

§ 1.103(n)-4T

26 CFR Ch. I (4-1-04 Edition)

Example (5). The facts are the same as in Example (1) except that Corporation R notifies County S that it only requires \$15 million for the pollution control facility, County S only issues \$15 million of private activity bonds for the pollution control facility, and County S only allocates \$15 million of its private activity bond limit to such obligations. County S will not be penalized for not allocating more than \$15 million of its private activity bond limit to Corporation R even though the original inducement resolution provided for up to \$25 million.

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C.103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39320, Oct. 5, 1984]

§ 1.103(n)-4T Elective carryforward of unused private activity bond limit (temporary).

Q-1: May an issuing authority carry forward any of its unused private activity bond limit for a calendar year?

A-1: In any calendar year after 1983 in which an issuing authority's private activity bond limit exceeds the aggregate amount of private activity bonds issued during such calendar year by such issuing authority, such issuing authority may elect to treat all, or any portion, of such excess as a carryforward for any one or more projects described in A-5 of this § 1.103(n)-4T (carryforward projects).

Q-2: How is the election to carry forward an issuing authority's unused private activity bond limit made?

A-2: (i) An issuing authority may make the election by means of a statement, signed by an authorized public official responsible for making allocations of such issuing authority's private activity bond limit, that the issuing authority elects to carry forward its unused private activity bond limit. The statement shall be filed with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. Except with respect to elections to carry forward any unused private activity bond limit for calendar year 1984, the election must be filed prior to the end of the calendar year with respect to which the issuing authority has the unused private activity bond limit; elections with respect to unused private activity bond limit for calendar year 1984 must be filed prior to February 26, 1985. The statement is to be titled

“Carryforward election under section 103(n)”.

(ii) The statement required by (i) of this A-2 shall contain the following information:

(A) The name, address, and TIN of the issuing authority,

(B) The issuing authority's private activity bond limit for the calendar year,

(C) The aggregate amount of private activity bonds issued by the issuing authority during the calendar year for which the election is being made,

(D) The unused private activity bond limit of the issuing authority, and

(E) For each carryforward project—

(1) A description of the project, including its address (by its street address or, if none, by a general description designed to indicate its specific location) and the general type of facility (e.g., an airport described in section 103(b)(4)(D)),

(2) The name, address, and TIN of the initial owner, operator, or manager, and

(3) The amount to be carried forward for the project.

(iii) For purposes of (ii)(E) of this A-2, in the case of a carryforward project for which the initial owner, operator, or manager is to be selected pursuant to a competitive bidding process, the election may include up to 3 prospective addresses for the project and the name, address, and TIN of more than one prospective initial owner, operator, or manager, if prior to the end of the calendar year for which the election is made—

(A) In the case of elections for calendar years other than 1984, the issuing authority has taken preliminary official action approving the undertaking of the carryforward project,

(B) All persons included as prospective owners, operators, or managers have met all applicable conditions (if any) to submit proposals to provide the project, and

(C) The issuing authority has expended (or has entered into binding contracts to expend) in connection with the planning and construction of the carryforward project the lesser of \$500,000 or 2½ percent of the carryforward amount.

(iv) For purposes of (ii) of this A-2, in the case of a carryforward election for the purpose of issuing student loan bonds, the statement need not include the address of a facility or the name, address, and TIN of an initial owner, operator, or manager of a project but shall state that the carryforward election is for the purpose of issuing student loan bonds.

Q-3: Is a carryforward election revocable?

A-3: Any carryforward election, and any specification contained therein, shall be irrevocable after the last day of the calendar year in which the election is made. Thus, for example, obligations issued to finance a carryforward project with a different initial owner, operator, or manager from the owner, operator, or manager specified in the carryforward election shall not be issued pursuant to such carryforward election. An insubstantial deviation from a specification contained in a carryforward election shall not prevent obligations from being issued pursuant to such carryforward election. In addition, where a carryforward election is made with respect to more than one carryforward project, a substantial deviation with respect to one carryforward project shall not prevent obligations from being issued pursuant to such carryforward election with respect to the other carryforward projects.

Q-4: How is a carryforward used?

A-4: Any private activity bonds issued during the three calendar years (six calendar years in the case of a project described in section 103(b)(4)(F)) following the calendar year in which the carryforward election was first made with respect to a carryforward project shall not be taken into account in determining whether the issue meets the requirements of section 103(n). If, however, the amount of private activity bonds issued for the carryforward project exceeds the amount of the carryforward elected with respect to the project, then the portion of the issue that exceeds the carryforward shall be taken into account in determining whether the issue meets with the requirements of section 103(n); if that portion of the issue does not meet the requirements of section

103(n) then the entire issue is treated as consisting of obligations not described in section 103(a). Carryforwards elected with respect to any project shall be used in the order of the calendar years in which they arose. Thus, for example, if an issuing authority makes carryforward elections in 1986 and 1988 for a carryforward project and issues private activity bonds for that project in 1989 and 1990, the obligations issued in 1989 will be applied to the 1986 carryforward election to the extent thereof.

Q-5: For what projects may a carryforward election be made?

A-5: A carryforward election may be made for any project described in section 103(b) (4) or (5), and for the purpose of issuing student loan bonds. Thus, for example, an issuing authority may elect to carry forward its unused private activity bond limit in order to provide a sports facility described in section 103(b)(4)(B). In addition, a governmental unit may elect to carry forward its unused private activity bond limit in order to issue qualified scholarship funding bonds. An issuing authority may not, however, elect to carry forward its unused private activity bond limit in order to issue an exempt small issue of industrial development bonds under section 103(b)(6).

(Secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C.103(n); 68A Stat. 917, 26 U.S.C. 7805); sec. 644(b) of the Tax Reform Act of 1984 (98 Stat. 940); secs. 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 915, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7981, 49 FR 39325, Oct. 5, 1984, as amended by T.D. 8001, 49 FR 50389, Dec. 28, 1984]

§ 1.103(n)-5T Certification of no consideration for allocation (temporary).

Q-1: Who must certify that there was no consideration for an allocation?

A-1: Section 103(n)(12)(A) provides that, with respect to any private activity bond allocated any portion of the State ceiling, the private activity bond will not be described under section 103(a) unless the public official, if any, responsible for such allocation ("responsible public official") certifies under penalties of perjury that to the best of his knowledge the allocation of