

Notice 2009-29

Part III -- Administrative, Procedural, and Miscellaneous

Notice 2009-29

Qualified Energy Conservation Bond Allocations for 2009

SECTION 1. PURPOSE

This Notice sets forth the maximum face amount of qualified energy conservation bonds ("QECBs") that may be issued by each State and large local government under § 54D(e)(1) of the Internal Revenue Code. For this purpose, § 54A(e)(3) provides that the term "State" includes the District of Columbia and any possession of the United States. This Notice also provides certain interim guidance for QECBs.

SECTION 2. BACKGROUND

.01 INTRODUCTION

Section 301(a) of 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 QECBs. The Act amended § 54A(d)(1) to provide that the term "qualified tax credit bond" 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. The Act also amended § 54A(d)(2) to provide that, for purposes of § 54A(d)(2)(C), the term "qualified purpose" for a QECB means a purpose specified in § 54D(a)(1) described below.

The Act added § 54D(d) to provide a national bond limitation ("national bond volume cap") authorization for QECBs of \$800 million. 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) ("2009 Act") amended § 54D(d) to increase the national bond volume cap authorization for QECBs from \$800 million to \$3.2 billion.

.02 QUALIFIED ENERGY CONSERVATION BONDS UNDER § 54D

Section 54D(a) defines a "qualified energy conservation bond" to mean any bond issued as part of an issue if --

- (1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,

- (2) the bond is issued by a State or local government, and
- (3) the issuer designates such bond for purposes of this section.

Section 54D(b) provides that the annual credit determined under § 54A(b) with respect to any qualified energy conservation bond shall be 70 percent of the amount so determined without regard to § 54D(b).

Section 54D(c) provides that the maximum face amount of bonds 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).

Section 54D(e)(1) provides that the \$3.2 billion in total national bond volume cap shall be allocated by the Department of the Treasury among the States in proportion to the population of the States. Section 54D(e)(2)(A) provides that in the case of any State where there is a "large local government," as defined § 54D(e)(2)(C), each large local government shall be allocated a portion of the State's allocation that bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of the large local government bears to the population of the State. Section 54D(e)(2)(B) provides that the amount allocated under this subsection to a large local government may be reallocated by the large local government to the State where the large local government is located. Section 54D(e)(2)(C) provides that for purposes of § 54D, the term "large local government" means any municipality or county that has a population of 100,000 or more.

Under § 54D(e)(3), any allocation to a State or large local government shall be allocated in turn by the State or large local government to issuers within the State in a manner that results in the use of not less than 70 percent of the allocation to such State or large local government to designate bonds that are not private activity bonds.

Section 54D(f) defines the term "qualified conservation purpose" to mean any of the following:

(A) Capital expenditures incurred for purposes of (i) reducing energy consumption in publicly-owned buildings by at least 20 percent, (ii) implementing green community programs (including the use of loans, grants, or other repayment mechanisms to implement such programs), (iii) rural development involving the production of electricity from renewable energy resources, or (iv) any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).

(B) Expenditures with respect to research facilities, and research grants, to support research in (i) development of cellulosic ethanol or other nonfossil fuels, (ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels, (iii) increasing the efficiency of existing technologies for producing nonfossil fuels, (iv) automobile battery technologies

and other technologies to reduce fossil fuel consumption in transportation, or (v) technologies to reduce energy use in buildings.

(C) Mass commuting facilities and related facilities that reduce consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

(D) Demonstration projects designed to promote the commercialization of (i) green building technology, (ii) conversion of agricultural waste for use in the production of fuel or otherwise, (iii) advanced battery manufacturing technologies, (iv) technologies to reduce peak use of electricity, or (v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

(E) Public education campaigns to promote energy efficiency.

Section 54D(f)(2) provides that, in the case of any private activity bond, the term "qualified conservation purposes" shall not include any expenditure that is not a capital expenditure. New § 54D(e)(4) added by the 2009 Act provides a special rule for bonds to finance green community programs, stating that bonds issued for the purpose of providing loans, grants, or other repayment mechanisms for capital expenditures to implement green community programs are not treated as private activity bonds for purposes of § 54D(e)(3).

Section 54D(g)(1) provides that the population of any State or local government shall be determined for purposes of this section as provided in § 146(j) for 2008. Section 54D(g)(2) provides, in determining the population of any county for purposes of § 54D, for the exclusion of that portion of the county population taken into account in determining the population of any municipality that is a large local government.

Under § 54D(h), an Indian tribal government shall be treated as a large local government, except that (1) an Indian tribal government shall be treated as located within a State to the extent of so much of the population of such government as resides within the State, and (2) 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.

SECTION 3. INTERIM GUIDANCE AND RELIANCE

.01 GENERALLY

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

.02 CREDIT RATE

For QECBs issued under §§ 54A and 54D, the maximum maturity and the credit rate are determined as of the date that there is a binding, written contract for the sale or

exchange of the bond. The applicable maximum maturity, the discount rate for determining the maturity, and QCEB credit rate are published for that date by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>. For further information regarding the methodology and procedures that the Treasury Department uses to determine these credit rates, see **Notice 2009**-15, 2009-6 I.R.B. 449 (February 9, 2009).

.03 SINKING FUND YIELD

Section 54A(d)(4)(C) provides that 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 the issue if: (i) the fund is funded at a rate not more rapid than equal annual installments; (ii) the 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 under § 54A(d)(5)(B)(the "permitted 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, applicable federal rate ("AFR"), compounded semiannually, for the month in which the bond is sold. The IRS publishes the long-term adjusted AFR, compounded semiannually, each month in a revenue ruling that is 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>.

.04 INFORMATION REPORTING

Section 54A(d)(3) requires issuers of QECBs to submit information reporting returns to the IRS similar to those required to be submitted under § 149(e) for tax-exempt State or local governmental bonds. These information reporting returns are required to be submitted at the same time and in the same manner as those under § 149(e) on such forms as shall be prescribed by the IRS for such purpose. Pending further guidance from the IRS regarding the applicable forms to be used for such information reporting for QECBs, in the case of an issue of QECBs, the issuer must submit to the IRS an information return on Form 8038, at the same time and in the same manner as required under § 149(e), with modifications as described below. Issuers of QECBs should complete Part II of Form 8038 by checking Line 20c (Other), writing "QECBs" in the space provided for the bond description, and entering the issue price of the QECBs in the Issue Price column on Line 20c. For purposes of this Notice, the term "issue" has the meaning used for tax-exempt bond purposes in § 1.150-1(c) of the Income Tax Regulations.

.05 ELIGIBLE ISSUERS

Eligible issuers of QECBs include States, political subdivisions as defined for purposes of § 103, and entities empowered to issue bonds on behalf of any such entity under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for

purposes of § 103 and § 1.103-1(b) of the regulations. Further, eligible issuers include otherwise-eligible issuers in conduit financing issues (as defined in § 1.150-1(b) of the regulations). An eligible issuer may issue QECBs based on a volume cap allocation received by the eligible issuer itself or by a conduit borrower or other ultimate beneficiary of the issue of QECBs. In all events, the eligible costs for qualified conservation purposes financed with the proceeds of an issue of QECBs under § 54D(f) must relate to qualified conservation purposes that are located within or attributable to both the jurisdiction of the issuer of the QECBs and the jurisdiction of the entity authorized to allocate volume cap to an issue of QECBs for the financing of those qualified conservation purposes. Entities authorized to allocate volume cap consist of States and large local governments that receive volume cap allocations under § 54D(e). Thus, for example, a large local government that has received a volume cap allocation under § 54D(e)(2) either may issue bonds and designate them as QECBs with respect to that volume cap itself or it may be a beneficiary of proceeds of an issue of bonds issued and designated as QECBs by another eligible issuer with respect to that volume cap, provided that, in either event, the proceeds of the issue are used to finance qualified conservation purposes located within or attributable to both the jurisdiction of the issuer of the QECBs and the jurisdiction of the large local government authorized to allocate volume cap to the issue of QECBs for the financing of those qualified conservation purposes.

SECTION 4. NATIONAL BOND VOLUME CAP FOR QECBs

The national bond volume cap for QECBs is \$3.2 billion. Each State must allocate a portion of its allocation of the national bond volume cap to each large local government in the State in an amount that bears the same ratio to the State's allocation as the population of such large local government bears to the population of such State. For this purpose, § 54D(h), described above, is applicable.

The allocations set forth below were based on the most recent available state population information released by the by the United States Census Bureau before the beginning of 2009 (which consists of state population information as of July 1, 2008), which can be found at the following web site:

<http://www.census.gov/popest/states/tables/NST-EST2008-01.xls>.

In making the required reallocations of applicable portions of State allocations to large local governments, States must use population figures for large local governments within the States based on available data from the United States Census Bureau for the period that is closest in time to that used for the State and released by the Census before 2009 which consists of information as of July 1, 2007. City and county population figures are located generally at <http://www.census.gov/popest/>.

In making the required allocations to large local governments, a State shall make the required adjustments under § 54D(g)(2), described above. Further, in making the required allocations to large local governments, in the case of a State that has local political subdivisions that are not referred to as counties or cities (e.g., townships, boroughs, or parishes), the determination of whether such political subdivisions are eligible to be treated as large local governments is based on whether, in substance,

such political subdivisions are most closely analogous to counties or cities and whether they constitute uncontrolled general purpose governmental entities under § 1.150-1(e)(3)(providing that an entity is not a controlled entity if the entity possesses substantial taxing, eminent domain, and police powers).

Allocations to States of the National Bond Volume Cap for
Qualified Energy Conservation Bonds

State or Territory	QECC Allocation (in dollars)
Alabama	48,364,000
Alaska	7,120,000
Arizona	67,436,000
Arkansas	29,623,000
California	381,329,000
Colorado	51,244,000
Connecticut	36,323,000
Delaware	9,058,000
District of Columbia	6,140,000
Florida	190,146,000
Georgia	100,484,000
Hawaii	13,364,000
Idaho	15,809,000
Illinois	133,846,000
Indiana	66,155,000
Iowa	31,150,000
Kansas	29,070,000
Kentucky	44,291,000
Louisiana	45,759,000
Maine	13,657,000
Maryland	58,445,000
Massachusetts	67,413,000
Michigan	103,780,000
Minnesota	54,159,000
Mississippi	30,486,000
Missouri	61,329,000
Montana	10,037,000
Nebraska	18,502,000
Nevada	26,975,000
New Hampshire	13,651,000
New Jersey	90,078,000
New Mexico	20,587,000
New York	202,200,000
North Carolina	95,677,000
North Dakota	6,655,000
Ohio	119,160,000
Oklahoma	37,787,000
Oregon	39,320,000
Pennsylvania	129,144,000
Rhode Island	10,901,000
South Carolina	46,475,000
South Dakota	8,343,000
Tennessee	64,476,000
Texas	252,378,000
Utah	28,389,000
Vermont	6,445,000

Virginia	80,600,000
Washington	67,944,000
West Virginia	18,824,000
Wisconsin	58,387,000
Wyoming	5,526,000
American Samoa	673,000
Guam	1,826,000
Northern Marianas	899,000
Puerto Rico	41,021,000
US Virgin Islands	1,140,000
Total Allocation	3,200,000,000

SECTION 5. EFFECTIVE DATE OF VOLUME CAP LIMITATIONS.

The limitations for QECBs in Section 4 are effective for QECBs issued pursuant to the national bond volume cap after October 3, 2008.

SECTION 6. DRAFTING INFORMATION

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