

Part III - Administrative, Procedural, and Miscellaneous

Current Refundings of Recovery Zone Facility Bonds

Notice 2014-9

SECTION 1. PURPOSE

This Notice provides guidance on “current refunding issues” (as defined in § 1.150-1(d)(3) of the Income Tax Regulations) that refund outstanding prior issues of bonds that qualify as Recovery Zone Facility Bonds (Recovery Zone Facility Bonds) under § 1400U-3 of the Internal Revenue Code (“Code”). In particular, this Notice applies to current refunding issues that are used (directly or indirectly in a series of current refunding issues) to refund original tax-exempt bonds issued before January 1, 2011 (the “Applicable Deadline”), that met the qualification requirements for qualified Recovery Zone Facility Bonds. These original qualified tax-exempt bonds are referred to in this Notice as “Qualified Bonds.”

SECTION 2. BACKGROUND

Section 1401 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 348 (2009) (“ARRA”), added §§ 1400U-1 and 1400U-3 to the Code to authorize State and local governments to issue Recovery Zone Facility Bonds. Section 1400U-1(a)(4)(B) imposes a national bond volume limitation of \$15 billion for Recovery Zone Facility Bonds. Section 1400U-1(a)(1)(A) provides that the Secretary shall allocate the national recovery zone facility bond limitation among the States in the proportion that each such State’s 2008 State employment decline bears to the

aggregate of 2008 State employment declines for all of the States. Notice 2009-50, 2009-26 I.R.B. 1118 (June 29, 2009), provides guidance regarding the maximum face amount of Recovery Zone Facility Bonds that may be issued by each State and counties and large municipalities within each State as provided in § 1400U-1(a).

In general, Recovery Zone Facility Bonds may be used to finance certain property, referred to as “recovery zone property,” for use within certain designated zones, referred to as “recovery zones.” Section 1400U-1(b) provides that, for purposes of §§ 1400U-1 through 1400U-3, the term “recovery zone” means: (1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990; and (3) any area for which a designation as an empowerment or renewal community is in effect as of the effective date of ARRA, which is February 17, 2009.

Section 1400U-3(c)(1) defines the term “recovery zone property” to mean any property in a recovery zone to which § 168 (relating to the accelerated cost recovery system) applies (or would apply but for § 179 (relating to the election to expense certain depreciable business assets)) if: (A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in § 179(d)(2)) by the taxpayer after the date on which the designation of the recovery zone took effect; (B) the original use of which in the recovery zone commences with the taxpayer; and (C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business (as defined in § 1400U-3(c)(2)) by the taxpayer in the recovery zone. Section

1400U-3(d) provides in part that § 146 (relating to volume cap) and § 147(d) (relating to prohibition against acquisition of existing property) shall not apply to any Recovery Zone Facility Bond.

Section 141(e) provides that an “exempt facility bond” under §142 is one type of qualified private activity bond that may be issued with interest that is excludable from gross income under §103(a). Section 1400U-3(a) provides that, for purposes of §§ 141 through 150, the term “exempt facility bond” includes any Recovery Zone Facility Bond. Section 1400U-3(b)(1) defines the term “Recovery Zone Facility Bond” to mean any bond issued as part of an issue if (A) 95 percent or more of the net proceeds (as defined in § 150(a)(3)) of such issue are to be used for recovery zone property; (B) such bond is issued before the Applicable Deadline; and (C) the issuer designates such bond for purposes of § 1400U-3.

The statutory provisions relating to Recovery Zone Facility Bonds are silent regarding the permissibility of current refundings of these bonds after the Applicable Deadline. Under similar provisions for exempt facility bonds for disaster relief, the Treasury Department and the IRS have previously provided guidance permitting current refundings within certain size limitations for purposes of bond issuance deadlines applicable to those bonds. See Notice 2012-3, 2012-3 I.R.B. 289 (January 17, 2012) (permitting current refundings of outstanding prior issues of Gulf Opportunity Zone Bonds issued under § 1400N and outstanding prior issues under certain other disaster relief bond programs) and Notice 2003-40, 2003-27 I.R.B. 10, at Question 5 (July 7, 2003) (permitting current refundings of qualified New York Liberty Bonds issued under § 1400L).

SECTION 3. SCOPE AND APPLICATION

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

.02 Scope of Application. This Notice applies to any current refunding issue that is used (directly or indirectly in a series of current refunding issues) to refund Qualified Bonds described in Section 1 of this Notice if the following requirements are met:

(1) The original Qualified Bonds were issued before the Applicable Deadline, or any statutory extension of such deadline.

(2) Except as provided herein, the “issue price” (as defined in § 1.148-1(b)) of the current refunding issue is no greater than the outstanding stated principal amount of the refunded bonds. For refunded bonds originally issued with more than a de minimis amount of original issue discount or premium (as defined in § 1.148-1(b)), the present value of the refunded bonds (as determined under § 1.148-4(e)) must be used in lieu of the outstanding stated principal amount to determine the maximum issue price of the current refunding issue.

(3) The current refunding issue meets all applicable requirements for the issuance of tax-exempt private activity bonds as Qualified Bonds (other than the Applicable Deadline), including, without limitation, the requirement under § 147(b) that the average maturity of the bonds issued as part of such issue be no longer than 120 percent of the average reasonably expected economic life of the facilities financed or refinanced with the net proceeds of such issue.

.03 Guidance. A current refunding issue that meets the requirements of section 3.02 of this Notice may be issued after the Applicable Deadline for the issuance of the original Qualified Bonds and will be treated as an issue of Qualified Bonds. In addition, in the case of such a current refunding issue, the designation of the original Qualified Bonds by a specified State or local governmental official or state bond commission that meets the designation requirement of § 1400U-3(b)(1)(C) for Recovery Zone Facility Bonds is treated as meeting this designation requirement for the current refunding issue without further designation or further official State or local governmental action.

.04 No Inferences. Other than bonds issued to currently refund Qualified Bonds, to which this Notice expressly applies, no inference should be drawn from this Notice that bonds issued to refund other types of bonds, such as build America bonds under § 54AA, after their statutory deadline for issuance meet the qualifications for such types of bonds.

SECTION 4. DRAFTING INFORMATION

The principal author of this Notice is Zoran Stojanovic of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this Notice, contact Mr. Stojanovic at (202) 317-6980 (not a toll-free call).