**Current Refundings for Certain Targeted State, Local, and Indian Tribal Government Bond Programs**

**Notice 2019-39**

## SECTION 1. PURPOSE

This notice provides guidance regarding the issuance of tax-exempt State and local bonds under § 103 of the Internal Revenue Code[1] and tax-exempt Indian tribal government bonds under § 7871 in current refunding issues (as defined in § 1.150-1(d)(3) ) to refund (directly or indirectly in a series of current refunding issues) original bonds issued in eligible targeted bond programs, as more particularly specified in section 3 of this notice.

## SECTION 2. BACKGROUND

Congress from time to time enacts statutory program provisions under the Code or special legislation to authorize various targeted bond programs that permit the issuance of State, local, or Indian tribal government bonds the interest on which is excluded from the gross income of the holders ("tax-exempt bonds") to facilitate lower borrowing costs, subject to bond volume caps or issuance time deadlines, or both

[1] Unless otherwise provided, section references are to the Internal Revenue Code or the Income Tax Regulations.

("targeted bond programs"). Targeted bond programs often involve incentives to provide disaster relief or to promote economic development or redevelopment in underserved areas in targeted circumstances.

Examples of targeted bond programs include the following: (1) certain tax-exempt exempt facility bonds and qualified mortgage bonds known as "GO Zone Bonds" issued under former § 1400(N) for a defined portion of the Hurricane Katrina disaster area known as the "Gulf Opportunity Zone," subject to a bond volume cap (population-based formula) and an issuance time deadline (before January 1, 2012); (2) tax-exempt bonds issued under §§ 702(d)(1) and 704(a) of the Heartland Disaster Tax Relief Act of 2008, Pub. L. No. 110-343, 122 Stat. 3912, 3913, 3919 (2008), to provide relief in the Midwestern and Hurricane Ike Disaster Areas, subject to bond volume caps (population-based formulas) and an issuance time deadline (before January 1, 2013); (3) certain tax-exempt exempt facility bonds known as "Recovery Zone Facility Bonds" issued under former § 1400U-3 for projects in certain defined "Recovery Zones," subject to a bond volume cap ($15 billion nationally) and an issuance time deadline (before January 1, 2011); and (4) Tribal Economic Development Bonds issued by Indian tribal governments under § 7871(f) to finance eligible projects on Indian reservations under program qualification parameters comparable to those that apply to State and local governments under § 103, subject to a bond volume cap ($2 billion).

In the case of the general ongoing program for tax-exempt qualified private activity bonds under § 141(e) that are subject to volume caps, § 146(i) generally authorizes current refunding issues without additional volume cap if the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds. However, the statutory provisions authorizing targeted bond programs often do not address the permissibility of issuing bonds in current refunding issues[2] to refund or refinance bonds originally issued pursuant to these programs. As a result, questions have arisen regarding whether original bonds issued under these targeted bond programs may be refinanced in current refunding issues without additional volume cap and whether such current refunding issues may be issued after an issuance time deadline for the original bonds.

Current refunding issues within appropriate size limits that do not increase the outstanding amount of tax-exempt bonds generally are favored transactions for economic and policy purposes because these transactions are done primarily to reduce borrowing costs and these transactions also reduce the Federal costs of the associated tax benefit. Previous published guidance permits current refunding issues for several targeted bond programs. See, e.g., Notice 2012-3, 2012-3 I.R.B. 289 (GO Zone, Midwest, and Hurricane Ike Disaster Area Bonds); Notice 2014-9, 2014-5 I.R.B. 455

[2] Under § 1.150-1(d)(3), a current refunding issue generally consists of an issue of bonds that is issued to refund or refinance bonds of a prior issue not more than 90 days before the last expenditure of any proceeds of the refunding issue to pay principal or interest on the prior issue.

(Recovery Zone Facility Bonds); see also Notice 2003-40, 2003-2 C.B. 10 (treatment of current refunding issues and other tax issues regarding New York Liberty Bonds).

The purpose of this notice is to reduce or eliminate the need for separate program-by-program guidance on this favored type of refinancing for each such program, subject to applicable statutory restrictions.

**SECTION 3. SCOPE AND APPLICATION**

The guidance in section 4 of this notice applies to tax-exempt bonds issued in current refunding issues to refund (directly or indirectly in a series of current refunding issues) original bonds in existing and future tax-exempt targeted bond programs that impose bond volume caps, issuance time deadlines, or both, on the issuance of the original bonds and that operate under statutory parameters that do not address the permissibility of current refunding bonds. Bonds issued in these tax-exempt targeted bond programs are referred to in this notice as "Qualified Bonds."

In addition, the references in this notice to "original bonds" or "original Qualified Bonds" include tax-advantaged build America bonds issued under former § 54AA.

**SECTION 4. GUIDANCE**

Any current refunding issue the proceeds of which are used (directly or indirectly in a series of current refunding issues) to refund original Qualified Bonds qualifies for issuance as an issue of tax-exempt Qualified Bonds without regard to any bond volume cap or issuance time deadline for the original Qualified Bonds if all of the following requirements are met:

(1) The original Qualified Bonds were issued with any required bond volume cap allocation and before any applicable time deadline for issuance of the original Qualified Bonds;

(2) Except as provided herein, the issue price (as defined in § 1.148-1(f)) of the current refunding issue is no greater than the outstanding stated principal amount of the refunded bonds of the prior issue (as defined in § 1.150-1(d)(5)) of Qualified Bonds (the refunded bonds). For refunded bonds originally issued with more than a de minimis amount of original issue discount or premium (as defined in § 1.148-1(b)), the present value of the refunded bonds (as determined under § 1.148-4(e)) must be used in lieu of the outstanding stated principal amount to determine the maximum issue price of the current refunding issue that may qualify as tax-exempt Qualified Bonds pursuant to this notice; and

(3) The current refunding issue meets all applicable requirements for the issuance of Qualified Bonds (excluding any bond volume cap or original issuance time deadline), including, without limitation, the requirements under § 149(g) that the original Qualified Bonds met the requirements applicable to hedge bonds, and, in the case of private activity bonds to which § 147(b) applies, the requirement under § 147(b) that the average bond maturity be no longer than 120 percent of the average reasonably expected economic life of the facilities financed or refinanced with the net proceeds of such issue.

## SECTION 5.  EFFECT ON OTHER DOCUMENTS

This notice supersedes Notice 2012-3 and Notice 2014-9.

## SECTION 6.  EFFECTIVE DATES

This notice applies to current refunding issues that are issued on or after May 22, 2019.  Issuers may apply this notice to current refunding issues that are issued before May 22, 2019.

## SECTION 7.  DRAFTING INFORMATION

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