

Part III - Administrative, Procedural, and Miscellaneous

Qualified New York Liberty Bond Questions and Answers

Notice 2003-40

PURPOSE

This notice provides guidance concerning qualified New York Liberty Bonds (“Liberty Bonds”).

BACKGROUND

Section 301 of the Job Creation and Worker Assistance Act of 2002, Pub.L. No.107-147, created section 1400L of the Internal Revenue Code of 1986, which provides various tax benefits for the area of New York City damaged or affected by the terrorist attack on September 11, 2001. Section 1400L(d) authorizes the issuance of \$8 billion of Liberty Bonds, a new type of tax-exempt private activity bond. On July 8, 2002, the Internal Revenue Service issued Notice 2002-42, 2002-27 I.R.B. 36, which provides guidance regarding section 1400L, including section 1400L(d). This notice provides additional guidance with respect to Liberty Bonds.

OVERVIEW OF THE PROVISION

Under section 1400L(d)(1), Liberty Bonds are treated as exempt facility bonds within the meaning of section 142. Section 1400L(d)(2) provides that a Liberty Bond is 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 the issue are to be used for qualified project costs; (b) the bond is issued by the State of New York or any political subdivision thereof; (c) the Governor of the State of New York or the Mayor of The City of New York designates the bond for purposes of section 1400L(d); and (d) the bond is issued after March 9, 2002, and before January 1, 2005. The maximum aggregate face amount of bonds that may be designated as Liberty Bonds is \$8 billion.

Section 1400L(d)(4) defines the term qualified project costs as the cost of acquisition, construction, reconstruction, and renovation of: (a) nonresidential real property and residential rental property (including fixed tenant improvements associated with the property) located in the New York Liberty Zone (as defined in section 1400L(h)), and (b) public utility property (as defined in section 168(i)(10)) located in the New York Liberty Zone. Qualified project costs also include the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed tenant improvements associated with the property) located outside the New York Liberty Zone but within The City of New York, New York, if the property is part of a project that consists of at least 100,000 square feet of usable office or other commercial

space located in a single building or multiple adjacent buildings. Liberty Bonds may not be used to finance movable fixtures or equipment.

Section 1400L(d)(5) contains the following modifications to the general rule that Liberty Bonds are treated as exempt facility bonds: (1) Liberty Bonds are not subject to the private activity bond volume cap under section 146; (2) the 15-percent rehabilitation requirement in section 147(d) that applies to the acquisition of certain existing property is increased to 50-percent for Liberty Bonds; (3) Liberty Bonds are eligible for the two-year construction exception to the rebate requirement under section 148(f)(4)(C); (4) repayments of principal on financing provided by Liberty Bonds are subject to certain special rules; and (5) section 57(a)(5), which treats interest on specified private activity bonds as an item of tax preference for purposes of computing the alternative minimum tax, does not apply to Liberty Bonds.

QUESTIONS AND ANSWERS

Set forth below are questions and answers with regard to section 1400L(d).

Q-1. What types of costs are qualified project costs under section 1400L(d)(4)?

A-1. Section 1400L(d)(1) provides that Liberty Bonds are treated as exempt facility bonds. Accordingly, qualified project costs are costs that (a) are chargeable to the capital account of a facility described in section 1400L(d)(4), or (b) would be so chargeable either with a proper election by a taxpayer (for example, under section 266) or but for a proper election by a taxpayer to deduct the costs. Qualified project costs also include costs of functionally related and subordinate property within the meaning of § 1.103-8(a)(3) of the Income Tax Regulations.

Q-2. Does § 1.142-4 apply to Liberty Bonds?

A-2. Yes. Section 1.142-4 applies to exempt facility bonds. Section 1.142-4 contains certain requirements that generally are designed to ensure that exempt facility bonds are not issued to finance working capital expenditures. For example, § 1.142-4(b) provides that, if an expenditure for a facility is paid before the issue date of the bonds to provide that facility, the facility is an exempt facility only if the expenditure meets the requirements of § 1.150-2 (relating to reimbursement allocations).

Q-3. How does § 1.150-2 apply to Liberty Bonds?

A-3. Section 1.150-2 applies to Liberty Bonds in the same manner as exempt facility bonds, except that all issuers of Liberty Bonds are treated as having adopted an official intent (as defined in § 1.150-2(c)) that satisfies the requirements of § 1.150-2(e) with respect to expenditures paid after September 11, 2001, and before June 23, 2003. For expenditures paid on or after June 23, 2003, any official intent must be adopted not later than 60 days after payment of the expenditures. See § 1.150-2(d)(1).

Q-4. Do Liberty Bonds issued before January 1, 2005, to currently refund outstanding Liberty Bonds count against the \$8 billion volume limitation on Liberty Bonds?

A-4. Liberty Bonds issued before January 1, 2005, to currently refund outstanding Liberty Bonds do not count against the \$8 billion volume limitation to the extent that the amount of the refunding bonds does not exceed the outstanding amount of the bonds being refunded.

Q-5. May Liberty Bonds be issued after December 31, 2004, to refund outstanding Liberty Bonds?

A-5. Liberty Bonds may be issued after December 31, 2004, to refund outstanding Liberty Bonds originally issued before January 1, 2005, to the extent (a) the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds, and (b) the refunding is not an advance refunding.

Q-6. May Liberty Bonds be issued by entities that are acting on behalf of the State of New York or any political subdivision thereof?

A-6. Liberty Bonds may be issued on behalf of the State of New York or any political subdivision thereof if the issuance satisfies the requirements for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for purposes of section 103.

FURTHER INFORMATION

For further information regarding this notice, contact Michael P. Brewer at (202) 622-3980 (not a toll-free call).