Business Contribution Requirement

Private Business Contribution Requirement

The private business contribution requirement relating to New QZABs is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the New QZABs) of not less than 10 percent of the proceeds of the issue.

For purposes of the private business contribution requirement, “qualified contribution” means any contribution (of a type and quality acceptable to the eligible local education agency) of:

- Equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),
 - Technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,
 - Services of employees as volunteer mentors,
 - Internships, field trips, or other educational opportunities outside the academy for students, or
 - Any other property or service specified by the eligible local education agency
-

Limitations on Bond Issuance

Limitations on Bond Issuance

As provided by § 54E(c) the national qualified zone academy bond limitation is \$400 million for calendar year 2008 increased to \$1 billion four hundred million in calendar years 2009 and 2010. Except for any carryover amounts allowed pursuant to § 54E(e), or further amendments to the Code, zero after 2010. The 2010 Act provided an authorization for \$400 million for calendar year 2011. The 2012 Act provided an authorization for \$400 million for each of calendar years 2012 and 2013. The 2014 Act provided an authorization for \$400 million for calendar year 2014 which applies to obligations after December 31, 2013. The 2015 Act provided an authorization for \$400 million for calendar years 2015 and 2016, each which applies to obligations after December 31, 2014.

The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

The maximum aggregate face amount of New QZABs issued during any calendar year which may be designated with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy for such calendar year.

Eligibility for Direct Pay

Section 202 of the 2014 Act also amended IRC § 6431(f)(3)(A)(iii) to provide that the direct pay subsidy option does not apply to any national qualified zone academy bond limitation for years after 2010 or any carryforward of such limitation. This was explained in Notice 2015-11.

Limitations on Bond Issuance, Continued

Carryover of Unused Limitation

Pursuant to § 54E(c), in any calendar year if the:

- Limitation amount for any state, exceeded
- Amount of New QZABs issued during such year within such state,

...**then** the limitation amount for such state for the following calendar year shall be increased by the amount of such excess.

Any carryover of a limitation amount may be carried only to the first 2 years following the unused limitation year. A limitation amount shall be treated as used on a first-in first-out basis.

Note: Any carryover determined under § 1397E(c)(4) with respect to any state calendar year 2008 or 2009 shall be treated for purposes of this section as a carryover with respect to such state for such calendar year under subparagraph (A) and the limitation of subparagraph (B) shall apply to such carryover taking into account the calendar years to which such carryover relates.

Section 5

§ 54F Qualified School Construction Bonds

Overview

Background

Section 1521 of the American Recovery and Reinvestment Tax Act of 2009 (P. L. 111-5) February 17, 2009 (ARRA) created qualified school construction bonds (QSCBs) as a financing option to help schools and to stimulate the economy.

Among other things, ARRA amended § 54A to provide the term “qualified tax credit bond” means, in part, a qualified school construction bond that is part of an issue that meets the requirements of §§ 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest.

Guidance

The IRS issued Notice 2009-35 providing allocations and interim guidance for QSCBs and clarified in Section 6 of such Notice that the § 54F(a)(1) requirement that 100 percent of available project proceeds be spent on construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue include expenditures for costs of acquisitions of equipment to be used in such portion or portions of the public school facility that is being constructed, rehabilitated or repaired with the proceeds of QSCBs.

In this Section

This section contains the following topics:

Topic	Page
Overview	81
Definitions	82
Limitations on Bond Issuance	83

Definitions

Qualified Tax Credit Bond

Qualified tax credit bond means, among other things, a “qualified school construction bond.”

§ 54A(d)(1)(E)

Qualified School Construction Bond

Qualified school construction bond means any bond issued as part of an issue if:

- 100 percent of the available project proceeds are to be used for the construction rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,
- The bond is issued by a state or local government within the jurisdiction of which such school is located, and
- The issuer designates such bond as a qualified school construction bond.

See § 54F(a).

Limitations on Bond Issuance

Limitations on Bond Issuance

Section 54F(b) provides the maximum face amount of QSCBs which may be issued during any calendar year by an issuer shall not exceed the limitation amount allocated to the issuer under § 54F(d) for such calendar year.

National Limitation Amount

The national QSCB limitation is set forth on calendar basis as follows:

- \$11,000,000,000 for 2009
- \$11,000,000,000 for 2010, and

...except for any carryover amounts allowed pursuant to §54F(e), or further amendments to the Code, zero after 2010.

Allocation of Limitation Among States

The limitation applicable for any calendar year shall be allocated by the Secretary among the states in proportion to the respective amounts each State is eligible to receive pursuant to §1124 of the Elementary and Secondary Education Act of 1965 for the most recent fiscal year ending before such calendar year. The limitation amount allocated to a state shall be further allocated by the State education agency (or such agency as authorized under state law to make such allocations) to issuers within the state.

See § 54F(d)(1).

Continued on next page

Limitations on Bond Issuance, Continued

Allocation Among Largest School Districts

Section 54F(d)(2)(A) provides that 40 percent of the calendar year allocation for any calendar year shall be allocated by the Secretary among local educational agencies that are “large local educational agencies” (defined below) for the calendar year.

Section 54F(d)(2)(B) provides that the allocation amount under § 54F(d)(2)(A) is to be allocated among large local educational agencies in proportion to the respective amounts each such agency received under § 1124 of the Elementary and Secondary Education Act of 1965 for the most recent fiscal year ending before the calendar year.

Section 54F(d)(2)(C) provides that the allocation of calendar year volume cap to any State under § 54F(d)(1) is reduced by the aggregate amount of allocations under § 54F(d)(2) to large local educational agencies within the state.

For purposes of § 54F(d)(2), a large local educational agency is defined as any local educational agency if such agency is:

- Among the 100 local educational agencies with the largest number of children aged 5 through 17 from families living below the poverty level, as determined by using the most recent data available from the Department of Commerce, or
- One of not more than 25 additional local educational agencies that the Secretary of Education determines are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or such other factors as the Secretary deems appropriate.

The unused amount allocated pursuant to § 54F(d)(2) to a large local educational agency for any calendar year may be reallocated by such agency to the state in which such agency is located. Any amount reallocated to a State under these circumstances, may be reallocated as provided in § 54F(d)(1).

Continued on next page

Limitations on Bond Issuance, Continued

Allocation to Certain Possessions

Section 54F(d)(3), provides that the amount to be allocated to any possessions of the United States other than Puerto Rico, shall be the amount which would have been allocated if all the allocations pursuant to § 54F(d)(1) were made on the basis of respective populations of individuals below the poverty line (as defined by Office of Budget and Management). In making other allocations, the amount allocated under § 54F(d)(1) shall be reduced by the aggregate amount allocated under § 54F(d)(3) to possessions of the United States.

Allocation for Indian Schools

In addition to amounts allocated pursuant to subsection 54F(d), § 54F(d)(4) provides that the \$200,000,000 shall be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by Bureau of Indian Affairs for calendar years 2009 and 2010, each.

Indian tribal governments (as defined in § 7701(a)(40)) are treated as qualified issuers for purposes of § 54F(d)(4).

Carryover of Unused Allocation

If for any calendar year the amount of allocation provided pursuant to § 54F(d) exceeds the amount of QSCBs during that year, the excess allocation amount for such state or Indian school shall be carried over to the following year.

This page intentionally left blank.

Summary

Review of Lesson 11

Section 54A provides the general requirements relating to the following QTCBs:

- Qualified forestry conservation bonds § 54B
- New clean renewable energy bonds (New CREBs) § 54C
- Qualified energy conservation bonds (QECBs) § 54D
- Qualified zone academy bonds (QZABs) § 54E
- Qualified school construction bonds (QSCBs) § 54F

In addition to meeting the general rules governing qualified tax credit bonds, there are specific requirements set forth for each particular type of bond that must be satisfied within each of the specific sections of the Code.

The general rules governing qualified tax credit bonds, apply to all bonds covered in this lesson. Those requirements include:

- The maturity of any bond which is part of such issue does not exceed the maximum term determined by the Secretary under § 54A(d)(5)(B).
- If a taxpayer holds a “qualified tax credit bond” on one or more “credit allowance dates” of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year in an amount equal to the sum of the credits determined thereunder with respect to such dates. See § 54A(a).
- Submission of reports similar to those required under § 149(e). All tax credit bonds are currently reported on Form 8038-TC. Prior to Form 8038-TC, tax credit bonds were reported on Form 8038. See § 54 A(d)(3).
- Compliance with the arbitrage provisions of § 148 with respect to the proceeds of the issue. See § 54A(d)(4)(A).

Issuers of New CREBs, QECBs, QSCBs, and QZABs issued under the 2009 and 2010 volume caps may elect to apply section 6431(f) to receive a direct payment of the refundable credit instead of the bondholder receiving a tax credit. These are the STCB or direct pay tax credit bonds.

Sections 1397E and 54 contain the requirements relating to Old QZABs and Old CREBs, respectively.

Summary, Continued

Preview of Lesson 12

Lesson 12 contains the text's discussion of Tribal Bonds. The Indian Tribal Government Tax Status Act of 1982 added new §§ 7701(a)(40) and 7871 to the Code pertaining to the status of Indian tribal governments. This lesson covers the general rules applicable to tax-exempt bonds issued by Indian tribal governments (tribal bonds) including tribal economic development bonds, which were created by the American Recovery and Reinvestment Act of 2009 (the Act).
