

2009 DRAFTING REQUEST

Bill

Received: 12/04/2009

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Julie Lassa (608) 266-3123

By/Representing: Danielle

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact: Reed Groethe @ Foley &
Lardner

Addl. Drafters: tkuczens

Subject: Local Gov't - munis generally
Local Gov't - counties
Econ. Development - misc.

Extra Copies: EVM, CTS

Submit via email: YES

Requester's email: Sen.Lassa@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

City and county waiver of allocation of federal bond authority

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	mshovers 12/08/2009	csicilia 12/08/2009	jfrantze 12/08/2009	_____	sbasford 12/08/2009		S&L
	tkuczens 12/10/2009	csicilia 12/10/2009		_____			
	mshovers 12/10/2009			_____			

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/1	tkuczens 12/15/2009	csicilia 12/15/2009	rschluet 12/10/2009	_____	mbarman 12/10/2009		S&L
/2			pherry 12/15/2009	_____	lparisi 12/15/2009	cduerst 12/21/2009 cduerst 12/22/2009	

original jacket returned w/ errors - printed new one

FE Sent For: "/2" @ intro. 12/23/09

<END>

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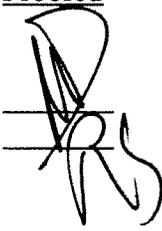
Topic:

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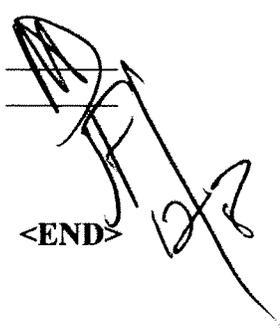
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1? mshovers

1/Pl cjs


12/8


<END>

1/Pl NES 12/6/09 12/8
09

FE Sent For:

Shovers, Marc

From: Groethe, Reed [reed.groethe@foley.com]
Sent: Friday, December 04, 2009 8:39 AM
To: Shovers, Marc
Cc: ghubbard@broydrick.com; Scalise, Michael; Templen, Lynda R. LRT (5505); Ryan, David B.; Wilson, Danielle; Kuczenski, Tracy; Sundberg, Christopher; Mueller, Eric
Subject: Draft Request Concerning Recovery Zone Facility Bond Allocation

From the Desk of: Reed Groethe



[My Location](#) [My V-card](#) [My Bio](#)

www.foley.com

Marc:

In response to your request, here are drafting instructions and answers to your specific questions. Please feel free to call me if you would like to discuss this proposed legislation.

Drafting Instructions Concerning Recovery Zone Facility Bonds

The American Recovery and Reinvestment Act of 2009 creates Section 1400U of the Internal Revenue Code, which authorizes the issuance of recovery zone facility bonds and makes an allocation of the recovery zone facility bond limitation to each county in the state and to each city in the state with a population in excess of 100,000. Section 1400U provides that if a county or city that receives an allocation waives the allocation, the state may reallocate the allocation. A system of reallocation by the state will promote the efficient and complete utilization of the recovery zone facility bond limitation in the state. In addition, when possible, financings should be issued as Midwestern disaster area bonds rather than as recovery zone facility bonds, to take advantage of the relatively plentiful resource that is available to less than all counties and to preserve the relatively scarce resource that is available to all counties.

The principal purpose of the legislation would be to provide that the counties and cities waive the allocations and to authorize the department of commerce to establish a system of reallocation. The tax code requires the county or city to be the entity that makes the waiver, so it is important that the legislation provide that the waiver is made by the counties and the cities. Ancillary changes will authorize various conduit bond issuers to request an allocation from the department of commerce and to issue bonds for qualifying projects. Thus:

- (1) The legislature should provide that each county waives its allocation of the recovery zone facility bond limitation, without the county taking any action. To the extent a county has already entered into a contract to sell bonds, no waiver as to that amount should be required, but the county should be required to notify the department of commerce.
- (2) The legislature should provide that each city that received an allocation waives its allocation of the recovery zone facility bond limitation, without the city taking any action. To the extent a city has already entered into a contract to sell bonds, no waiver as to that amount should be required, but the city should be required to notify the department of commerce.
- (3) The legislature should direct the department of commerce to administer a system for the reallocation of recovery zone facility bond limitation. The department should be authorized to establish rules relating to the reallocation of the recovery zone facility bond limitation. In making reallocations, the department should take into

12/4/2009

account the availability of Midwestern disaster area bonds as an alternative source of financing.

(4) The definition of "project" in the industrial development bond statute, section 66.1103, should be amended to include a facility with respect to which there may be issued either a recovery zone facility bond or a Midwestern disaster area bond.

(5) The intergovernmental cooperation statute, section 66.0301, should be amended to clarify that a housing authority, redevelopment authority, or a community development authority may be a party to an intergovernmental cooperation agreement (this may be helpful in connection with the issuance of recovery zone facility bonds or Midwestern disaster area bonds).

Please note:

- The intent is that the waiver will occur by enactment of the legislation, without any further action by the county or city. Because the counties and cities are creatures of the state, the legislature has the power to provide that the counties and cities are waiving the allocation.
- Because the original allocations were made earlier this year when Congress enacted ARRA, consideration needs to be given to the possibility that a county or city has already issued bonds or has committed to do so. In order to have a bond issuance or a commitment to issue bonds, the county or city would have to enter into a contract to sell bonds.
- The original allocations were made to each county and to municipalities with a population in excess of 100,000. In the state of Wisconsin, such a large population is found in only three cities and in no villages or towns.
- The possible applicants to the department of commerce for a reallocation would include any governmental entity that might issue recovery zone facility bonds (which are a type of conduit bond). Possible issuers would include a city, village, or town, a redevelopment authority, a housing authority, or a community development authority; one of the independent authorities created by the state, such as WHEFA or WHEDA; or an intergovernmental commission created by contract under s. 66.0301. A special purpose district is an unlikely issuer of conduit bonds, but many of them are described in section 66.0621 (1) (a), and it seems prudent to include them, too.

----- Forwarded Message

From: "Wilson, Danielle" <Danielle.Wilson@legis.wisconsin.gov>
Date: Thu, 3 Dec 2009 14:28:50 -0600
To: <ghubbard@broydrick.com>, "Shovers, Marc" <Marc.Shovers@legis.wisconsin.gov>
Cc: "Kuczenski, Tracy" <Tracy.Kuczenski@legis.wisconsin.gov>, "Sundberg, Christopher" <Christopher.Sundberg@legis.wisconsin.gov>, "Mueller, Eric" <Eric.Mueller@legis.wisconsin.gov>
Conversation: Draft Request-Rush
Subject: FW: Draft Request-Rush

Hi Marc,

Thank you for working on this bill. I am emailing Greg Hubbard, who will connect you with the person who actually put together the proposed language so that you can get all of the answers to your questions. I am out of the office both today and tomorrow, but can be reached on my cell phone at 212-6423 and will be checking my email periodically.

Thanks again,

Danielle

 INFO

From: Shovers, Marc

12/4/2009

Sent: Wed 12/2/2009 5:12 PM
To: Wilson, Danielle
Cc: Kuczenski, Tracy; Sundberg, Christopher; Mueller, Eric
Subject: FW: Draft Request-Rush

Hi Danielle:

Rick forwarded this to me as its mostly local government bonding, although one of my colleagues will draft the material in ch. 560.

The "draft" that was submitted is a little confusing and may be difficult to use as drafting instructions. Please have the person who prepared it submit in narrative form a description of exactly what is wanted. I have just read through the "draft" once, but I have a number of specific questions. If additional questions arise during the drafting process, should I contact you, or the author of the "draft?"

In created ss. 59.67 (1) and 66.0629, there is the following phrase: "each county [or city] shall waive, and shall be deemed to have waived . . ." What does this mean? By the use of "shall waive" do you mean that the state is requiring a city or county to adopt a resolution or enact an ordinance taking specific action, such as waiving its allocation? By the use of "shall be deemed to have waived" do you mean that by enacting the bill, the state is actually waiving any unused allocations, and no action by a city or county is required?

I'm not sure what created ss. 59.67 (2) and 66.0629 (2) mean. Please include an explanation of these subsections.

In created s. 66.0629 (1), only cities are mentioned, but in sub. (3), the phrase is "any city, village, town, special district, authority, or commission" is used. Was this intentional, or should sub. (1) also apply to villages and towns?

What is a "special district?" Do you mean "special purpose districts", such as school districts, sewerage districts, baseball park and football stadium districts? Do you also want to include other districts, such as mosquito control districts and public inland lake districts? By including "authority", do you mean to include WHEDA, WHEFA, the Dairy Authority, and the UW Hospital Authority? What kind of "commissions" does s.. 66.0629 (3) refer to?

Thanks, Danielle.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov

From: Champagne, Rick
Sent: Wednesday, December 02, 2009 1:00 PM
To: Shovers, Marc
Cc: Wilson, Danielle
Subject: FW: Draft Request-Rush

Marc:

Here's a local government bonding drafting request from Danielle Wilson in Sen. Lassa's office. Thanks.

Rick

From: Wilson, Danielle
Sent: Wednesday, December 02, 2009 11:46 AM
To: Champagne, Rick
Subject: Draft Request-Rush

Good morning,

Would you please draft a bill that reflects the proposed language in the attached document for Senator Lassa? The intent is to be able to discuss this bill at a

public hearing next Thursday, so she would appreciate this being rushed. I have attached a summary of the issue, but if you have any other questions, please let me know.

Thank you for your help.

Danielle Wilson
Office of Senator Julie Lassa
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-3123
danielle.wilson@legis.wisconsin.gov

----- End of Forwarded Message

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Coordinated Use of Federal Tax-Exempt Bond Allocations for Private Sector Development will Make Bigger Impact in Wisconsin

Two new federal statutes allow local governments in Wisconsin to issue tax-exempt bonds to assist private economic development. Tax-exempt financing can provide significant debt service savings that can be used to attract a development project and enhance its prospects.

One statute, the American Recovery and Reinvestment Act, applies to State and local governments nationwide. A separate, more targeted federal economic development statute applies to only a small number of States, and most dramatically to Wisconsin. However, to take full advantage of the tax-exempt bond financing authorized under the American Recovery and Reinvestment Act, action is needed to replace the statute's presumptive allocation system.

Recovery Zone Facility Bond Allocations are Scarce – \$238 million

The American Recovery and Reinvestment Act authorizes local governments to issue tax-exempt bonds to finance any tangible depreciable property that is used in any trade or business (other than residential rental property). The total amount of these bonds – known as “Recovery Zone Facility Bonds” – is limited, and in each State the authority is initially allocated among each county and large municipality (those with populations over 100,000).¹ Wisconsin's total allocation, for bonds issued this year or next, is approximately \$238 million. However, because that amount is divided up among Wisconsin's counties and the Cities of Milwaukee, Madison and Green Bay, most counties do not have a large enough allocation to make a tax-exempt financing cost-effective.² Nine counties have no allocation, another 28 have an allocation of less than \$1 million, and 14 more have less than \$2 million. This piece-meal allocation diminishes the availability of Recovery Zone Facility Bonds for projects that could make a significant difference to the state or local economy. An approach that provides for the allocations to be pooled and used for larger financings (where the availability of tax-exempt financing may be a deciding factor in whether or not the project gets done) would allow the State to make strategic use of this opportunity in a way that could have a much larger impact. Absent legislation it is unlikely that most of the \$238 million of available allocation will ever be used because any bonds would need to be issued by December 31, 2010. To date, there have been no Recovery Zone Facility Bonds issued in Wisconsin despite the fact that there are a number of large “shovel-ready” projects whose geographic location forecloses them from using this valuable economic tool. Consequently, hundreds or perhaps thousands of high quality jobs will not be created in the State of Wisconsin.

¹ The American Recovery and Reinvestment Act also authorizes counties and local governments to issue bonds known as “Recovery Zone Economic Development Bonds” for governmental purposes (that is, to finance their own projects, as opposed to assisting private development), and similarly allocates that authority among the same governmental units. This proposal does not include the allocations for those bonds.

² The additional up-front costs of tax-exempt industrial development bond financing as opposed to conventional financing make such bonds less effective for smaller projects than for larger projects where the costs can be spread over larger financings. Although there is no bright line, bond financings in amounts less than \$2 million generally are not cost-effective, and the savings become more apparent for financings of \$5 million or more.

Midwestern Disaster Area Bond Allocations are Abundant – \$3.8 billion

The Heartland Disaster Tax Relief Act of 2008, adopted to encourage economic recovery from the severe storms and floods of June 2008, authorizes seven states and their local governmental units to issue tax-exempt bonds, known as “Midwestern Disaster Area Bonds,” to finance nearly any real property development in certain federally-declared disaster areas. Wisconsin has the largest allocation – \$3.8 billion through 2012 for projects in thirty counties in southern Wisconsin.³ This amount is not allocated to the particular counties, but is an undivided pool available for projects designated by the Governor.

Use Abundant Resource to Conserve Scarce Resource

Not only does the large number of small allocations detract from the effectiveness of Recovery Zone Facility Bonds as an economic development tool, but under the initial allocation system most of the allocation is directed to the areas that least need it. The large majority (approximately \$160 million of the \$238 million total) of Recovery Zone Facility Bond allocations are made to counties and cities within the area covered by the Midwestern Disaster Area Bond authorization. Most projects located in that area that could be financed with Recovery Zone Facility Bonds could alternatively be financed with Midwestern Disaster Area Bonds.⁴ It seems very unlikely that there will be demand for the use of the entire \$3.8 billion of Midwestern Disaster Area Bonds through 2012. Thus, the use of Recovery Zone Facility Bonds by the counties and cities in southern Wisconsin would in most cases simply result in more of the Midwestern Disaster Area Bond authority going unused.

Aggregate Recovery Zone Facility Bond Allocations to Avoid Waste

The American Recovery and Reinvestment Act authorizes counties and municipalities to waive their Recovery Zone Facility Bond allocations, and the State to re-allocate those amounts as it sees fit. The best approach would be for all of the counties and cities to waive their allocations, thereby creating a single pool. The State could then administer these two federal allocations in a coordinated, thoughtful manner that could result in a larger number of significant projects getting low-cost financing. The Recovery Zone Facility Bond allocations, which are generally too small to make much of an impact as currently sprinkled throughout the State, could be pooled and used for those projects for which Midwestern Disaster Area Bond financing is unavailable. Used in this manner, the \$238 million could have a real impact.

³ These counties include nearly all of the southern portion of the State (generally, all counties intersected by or south of a line from LaCrosse through Oshkosh), except Lafayette County.

⁴ There are exceptions. Midwestern Disaster Area Bonds cannot be used to finance equipment, while Recovery Zone Facility Bonds can be used for that purpose. Also, the rules relating to use of bond proceeds to finance the acquisition of existing buildings differ – both types of bonds generally require rehabilitation expenditures to be made, although in most instances the requirements applicable to Midwestern Disaster Area Bonds are less burdensome.

Need for Emergency Action

There is an urgent and immediate need for emergency legislation to be considered and adopted because every day that passes increases the strong likelihood that Wisconsin will lose jobs or fail to create the new jobs which the Recovery Zone legislation was intended to stimulate. This is true because companies must issue these bonds by December 31, 2010. Failure to remedy or delay in remedying the allocation process will necessarily mean that the State will not realize the majority of the benefits afforded by this stimulus program.

2009 BILL

AN ACT to create 59.67, 66.0629, 66.1103 (2) (b) 22. and 560.033 of the statutes and to amend 66.0301 (1) (a) of the statutes; relating to: causing each county and each affected city to waive its allocation of the recovery zone facility bond limitation, directing the establishment of a system for reallocation of the recovery zone facility bond limitation, authorizing any city, village, or town to issue industrial development revenue bonds for any project that may be financed with a recovery zone facility bond or a Midwestern disaster area bond, and authorizing any housing authority, redevelopment authority, or community development authority to enter into an intergovernmental cooperation agreement.

Analysis by the Legislative Reference Bureau

This bill causes each county and each affected city to waive its allocation under federal tax law of the recovery zone facility bond limitation. Federal law provides for the allocation of the recovery zone facility bond limitation among counties and large municipalities in the state in the proportion each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in the state.

Under this bill, the department of commerce is directed to establish by rule a system for the reallocation of the recovery zone bond limitation among the cities, villages, towns, special districts, authorities, and commissions of the state, using any procedure or condition which the department deems to be in the best interest of the state.

Under current law, a city, village, or town may issue industrial development bonds for certain specified types of project. This bill adds to those any project that may be financed with a recovery zone facility bond or a Midwestern disaster area bond.

Under current law, specified types of governmental entities are authorized to enter into an intergovernmental cooperation agreement. This bill adds to those a housing authority, a redevelopment authority, and a community development authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. 59.67 of the statutes is created to read:

shall waive? **59.67 Waiver of recovery zone facility bond limitation (1)** For the purposes of section 1400U-1 (a) (3) (A) of the Internal Revenue Code [(26 USC 1400U-1 (a) (3) (A))], each county shall waive, and shall be deemed to have waived, its unused allocation of the recovery zone facility bond limitation, in order that the state may reallocate the recovery zone facility bond limitation in accordance with the system established pursuant to s. 560.033.

(2) An allocation will be treated as unused, for the purposes of this section, except with regard to the amount of issuance of a recovery zone facility bond pursuant to section 1400U-3 of the Internal Revenue Code [(26 USC 1400U-3)], based on written notice from the county to the department of commerce within 30 days after [revisor to insert the effective date of

have any counties used an portion of their allocation?

the legislation] that the county has entered into a contract for sale of such bonds before [revisor to insert the effective date of the legislation].

(3) Any county may apply for a reallocation of recovery zone facility bond limitation, in accordance with the system established pursuant to s. 560.033.

Section 2. 66.0629 of the statutes is created to read:

why just city?
66.0629 **Waiver of recovery zone facility bond limitation (1)** For the purposes of section 1400U-1 (a) (3) (A) of the Internal Revenue Code [(26 USC 1400U-1 (a) (3) (A))], each city, including a city of the first class, that has received an allocation of the recovery zone facility bond limitation shall waive, and shall be deemed to have waived, its allocation, in order that the state may reallocate the recovery zone facility bond limitation in accordance with the system established pursuant to s. 560.033.

2
(2) An allocation will be treated as unused, for the purposes of this section, except with regard to the amount of issuance of a recovery zone facility bond pursuant to section 1400U-3 of the Internal Revenue Code [(26 USC 1400U-3)], based on written notice from the city to the department of commerce within 30 days after [revisor to insert the effective date of the legislation] that the city has entered into a contract for sale of such bonds before [revisor to insert the effective date of the legislation].

(3) Any city, village, town, *2* special district, authority, or commission may apply for a reallocation of the recovery zone facility bond limitation, in accordance with the system established pursuant to s. 560.033.

Section 3. 66.1103 (2) (k) 22. is created to read:

66.1103 (2) (k) 22. Facilities with respect to which there may be issued either a recovery zone facility bond pursuant to section 1400U-3 of the Internal Revenue Code [(26 USC 1400U-3)] or a qualified Midwestern disaster area bond pursuant to section 1400N (a) of the Internal Revenue Code [(26 USC 1400N (a))], as modified and applied to s. 702 (d) (intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

Section 4. 66.0301 (1) (a) of the statutes is amended to read:

66.0301 **Intergovernmental cooperation. (1)** (a) Except as provided in pars. (b) and (c), in this section “municipality” means the state or any department or agency thereof, or any city, village, town, county, school district, public library system, public inland lake protection and rehabilitation district, sanitary district, farm drainage district, metropolitan sewerage district, sewer utility district, solid waste management system created under s. 59.70 (2), local exposition district created under subch. II of ch. 229, local professional baseball park district created under subch. III of ch. 229, local professional football stadium district created under subch. IV of ch. 229, a local cultural arts district created under subch. V of ch. 229, long-term care district under s. 46.2895, water utility district, mosquito control district, municipal electric company, county or city transit commission, commission created by contract under this section, taxation district, regional planning commission, housing authority created under s. 66.1201, redevelopment authority created under s. 66.1333, community development authority created under s. 66.1335, or city-county health department.

Section 5. 560.033 of the statutes is created to read:

560.033 Allocation of recovery zone facility bond limitation. (1) REALLOCATION. The department, by rule, shall establish under section 1400U-1 (a) (3) (A) of the Internal Revenue Code [(26 USC 1400U-1 (a) (3) (A))] and administer a system for the reallocation of the recovery zone facility bond limitation among the cities, villages, town, special districts, authorities, and commissions of the state.

(2) AMENDMENT TO REALLOCATION. At any time the department may promulgate rules to revise the reallocation system established under sub. (1), except that any revision under this subsection does not apply to any reallocation under which the recipient of that reallocation has adopted a resolution authorizing the issuance of a recovery zone facility bond, as defined in section 1400U-3 (b) of the Internal Revenue Code [(26 USC 1400U-3 (b))].

(3) CONDITIONS. The department may establish, by rule, any procedure for, and place any condition upon, the granting of a reallocation under this section which the department deems to be in the best interest of the state including, but not limited to, a requirement that a cash deposit, at a rate established by the department in the rules, be a condition for a reallocation. The department shall take into consideration, as an alternative means of financing, the issuance of qualified Midwestern disaster area bonds pursuant to section 1400N (a) of the Internal Revenue Code [26 USC 1400N (a)], as modified and applied by s. 702 (d) (intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

Note: There are multiple formats used in the Wisconsin Statutes to refer to the Internal Revenue Code. Acceptable choices for this application would include section 1400U of the Internal Revenue Code, section 1400U of the internal revenue code, and 26 USC 1400U; however, adding “as defined in s. 71.06” or a similar phrase would be inappropriate in this instance.

Sec. 1400U-1. Allocation of recovery zone bonds

Background Notes

2009 American Recovery and Reinvestment Act

Caution: Code section 1400U-1, below, as added by P.L. 111-5, applies to obligations issued after February 17, 2009.

(a) Allocations

(1) In general

(A) General allocation

The Secretary shall allocate the national recovery zone economic development bond limitation and 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 the 2008 State employment declines for all of the States.

(B) Minimum allocation

The Secretary shall adjust the allocations under subparagraph (A) for any calendar year for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the national recovery zone economic development bond limitation and 0.9 percent of the national recovery zone facility bond limitation.

(2) 2008 State employment decline

For purposes of this subsection, the term "2008 State employment decline" means, with respect to any State, the excess (if any) of--

(A) the number of individuals employed in such State determined for December 2007, over

(B) the number of individuals employed in such State determined for December 2008.

(3) Allocations by States

(A) In general

Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion to each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State. A county or municipality may waive any portion of an allocation made under this subparagraph.

(B) Large municipalities

For purposes of subparagraph (A), the term "large municipality" means a municipality with a population of more than 100,000.

(C) Determination of local employment declines

For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

(4) National limitations

(A) Recovery zone economic development bonds

There is a national recovery zone economic development bond limitation of \$10,000,000,000.

(B) Recovery zone facility bonds

There is a national recovery zone facility bond limitation of \$15,000,000,000.

(b) Recovery zone

For purposes of this part, 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 zone or renewal community is in effect.

Sec. 1400U-2. Recovery zone economic development bonds*Background Notes**2009 American Recovery and Reinvestment Act*

Caution: Code section 1400U-2, below, as added by P.L. 111-5, applies to obligations issued after February 17, 2009.

(a) In general

In the case of a recovery zone economic development bond--

- (1) such bond shall be treated as a qualified bond for purposes of section 6431, and
- (2) subsection (b) of such section shall be applied by substituting "45 percent" for "35 percent".

(b) Recovery zone economic development bond**(1) In general**

For purposes of this section, the term "recovery zone economic development bond" means any build America bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if--

(A) 100 percent of the excess of--

(i) the available project proceeds (as defined in section 54A) of such issue, over

(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for one or more qualified economic development purposes, and

(B) the issuer designates such bond for purposes of this section.

(2) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U-1.

(c) Qualified economic development purpose

For purposes of this section, the term "qualified economic development purpose" means expenditures for purposes of promoting development or other economic activity in a recovery zone, including--

- (1) capital expenditures paid or incurred with respect to property located in such zone,
- (2) expenditures for public infrastructure and construction of public facilities, and
- (3) expenditures for job training and educational programs.

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Sec. 1400U-3. Recovery zone facility bonds

Background Notes

2009 American Recovery and Reinvestment Act

Caution: Code section 1400U-3, below, as added by P.L. 111-5, applies to obligations issued after February 17, 2009.
--

(a) In general

For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term "exempt facility bond" includes any recovery zone facility bond.

(b) Recovery zone facility bond

(1) In general

For purposes of this section, the term "recovery zone facility bond" means any bond issued as part of an issue if--

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

(B) such bond is issued before January 1, 2011, and

(C) the issuer designates such bond for purposes of this section.

(2) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U-1.

(c) Recovery zone property

For purposes of this section--

(1) In general

The term "recovery zone property" means any property to which section 168 applies (or would apply but for section 179) if--

(A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in section 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 by the taxpayer in such zone.

(2) Qualified business

The term "qualified business" means any trade or business except that--

(A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)), and

(B) such term shall not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B).

(3) Special rules for substantial renovations and sale-leaseback

Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

(d) Nonapplication of certain rules

Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond.

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IRS Releases Guidance on ARRA Bond Provisions

The American Recovery & Reinvestment Act of 2009 (ARRA) created several new types of tax-exempt bonds and tax credit bonds under the Internal Revenue Code. Of particular note, the ARRA created new tax incentives for certain taxable governmental bonds called Build America Bonds and Recovery Zone Economic Development Bonds whereby the governmental issuer of such bonds may elect (in lieu of issuing tax-exempt bonds) to receive a direct refundable credit payment from the Federal government equal to a percentage of the interest payments on these bonds.

The latest guidance, forms and information on the ARRA bond provisions is available at the links below. For more information about other ARRA tax provisions, please visit [ARRA information page](#).

Build America Bonds & Recovery Zone Economic Development Bonds

[Notice 2009-50 \(Recovery Zone Bond Volume Cap Allocations\)](#)

This notice provides guidance regarding the maximum face amount of recovery zone economic development bonds and recovery zone facility bonds that may be issued by each state before January 1, 2011 under sections 1400U-2 and 1400U-3, respectively, of the Internal Revenue Code, as provided by section 1400U-1 of the Code.

The Treasury Department and the IRS recognize that the required local suballocations of the national volume cap for Recovery Zone Bonds among counties and large municipalities impose administrative burdens for the States and involve mandatory local suballocations without State discretion. Accordingly, the Treasury Department and the IRS have determined these required local suballocations to facilitate prompt availability of Recovery Zone Bonds as a source for State and local governmental borrowing at lower borrowing costs to promote job creation and economic recovery in areas particularly affected by employment declines. [Click here to access these suballocations.](#)

[Notice 2009-26 \(Build America Bonds and Direct Payment Subsidy Implementation\)](#)

This notice provides guidance on the new tax incentives for Build America Bonds under section 54AA of the Internal Revenue Code and the implementation plans for the refundable credit payment procedures for these bonds. The notice also includes guidance on the modified Build America Bond program for Recovery Zone Economic Development Bonds under section 1400U-2 of the Code.

[Form 8038-CP – Return for Credit Payments to Issuers of Qualified Bonds](#)

Governmental issuers of qualified Build America Bonds and Recovery Zone Economic Development Bonds must submit this form to request refundable credit payments payable under section 6431 of the Internal Revenue Code. [Instructions for Form 8038-CP – Return for Credit Payments to Issuers of Qualified Bonds.](#)

[IRS News Release, IR-2009-33, April 3, 2009 \(IRS Issues Guidance on New Build America Bonds\)](#)

Education Related Bond Provisions

[Notice 2009-30 \(Qualified Zone Academy Bond Allocations for 2008 and 2009\)](#)

This notice provides guidance on qualified tax credit bonds called Qualified Zone Academy Bonds (QZABs) under section 54E of the Internal Revenue Code. The notice sets forth the amount of QZABs that may be issued within each State for each of the calendar years 2008 and 2009. QZABs may be issued to finance certain expenditures relating to a qualified zone academy established by a local education agency.

[Notice 2009-35 \(Qualified School Construction Bond Allocations for 2009\)](#)

This notice provides guidance on qualified tax credit bonds called Qualified School Construction Bonds (QSCBs) under section 54F of the Internal Revenue Code. The notice sets forth the amount of QSCBs that may be issued by each State and large local education agency in 2009. QSCBs may be issued to finance certain construction and land acquisition expenditures relating to public school facilities.

Energy Related Bond Provisions

[Notice 2009-29 \(Qualified Energy Conservation Bond Allocations for 2009\)](#)

This notice provides guidance on qualified tax credit bonds called Qualified Energy Conservation Bonds (QECBs) under section 54D of the Internal Revenue Code. The notice sets forth the amount of QECBs that may be issued for each State. QECBs may be issued to finance projects designed to reduce greenhouse gas emissions.

[Notice 2009-33 \(New Clean Renewable Energy Bonds Application and Requirements\)](#)

This notice provides guidance on and solicits applications for authority to issue qualified tax credit bonds called New Clean Renewable Energy Bonds (New CREBs) under section 54C of the Internal Revenue Code to finance certain clean renewable energy facilities described under section 45(d) of the Code. There is a national limitation of \$2.4 billion of volume of New CREBs which the IRS may allocate to qualified issuers. [Application for Notice 2009-33 \(New Clean Renewable Energy Bonds\) – Rich Text Format.](#)

[IRS announces New Clean Renewable Energy Bonds Allocations](#)

[New Clean Renewable Energy Bonds 2009 Allocation Schedule](#)

[Treasury News Release on New Clean Renewable Energy Bonds Allocations](#)

Tribal Economic Development Bond Provisions

[Notice 2009-51 \(Tribal Economic Development Bonds\)](#). This notice provides guidance on and solicits applications for allocations of the \$2 billion national bond volume limitation authority ("volume cap") to issue tribal economic development bonds under new section 7871(f) of the Internal Revenue Code. [Application for Notice 2009-51 \(Tribal Economic Development Bonds\) - Rich Text Format.](#)

The IRS addressed the interaction between tribal economic development bonds and build America bonds in Office of Chief Counsel memorandum number AM2009-14.

In addition to the program announced in [Notice 2009-51](#), Tribes can also issue regular tax credit bonds to finance public school construction under a \$200 million authorization that is administered by the Department of Interior (See [Notice 2009-35](#)).

IRS Announces Tribal Economic Development Bonds Allocations

The IRS announced, in a news release ([IR-2009-81](#)), the allocation of the first \$1 billion of volume cap to Indian tribal governments under the new TEDBs program.

Allocation Schedule of 1st Tranche of Tribal Economic Development Bonds

Davis-Bacon Labor Standards Provisions

Pursuant to the American Recovery and Reinvestment Act, Division B, section 1601, Davis-Bacon labor standards must be applied to projects financed with the proceeds of the following tax-favored bonds:

1. Any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after February 17, 2009.
2. Any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after February 17, 2009.
3. Any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after February 17, 2009.
4. Any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and
5. Any recovery zone economic development bond (as defined in section 1400U-2 of the Internal Revenue Code of 1986).

The Davis-Bacon contract clauses stated in 29 CFR 5.5(a)(1) through (10) must be incorporated into covered contracts for construction, alteration, or repair work. Additional information regarding the application of Davis-Bacon labor standards is available at the U.S. Department of Labor Wage and Hour Division website at www.dol.gov/esa/whd/recovery/

Page Last Reviewed or Updated: November 09, 2009

Kuczenski, Tracy

From: Groethe, Reed [reed.groethe@foley.com]
Sent: Monday, December 07, 2009 11:07 AM
To: Kuczenski, Tracy
Cc: Ryan, David B.
Subject: Recovery Zone Facility Bonds
Attachments: [Untitled].PDF

From the Desk of: Reed Groethe



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www.foley.com

Tracy:

Here are the two pages from the American Recovery and Reinvestment Act of 2009 that include Section 1401 (which creates Section 1400U-1, 1400U-2, and 1400U-3 of the Internal Revenue Code).



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12/7/2009

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"(1) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

"(iii) **SPECIAL RULES FOR BONDS ISSUED IN 2009 AND 2010.**—In the case of any issue made after the date of enactment of this clause and before January 1, 2011, clause (ii) shall not apply and the net proceeds from a bond shall be considered to be used to provide a manufacturing facility if such proceeds are used to provide—

"(1) a facility which is used in the creation or production of intangible property which is described in section 197(d)(1)(C)(iii), or

"(ii) a facility which is functionally related and subordinate to a manufacturing facility (determined without regard to this subclause) if such facility is located on the same site as the manufacturing facility."

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 1303. CREDIT FOR INVESTMENT IN ADVANCED ENERGY FACILITIES.

(a) **IN GENERAL.**—Section 46 (relating to amount of credit) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4), and by adding at the end the following new paragraph:

"(5) the qualifying advanced energy project credit."

(b) **AMOUNT OF CREDIT.**—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48B the following new section:

"SEC. 48C. QUALIFYING ADVANCED ENERGY PROJECT CREDIT.

"(a) **IN GENERAL.**—For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

"(b) **QUALIFIED INVESTMENT.**—

"(1) **IN GENERAL.**—For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project.

"(2) **CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.**—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

"(3) **LIMITATION.**—The amount which is treated for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

"(c) **DEFINITIONS.**—

"(1) **QUALIFYING ADVANCED ENERGY PROJECT.**—

"(A) **IN GENERAL.**—The term 'qualifying advanced energy project' means a project—

"(i) which re-equips, expands, or establishes a manufacturing facility for the production of—

"(I) property designed to be used to produce energy from the sun, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

"(II) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,

"(III) electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy,

"(IV) property designed to capture and sequester carbon dioxide emissions,

"(V) property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies),

"(VI) new qualified plug-in electric drive motor vehicles (as defined by section 30D), qualified plug-in electric vehicles (as defined by

section 30(d)), or components which are designed specifically for use with such vehicles, including electric motors, generators, and power control units, or

"(VII) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary, and

"(ii) any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.

"(B) **EXCEPTION.**—Such term shall not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels).

"(2) **ELIGIBLE PROPERTY.**—The term 'eligible property' means any property—

"(A) which is necessary for the production of property described in paragraph (1)(A)(i),

"(B) which is—

"(i) tangible personal property, or

"(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

"(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

"(d) **QUALIFYING ADVANCED ENERGY PROJECT PROGRAM.**—

"(1) **ESTABLISHMENT.**—

"(A) **IN GENERAL.**—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

"(B) **LIMITATION.**—The total amount of credits that may be allocated under the program shall not exceed \$2,300,000,000.

"(2) **CERTIFICATION.**—

"(A) **APPLICATION PERIOD.**—Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the 2-year period beginning on the date the Secretary establishes the program under paragraph (1).

"(B) **TIME TO MEET CRITERIA FOR CERTIFICATION.**—Each applicant for certification shall have 1 year from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

"(C) **PERIOD OF ISSUANCE.**—An applicant which receives a certification shall have 3 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period, then the certification shall no longer be valid.

"(3) **SELECTION CRITERIA.**—In determining which qualifying advanced energy projects to certify under this section, the Secretary—

"(A) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

"(B) shall take into consideration which projects—

"(i) will provide the greatest domestic job creation (both direct and indirect) during the credit period,

"(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

"(iii) have the greatest potential for technological innovation and commercial deployment,

"(iv) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and

"(v) have the shortest project time from certification to completion.

"(4) **REVIEW AND REDISTRIBUTION.**—

"(A) **REVIEW.**—Not later than 4 years after the date of enactment of this section, the Sec-

retary shall review the credits allocated under this section as of such date.

"(B) **REDISTRIBUTION.**—The Secretary may reallocate credits awarded under this section if the Secretary determines that—

"(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

"(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

"(C) **REALLOCATION.**—If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

"(5) **DISCLOSURE OF ALLOCATIONS.**—The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

"(e) **DENIAL OF DOUBLE BENEFIT.**—A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, or 48B."

(c) **CONFORMING AMENDMENTS.**—

(1) Section 49(a)(1)(C) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding after clause (iv) the following new clause:

"(v) the basis of any property which is part of a qualifying advanced energy project under section 48C."

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48B the following new item:

"48C. Qualifying advanced energy project credit."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to periods after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

Subtitle E—Economic Recovery Tools

SEC. 1401. RECOVERY ZONE BONDS.

(a) **IN GENERAL.**—Subchapter Y of chapter 1 is amended by adding at the end the following new part:

"PART III—RECOVERY ZONE BONDS

"Sec. 1400U-1. Allocation of recovery zone bonds.

"Sec. 1400U-2. Recovery zone economic development bonds.

"Sec. 1400U-3. Recovery zone facility bonds.

"SEC. 1400U-1. ALLOCATION OF RECOVERY ZONE BONDS.

"(a) **ALLOCATIONS.**—

"(1) **IN GENERAL.**—

"(A) **GENERAL ALLOCATION.**—The Secretary shall allocate the national recovery zone economic development bond limitation and 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 the 2008 State employment declines for all of the States.

"(B) **MINIMUM ALLOCATION.**—The Secretary shall adjust the allocations under subparagraph (A) for any calendar year for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the national recovery zone economic development bond limitation and 0.9 percent of the national recovery zone facility bond limitation.

"(2) **2008 STATE EMPLOYMENT DECLINE.**—For purposes of this subsection, the term '2008 State employment decline' means, with respect to any State, the excess (if any) of—

"(A) the number of individuals employed in such State determined for December 2007, over

"(B) the number of individuals employed in such State determined for December 2008.

"(3) ALLOCATIONS BY STATES.—

"(A) IN GENERAL.—Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion to each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State. A county or municipality may waive any portion of an allocation made under this subparagraph.

"(B) LARGE MUNICIPALITIES.—For purposes of subparagraph (A), the term 'large municipality' means a municipality with a population of more than 100,000.

"(C) DETERMINATION OF LOCAL EMPLOYMENT DECLINES.—For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

"(4) NATIONAL LIMITATIONS.—

"(A) RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.—There is a national recovery zone economic development bond limitation of \$10,000,000,000.

"(B) RECOVERY ZONE FACILITY BONDS.—There is a national recovery zone facility bond limitation of \$15,000,000,000.

"(b) RECOVERY ZONE.—For purposes of this part, 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 zone or renewal community is in effect.

"SEC. 1400U-2. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS.

"(a) IN GENERAL.—In the case of a recovery zone economic development bond—

"(1) such bond shall be treated as a qualified bond for purposes of section 5431, and

"(2) subsection (b) of such section shall be applied by substituting '45 percent' for '35 percent'.

"(b) RECOVERY ZONE ECONOMIC DEVELOPMENT BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone economic development bond' means any build America bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if—

"(A) 100 percent of the excess of—

"(i) the available project proceeds (as defined in section 54A) of such issue, over

"(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for one or more qualified economic development purposes, and

"(B) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U-1.

"(c) QUALIFIED ECONOMIC DEVELOPMENT PURPOSE.—For purposes of this section, the term 'qualified economic development purpose' means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

"(1) capital expenditures paid or incurred with respect to property located in such zone,

"(2) expenditures for public infrastructure and construction of public facilities, and

"(3) expenditures for job training and educational programs.

"SEC. 1400U-3. RECOVERY ZONE FACILITY BONDS.

"(a) IN GENERAL.—For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term 'exempt facility bond' includes any recovery zone facility bond.

"(b) RECOVERY ZONE FACILITY BOND.—

"(1) IN GENERAL.—For purposes of this section, the term 'recovery zone facility bond' means any bond issued as part of an issue if—

"(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

"(B) such bond is issued before January 1, 2011, and

"(C) the issuer designates such bond for purposes of this section.

"(2) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U-1.

"(c) RECOVERY ZONE PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'recovery zone property' means any property to which section 168 applies (or would apply but for section 179) if—

"(A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in section 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 by the taxpayer in such zone.

"(2) QUALIFIED BUSINESS.—The term 'qualified business' means any trade or business except that—

"(A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)), and

"(B) such term shall not include any trade or business consisting of the operation of any facility described in section 144(c)(8)(B).

"(3) SPECIAL RULES FOR SUBSTANTIAL RENOVATIONS AND SALE-LEASEBACK.—Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

"(d) NONAPPLICATION OF CERTAIN RULES.—Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond."

"(b) CLERICAL AMENDMENT.—The table of parts for subchapter Y of chapter 1 of such Code is amended by adding at the end the following new item:

"PART III. RECOVERY ZONE BONDS."

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

"SEC. 1408. TRIBAL ECONOMIC DEVELOPMENT BONDS.

"(a) IN GENERAL.—Section 7871 is amended by adding at the end the following new subsection:

"(f) TRIBAL ECONOMIC DEVELOPMENT BONDS.—

"(1) ALLOCATION OF LIMITATION.—

"(A) IN GENERAL.—The Secretary shall allocate the national tribal economic development bond limitation among the Indian tribal governments in such manner as the Secretary, in consultation with the Secretary of the Interior, determines appropriate.

"(B) NATIONAL LIMITATION.—There is a national tribal economic development bond limitation of \$2,000,000,000.

"(2) BONDS TREATED AS EXEMPT FROM TAX.—In the case of a tribal economic development bond—

"(A) notwithstanding subsection (c), such bond shall be treated for purposes of this title in the same manner as if such bond were issued by a State,

"(B) the Indian tribal government issuing such bond and any instrumentality of such Indian tribal government shall be treated as a State for purposes of section 141, and

"(C) section 146 shall not apply.

"(3) TRIBAL ECONOMIC DEVELOPMENT BOND.—

"(A) IN GENERAL.—For purposes of this section, the term 'tribal economic development bond' means any bond issued by an Indian tribal government—

"(i) the interest on which would be exempt from tax under section 103 if issued by a State or local government, and

"(ii) which is designated by the Indian tribal government as a tribal economic development bond for purposes of this subsection.

"(B) EXCEPTIONS.—Such term shall not include any bond issued as part of an issue if any portion of the proceeds of such issue are used to finance—

"(i) any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually used in the conduct of such gaming, or

"(ii) any facility located outside the Indian reservation (as defined in section 168(j)(6)).

"(C) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national tribal economic development bond limitation allocated to such government under paragraph (1)."

"(b) STUDY.—The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the effects of the amendment made by subsection (a). Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the study conducted under this paragraph, including the Secretary's recommendations regarding such amendment.

"(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

"SEC. 1409. INCREASE IN NEW MARKETS TAX CREDIT.

"(a) IN GENERAL.—Section 45D(f)(1) is amended—

"(1) by striking "and" at the end of subparagraph (C),

"(2) by striking "2007, 2008, and 2009." in subparagraph (D), and inserting "and 2007," and

"(3) by adding at the end the following new subparagraphs:

"(E) \$5,000,000 for 2008, and

"(F) \$5,000,000,000 for 2009."

"(b) SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION.—The amount of the increase in the new markets tax credit limitation for calendar year 2008 by reason of the amendments made by subsection (a) shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

"(1) submitted an allocation application with respect to calendar year 2008, and

"(2)(A) did not receive an allocation for such calendar year, or

"(B) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.

(b) EXTENSION.—

(1) **IN GENERAL.**—Section 4611(f) (relating to application of Oil Spill Liability Trust Fund financing rate) is amended by striking paragraphs (2) and (3) and inserting the following new paragraph: 26 USC 4611.

“(2) **TERMINATION.**—The Oil Spill Liability Trust Fund financing rate shall not apply after December 31, 2017.”

(2) **CONFORMING AMENDMENT.**—Section 4611(f)(1) is amended by striking “paragraphs (2) and (3)” and inserting “paragraph (2)”.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect on the date of the enactment of this Act. 26 USC 4611 note.

DIVISION C—TAX EXTENDERS AND ALTERNATIVE MINIMUM TAX RELIEF

Tax Extenders
and Alternative
Minimum Tax
Relief Act
of 2008.

SEC. 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This division may be cited as the “Tax Extenders and Alternative Minimum Tax Relief Act of 2008”. 26 USC 1 note.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—The table of contents of this division is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—ALTERNATIVE MINIMUM TAX RELIEF

Sec. 101. Extension of alternative minimum tax relief for nonrefundable personal credits.

Sec. 102. Extension of increased alternative minimum tax exemption amount.

Sec. 103. Increase of AMT refundable credit amount for individuals with long-term unused credits for prior year minimum tax liability, etc.

TITLE II—EXTENSION OF INDIVIDUAL TAX PROVISIONS

Sec. 201. Deduction for State and local sales taxes.

Sec. 202. Deduction of qualified tuition and related expenses.

Sec. 203. Deduction for certain expenses of elementary and secondary school teachers.

Sec. 204. Additional standard deduction for real property taxes for nonitemizers.

Sec. 205. Tax-free distributions from individual retirement plans for charitable purposes.

Sec. 206. Treatment of certain dividends of regulated investment companies.

Sec. 207. Stock in RIC for purposes of determining estates of nonresidents not citizens.

Sec. 208. Qualified investment entities.

TITLE III—EXTENSION OF BUSINESS TAX PROVISIONS

Sec. 301. Extension and modification of research credit.

Sec. 302. New markets tax credit.

Sec. 303. Subpart F exception for active financing income.

Sec. 304. Extension of look-thru rule for related controlled foreign corporations.

Sec. 305. Extension of 15-year straight-line cost recovery for qualified leasehold improvements and qualified restaurant improvements; 15-year straight-line cost recovery for certain improvements to retail space.

Sec. 306. Modification of tax treatment of certain payments to controlling exempt organizations.

- Sec. 307. Basis adjustment to stock of S corporations making charitable contributions of property.
- Sec. 308. Increase in limit on cover over of rum excise tax to Puerto Rico and the Virgin Islands.
- Sec. 309. Extension of economic development credit for American Samoa.
- Sec. 310. Extension of mine rescue team training credit.
- Sec. 311. Extension of election to expense advanced mine safety equipment.
- Sec. 312. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
- Sec. 313. Qualified zone academy bonds.
- Sec. 314. Indian employment credit.
- Sec. 315. Accelerated depreciation for business property on Indian reservations.
- Sec. 316. Railroad track maintenance.
- Sec. 317. Seven-year cost recovery period for motorsports racing track facility.
- Sec. 318. Expensing of environmental remediation costs.
- Sec. 319. Extension of work opportunity tax credit for Hurricane Katrina employees.
- Sec. 320. Extension of increased rehabilitation credit for structures in the Gulf Opportunity Zone.
- Sec. 321. Enhanced deduction for qualified computer contributions.
- Sec. 322. Tax incentives for investment in the District of Columbia.
- Sec. 323. Enhanced charitable deductions for contributions of food inventory.
- Sec. 324. Extension of enhanced charitable deduction for contributions of book inventory.
- Sec. 325. Extension and modification of duty suspension on wool products; wool research fund; wool duty refunds.

TITLE IV—EXTENSION OF TAX ADMINISTRATION PROVISIONS

- Sec. 401. Permanent authority for undercover operations.
- Sec. 402. Permanent authority for disclosure of information relating to terrorist activities.

TITLE V—ADDITIONAL TAX RELIEF AND OTHER TAX PROVISIONS

Subtitle A—General Provisions

- Sec. 501. \$8,500 income threshold used to calculate refundable portion of child tax credit.
- Sec. 502. Provisions related to film and television productions.
- Sec. 503. Exemption from excise tax for certain wooden arrows designed for use by children.
- Sec. 504. Income averaging for amounts received in connection with the Exxon Valdez litigation.
- Sec. 505. Certain farming business machinery and equipment treated as 5-year property.
- Sec. 506. Modification of penalty on understatement of taxpayer's liability by tax return preparer.

Subtitle B—Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008

- Sec. 511. Short title.
- Sec. 512. Mental health parity.

TITLE VI—OTHER PROVISIONS

- Sec. 601. Secure rural schools and community self-determination program.
- Sec. 602. Transfer to abandoned mine reclamation fund.

TITLE VII—DISASTER RELIEF

Subtitle A—Heartland and Hurricane Ike Disaster Relief

- Sec. 701. Short title.
- Sec. 702. Temporary tax relief for areas damaged by 2008 Midwestern severe storms, tornados, and flooding.
- Sec. 703. Reporting requirements relating to disaster relief contributions.
- Sec. 704. Temporary tax-exempt bond financing and low-income housing tax relief for areas damaged by Hurricane Ike.

Subtitle B—National Disaster Relief

- Sec. 706. Losses attributable to federally declared disasters.
- Sec. 707. Expensing of Qualified Disaster Expenses.
- Sec. 708. Net operating losses attributable to federally declared disasters.

- Sec. 709. Waiver of certain mortgage revenue bond requirements following federally declared disasters.
 Sec. 710. Special depreciation allowance for qualified disaster property.
 Sec. 711. Increased expensing for qualified disaster assistance property.
 Sec. 712. Coordination with Heartland disaster relief.

TITLE VIII—SPENDING REDUCTIONS AND APPROPRIATE REVENUE
 RAISERS FOR NEW TAX RELIEF POLICY

- Sec. 801. Nonqualified deferred compensation from certain tax indifferent parties.

**TITLE I—ALTERNATIVE MINIMUM TAX
 RELIEF**

**SEC. 101. EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR
 NONREFUNDABLE PERSONAL CREDITS.**

- (a) **IN GENERAL.**—Paragraph (2) of section 26(a) (relating to special rule for taxable years 2000 through 2007) is amended—
 (1) by striking “or 2007” and inserting “2007, or 2008”,
 and
 (2) by striking “2007” in the heading thereof and inserting “2008”. 26 USC 26.

- (b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2007. 26 USC 26 note.

**SEC. 102. EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX
 EXEMPTION AMOUNT.**

- (a) **IN GENERAL.**—Paragraph (1) of section 55(d) (relating to exemption amount) is amended—

(1) by striking “(\$66,250 in the case of taxable years beginning in 2007)” in subparagraph (A) and inserting “(\$69,950 in the case of taxable years beginning in 2008)”, and

(2) by striking “(\$44,350 in the case of taxable years beginning in 2007)” in subparagraph (B) and inserting “(\$46,200 in the case of taxable years beginning in 2008)”.

- (b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2007. 26 USC 55 note.

**SEC. 103. INCREASE OF AMT REFUNDABLE CREDIT AMOUNT FOR
 INDIVIDUALS WITH LONG-TERM UNUSED CREDITS FOR
 PRIOR YEAR MINIMUM TAX LIABILITY, ETC.**

- (a) **IN GENERAL.**—Paragraph (2) of section 53(e) is amended to read as follows:

“(2) **AMT REFUNDABLE CREDIT AMOUNT.**—For purposes of paragraph (1), the term ‘AMT refundable credit amount’ means, with respect to any taxable year, the amount (not in excess of the long-term unused minimum tax credit for such taxable year) equal to the greater of—

“(A) 50 percent of the long-term unused minimum tax credit for such taxable year, or

“(B) the amount (if any) of the AMT refundable credit amount determined under this paragraph for the taxpayer’s preceding taxable year (determined without regard to subsection (f)(2)).”

- (b) **TREATMENT OF CERTAIN UNDERPAYMENTS, INTEREST, AND PENALTIES ATTRIBUTABLE TO THE TREATMENT OF INCENTIVE STOCK OPTIONS.**—Section 53 is amended by adding at the end the following new subsection:

inserting “\$9,000,000 on October 1, 2009, and \$9,000,000 on October 1, 2010”.

TITLE VII—DISASTER RELIEF

Subtitle A—Heartland and Hurricane Ike Disaster Relief

Heartland
Disaster Tax
Relief Act
of 2008.

26 USC 1 note.

SEC. 701. SHORT TITLE.

This subtitle may be cited as the “Heartland Disaster Tax Relief Act of 2008”.

SEC. 702. TEMPORARY TAX RELIEF FOR AREAS DAMAGED BY 2008 MIDWESTERN SEVERE STORMS, TORNADOS, AND FLOODING.

Applicability.

(a) **IN GENERAL.**—Subject to the modifications described in this section, the following provisions of or relating to the Internal Revenue Code of 1986 shall apply to any Midwestern disaster area in addition to the areas to which such provisions otherwise apply:

(1) **GO ZONE BENEFITS.**—

(A) Section 1400N (relating to tax benefits) other than subsections (b), (d), (e), (i), (j), (m), and (o) thereof.

(B) Section 1400O (relating to education tax benefits).

(C) Section 1400P (relating to housing tax benefits).

(D) Section 1400Q (relating to special rules for use of retirement funds).

(E) Section 1400R(a) (relating to employee retention credit for employers).

(F) Section 1400S (relating to additional tax relief) other than subsection (d) thereof.

(G) Section 1400T (relating to special rules for mortgage revenue bonds).

(2) **OTHER BENEFITS INCLUDED IN KATRINA EMERGENCY TAX RELIEF ACT OF 2005.**—Sections 302, 303, 304, 401, and 405 of the Katrina Emergency Tax Relief Act of 2005.

(b) **MIDWESTERN DISASTER AREA.**—

(1) **IN GENERAL.**—For purposes of this section and for applying the substitutions described in subsections (d) and (e), the term “Midwestern disaster area” means an area—

(A) with respect to which a major disaster has been declared by the President on or after May 20, 2008, and before August 1, 2008, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of severe storms, tornados, or flooding occurring in any of the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin, and

(B) determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act with respect to damages attributable to such severe storms, tornados, or flooding.

Applicability.

(2) **CERTAIN BENEFITS AVAILABLE TO AREAS ELIGIBLE ONLY FOR PUBLIC ASSISTANCE.**—For purposes of applying this section to benefits under the following provisions, paragraph (1) shall be applied without regard to subparagraph (B):

(A) Sections 1400Q, 1400S(b), and 1400S(d) of the Internal Revenue Code of 1986.

(B) Sections 302, 401, and 405 of the Katrina Emergency Tax Relief Act of 2005.

(c) REFERENCES.—

(1) AREA.—Any reference in such provisions to the Hurricane Katrina disaster area or the Gulf Opportunity Zone shall be treated as a reference to any Midwestern disaster area and any reference to the Hurricane Katrina disaster area or the Gulf Opportunity Zone within a State shall be treated as a reference to all Midwestern disaster areas within the State.

(2) ITEMS ATTRIBUTABLE TO DISASTER.—Any reference in such provisions to any loss, damage, or other item attributable to Hurricane Katrina shall be treated as a reference to any loss, damage, or other item attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (b)(1)(A).

(3) APPLICABLE DISASTER DATE.—For purposes of applying the substitutions described in subsections (d) and (e), the term “applicable disaster date” means, with respect to any Midwestern disaster area, the date on which the severe storms, tornados, or flooding giving rise to the Presidential declaration described in subsection (b)(1)(A) occurred.

(d) MODIFICATIONS TO 1986 CODE.—The following provisions of the Internal Revenue Code of 1986 shall be applied with the following modifications:

Applicability.

(1) TAX-EXEMPT BOND FINANCING.—Section 1400N(a)—

(A) by substituting “qualified Midwestern disaster area bond” for “qualified Gulf Opportunity Zone Bond” each place it appears, except that in determining whether a bond is a qualified Midwestern disaster area bond—

(i) paragraph (2)(A)(i) shall be applied by only treating costs as qualified project costs if—

(I) in the case of a project involving a private business use (as defined in section 141(b)(6)), either the person using the property suffered a loss in a trade or business attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (b)(1)(A) or is a person designated for purposes of this section by the Governor of the State in which the project is located as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such a loss, and

(II) in the case of a project relating to public utility property, the project involves repair or reconstruction of public utility property damaged by such severe storms, tornados, or flooding, and

(ii) paragraph (2)(A)(ii) shall be applied by treating an issue as a qualified mortgage issue only if 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of the issue are to be used to provide financing for mortgagors who suffered damages to their principal residences attributable to such severe storms, tornados, or flooding.

(B) by substituting “any State in which a Midwestern disaster area is located” for “the State of Alabama, Louisiana, or Mississippi” in paragraph (2)(B),

(C) by substituting “designated for purposes of this section (on the basis of providing assistance to areas in the order in which such assistance is most needed)” for “designated for purposes of this section” in paragraph (2)(C),

(D) by substituting “January 1, 2013” for “January 1, 2011” in paragraph (2)(D),

(E) in paragraph (3)(A)—

(i) by substituting “\$1,000” for “\$2,500”, and

(ii) by substituting “before the earliest applicable disaster date for Midwestern disaster areas within the State” for “before August 28, 2005”,

(F) by substituting “qualified Midwestern disaster area repair or construction” for “qualified GO Zone repair or construction” each place it appears,

(G) by substituting “after the date of the enactment of the Heartland Disaster Tax Relief Act of 2008 and before January 1, 2013” for “after the date of the enactment of this paragraph and before January 1, 2011” in paragraph (7)(C), and

(H) by disregarding paragraph (8) thereof.

(2) **LOW-INCOME HOUSING CREDIT.**—Section 1400N(c)—

(A) only with respect to calendar years 2008, 2009, and 2010,

(B) by substituting “Disaster Recovery Assistance housing amount” for “Gulf Opportunity housing amount” each place it appears,

(C) in paragraph (1)(B)—

(i) by substituting “\$8.00” for “\$18.00”, and

(ii) by substituting “before the earliest applicable disaster date for Midwestern disaster areas within the State” for “before August 28, 2005”, and

(D) determined without regard to paragraphs (2), (3), (4), (5), and (6) thereof.

(3) **EXPENSING FOR CERTAIN DEMOLITION AND CLEAN-UP COSTS.**—Section 1400N(f)—

(A) by substituting “qualified Disaster Recovery Assistance clean-up cost” for “qualified Gulf Opportunity Zone clean-up cost” each place it appears,

(B) by substituting “beginning on the applicable disaster date and ending on December 31, 2010” for “beginning on August 28, 2005, and ending on December 31, 2007” in paragraph (2), and

(C) by treating costs as qualified Disaster Recovery Assistance clean-up costs only if the removal of debris or demolition of any structure was necessary due to damage attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (b)(1)(A).

(4) **EXTENSION OF EXPENSING FOR ENVIRONMENTAL REMEDIATION COSTS.**—Section 1400N(g)—

(A) by substituting “the applicable disaster date” for “August 28, 2005” each place it appears,

(B) by substituting “January 1, 2011” for “January 1, 2008” in paragraph (1),

(C) by substituting “December 31, 2010” for “December 31, 2007” in paragraph (1), and

(D) by treating a site as a qualified contaminated site only if the release (or threat of release) or disposal of a hazardous substance at the site was attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (b)(1)(A).

(5) INCREASE IN REHABILITATION CREDIT.—Section 1400N(h), as amended by this Act—

(A) by substituting “the applicable disaster date” for “August 28, 2005”,

(B) by substituting “December 31, 2011” for “December 31, 2009” in paragraph (1), and

(C) by only applying such subsection to qualified rehabilitation expenditures with respect to any building or structure which was damaged or destroyed as a result of the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (b)(1)(A).

(6) TREATMENT OF NET OPERATING LOSSES ATTRIBUTABLE TO DISASTER LOSSES.—Section 1400N(k)—

(A) by substituting “qualified Disaster Recovery Assistance loss” for “qualified Gulf Opportunity Zone loss” each place it appears,

(B) by substituting “after the day before the applicable disaster date, and before January 1, 2011” for “after August 27, 2005, and before January 1, 2008” each place it appears,

(C) by substituting “the applicable disaster date” for “August 28, 2005” in paragraph (2)(B)(ii)(I),

(D) by substituting “qualified Disaster Recovery Assistance property” for “qualified Gulf Opportunity Zone property” in paragraph (2)(B)(iv), and

(E) by substituting “qualified Disaster Recovery Assistance casualty loss” for “qualified Gulf Opportunity Zone casualty loss” each place it appears.

(7) CREDIT TO HOLDERS OF TAX CREDIT BONDS.—Section 1400N(l)—

(A) by substituting “Midwestern tax credit bond” for “Gulf tax credit bond” each place it appears,

(B) by substituting “any State in which a Midwestern disaster area is located or any instrumentality of the State” for “the State of Alabama, Louisiana, or Mississippi” in paragraph (4)(A)(i),

(C) by substituting “after December 31, 2008 and before January 1, 2010” for “after December 31, 2005, and before January 1, 2007”,

(D) by substituting “shall not exceed \$100,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 2,000,000, \$50,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 1,000,000 but less than 2,000,000, and zero for any other State. The population of a State within any area shall be determined on the basis of the most recent census estimate of resident population released

by the Bureau of Census before the earliest applicable disaster date for Midwestern disaster areas within the State.” for “shall not exceed” and all that follows in paragraph (4)(C), and

(E) by substituting “the earliest applicable disaster date for Midwestern disaster areas within the State” for “August 28, 2005” in paragraph (5)(A).

(8) EDUCATION TAX BENEFITS.—Section 1400O, by substituting “2008 or 2009” for “2005 or 2006”.

(9) HOUSING TAX BENEFITS.—Section 1400P, by substituting “the applicable disaster date” for “August 28, 2005” in subsection (c)(1).

(10) SPECIAL RULES FOR USE OF RETIREMENT FUNDS.—Section 1400Q—

(A) by substituting “qualified Disaster Recovery Assistance distribution” for “qualified hurricane distribution” each place it appears,

(B) by substituting “on or after the applicable disaster date and before January 1, 2010” for “on or after August 25, 2005, and before January 1, 2007” in subsection (a)(4)(A)(i),

(C) by substituting “the applicable disaster date” for “August 28, 2005” in subsections (a)(4)(A)(i) and (c)(3)(B),

(D) by disregarding clauses (ii) and (iii) of subsection (a)(4)(A) thereof,

(E) by substituting “qualified storm damage distribution” for “qualified Katrina distribution” each place it appears,

(F) by substituting “after the date which is 6 months before the applicable disaster date and before the date which is the day after the applicable disaster date” for “after February 28, 2005, and before August 29, 2005” in subsection (b)(2)(B)(ii),

(G) by substituting “the Midwestern disaster area, but not so purchased or constructed on account of severe storms, tornados, or flooding giving rise to the designation of the area as a disaster area” for “the Hurricane Katrina disaster area, but not so purchased or constructed on account of Hurricane Katrina” in subsection (b)(2)(B)(iii),

(H) by substituting “beginning on the applicable disaster date and ending on the date which is 5 months after the date of the enactment of the Heartland Disaster Tax Relief Act of 2008” for “beginning on August 25, 2005, and ending on February 28, 2006” in subsection (b)(3)(A),

(I) by substituting “qualified storm damage individual” for “qualified Hurricane Katrina individual” each place it appears,

(J) by substituting “December 31, 2009” for “December 31, 2006” in subsection (c)(2)(A),

(K) by disregarding subparagraphs (C) and (D) of subsection (c)(3) thereof,

(L) by substituting “beginning on the date of the enactment of the Heartland Disaster Tax Relief Act of 2008 and ending on December 31, 2009” for “beginning on September 24, 2005, and ending on December 31, 2006” in subsection (c)(4)(A)(i),

(M) by substituting “the applicable disaster date” for “August 25, 2005” in subsection (c)(4)(A)(ii), and

(N) by substituting “January 1, 2010” for “January 1, 2007” in subsection (d)(2)(A)(ii).

(11) EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY SEVERE STORMS, TORNADOS, AND FLOODING.—Section 1400R(a)—

(A) by substituting “the applicable disaster date” for “August 28, 2005” each place it appears,

(B) by substituting “January 1, 2009” for “January 1, 2006” both places it appears, and

(C) only with respect to eligible employers who employed an average of not more than 200 employees on business days during the taxable year before the applicable disaster date.

(12) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Section 1400S(a), by substituting the following paragraph for paragraph (4) thereof:

“(4) QUALIFIED CONTRIBUTIONS.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified contribution’ means any charitable contribution (as defined in section 170(c)) if—

“(i) such contribution—

“(I) is paid during the period beginning on the earliest applicable disaster date for all States and ending on December 31, 2008, in cash to an organization described in section 170(b)(1)(A), and

“(II) is made for relief efforts in 1 or more Midwestern disaster areas,

“(ii) the taxpayer obtains from such organization contemporaneous written acknowledgment (within the meaning of section 170(f)(8)) that such contribution was used (or is to be used) for relief efforts in 1 or more Midwestern disaster areas, and

“(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

“(B) EXCEPTION.—Such term shall not include a contribution by a donor if the contribution is—

“(i) to an organization described in section 509(a)(3), or

“(ii) for establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)).

“(C) APPLICATION OF ELECTION TO PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.”

(13) SUSPENSION OF CERTAIN LIMITATIONS ON PERSONAL CASUALTY LOSSES.—Section 1400S(b)(1), by substituting “the applicable disaster date” for “August 25, 2005”.

(14) SPECIAL RULE FOR DETERMINING EARNED INCOME.—Section 1400S(d)—

(A) by treating an individual as a qualified individual if such individual’s principal place of abode on the applicable disaster date was located in a Midwestern disaster area,

(B) by treating the applicable disaster date with respect to any such individual as the applicable date for purposes of such subsection, and

(C) by treating an area as described in paragraph (2)(B)(ii) thereof if the area is a Midwestern disaster area only by reason of subsection (b)(2) of this section (relating to areas eligible only for public assistance).

(15) ADJUSTMENTS REGARDING TAXPAYER AND DEPENDENCY STATUS.—Section 1400S(e), by substituting “2008 or 2009” for “2005 or 2006”.

Applicability.

(e) MODIFICATIONS TO KATRINA EMERGENCY TAX RELIEF ACT OF 2005.—The following provisions of the Katrina Emergency Tax Relief Act of 2005 shall be applied with the following modifications:

(1) ADDITIONAL EXEMPTION FOR HOUSING DISPLACED INDIVIDUAL.—Section 302—

(A) by substituting “2008 or 2009” for “2005 or 2006” in subsection (a) thereof,

(B) by substituting “Midwestern displaced individual” for “Hurricane Katrina displaced individual” each place it appears, and

(C) by treating an area as a core disaster area for purposes of applying subsection (c) thereof if the area is a Midwestern disaster area without regard to subsection (b)(2) of this section (relating to areas eligible only for public assistance).

(2) INCREASE IN STANDARD MILEAGE RATE.—Section 303, by substituting “beginning on the applicable disaster date and ending on December 31, 2008” for “beginning on August 25, 2005, and ending on December 31, 2006”.

(3) MILEAGE REIMBURSEMENTS FOR CHARITABLE VOLUNTEERS.—Section 304—

(A) by substituting “beginning on the applicable disaster date and ending on December 31, 2008” for “beginning on August 25, 2005, and ending on December 31, 2006” in subsection (a), and

(B) by substituting “the applicable disaster date” for “August 25, 2005” in subsection (a).

(4) EXCLUSION OF CERTAIN CANCELLATION OF INDEBTEDNESS INCOME.—Section 401—

(A) by treating an individual whose principal place of abode on the applicable disaster date was in a Midwestern disaster area (determined without regard to subsection (b)(2) of this section) as an individual described in subsection (b)(1) thereof, and by treating an individual whose principal place of abode on the applicable disaster date was in a Midwestern disaster area solely by reason of subsection (b)(2) of this section as an individual described in subsection (b)(2) thereof,

(B) by substituting “the applicable disaster date” for “August 28, 2005” both places it appears, and

(C) by substituting “January 1, 2010” for “January 1, 2007” in subsection (e).

(5) EXTENSION OF REPLACEMENT PERIOD FOR NONRECOGNITION OF GAIN.—Section 405, by substituting “on or after the applicable disaster date” for “on or after August 25, 2005”.