

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD-8903]

RIN 1545-AY01

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the Federal income tax treatment of qualified zone academy bonds.

These regulations provide guidance to State and local governments that issue qualified zone academy bonds and to banks, insurance companies and other taxpayers that hold those bonds. These regulations make final certain temporary regulations.

DATES: Effective Date: These regulations are effective September 26, 2000.

Applicability Date: For dates of applicability, see §1.1397E-1(k).

FOR FURTHER INFORMATION CONTACT: Timothy L. Jones or Allan B. Seller at 202-622-3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

Section 226(a) of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788), amended the Internal Revenue Code

(Code) by redesignating section 1397E as section 1397F and adding a new section 1397E. Section 1397E authorizes a type of debt instrument known as a qualified zone academy bond.

### **Explanation of Provisions**

#### In General

A qualified zone academy bond is a taxable bond issued by a State or local government, the proceeds of which are used to enhance certain eligible public schools. In lieu of receiving periodic interest payments from the issuer, an eligible holder of a qualified zone academy bond is generally allowed annual federal income tax credits while the bond is outstanding. These credits compensate the holder for lending money to the issuer and function as payments of interest on the bond.

Temporary regulations (REG-119449-97) interpreting section 1397E were published on January 7, 1998 (63 FR 671), and amended on July 1, 1999 (64 FR 35573). The temporary regulations generally treat the allowance of the credit as if it were a payment of interest on the bond.

Code section 1397E(e), as amended by section 509 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170 (113 Stat. 1860), imposes a national limitation on the amount of qualified zone academy bonds that can be issued. For each applicable year, the IRS publishes a revenue

procedure allocating the national limitation among the States and the possessions.

#### Bonds Issued by a State or Local Government

Section 1397E(d)(1)(B) requires that a qualified zone academy bond be issued by a State or local government within the jurisdiction of which a qualified zone academy (as defined in section 1397E(d)(4)) is located. Commentators requested clarification that, for these purposes, a State or local government means a State or political subdivision as defined for purposes of section 103(c). Commentators also requested that the final regulations include a provision for the issuance of qualified zone academy bonds on behalf of a State or local government in a manner similar to the issuance of obligations on behalf of a State or political subdivision under section 103.

The final regulations provide that, for purposes of section 1397E(d)(1)(B), the term State or local government means a State or political subdivision as defined for purposes of section 103(c). The final regulations also specify that a qualified zone academy bond may be issued on behalf of a State or local government under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for purposes of section 103.

#### Private Business Contribution Requirement

Section 1397E(d)(1)(C)(ii) requires the issuer of a qualified zone academy bond to certify that it has written assurances that the private business contribution requirement of section 1397E(d)(2) will be met with respect to the qualified zone academy. For these purposes, the private business contribution requirement is met if the eligible local education agency (as defined in section 1397E(d)(4)(B)) has written commitments from private entities to make qualified contributions having a present value as of the issue date of 10 percent or more of the proceeds of the issue.

The Code does not define private entities for these purposes. Section 1397E(d)(2)(B) defines qualified contribution as any contribution (of a type and quality acceptable to the eligible local education agency) of (i) equipment for use in the qualified zone academy, (ii) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom, (iii) services of employees as volunteer mentors, (iv) internships, field trips, or other educational opportunities outside the academy for students, or (v) any other property or service specified by the eligible local education agency.

Commentators requested clarification of the meaning of private entities for these purposes. For example, commentators

asked whether the term may include an organization described in section 501(c)(3) or a private individual.

The final regulations provide that, for purposes of section 1397E(d)(2)(A), the term private entities includes any person (as defined in section 7701(a)) other than the United States, a State or local government, or any agency or instrumentality thereof or related party with respect thereto.

Commentators also sought clarification regarding the meaning of qualified contribution under section 1397E(d)(2)(B). The final regulations provide that cash received with respect to a qualified zone academy from a private entity constitutes a qualified contribution if it is to be used to purchase any property or service described in section 1397E(d)(2)(B)(i), (ii), (iii), (iv) or (v). The final regulations also indicate that services of employees of the eligible local education agency do not constitute qualified contributions.

#### Issuer Certifications

Section 1397E(d)(1)(C) requires the issuer to certify (1) that it has written assurances that the private business contribution requirement will be met, and (2) that it has the written approval of the eligible local education agency for the bond issuance. The Treasury and the IRS intend that these certifications will be respected and may be relied on by taxpayers if the certifications are reasonably made.

### 95 Percent Test

Section 1397E(d)(1)(A) requires that 95 percent or more of the proceeds of an issue of qualified zone academy bonds be used for a qualified purpose described in section 1397E(d)(5) with respect to a qualified zone academy. The Treasury and the IRS intend that the qualified purposes set forth in section 1397E(d)(5) are to be broadly interpreted. The Treasury and the IRS also intend that issuers may apply principles similar to the requirements of §1.142-2 (without regard to the requirement therein that the period between the issue date and the first call date not exceed 10 ½ years) to cure an unexpected failure to spend 95 percent or more of the proceeds of an issue for a qualified purpose. Further, the Treasury and the IRS intend that taxpayers may rely on an issuer's determination that a public school (or academic program within a public school) is a qualified zone academy for purposes of section 1397E(d)(4) if the determination has a reasonable basis.

### Effective Dates

The final regulations apply to bonds sold on or after September 26, 2000. In addition, the final regulations permit elective, retroactive application to bonds sold before September 26, 2000, of either of the following sections of the regulations: §1.1397E-1(c) (private business contribution requirement) and §1.1397E-1(i) (State or local government).

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. The Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply because these regulations do not impose a collection of information on small entities. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was sent to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.1397E-1T and adding a new entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
Section 1.1397E-1 also issued under 26 U.S.C. 1397E(b) and (d).

**§1.1397E-1T [Redesignated as §1.1397E-1]**

Par. 2. Section 1.1397E-1T is redesignated as §1.1397E-1.

Par. 3. Newly designated §1.1397E-1 is amended as follows:

1. The section heading is revised.
2. Revising paragraphs (c), (f)(2), (i) and (j).
3. Adding a new paragraph (k).

The revisions and addition read as follows:

§1.1397E-1 Qualified zone academy bonds.

\* \* \* \* \*

(c) Private business contribution requirement--(1)

Reasonable discount rate. To determine the present value (as of the issue date) of qualified contributions from private entities under section 1397E(d)(2), the issuer must use a reasonable discount rate. The credit rate determined under paragraph (b) of this section is a reasonable discount rate.

(2) Definition of private entities. For purposes of section 1397E(d)(2)(A), the term private entities includes any person (as defined in section 7701(a)) other than the United States, a State or local government, or any agency or instrumentality thereof or related party with respect thereto. To determine whether a person is related to the United States or a State or local government under this paragraph (c)(2), rules similar to those for determining whether a person is a related party under §1.150-1(b) shall apply (treating the United States as a governmental unit for purposes of §1.150-1(b)).



(3) Qualified contribution. For purposes of section 1397E(d)(2)(A), the term qualified contribution means any contribution (of a type and quality acceptable to the eligible local education agency) of any property or service described in section 1397E(d)(2)(B)(i), (ii), (iii), (iv) or (v). In addition, cash received with respect to a qualified zone academy from a private entity (other than cash received indirectly from a person that is not a private entity as part of a plan to avoid the requirements of section 1397E) constitutes a qualified contribution if it is to be used to purchase any property or service described in section 1397E(d)(2)(B)(i), (ii), (iii), (iv) or (v). Services of employees of the eligible local education agency do not constitute qualified contributions.

\* \* \* \* \*

(f) \* \* \*

(2) Adjustment if the holder cannot use the credit to offset a tax liability. If a holder holds a qualified zone academy bond on the credit allowance date but cannot use all or a portion of the credit to reduce its income tax liability (for example, because the holder is not an eligible taxpayer or because the limitation in section 1397E(c) applies), the holder is allowed a deduction for the taxable year that includes the credit allowance date (or, at the option of the holder, the next succeeding taxable year). The amount of the deduction is equal to the

amount of the unused credit deemed paid on the credit allowance date.

\* \* \* \* \*

(i) State or local government--(1) In general. For purposes of section 1397E(d)(1)(B), the term State or local government means a State or political subdivision as defined for purposes of section 103(c).

(2) On behalf of issuer. A qualified zone academy bond may be issued on behalf of a State or local government under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for purposes of section 103.

(j) Cross-references. See section 171 and the regulations thereunder for rules relating to amortizable bond premium. See §1.61-7(d) for the seller's treatment of a bond sold between interest payment dates (credit allowance dates) and §1.61-7(c) for the buyer's treatment of a bond purchased between interest payment dates (credit allowance dates).

(k) Effective dates. Except as provided in this paragraph (k), this section applies to bonds sold on or after September 26, 2000. Each of paragraphs (c) and (i) of this section may be applied by issuers to bonds that are sold before September 26, 2000.

Bob Wenzel

Deputy Commissioner of Internal Revenue

Approved: September 19, 2000

Jonathan Talisman

Acting Assistant Secretary of the Treasury