

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2009-32, page 865.

2008 section 45K inflation adjustment factor. This notice announces the inflation adjustment factor, the reference price, and the credit amount for the nonconventional source fuel credit for coke or coke gas (other than from petroleum based products) for the 2008 calendar year.

Notice 2009-33, page 865.

This notice solicits applications for allocations of the present total national bond volume limitation authority of \$2.4 billion to issue new clean renewable energy bonds (New CREBs) under section 54C(a) of the Code to finance certain qualified projects described in section 45(d). This notice also provides related guidance on the following: (1) eligibility requirements that a project must meet to be considered for a volume cap allocation; (2) application requirements and the application form for requests for volume cap allocations; (3) the method that the IRS will use to allocate the volume cap; and (4) certain aspects of the applicable law and interim guidance in this area.

Notice 2009-35, page 880.

This notice provides the face amount of qualified school construction bonds (QSCBs) allocated by the Department of the Treasury to each State and large local education agency for 2009 under section 54F(d) of the Code. This notice also provides other limited interim guidance with respect to QSCBs.

Notice 2009-36, page 886.

This notice states that pursuant to the administration's Home Affordable Modification Program (HAMP), the United States Government may make certain payments to a real estate mortgage investment conduit (REMIC). It also states that if those payments are "contributions" subject to the 100 percent contribution tax set forth in section 860G(d)(1) of the Code and if none of the exceptions set forth in section 860G(d)(2) apply,

then regulations will be issued that will provide an exception for such payments pursuant to section 860G(d)(2)(E).

Rev. Proc. 2009-23, page 887.

This procedure describes the conditions under which modifications to residential mortgage loans pursuant to the administration's Home Affordable Modification Program will cause the IRS to challenge the tax status of real estate mortgage investment conduits (REMICs) or fixed investment trusts or to assert that those modifications to mortgages held by a REMIC give rise to a prohibited transaction.

Rev. Proc. 2009-24, page 889.

Automobile owners and lessees. This procedure provides owners and lessees of passenger automobiles (including trucks and vans) with tables detailing the limitations on depreciation deductions for passenger automobiles first placed in service during calendar year 2009 and the amounts to be included in income for passenger automobiles first leased during calendar year 2009.

EXCISE TAX

Notice 2009-34, page 879.

This notice extends the time for making claims pertaining to biodiesel and biodiesel mixtures that was certified under the old ASTM D6751 standard from April 1, 2009, set forth in Notice 2008-110, 2008-51 I.R.B. 1298, to September 30, 2009. Notice 2008-110 modified.

Announcements of Disbarments and Suspensions begin on page 896.
Finding Lists begin on page ii.
Index for January through April begins on page v.



The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 54C.—New Clean Renewable Energy Bonds

A notice that solicits applications for allocations of the present total national bond volume limitation authority of \$2.4 billion to issue new clean renewable energy bonds (New CREBs) under section 54C(a) of the Internal Revenue Code (the “Code”) to finance certain qualified projects described in section 45(d) of the Code and provides related guidance on the following: (1) eligibility requirements that a project must meet to be considered for a volume cap allocation; (2) application requirements and the application form for requests for volume cap allocations; (3) the method that the IRS will use to allocate the volume cap; and

(4) certain aspects of the applicable law and interim guidance in this area. See Notice 2009-33, page 865.

Section 1001.—Determination of amount and recognition of gain or loss

26 C.F.R. 1.1001-3. Modifications of debt instruments. This revenue procedure describes the conditions under which changes to certain mortgage loans will not cause the Internal Revenue Service to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifica-

tions give rise to prohibited transactions. See Rev. Proc. 2009-23, page 887.

Section 7701.—Definitions

See Rev. Proc. 2009-23, page 887.26 C.F.R. 301.7701-4; Trusts This revenue procedure describes the conditions under which changes to certain mortgage loans will not cause the Internal Revenue Service to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications give rise to prohibited transactions.

Part III. Administrative, Procedural, and Miscellaneous

Nonconventional Source Fuel Credit, Section 45K Inflation Adjustment Factor, and Section 45K Reference Price

Notice 2009–32

SECTION 1. PURPOSE

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 45K of the Internal Revenue Code for coke or coke gas (other than from petroleum based products) for calendar year 2008. The inflation adjustment factor and the reference price are used to determine the credit allowable under § 45K for coke or coke gas. The calendar year 2008 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of coke or coke gas sold by a taxpayer to an unrelated person during the 2008 calendar year, the domestic production of which is attributable to the taxpayer.

SECTION 2. BACKGROUND

Section 45K(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuel, the production of which is attributable to the taxpayer and is sold by the taxpayer to an unrelated person during the taxable year. For calendar year 2008, the credit is available only for coke or coke gas. The credit amount for coke or coke gas is equal to the product of \$3.00 and the appropriate inflation adjustment factor.

Section 45K(d)(1) provides that the credit applies only to sales of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 45K(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 45K(d)(2)(B) defines “inflation adjustment factor” for a calendar year as a fraction the numerator of which is the

GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term “GNP implicit price deflator” means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 45K(d)(2)(C) defines “reference price” to mean with respect to a calendar year the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 45K(d)(5) provides that the term “barrel-of-oil equivalent” with respect to any fuel generally means that amount of the fuel that has a Btu content of 5.8 million.

Section 45K(g)(1) provides that in the case of a facility for producing coke or coke gas (other than from petroleum based products), which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, § 45K(g) shall apply with respect to coke or coke gas produced in such facility and sold during the period beginning on the later of January 1, 2006, or the date that such facility is placed in service, and ending on the date which is 4 years after the date such period began.

Section 45K(g)(2)(A) provides that the amount of coke or coke gas sold during any taxable year that may be taken into account to compute the credit under § 45K with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day.

Section 45K(g)(2)(B) provides that in determining the amount of credit allowable to coke or coke gas sold after 2005, the credit shall be computed by substituting “2004” for “1979.” Accordingly, for purposes of § 45K(g), the inflation adjustment factor for a calendar year is a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 2004.

Section 45K(g)(2)(D) provides that the phase-out of the credit under § 45K(b)(1) does not apply in the case of facilities producing coke or coke gas.

SECTION 3. REFERENCE PRICE

The reference price for calendar year 2008 is \$94.03.

SECTION 4. INFLATION ADJUSTMENT AND CREDIT AMOUNT

The inflation adjustment factor for calendar year 2008 is 1.1183. The nonconventional source fuel credit is \$3.36 per barrel-of-oil equivalent (\$3.00 x 1.1183).

SECTION 5. DRAFTING INFORMATION CONTACT

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer C. Bernardini at (202) 622–3110 (not a toll-free call).

New clean renewable energy bonds application solicitation and requirements

Notice 2009–33

SECTION 1. PURPOSE

This notice solicits applications for allocations of the present total national bond volume limitation authority (“volume cap”) of \$2.4 billion to issue new clean renewable energy bonds (New CREBs) under § 54C(a) of the Internal Revenue Code (the “Code”) to finance certain qualified renewable energy facilities described in § 45(d) of the Code (also referred to in this notice as a qualified “project” or “projects”). This notice also provides related guidance on the following: (1) eligibility requirements that a project must meet to be considered for a volume cap allocation; (2) application requirements and the application form for requests for volume cap allocations; (3) the method that the Internal Revenue Service (“IRS”) and the Treasury Department will use to allocate the volume cap; and (4) certain aspects of the applicable law and interim guidance in this area.

Applications for New CREB volume cap allocations pursuant to this notice must be filed in accordance with this notice by the following application deadline: August 4, 2009.

This notice will use the term CREBs for clean renewable energy bonds issued under § 54 and the term New CREBs for new clean renewable energy bonds issued under § 54C. To the extent that this notice refers generally to the clean renewable energy bond program, the term CREB program will be used.

SECTION 2. BACKGROUND

.01 Introduction

Section 1303 of the Energy Tax Incentives Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), added § 54 to the Code. Section 54 originally provided for a total national volume cap of \$800 million for CREBs to finance eligible clean renewable energy projects and delegated to the Secretary the authority to allocate that volume cap, subject to the constraint that the Secretary could allocate no more than \$500 million of that volume cap to qualified borrowers that were governmental bodies (with the balance to be allocated to qualified borrowers which were cooperative electric companies). Section 54 originally required that CREBs had to be issued by an expiration date of December 31, 2007.

Section 202 of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922 (2006) (the “2006 Act”), amended § 54 in three respects. First, the 2006 Act increased the total national bond volume cap for CREBs from \$800 million to \$1.2 billion. Second, the 2006 Act extended the expiration date for the issuance of CREBs under the total authorized national volume cap of \$1.2 billion from December 31, 2007, to December 31, 2008. Third, the 2006 Act increased the maximum allocations or reallocations to qualified borrowers which are governmental bodies from \$500 million to \$750 million (with the balance to be allocated to cooperative electric companies). In 2007, the IRS completed the allocation with respect to the volume cap under § 54 of the Code, as amended.

Section 15316 of the Food, Conservation, and Energy Act of 2008, Pub. L. No.

110-246, 122 Stat. 1651 (2008) (the “2008 Food Act”), added new § 54A to the Code. Section 54A provides certain general program requirements and operating rules for qualified tax credit bonds. Section 54A(a) provides that a taxpayer that holds a qualified tax credit bond on one or more credit allowance dates of the bond occurring during any taxable year is allowed as a credit against Federal income tax for the taxable year an amount equal to the sum of the credits determined under § 54A(b) with respect to such dates.

Section 107 of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110-343, 122 Stat. 3765 (2008) (the “2008 Energy Act”) (the 2008 Food Act and the 2008 Energy Act are referred to collectively as the “2008 Acts”), added new § 54C to the Code to provide for a new national volume cap of \$800 million for New CREBs to finance qualified renewable energy facilities. Section 107(b) of the 2008 Energy Act amended § 54A(d)(1) of the Code to provide that the term qualified tax credit bond, in part, means a New CREB that is part of an issue that meets the requirements of § 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions on financial conflicts of interest, respectively. Section 107(d) of the 2008 Energy Act provides that amendments to the Code made by § 107 of the 2008 Energy Act apply to obligations issued after October 3, 2008.

Section 1111 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (the “2009 Act”), increased the national bond volume cap for New CREBs by \$1.6 billion.

Section 107(c) of the 2008 Energy Act extends the expiration date for the issuance of CREBs under authority previously allocated by the IRS pursuant to § 54 of the Code from December 31, 2008, to December 31, 2009. In addition to providing for authority to issue New CREBs, the 2008 Acts amended certain provisions and requirements applicable to CREBs with respect to New CREBs authorized under §§ 54A and 54C of the Code. These amended requirements include: (1) requiring that 100 percent of the “available project proceeds” (as defined in § 54A(e)(4)) be used for capital expen-

ditures incurred for one or more qualified renewable energy facilities; (2) reducing the amount of annual CREB credit under § 54C to 70 percent of the amount determined under the general rules of § 54A(b); (3) providing that not more than one-third of the national volume cap of \$800 million may be allocated to qualified projects owned by each of three types of qualified owners, including public power providers, governmental bodies, and cooperative electric companies, respectively; (4) allowing unrestricted investments of available project proceeds during a prescribed three-year spending period and, subject to certain restrictions, allowing investments of certain sinking funds expected to be used to repay the CREBs within certain limitations; (5) permitting credit “stripping” or separation of the ownership of a qualified tax credit bond, including a New CREB, and the entitlement to the credit under § 54A with respect to a qualified tax credit bond under regulations to be promulgated by the Secretary; and (6) omitting the requirement that the New CREBs be repaid in equal annual installments.

.02 New clean renewable energy bonds under § 54C

Section 54C(a) provides that a “new clean renewable energy bond” or New CREB means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by qualified owners, including governmental bodies, public power providers, or cooperative electric companies, for one or more qualified renewable energy facilities; (2) the bond is issued by a qualified issuer; and (3) the issuer designates such bond for purposes of this section.

Section 54C(b) provides that the annual credit amount under § 54A(b) with respect to any New CREB issued under § 54C shall be 70 percent of the amount so determined without regard to § 54C(b).

Section 54C(d)(6) defines a “qualified issuer” as: (1) a public power provider; (2) a cooperative electric company; (3) a governmental body; (4) a clean renewable energy bond lender; or (5) a not-for-profit electric utility that has received a loan or loan guarantee under the Rural Electrification Act. Section 54C(d)(2) provides that

the term “public power provider” means a State utility with a service obligation, as such terms are defined in § 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph). Section 54C(d)(3) provides that the term “governmental body” means any State (including the District of Columbia and any possession of the United States) or Indian tribal government, or any political subdivision thereof. Section 54C(d)(4) provides that the term “cooperative electric company” means a mutual or cooperative electric company described in § 501(c)(12) or § 1381(a)(2)(C). Section 54C(d)(5) provides that the term “clean renewable energy bond lender” means a lender that is a cooperative that is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity controlled by such lender.

Section 54C(d)(1) defines the term “qualified renewable energy facility” to mean any of the following qualified facilities (as determined under § 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider, a governmental body, or a cooperative electric company: (1) a wind facility under § 45(d)(1); (2) a closed-loop biomass facility under § 45(d)(2); (3) an open-loop biomass facility under § 45(d)(3); (4) a geothermal or solar energy facility under § 45(d)(4); (5) a small irrigation power facility under § 45(d)(5); (6) a landfill gas facility under § 45(d)(6); (7) a trash combustion facility under § 45(d)(7); (8) a qualified hydropower facility under § 45(d)(9); and (9) a marine and hydrokinetic renewable energy facility under § 45(d)(11).

Section 54C(c)(2) provides that the national bond volume cap for New CREBs is \$2.4 billion. Section 54C(c)(2) further provides that the Secretary shall allocate no more than one third of the volume cap to qualified projects owned by public power providers, governmental bodies, and cooperative electric companies, respectively. Section 54C(c)(3)(A) provides that with respect to public power providers, after the Secretary identifies the qualified projects of public power providers that are appropriate for receiving an allocation of the CREB volume cap, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such

manner that the amount allocated to each such project bears the same ratio to the cost of such project as the portion of the CREB volume cap that may be allocated to public power providers bears to the cost of all such projects. Section 54C(c)(3)(B) provides that with respect to governmental bodies and cooperative electric companies, the Secretary shall make allocations of the respective CREB volume caps among qualified projects of governmental bodies and cooperative electric companies in such manner as the Secretary determines appropriate.

SECTION 3. APPLICATION REQUIREMENTS IN GENERAL

Each application for an allocation of the New CREBs volume cap under § 54C (“Application”) must be prepared and submitted in accordance with this section. In order for an Application to comply with this section, among other things, the Application must be prepared in substantially the form attached to this notice as Appendix A, subject to such minor changes or variations as the IRS and the Treasury Department may approve in their discretion. This notice, including Appendix A, may be found on the IRS web site at <http://www.irs.gov/taxexemptbond/index.html> or <http://www.irs.gov/pub/irs-drop/>. By submitting an Application, the applicant agrees to comply with the requirements of this notice.

a. *Qualified issuer.* An Application must be submitted by a qualified issuer within the meaning of § 54C(d)(6). A “qualified issuer” is: (1) a public power provider (as defined in § 54C(d)(2)); (2) a cooperative electric company (as defined in § 54C(d)(4)); (3) a governmental body (as defined in § 54C(d)(3)); (4) a New CREB lender (as defined in § 54C(d)(5)); or (5) a not-for-profit electric utility that has received a loan or loan guarantee under the Rural Electrification Act. An Application must identify the qualified issuer (including the qualified issuer’s Federal tax identification number) and must demonstrate that the entity constitutes a qualified issuer within the meaning of § 54C(d)(6).

b. *Signatures.* An Application must be signed and dated by, and must include the printed name and title of, an authorized official of the qualified issuer. For purposes of this notice, the term “authorized official

of the qualified issuer” means an officer, board member, employee, or other official of the qualified issuer who is duly authorized to execute legal documents on behalf of the qualified issuer in connection with incurring debt of the qualified issuer (*e.g.*, a mayor, chairperson of a city council, chairperson of a board of directors, county or city administrator or manager, chief executive officer or chief financial officer), similar to the kind of duly authorized official of an issuer who would be authorized to execute documents in connection with an issuer’s declaration of official intent to reimburse expenditures from the proceeds of a borrowing under § 1.150–2(e), Income Tax Regs.

c. *Contact person.* An Application must designate one or more persons with knowledge regarding the project that the qualified issuer duly authorizes to discuss with the IRS any information relating to the Application. The designation must include the designee’s name, title, telephone number, fax number, and mailing address. If a designee is not an official or officer of the issuer, the Application must include an executed Form 8821 (*Taxpayer Information Authorization*), authorizing the disclosure of taxpayer information specifically relating to the Application to the designee.

d. *Addresses.* An Application must be submitted by hard copy in duplicate accompanied by a copy of the Application in electronic format on compact disc (“CD”) by mail to the IRS, TEB CREBs Allocations, 1122 Town & Country Commons, St. Louis, Missouri 63017.

e. *Due date.* An Application must be filed with the IRS on or before the Application deadline of August 4, 2009.

f. *Project description.* Each Application must contain the information required by this subsection f.

(i) *Qualified owner.* Each Application must identify the public power provider, governmental body, or cooperative electric company expected to own the qualified renewable energy facility. A “public power provider” is a State utility with a service obligation, as such terms are defined in § 217 of the Federal Power Act (as in effect on October 3, 2008). A “governmental body” is any State or Indian Tribal government, or any political subdivision thereof (within the meaning of § 103 of the Code). A “cooperative electric company” is a mutual or cooperative elec-

tric company described in §§ 501(c)(12) or 1381(a)(2)(C) of the Code. The Application must demonstrate that the entity is a public power provider, governmental body, or cooperative electric company within the meaning of § 54C(d)(2), (3), and (4), respectively.

(ii) *Qualified project.* Each Application must describe in reasonable detail the qualified renewable energy facility or facilities constituting the project to be financed with the proceeds of the New CREBs. The Application must demonstrate that each project will constitute a “qualified renewable energy facility” under § 54C(d)(1). The Application must indicate the expected date that the acquisition and construction of each project will commence and the expected date that each project will be placed in service.

The Application must contain a certification by an independent, licensed engineer that each project will meet the requirements for a “qualified facility” under § 45(d)(but without regard to § 45(d)(8) and (10) and to any placed in service date), and that the project will be technically viable and will produce electricity.

If the project is a qualified hydropower facility under § 45(d)(9) producing incremental hydropower production (as defined under § 45(c)(8)(B)), then the certification also must state that the project consists only of efficiency improvements or additions to capacity that produce additional production as described in § 45(c)(8)(B) based on a methodology that would meet Federal Energy Regulatory Commission (FERC) standards. If the project is a qualified hydropower facility under § 45(d)(9) for qualified hydropower production at a nonhydroelectric dam under § 45(c)(8)(C), then the certification also must state that: (i) the facility, when constructed, will meet FERC licensing requirements and other applicable environmental, licensing and regulatory requirements; and (ii) the facility will be operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.

(iii) *Prior allocations and related projects.* Each Application must describe

the amount of CREB volume cap previously allocated to each project under § 54 of the Code described in the Application and to any “related projects.” For purposes of this notice and the Application, the term “related projects” means projects that are owned by the same entity, or a “related party” as defined in § 1.150-1(b), that are of the same type under § 45(d), located on the same site, and integrated, interconnected, or directly or indirectly dependent on each other, based on all the facts and circumstances (“Related Projects”). For purposes of the allocation methodology described in section 6 of this notice, a facility the construction of which causes an increase in capacity (measured in units of power) of a project for which an Applicant previously received an allocation under § 54 will not be treated as a Related Project with respect to such project.

(iv) *Location of project.* The Application must indicate the location of the project.

(v) *Regulatory approvals.* The Application must describe a plan to obtain all necessary Federal, state and local regulatory approvals for the project.

g. *Plan of financing.* The Application must contain a reasonably detailed description of the plan of financing for the project, including all reasonably expected sources and uses of financing and other funds, the status of such financing, the anticipated date of bond issuance, the sources of security and repayment for the bonds, the aggregate face amount of bonds expected to be issued for the project, and the issuer’s reasonably expected schedule for spending proceeds of New CREBs. If the owner intends to use the proceeds of New CREBs to reimburse amounts paid with respect to a qualified project, the Application must demonstrate that the requirements under § 54A(d)(2)(D) will be met.

h. *Dollar amount of allocation requested.* The Application must specify the dollar amount of the volume cap requested for the project.

SECTION 4. REQUIRED DECLARATIONS IN APPLICATIONS

Each application submitted under this notice must include the following declaration signed and dated by an authorized official of the qualified issuer who has personal knowledge of the relevant facts and

circumstances: “Under penalties of perjury, I declare that I have examined this document and, to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete.”

SECTION 5. CONSENT TO DISCLOSURE OF ALLOCATION

In order to provide the public with information on how the volume cap authorized by Congress has been allocated and to facilitate oversight of the CREB program, the IRS intends to publish the results of the allocation process. The information will be the most useful to the public if it identifies the specific allocations awarded. Pursuant to § 6103, consent is required in order for the IRS to disclose identifying information with respect to applicants awarded an allocation. Therefore, the IRS requests that each applicant submit with the Application a declaration consenting to the disclosure by the IRS of the name of the applicant (issuer), the name of the qualified renewable energy facility owner (if other than the issuer), the type and location of the qualified renewable energy facility that is the subject of the Application, and the amount of the New CREBs volume cap allocation for such facility in the event the facility receives an allocation. To provide valid consent, the declaration must be in the form set forth in Appendix B. An applicant is not required to provide a declaration consenting to disclosure in order to receive an allocation. The IRS will not publish identifying information with respect to applications that are not awarded an allocation of volume cap or while applications are pending.

SECTION 6. VOLUME CAP ALLOCATIONS AND METHODOLOGY

a. *In general.* New CREB volume cap under § 54C will be allocated in accordance with this section for qualified projects for which Applications meeting the requirements of this notice have been filed with the IRS on or before the Application deadline set forth in this notice. For purposes of this section 6, all Related Projects, as defined in section 3(f)(iii), will be treated as a single project.

b. *Allocation methodology for governmental bodies and cooperative electric companies.* Up to one-third of the total

national volume cap will be allocated to qualified projects owned by governmental bodies and up to an additional one-third of the total national volume cap will be allocated to qualified projects owned by cooperative electric companies. With respect to each such category of qualified owners, the full amount of volume cap requested will be allocated beginning with the project for which the smallest dollar amount of volume cap has been requested and continuing with the project for which the next-smallest dollar amount of volume cap has been requested until the total amount of volume cap set aside for that category of qualified owners has been exhausted or until all applications from that category of qualified owners have been granted, whichever occurs first. For this purpose, except for projects consisting of increases in capacity as described in section 3(f)(iii) of this notice, any amount of the CREB volume cap previously allocated to a project under § 54 (for CREBs) of the Code will be taken into account by increasing the amount requested for that project in the Application submitted pursuant to this notice by the amount previously allocated to the project. A project that causes an increase in capacity of an existing project or of a project that was previously allocated CREB volume cap under § 54 will be treated as a separate, new project for purposes of the allocation of New CREBs volume cap under this section.

c. *Allocation methodology for public power providers.* Up to one-third of the total national volume cap will be allocated to qualified projects owned by public power providers using the pro rata allocation method described below. The amount of volume cap allocated to a project for a public power provider will bear the same proportion to the national volume cap allocated to public power providers as the amount of volume cap requested for that project bears to the total amount of volume cap requested for all projects by public power providers.

SECTION 7. INSUBSTANTIAL DEVIATIONS FROM APPLICATION PROVISIONS

Generally, any allocation of CREBs or New CREBs volume cap is valid for purposes of § 54 or § 54C, respectively, with

respect to bonds issued pursuant to such allocation that are used to finance qualified renewable energy facilities described in the application. An allocation of CREBs or New CREBs under §§ 54 and 54C, respectively, is also valid notwithstanding insubstantial deviations with respect to the information submitted in the Application. Whether a deviation with respect to the information submitted in the Application is insubstantial is determined based on all the facts and circumstances using criteria similar to those used under § 5f.103-2(f)(2) and Prop. Reg. § 1.147(f)-1(b)(6), as amended from time to time, relating to the insubstantial deviation in the information required for public approval of an issue of governmental bonds under § 147(f) of the Code. Applications for approval of specific insubstantial deviations must be submitted by hard copy and in electronic format on compact disk ("CD") by mail to IRS, TEB CREBs Determinations, 1122 Town & Country Commons, St. Louis, Missouri 63017. An application for approval of a specific insubstantial deviation must include (a) a detailed description of the proposed deviation, (b) facts establishing the continued technical viability of the project and that no other taxpayer or the Government will be prejudiced, (c) a copy of the allocation letter issued by the IRS, and (d) a declaration pursuant to section 4 of this notice signed by an authorized person in accordance with section 3.b. of this notice.

SECTION 8. INFORMATION REPORTING

Section 54A(d)(3) requires issuers of New CREBs to submit information reporting returns to the IRS similar to those required to be submitted under § 149(e) for tax-exempt State or local governmental bonds. These information reporting returns are required to be submitted at the same time and in the same manner as those under § 149(e) on such forms as shall be prescribed by the IRS for such purpose. Pending further guidance from the IRS regarding the applicable forms to be used for such information reporting for New CREBs, in the case of an issue of New CREBs, the issuer must submit to the IRS an information return on Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*, at the same time

and in the same manner as required under § 149(e), with modifications as described below. Issuers of New CREBs should complete Part II of Form 8038 by checking the box on Line 20c (Other), writing "New Clean Renewable Energy Bonds" or "New CREBs" in the space provided for the bond description, and entering the issue price of the New CREBs in the Issue Price column. For purposes of this notice, the term "issue" has the meaning used for tax-exempt bond purposes in § 1.150-1(c).

SECTION 9. RELIANCE ON NOTICE AND INTERIM GUIDANCE

(a) Generally

Pending the promulgation and effective date of applicable future regulations or other published administrative guidance, taxpayers may rely on the interim guidance provided in this notice and, to the extent not inconsistent with §§ 54A and 54C and this notice. Taxpayers may also rely on Notice 2006-7, 2006-1 C.B. 559 (March 6, 2006), and Notice 2007-26, 2007-1 C.B. 870 (April 2, 2007).

(b) Credit Rate

For New CREBs issued under § 54C, the credit rate is determined as of the date that the issue of New CREBs is sold. The New CREB credit rate is published for that date by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: <https://www.treasury-direct.gov>. The credit rates will be determined by the Treasury Department in accordance with Notice 2009-15, 2009-6 I.R.B. 449 (February 9, 2009).

(c) Maximum term

The maximum term for a New CREB is determined under § 54A(d)(5) by using a discount rate equal to 110 percent of the long-term adjusted AFR, compounded semi-annually, for the month in which the bond is sold. For purposes of this notice, a bond is "sold" on the first day on which there is a binding written contract for the sale or exchange of the bond. The maximum term for a New CREB is published daily by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>.

(d) Permitted sinking fund yield

Section 54A(d)(4)(C) provides that an issue shall not be treated as failing to meet the arbitrage requirements of § 148 by

reason of any fund which is expected to be used to repay the issue if: (i) the fund is funded at a rate not more rapid than equal annual installments; (ii) the fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (iii) the yield on such fund is not greater than the discount rate determined under § 54A(d)(5)(B) (the “permitted sinking fund yield”).

The permitted sinking fund yield is determined under § 54A(d)(5)(B) by using a rate equal to 110 percent of the long-term adjusted AFR, compounded semi-annually, for the month in which the bond is sold. The IRS publishes the long-term adjusted AFR, compounded semi-annually, each month in a revenue ruling published in the Internal Revenue Bulletin. The Bureau of Public Debt publishes the permitted sinking fund yield for each month on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>.

(e) *Joint ownership of qualified renewable energy facilities*

Joint ownership of qualified renewable energy facilities financed with New CREBs will be recognized in a manner similar to the recognition of joint ownership of output projects under the private activity bond restrictions on tax-exempt bonds under § 141.

(f) *Allocation and accounting*

In determining whether all or a part of a facility will be eligible to be a qualified renewable energy facility for New CREBs purposes, allocation and accounting rules similar to those employed for mixed-use projects will be applied.

(g) *Qualified expenditures*

For purposes of the requirement under § 54C(a)(1) to use 100 percent of the available project proceeds of an issue of New CREBs for qualified costs to finance capital expenditures for qualified renewable energy facilities, available project proceeds used to finance a reserve, sinking, or replacement fund (e.g., a debt service reserve fund to secure the New CREBs), including a Qualified Tax Credit Bond sinking fund, will be treated as nonqualified costs. Except in limited circumstances involving reimbursements to which § 54A(d)(2)(D) applies, costs of acquiring existing facilities, including

refinancing costs (as contrasted with costs of enhancements, repair, or rehabilitation of existing facilities) generally will be treated as nonqualified costs for purposes of the 100 percent use of proceeds test under § 54C(a)(1).

(h) *Coordination with tax credit under § 45K*

A qualified renewable energy facility under § 54C(d)(1) shall include a qualified facility under § 45(d)(6) without regard to the limitation under § 45(e)(9)(A) (which limitation disallows the renewable electricity production credit under § 45 for certain facilities which receive the non-conventional source production credit under § 45K), provided that the owner of the qualified renewable energy facility has not been allowed a credit under § 45K during any taxable year with respect to landfill gas to be used by the qualified renewable energy facility.

(i) *Cooperative electric companies treated like state or local governmental entities*

Cooperative electric companies under § 54C(d)(4) will be treated as “governmental persons” under § 1.141-1(b) for purposes of (1) applying the arbitrage investment restrictions under § 148, including the program investment definition under § 1.148-1(b), and (2) determining whether New CREBs are private activity bonds under § 141 in applying any particular arbitrage investment restriction that depends on whether bonds are private activity bonds.

(j) *Expiration of allocation*

An allocation of New CREBs volume cap is valid for 3 years after the date of the letter issuing the allocation (the “allocation date”). An allocation of unused volume cap will expire and revert back to the IRS on the first day following 3 years after the allocation date. Any bonds issued pursuant to such expired allocation will not be New CREBs for purposes of §§ 54A and 54C. Under a program to be announced, the IRS plans to reallocate any unallocated volume cap, and any allocated volume cap that has been relinquished or that has reverted to the IRS. For purposes of reallocation, relinquished volume cap means volume cap previously allocated to a qualified issuer to finance a qualified project for which the IRS has received written notice from a duly authorized official of the qual-

ified issuer stating that the issuer will not issue CREBs pursuant to the allocation.

To facilitate reallocation of the unused New CREBs volume cap, a qualified issuer that determines it will not issue bonds within 3 years from the allocation date must notify the IRS of such determination in writing within 90 days after the determination is made. If no determination is made, a qualified issuer that fails to issue bonds pursuant to its allocation within the 3-year period must notify the IRS of such failure within 90 days after the end of the 3-year period. The notification must include a copy of the original allocation letter and must be submitted by hard copy and in electronic format on compact disk (“CD”) by mail to the IRS, TEB CREBs Forfeiture, 1122 Town & Country Commons, St. Louis, Missouri 63017.

Consistent with allocation requirements under § 54C(c)(2), any relinquished or reverted New CREB volume cap under § 54C will be reallocated only for a qualified project owned or to be owned by the same category of qualified owner as the owner that originally received the relinquished or reverted allocation. The IRS does not plan to reallocate any unused, relinquished, or unallocated portion of the CREB volume cap authorized under § 54 of the Code.

SECTION 10. EFFECT ON OTHER DOCUMENTS

To the extent not amended by the 2008 Acts and 2009 Act, references to § 54 of the Code under Notice 2006-7 and Notice 2007-26 apply as if the references were to corresponding provisions of §§ 54A and 54C.

SECTION 11. DRAFTING INFORMATION

The principal authors of this notice are Zoran Stojanovic and Timothy L. Jones of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice and the Application, contact Janae Lemley at (636) 255-1202 (not a toll-free call).

APPENDIX A
APPLICATION FOR ALLOCATION OF
NEW CLEAN RENEWABLE ENERGY BOND VOLUME CAP

Internal Revenue Service
TEB CREBs Allocations
1122 Town & Country Commons
St. Louis, Missouri 63017

The following constitutes the application (“Application”) of (Name) (the “Applicant”) for allocation of new clean renewable energy bond (“New CREB”) volume cap under Section 54C(c) of the Internal Revenue Code (the “Code”) (unless otherwise noted, section references herein are to the Code) to finance the project described below. *(If a single Application is used to request New CREB volume cap for more than one project, then all of the required information in the Application must be provided separately for each project.)*

1. Name of Applicant/Issuer _____

Street Address _____

City _____ State _____ Zip _____

Telephone Number _____ Fax Number _____

2. Status of Issuer — *(Select as appropriate)*

The Applicant/Issuer is a “qualified issuer” under section 54C(d)(6) because it is —

- (i) a “clean renewable energy lender” that is a cooperative owned by, or has outstanding loans to, 100 or more cooperative electrical companies and was in existence on February 1, 2002, or is an affiliate that is owned by such a lender, as demonstrated by the attached documents included as Exhibit D.
- (ii) a “cooperative electric company” that is a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C), as demonstrated by the attached documents included as Exhibit D, including a copy of the determination letter previously obtained from the IRS, if any (or other relevant documents).
- (iii) a “governmental body” that is a State, possession of the United States, District of Columbia, Indian tribal government, or any political subdivision of the foregoing, as demonstrated by the attached documents included as Exhibit D. *(Supporting documents are not required to be attached for governmental bodies that are general purpose governmental entities with substantial taxing, eminent domain, and police powers such as generally a county, city, municipality, township, or borough.)*
- (iv) a “public power provider” that is a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on October 3, 2008), as demonstrated by the attached documents included as Exhibit D.
- (v) a “not-for-profit electric utility which has received a loan or loan guarantee under the rural Electrification Act,” as demonstrated by the attached documents included as Exhibit D. For this purpose, supporting documents should include copies of the articles of incorporation and bylaws of the not-for-profit electric utility, and of the loan or loan guarantee documents.

3. Name of Qualified Renewable Energy Facility Owner _____

Street Address _____

City _____ State _____ Zip _____

Telephone Number _____ Fax Number _____

4. Status of Owner — *(Select as appropriate)* The Owner is a qualified entity under section 54C(d)(1) because it is —

- (i) a qualified owner under section 54C(d)(4) that is a mutual or cooperative electric company under section 501(c)(12) or section 1381(a)(2)(C), as demonstrated by the attached documents included as Exhibit D, including a copy of the determination letter previously obtained from the IRS, if any (or other relevant documents).

- (ii) a qualified owner under section 54C(d)(3) that is a “governmental body” and is a State, possession of the United States, District of Columbia, Indian tribal government, or any political subdivision of the foregoing, as demonstrated by the attached documents included as Exhibit D. (*Supporting documents are not required to be attached for governmental bodies that are general purpose governmental entities with substantial taxing, eminent domain, and police powers such as generally a county, city, municipality, township, or borough.*)
- (iii) a qualified owner under section 54C(d)(2) that is a “public power provider” and is a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on October, 3 2008), as demonstrated by the attached documents included as Exhibit D. For this purpose, supporting documents should include copies of the articles of incorporation and bylaws of the not-for-profit electric utility, and of the loan or loan guarantee documents.

5. Name of Qualified Renewable Energy Facility.

6. Detailed Description of the Qualified Renewable Energy Facility. A reasonably detailed description of the qualified renewable energy facility (the “Project”) is set forth below or in attached Exhibit A, including reasonably expected costs of components, such as land, site prep, equipment, installation, other dedicated facilities such as transmission, Project capacity and projected or expected use of the power produced at the Project:

7. Qualified Renewable Energy Facility. The Project is a “qualified renewable energy facility” within the meaning of section 54C(d)(1) of the Code because it is a “qualified facility” (as determined under section 45(d) of the Code without regard to section 45(d)(8) and (10) and to any placed in service date) that is (*select as appropriate*)—

- (1) a wind facility — a facility using wind to produce electricity;
- (2) a closed-loop biomass facility — a facility using closed-loop biomass (as defined in section 45(c)) to produce electricity or, if owned by the taxpayer prior to January 1, 2008, a facility using closed-loop biomass to produce electricity which is modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation;
- (3) an open-loop biomass facility — a facility using open-loop biomass (as defined in section 45(c)) to produce electricity and in the case of a facility using agricultural livestock waste nutrients, the nameplate capacity rating of which is not less than 150 kilowatts;
- (4) a geothermal or solar energy facility — a facility using geothermal energy (as defined in section 45(c)) or solar energy to produce electricity (not including a facility described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48 of the Code);
- (5) a small irrigation power facility — a facility using small irrigation power (as defined in section 45(c)) to produce electricity;
- (6) a landfill gas facility — a facility producing electricity from gas derived from the biodegradation of municipal solid waste (as defined in section 45(c));
- (7) a trash combustion facility — a facility that burns municipal solid waste (as defined in section 45(c)) to produce electricity;
- (8) a qualified hydropower facility — a facility engaged in qualified hydropower production (as defined in section 45(c)); or
- (9) a marine and hydrokinetic renewable energy facility — a facility producing electricity from marine and hydrokinetic renewable energy (as defined in section 45(c)) with a nameplate capacity of at least 150 kilowatts.

8. Construction Commencement Date and Placed in Service Date. The Borrower begun or expects to begin the construction, installation and equipping of the Project on _____. The Borrower expects that the Project will be placed into service on or before _____.

9. Independent Engineer’s Certificate: (*If the Application is for more than one Project, a separate certificate must be included for each Project.*) Attached as Exhibit B hereto is a certification by an independent, licensed engineer to the effect that the Project will be a “qualified renewable energy facility” within the meaning of section 54C(d)(1) and a “qualified facility” within the meaning of section 45(d) of the Code (without regard to section 45(d)(8) and (10) of the Code and to any placed in service date), and that the project is technically viable and will produce electricity.

If the project is a **qualified hydropower facility** under section 45(d)(9)—

- a. producing incremental hydropower production, then the engineering certificate also must state that the project consists only of efficiency improvements or additions to capacity that produce additional production as described in section 45(c)(8)(B) based on a methodology that would meet Federal Energy Regulatory Commission (FERC) standards; or
- b. that is a nonhydroelectric dam under section 45(c)(8)(C), then the engineering certificate also must state that the facility, when constructed, (a) will meet FERC licensing requirements and other applicable environmental, licensing and regulatory requirements, and (b) will be operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.

10. Location of the Project:

Project address or physical location (do not include postal box numbers or mailing address) _____
City _____ State _____ Zip _____
County where Project is located _____

11. Individual to contact for more information about the Project:

Individual Name _____
Company Name _____
Street Address _____
City _____ State _____ Zip _____
Telephone Number _____
Fax Number _____
Email Address _____

(Include as appropriate) The contact person is not an authorized official or officer of the Issuer and a properly executed Form 8821 is included with this Application that authorizes the disclosure by the IRS of information that relates to this Application and the Project(s) described above to the contact person.

- 12. Regulatory Approvals.** Identify each regulatory body, the action that must be taken, status of any pending action and the remaining timeframe required to obtain each required approval such as a FERC approval, or siting permits. The plan of the Applicant for obtaining such approvals is as follows: *(or attach an Exhibit)*
- 13. Plan of Financing.** Include a reasonably detailed description of the plan of financing for the Project, including all reasonably expected sources and uses of financing and other funds, the status of such financing, the anticipated date of bond issuance, the sources of security and repayment for the bonds, the aggregate face amount of bonds expected to be issued for the Project, and the issuer's reasonably expected schedule for spending proceeds of New CREBs. Attached as Exhibit C is a plan of financing for the Project.
- 14. Reimbursements.** *(For reimbursements, include the following statement.)* The Issuer intends to use the proceeds of New CREBs to reimburse costs of the Project in accordance with section 54A(d)(2)(D).] *(In addition, the Issuer must demonstrate that the requirements of § 54A(d)(2)(D) will be met.)*
- 15. Dollar Amount of Allocation Requested for the Project.** To finance the Project, the Applicant hereby requests a New CREB allocation in the amount of \$_____.
- 16. Prior Allocations for the Project or Related Project.** *(If the Project or any Related Project (as defined in section 3.f.(iii) of this notice) previously received an allocation of CREBs volume cap under section 54 of the Code, then this paragraph must include a statement to that effect.)*

[If applicable, include the following statement: On (Insert date), the Project previously received a CREBs volume cap allocation in the amount of \$_____. A copy of the IRS allocation letter for that allocation is attached.]

[If applicable, include the following statement: On (Insert date), a Related Project previously received a CREBs volume cap allocation in the amount of \$_____. A copy of the IRS allocation letter for that allocation is attached.]

- 17. Other Allocation Requests for Related Projects to the Project.** Included below are descriptions of other projects that are Related Projects (as defined in paragraph 16 above) to the Project for which the applicant or other entities are applying for a CREB volume cap allocation. With respect to an applicant on a Related Project other than the Applicant, set forth below are the names, addresses, contact persons, and telephone numbers for any such applicant.
- 18. Pooled Financing Bonds.** *(If the issuer expects to use the requested allocation of New CREB volume cap as part of a pooled financing bond within the meaning of section 149(f), then the issuer should include the undertaking noted below.)*

[The Applicant Issuer expects to use the requested allocation for New CREBs volume cap in a pooled financing bond within the meaning of section 149(f), and the Issuer expressly agrees that it will obtain a written loan commitment for all borrowers from the issue of New CREBs to which the requested allocation relates before the issue date of that issue.]

I hereby certify that I am an authorized officer or official of the Applicant and am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt and that I am duly authorized to execute legal documents on behalf of the Application in making this Application. Under penalties of perjury, I declare that (i) I have knowledge of the relevant facts and circumstances relating to this Application and the Project(s), (ii) I have examined this Application, and (iii) to the best of my knowledge and belief, all of the facts contained in this Application are true, correct and complete.

By: _____

Name and Title: _____

Date: _____

EXHIBIT A
DESCRIPTION OF THE PROJECT
(RESPONSE TO QUESTION 6 OF THE APPLICATION)
(Attached hereto)

EXHIBIT B
ENGINEER'S CERTIFICATE
(RESPONSE TO QUESTION 9 OF THE APPLICATION)

(Attached hereto in substantially the form below)

Dated: _____, 2009

This certificate is being provided to the Internal Revenue Service ("IRS") in connection with an application (the "Application") by [*Name of Applicant Issuer*: _____] (the "Issuer") to the IRS requesting an allocation of volume cap authority to issue new clean renewable energy bonds ("New CREBs") under section 54C of the Internal Revenue Code, as amended (the "Code"). The New CREBs are being issued to make a loan to [*Name of the qualified renewable energy facility owner*]: _____ (the "Owner"), to finance the costs of certain qualified renewable energy facility or facilities described more particularly in the Application (the "Project"). The undersigned hereby certifies as follows:

1. I am an independent, licensed engineer, duly qualified to practice the profession of engineering under the laws of the State of _____ and I am not an officer or employee of the Issuer or the Borrower.

2. I have reviewed the Application for a New CREBs volume cap allocation (including the exhibits thereto) of the Issuer of even date herewith describing the Project. To the best of my knowledge, information, and belief, the Project will meet the requirements to be a "qualified renewable energy facility" under section 54C(d)(1) of the Code and correspondingly a "qualified facility" under section 45(d) of the Code (determined without regard to section 45(d)(8) and (10) of the Code and without regard to any placed in service date).

[(*Include as applicable*) To the best of my knowledge, information, and belief, the Project is a qualified hydropower facility under section 45(d)(9)—

- a. producing incremental hydropower production consisting only of efficiency improvements or additions to capacity that produce additional production as described in section 45(c)(8)(B) based on a methodology that would meet Federal Energy Regulatory Commission (FERC) standards. *or*
- b. that is a nonhydroelectric dam under section 45(c)(8)(C) and the facility, when constructed, (a) will meet FERC licensing requirements and other applicable environmental, licensing and regulatory requirements, and (b) will be operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.]

3. To the best of my knowledge, information and belief, the Project is technically viable and, when constructed, will produce electricity.

IN WITNESS WHEREOF, I have hereunto affixed my official signature on the date of this Engineer's Certificate.

By: _____

Seal and/or License number:

Name and Title: _____

Company: _____

EXHIBIT C
PLAN OF FINANCING
(RESPONSE TO QUESTION 13 OF THE APPLICATION)
(Attached hereto)

EXHIBIT D
DOCUMENTS REGARDING ISSUER OR BORROWER ORGANIZATIONAL STATUS
(RESPONSE TO QUESTION 2 OR 4 OF THE APPLICATION, AS APPLICABLE)

(Attached hereto)

APPENDIX B
CONSENT TO PUBLIC DISCLOSURE
OF CERTAIN CLEAN RENEWABLE ENERGY BOND
APPLICATION INFORMATION

In the event that the Application of [(Insert name of applicant here): _____] (the "Applicant") for an allocation of authority to issue new clean renewable energy bonds ("New CREBs") under section 54C of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant hereby consents to the disclosure by the Internal Revenue Service through publication of a Notice in the Internal Revenue Bulletin or a press release of the name of applicant (issuer), the name of the qualified renewable energy facility owner (if other than the issuer), the type and location of the facility that is the subject of the Application, and the amount of the allocation, if any, of volume cap authority to issue New CREBs for such facility. The undersigned understands that this information might be published, broadcast, discussed or otherwise disseminated in the public record.

This authorization shall become effective upon the execution thereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to disclose on behalf of the taxpayer named below.

Date: _____ Signature: _____
Print name: _____
Title: _____

Name of Applicant-Taxpayer: _____

Taxpayer Identification Number: _____

Taxpayer's Address: _____

Note: Treasury Regulations require that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

Modification of Notice
2008-110; ASTM standards
for biodiesel

Notice 2009-34

SECTION 1. PURPOSE

This notice extends the transitional rule set forth in Section 2(c) of Notice 2008-110, 2008-51 I.R.B. 1298, to September 30, 2009.

SECTION 2. BACKGROUND

(1) Sections 40A, 6426, and 6427(e) of the Internal Revenue Code (Code) provide tax incentives for the production, sale, and use of biodiesel and biodiesel mixtures. Section 40A(d)(1) of the Code defines biodiesel as monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet (i) the registration

requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and (ii) the requirements of ASTM D6751.

(2) Effective on October 13, 2008, the American Society of Testing and Materials revised the requirements of ASTM D6751 by adding a cold soak filtration test for biodiesel (the October 13, 2008 revision).

(3) Section 2(c) of Notice 2008-110 provides a transitional rule to address this new ASTM D6751 requirement. Under the transitional rule, if a taxpayer's claim for biodiesel incentives is related to the production, sale, or use of biodiesel or a biodiesel mixture before April 1, 2009, a certification that the biodiesel covered by the claim meets the requirements of ASTM 6751 is valid if the biodiesel meets the requirements of ASTM 6751 as in effect either before or after the October 13, 2008, revision. However, if the claim is related to the production, sale, or use on or af-

ter April 1, 2009, the certification of the biodiesel covered by the claim is valid only if the biodiesel meets the requirements of ASTM 6751 as in effect after the October 13, 2008 revision.

SECTION 3. EXTENSION OF
TRANSITIONAL RULE

This guidance extends the transitional rule set forth in Section 2(c) of Notice 2008-110 through September 30, 2009. Therefore, if a taxpayer's claim for biodiesel incentives relates to the production, sale, or use of biodiesel or a biodiesel mixture and the production, sale, or use occurs before October 1, 2009, a certification that the biodiesel covered by the claim meets the requirements of ASTM D6751 is valid if the biodiesel meets the requirements of ASTM D6751 as in effect either before or after the October 13, 2008 revision that added the cold soak filtration test for biodiesel. If a claim relates to the production, sale, or use of biodiesel or

a biodiesel mixture and the production, sale, or use occurs on or after October 1, 2009, a certification that the biodiesel covered by the claim meets the requirements of ASTM D6751 is valid only if the biodiesel satisfies the requirements of ASTM D6751 as in effect after the October 13, 2008, revision that added the cold soak filtration test for biodiesel.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2008–110 is modified.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Charles J. Langley, Jr. of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Charles J. Langley, Jr. at (202) 622–3130 (not a toll-free call).

Qualified School Construction Bond Allocations for 2009

Notice 2009–35

SECTION 1. PURPOSE

This notice sets forth the maximum face amount of qualified school construction bonds (“QSCBs”) allocated by the Department of the Treasury (Treasury) to each State and large local educational agency for 2009 under § 54F(d) of the Internal Revenue Code (Code). For this purpose, § 54A(e)(3) provides that the term “State” includes the District of Columbia and any possession of the United States. This notice also provides interim guidance for QSCBs.

SECTION 2. BACKGROUND

.01 INTRODUCTION

Section 1521(a) of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115 (2009) (“Act”) added new § 54F to the Code, setting forth program provisions for QSCBs. The Act amended

§ 54A(d)(1) to provide that the term “qualified tax credit bond” means, in part, a qualified school construction bond that is part of an issue that meets the requirements of §§ 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest, respectively. The Act also amended § 54A(d)(2) to provide that, for purposes of § 54A(d)(2)(C), the term “qualified purpose” for a QSCB means a purpose specified in § 54F(a)(1) described below.

The Act added § 54F(c) to provide a national bond limitation authorization for QSCBs of \$11 billion for 2009 and \$11 billion for 2010 (each, a “calendar year volume cap” and together “volume cap”). Section 54F(c)(3) provides that except for carryforwards provided for in § 54F(e), there is no calendar year volume cap for calendar years after 2010.

.02 QUALIFIED SCHOOL CONSTRUCTION BONDS UNDER § 54F

Section 54F(a) defines a “qualified school construction bond” to mean any bond issued as part of an issue if —

(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

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

Section 54F(b) provides that the maximum aggregate face amount of bonds issued during any calendar year that may be designated under § 54F(a) by any issuer shall not exceed the portion of the calendar year volume cap allocated to such issuer for the calendar year under § 54F(d).

Section 54F(d)1) provides that, except as provided in § 54F(d)(2)(C), the calendar year volume cap shall be allocated by the Treasury among the States in proportion to the respective amounts each State is eligible to receive under § 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) (the “Education Act”) for

the most recent fiscal year ending before the calendar year. Section 54F(d)(1) further provides that the calendar year volume cap amount allocated to each State is to be further allocated by the State to the issuers within the State.

Section 54F(d)(2)(A) provides that 40 percent of the calendar year volume cap for any calendar year is to be allocated under § 54F(d)(2)(B) by the Treasury among local educational agencies that are large local agencies for the calendar year. Section 54F(d)(2)(B) provides that 40 percent of the calendar year volume cap is to be allocated among large local educational agencies in proportion to the respective amounts each such agency received under § 1124 of the Education Act for the most recent fiscal year ending before the calendar year.

Section 54F(d)(2)(C) provides that the allocation of calendar year volume cap to any State under § 54F(d)(1) is reduced by the aggregate amount of allocations under § 54F(d)(2) to large local educational agencies within the State.

Section 54F(d)(2)(D) provides the amount of calendar year volume cap allocated to a large local educational agency for any calendar year may be reallocated by such agency to the State in which such agency is located for the calendar year. Section 54F(d)(2)(D) further provides that any amount reallocated to a State by a large local educational agency may be further allocated by the State to issuers within the State.

Section 54F(d)(2)(E) defines a large local educational agency as any local educational agency if such agency is: (1) among the one hundred local educational agencies with the largest number of children aged 5 through 17 from families living below the poverty level, as determined by the Treasury using the most recent data available from the Department of Commerce that are satisfactory to the Treasury; or (2) one of not more than twenty-five additional local educational agencies that the Secretary of Education determines (based on the most recent data available satisfactory to the Treasury) are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or such other factors as the Treasury deems appropriate.

Section 54F(d)(3) provides that the amount allocated under § 54F(d)(1) to any

United States possession other than Puerto Rico is an amount that would have been allocated to such possession if all allocations under § 54F(d)(1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). Section 54F(d)(3) further provides that in making the other allocations, the amount to be allocated under § 54F(d)(1) to the States is reduced by the aggregate amount allocated under § 54F(d)(3) to the United States possessions.

Section 54F(d)(4) provides for additional calendar year volume cap amounts of \$200 million for calendar year 2009 and \$200 million for calendar year 2010 (each an “Indian tribal government calendar year volume cap” and together the “Indian tribal government volume cap”) to be allocated by the Secretary of Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. This \$ 200 million Indian tribal government calendar year volume cap allocated to the Indian tribal governments does not reduce the \$11 billion calendar year volume cap allocated to the States and the large local educational agencies. Section 54F(d)(4) further provides that, for amounts of Indian tribal government volume cap allocated, Indian tribal governments (as defined in § 7701(a)(40)) are to be treated as qualified issuers.

Section 54F(e) provides that if for any calendar year, the amount of calendar year volume cap allocated under § 54(d) to any State or the amount of Indian tribal government calendar year volume cap allocated to an Indian tribal government exceeds the amount of QSCBs issued during the calendar year pursuant to such allocation, the amount of such excess shall to be carried over to the following calendar year and shall increase the calendar year volume cap or the Indian tribal government calendar year volume cap allocation for the following calendar year for the State or Indian tribal government.

SECTION 3. INTERIM GUIDANCE AND RELIANCE

.01 GENERALLY

Pending the promulgation and effective date of future administrative or regulatory

guidance, taxpayers may rely on the interim guidance provided in this Notice.

.02 CREDIT RATE

For QSCBs issued under §§ 54A and 54F, the maximum maturity and the credit rate are determined as of the date that there is a binding, written contract for the sale or exchange of the bond. The applicable maximum maturity, the discount rate for determining the maturity, and QSCB credit rate are published for that date by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>. For further information regarding the methodology and procedures that the Treasury uses to determine these credit rates, see Notice 2009–15, 2009–6 I.R.B. 449 (February 9, 2009).

.03 SINKING FUND YIELD

Section 54A(d)(4)(C) provides that an issue shall not be treated as failing to meet the requirements of § 148 by reason of any fund that is expected to be used to repay the issue if: (i) the fund is funded at a rate not more rapid than equal annual installments; (ii) the fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (iii) the yield on such fund is not greater than the discount rate determined under § 54A(d)(5)(B) (the “permitted sinking fund yield”).

The permitted sinking fund yield is determined under § 54A(d)(5)(B) by using a rate equal to 110 percent of the long-term adjusted federal rate (“AFR”), compounded semiannually, for the month in which the bond is sold. The IRS publishes the long-term adjusted AFR, compounded semiannually, each month in a revenue ruling published in the Internal Revenue Bulletin. The Bureau of Public Debt publishes the permitted sinking fund yield for each month on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>.

.04 INFORMATION REPORTING

Section 54A(d)(3) requires issuers of QSCBs to submit information reporting returns to the IRS similar to those required to be submitted under § 149(e) for tax-exempt State or local governmental bonds.

These information reporting returns are required to be submitted at the same time and in the same manner as those under § 149(e) on such forms as shall be prescribed by the IRS for such purpose. Pending further guidance from the IRS regarding the applicable forms to be used for such information reporting for QSCBs, in the case of an issue of QSCBs, the issuer must submit to the IRS an information return on Form 8038, at the same time and in the same manner as required under § 149(e), with modifications as described below. Issuers of QSCBs should complete Part II of Form 8038 by checking Line 20c (Other), writing “QSCBs” in the space provided for the bond description, and entering the issue price of the QSCBs in the Issue Price column on Line 20c. For purposes of this notice, the term “issue” has the meaning used for tax-exempt bond purposes in § 1.150–1(c) of the Income Tax Regulations.

.05 CERTAIN ELIGIBLE EXPENDITURES FOR EQUIPMENT

For purposes of the § 54F(a)(1) requirement that all available proceeds of QSCBs be spent on construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, eligible expenditures include, among other things, expenditures for costs of acquisition of equipment to be used in such portion or portions of the public school facility that is being constructed, rehabilitated, or repaired with the proceeds of QSCBs.

.06 ELIGIBLE ISSUERS

Eligible issuers of QSCBs include States, political subdivisions as defined for purposes of § 103, large local educational agencies that are State or local governmental entities, and entities empowered to issue bonds on behalf of any such entity 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 § 103 and § 1.103–1(b), Income Tax Regs. Further, eligible issuers include otherwise-eligible issuers in conduit financing issues (as defined in § 1.150–1(b), Income Tax Regs.)

An eligible issuer may issue QSCBs based on a volume cap allocation received by the eligible issuer itself or by a conduit borrower or other ultimate beneficiary of the issue of QSCBs. In all events, the eligible costs of public school facilities financed with the proceeds of an issue of QSCBs under § 54F(a)(1) must relate to public school facilities that are located within both the jurisdiction of the issuer of the QSCBs and the jurisdiction of the authorized entity that allocates volume cap to the issue of QSCBs for the financing of those public school facilities. Authorized entities that may allocate volume cap consist of those entities that receive volume cap allocations under § 54F(d). Thus, for example, a large local educational agency that has received a volume cap allocation under § 54F(d)(2) either may issue QSCBs

with respect to that volume cap itself or it may be a beneficiary of proceeds of an issue issued by another eligible issuer with respect to that volume cap, provided that, in either event, the public school facilities to be financed with the proceeds of the issue of QSCBs are located within both the jurisdiction of the issuer of the QSCBs and the jurisdiction of the large educational agency that allocated volume cap to the issue of QSCBs for the financing of those public school facilities.

SECTION 4. 2009 ALLOCATIONS OF NATIONAL BOND VOLUME CAP FOR QSCBs

The 2009 national bond volume cap for QSCBs is \$11 billion. This amount is allocated among the States and large local edu-

cational agencies as set forth in this notice. The 2009 allocations to 100 large local educational agencies reflects the determination by the Secretary of Education to decline to select 25 additional large local educational agencies under § 54F(d)(2)(E)(ii) for such year. The first chart below allocates \$6.6 billion of the \$11 billion 2009 calendar year volume cap for QSCBs to States to be further allocated to the issuers within such State. The second chart below allocates \$4.4 billion of the \$11 billion 2009 calendar year volume cap for QSCBs to large local educational agencies.

2009 Allocations to States of Volume Cap for Qualified School Construction Bonds (Net of Allocations to Large Local Educational Agencies)	
State/Territory	Total Allocation by State/Territory
Alabama	118,776,000
Alaska	29,784,000
Arizona	186,292,000
Arkansas	113,443,000
California	773,525,000
Colorado	87,147,000
Connecticut	105,092,000
Delaware	29,784,000
District of Columbia	0
Florida	106,806,000
Georgia	201,062,000
Hawaii	0
Idaho	37,665,000
Illinois	244,435,000
Indiana	177,861,000
Iowa	64,252,000
Kansas	79,589,000
Kentucky	135,132,000
Louisiana	131,622,000
Maine	42,074,000
Maryland	50,354,000

Massachusetts	144,783,000
Michigan	296,860,000
Minnesota	75,850,000
Mississippi	132,443,000
Missouri	141,441,000
Montana	31,623,000
Nebraska	32,343,000
Nevada	6,767,000
New Hampshire	29,784,000
New Jersey	223,279,000
New Mexico	64,602,000
New York	192,049,000
North Carolina	187,167,000
North Dakota	25,740,000
Ohio	267,112,000
Oklahoma	87,018,000
Oregon	112,886,000
Pennsylvania	315,737,000
Rhode Island	22,062,000
South Carolina	131,364,000
South Dakota	29,784,000
Tennessee	121,738,000
Texas	538,585,000
Utah	50,962,000
Vermont	24,845,000
Virginia	191,077,000
Washington	164,111,000
West Virginia	78,219,000
Wisconsin	98,589,000
Wyoming	24,080,000
American Samoa	10,748,000
Guam	10,980,000
Northern Marianas	10,703,000
Puerto Rico	0
Virgin Islands	9,974,000
Total	6,600,000,000

**2009 Allocations to Large Local Educational Agencies of Volume Cap for
Qualified School Construction Bonds**

State	Large Local Educational Agency	Allocation
Alabama	Birmingham City School District	15,683,000
Alabama	Mobile County School District	23,135,000
Alabama	Montgomery County School District	11,421,000
Arizona	Mesa Unified District	16,111,000
Arizona	Tucson Unified District	21,375,000
California	Bakersfield City Elementary	15,720,000
California	Compton Unified	18,559,000
California	Fresno Unified	41,398,000
California	Long Beach Unified	37,905,000
California	Los Angeles Unified	318,816,000
California	Oakland Unified	26,326,000
California	Sacramento City Unified	21,251,000
California	San Bernardino City Unified	27,790,000
California	San Diego City Unified	38,877,000
California	Santa Ana Unified	19,269,000
California	Stockton City Unified	16,055,000
Colorado	Denver County 1	24,022,000
District of Columbia	District of Columbia Public Schools	33,936,000
Florida	Broward County School District	49,913,000
Florida	Dade County School District	104,855,000
Florida	Duval County School District	27,220,000
Florida	Hillsborough County School District	40,633,000
Florida	Lee County School District	12,701,000
Florida	Orange County School District	35,824,000
Florida	Palm Beach County School District	33,643,000
Florida	Pasco County School District	11,028,000
Florida	Pinellas County School District	24,352,000
Florida	Polk County School District	20,543,000
Florida	Volusia County School District	11,941,000
Georgia	Atlanta City School District	37,934,000
Georgia	Clayton County School District	13,793,000
Georgia	Cobb County School District	12,732,000
Georgia	De Kalb County School District	27,832,000
Georgia	Fulton County School District	17,720,000
Georgia	Gwinnett County School District	18,985,000
Georgia	Richmond County School District	16,163,000
Hawaii	Hawaii	32,058,000
Illinois	City of Chicago School District 299	254,250,000

Indiana	Indianapolis Public Schools	31,181,000
Kentucky	Jefferson County School District	27,483,000
Louisiana	Caddo Parish School Board	17,359,000
Louisiana	East Baton Rouge Parish School Board	21,433,000
Louisiana	Jefferson Parish School Board	21,646,000
Louisiana	Orleans Parish School Board	39,607,000
Maryland	Baltimore City Public School System	58,096,000
Maryland	Baltimore County Public Schools	19,424,000
Maryland	Prince George's County Public Schools	25,102,000
Massachusetts	Boston	37,567,000
Massachusetts	Springfield	17,864,000
Michigan	Detroit City School District	123,272,000
Minnesota	Minneapolis	21,739,000
Minnesota	St. Paul	16,119,000
Mississippi	Jackson Public School District	15,255,000
Missouri	Kansas City School District	17,880,000
Missouri	St Louis City	28,163,000
Nebraska	Omaha Public Schools	17,378,000
Nevada	Clark County School District	51,414,000
New Jersey	Newark City	27,258,000
New Mexico	Albuquerque Public Schools	21,968,000
New York	Buffalo City School District	34,374,000
New York	New York City	699,872,000
New York	Rochester City School District	29,535,000
North Carolina	Charlotte-Mecklenburg Schools	25,962,000
North Carolina	Cumberland County Schools	15,948,000
North Carolina	Forsyth County Schools	12,244,000
North Carolina	Guilford County Schools	17,147,000
North Carolina	Wake County Schools	17,304,000
Ohio	Akron City School District	15,062,000
Ohio	Cincinnati City School District	25,632,000
Ohio	Cleveland Municipal School District	53,145,000
Ohio	Columbus City School District	36,372,000
Ohio	Toledo City School District	21,460,000
Oklahoma	Oklahoma City	17,844,000
Oklahoma	Tulsa	14,327,000
Pennsylvania	Philadelphia City School District	146,897,000
Puerto Rico	Puerto Rico	376,055,000
Rhode Island	Providence School District	22,338,000
South Carolina	Charleston County School District	13,517,000
South Carolina	Greenville County School District	15,060,000

Tennessee	Memphis City School District	41,736,000
Tennessee	Nashville-Davidson County School District	21,132,000
Texas	Aldine Independent School District	18,810,000
Texas	Alief Independent School District	16,297,000
Texas	Arlington Independent School District	12,805,000
Texas	Austin Independent School District	24,440,000
Texas	Brownsville Independent School District	25,612,000
Texas	Dallas Independent School District	73,741,000
Texas	Edinburg Consolidated Independent School District	13,810,000
Texas	El Paso Independent School District	29,067,000
Texas	Fort Worth Independent School District	31,602,000
Texas	Garland Independent School District	10,186,000
Texas	Houston Independent School District	94,303,000
Texas	La Joya Independent School District	13,392,000
Texas	Laredo Independent School District	13,639,000
Texas	Northside Independent School District	13,299,000
Texas	Pasadena Independent School District	14,445,000
Texas	Pharr-San Juan-Alamo Independent School District	13,302,000
Texas	San Antonio Independent School District	30,385,000
Texas	Ysleta Independent School District	16,807,000
Wisconsin	Milwaukee	72,118,000
Total		4,400,000,000

SECTION 5. EFFECTIVE DATE OF 2009 ALLOCATIONS OF NATIONAL BOND VOLUME CAP

The allocations of the national bond volume cap for QSCBs in Section 4 are effective for QSCBs issued, pursuant to an allocation of 2009 calendar year volume cap, after February 17, 2009, and before January 1, 2010.

SECTION 6. ALLOCATION OF THE INDIAN TRIBAL GOVERNMENT VOLUME CAP

The Department of the Interior is exclusively responsible for making the allocations of the Indian tribal government volume cap and inquiries about the process and timing for those allocations of volume cap should be directed to John Rever, Director, Office of Management Support Services, Bureau of Indian Affairs, at (703) 390-6314 or *John.rever@bia.gov*.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Aviva M. Roth of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Aviva M. Roth at (202) 622-3980 (not a toll-free call.)

Payments made to a REMIC pursuant to the Home Affordable Modification Program

Notice 2009-36

The Internal Revenue Service (Service) and the Department of the Treasury (Treasury) intend to issue regulations regarding the application of section 860G(d) of the Internal Revenue Code to certain amounts

that may be paid to real estate mortgage investment conduits (REMICs) as part of the Home Affordable Modification Program (HAMP). The HAMP was announced on February 18, 2009, and many details of its operation were provided on March 4, 2009. See documents entitled “Home Affordable Modification Program Guidelines” and “Making Home Affordable, Summary of Guidelines.”

BACKGROUND

.01 Section 860G(d)(1) states that, except as provided in section 860G(d)(2), “if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.”

.02 Section 860G(d)(2) provides that this tax does not apply to any cash contributions that are—

(A) Contributions made to facilitate a clean-up call or a qualified liquidation;

(B) Payments in the nature of a guarantee;

(C) Contributions made during the 3-month period beginning on the startup day;

(D) Contributions made to a qualified reserve fund by any holder of a residual interest in the REMIC; or

(E) Other contributions permitted in regulations.

.03 The question has arisen whether some of the payments that may be made to REMICs under the HAMP are “contributions” that are described in section 860G(d)(1) and, if so, whether they are covered by the exceptions in section 860G(d)(2).

DISCUSSION

If a payment is made to a REMIC under the HAMP, if the payment is described in section 860G(d)(1), and if the payment is not covered by any of the exceptions in section 860G(d)(2), then regulations to be issued by the Service and Treasury will provide an exception for that payment. The regulations are expected to be effective for payments made on or after March 4, 2009. Pending the issuance of further guidance, taxpayers may rely on this Notice and, accordingly, any payment made to a REMIC under the HAMP will not be subject to the 100 percent tax set forth in section 860G(d)(1).

DRAFTING INFORMATION

The principal author of this notice is Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Ms. Imholtz at 202-622-3930 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part I, §§ 860D, 860F, 860G, 1001; 1.860G-2, 1.1001-3, 301.7701-2, 301.7701-3, 301.7701-4.)

Rev. Proc. 2009-23

SECTION 1. PURPOSE

This revenue procedure describes the conditions under which modifications to certain mortgage loans will not cause the Internal Revenue Service (Service) to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications give rise to prohibited transactions.

This revenue procedure provides certainty in the current economic environment with respect to certain potential tax issues that may be implicated by loan modifications made pursuant to the Home Affordable Modification Program (“HAMP”), described below. No inference should be drawn about whether similar consequences would obtain if a transaction falls outside the limited scope of this revenue procedure. Furthermore, there should be no inference that, in the absence of this revenue procedure, transactions within its scope would have impaired the tax status of securitization vehicles or would have given rise to prohibited transactions.

SECTION 2. BACKGROUND-THE HAMP

.01 The deep contraction in the economy and in the housing market has created distress for homeowners and communities throughout the country. Large numbers of homeowners are unable to afford their current monthly mortgage payments and are at risk of losing their homes. In response, on February 18, 2009, the United States Government announced the Homeowner Affordability and Stability Plan (the “Plan”). The Plan is intended to help at-risk homeowners to modify their mortgages to avoid foreclosure. On March 4, 2009, as a key component of the Plan, the United States Government released further details about the HAMP. *See* documents entitled “Home Affordable Modification Program Guidelines” and “Making Home Affordable, Summary of Guidelines.”

.02 The HAMP includes detailed protocols for identifying borrowers at risk of de-

fault. As is more fully set forth in the program documents, the HAMP is intended to reach borrowers with high mortgage debt service compared to income and other indications of being at risk of default. Delinquency is not a requirement for eligibility. Rather, because loan modifications are more likely to succeed if they are made before a borrower misses a payment, the HAMP is also intended to reach borrowers for whom default is imminent despite the fact that those borrowers are current on their mortgage payments. In determining whether default is imminent for a particular borrower, the HAMP takes into account a broad range of information, including whether the borrower has had a change in circumstances that causes financial hardship, or is facing a recent or imminent increase in the monthly mortgage payment that would likely create a financial hardship.

.03 The HAMP applies both to loans that investors hold directly and to those that are held through securitization vehicles such as investment trusts and real estate mortgage investment conduits (REMICs).

SECTION 3. BACKGROUND—REMICs

.01 REMICs are widely used securitization vehicles for mortgages. REMICs are governed by sections 860A through 860G of the Internal Revenue Code.

.02 For an entity to qualify as a REMIC, all of the interests in the entity must consist of one or more classes of regular interests and a single class of residual interests, *see* section 860D(a), and those interests must be issued on the startup day, within the meaning of § 1.860G-2(k) of the Income Tax Regulations.

.03 A regular interest is one that is designated as a regular interest and whose terms are fixed on the startup day. Section 860G(a)(1). In addition, a regular interest must (1) unconditionally entitle the holder to receive a specified principal amount (or other similar amount), and (2) provide that interest payments, if any, at or before maturity are based on a fixed rate (or to the extent provided in regulations, at a variable rate).

.04 An interest issued after the startup day does not qualify as a REMIC regular interest.

.05 Under section 860D(a)(4), an entity qualifies as a REMIC only if, among other things, as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of its assets consist of qualified mortgages and permitted investments. This asset test is satisfied if the entity owns no more than a *de minimis* amount of other assets. See § 1.860D-1(b)(3)(i). As a safe harbor, the amount of assets other than qualified mortgages and permitted investments is *de minimis* if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the entity's assets. § 1.860D-1(b)(3)(ii).

.06 With limited exceptions, a mortgage loan is not a qualified mortgage unless it is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC. See section 860G(a)(3)(A)(i).

.07 The legislative history of the REMIC provisions indicates that Congress intended the provisions to apply only to an entity that holds a substantially fixed pool of real estate mortgages and related assets and that "has no powers to vary the composition of its mortgage assets." S. Rep. No. 99-313, 99th Cong., 2nd Sess. 791-92, 1986-3 (Vol. 3) C.B. 791-92.

.08 Section 1.1001-3(c)(1)(i) defines a "modification" of a debt instrument as any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. Section 1.1001-3(e) governs which modifications of debt instruments are "significant." Under § 1.1001-3(b), for most federal income tax purposes, a significant modification produces a deemed exchange of the original debt instrument for a new debt instrument.

.09 Under § 1.860G-2(b), related rules apply to determine REMIC qualification. Except as specifically provided in § 1.860G-2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. See § 1.860G-2(b)(1). For this purpose, the rules in § 1.1001-3(e) determine whether a modification is "significant." See § 1.860G-2(b)(2). Thus,

even if an entity initially qualifies as a REMIC, one or more significant modifications of loans held by the entity may terminate the qualification if the modifications cause less than substantially all of the entity's assets to be qualified mortgages.

.10 Certain loan modifications, however, are not significant for purposes of § 1.860G-2(b)(1), even if the modifications are significant under the rules in § 1.1001-3. In particular, under § 1.860G-2(b)(3)(i), if a change in the terms of an obligation is "occasioned by default or a reasonably foreseeable default," the change is not a significant modification for purposes of § 1.860G-2(b)(1), regardless of the modification's status under § 1.1001-3.

.11 Section 860F(a)(1) imposes a tax on REMICs equal to 100 percent of the net income derived from "prohibited transactions." The disposition of a qualified mortgage is a prohibited transaction unless the "disposition [is] pursuant to—(i) the substitution of a qualified replacement mortgage for a qualified mortgage . . . , (ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage, (iii) the bankruptcy or insolvency of the REMIC, or (iv) a qualified liquidation." Section 860F(a)(2)(A).

.12 Under section 860C(b)(1), "The taxable income of a REMIC shall be determined under an accrual method of accounting . . . except that— . . . (C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction, . . ."

SECTION 4. BACKGROUND-TRUSTS

.01 Section 301.7701-2(a) of the Procedure and Administration Regulations defines a "business entity" as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code.

.02 Section 301.7701-4(a) provides that an arrangement is treated as a trust if the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are

not associates in a joint enterprise for the conduct of business for profit.

.03 Section 301.7701-4(c) provides that an "investment" trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders.

SECTION 5. SCOPE

This revenue procedure applies to a modification made pursuant to the HAMP of a mortgage loan that is held by a REMIC or by an investment trust.

SECTION 6. APPLICATION

If one or more modifications of mortgage loans are described in Section 5 of this revenue procedure—

.01 The Service will not challenge a securitization vehicle's qualification as a REMIC on the grounds that the modifications are not among the exceptions listed in § 1.860G-2(b)(3);

.02 The Service will not contend that the modifications are prohibited transactions under section 860F(a)(2) on the grounds that the modifications result in one or more dispositions of qualified mortgages and that the dispositions are not among the exceptions listed in section 860F(a)(2)(A)(i)-(iv);

.03 The Service will not challenge a securitization vehicle's classification as a trust under § 301.7701-4(c) on the grounds that the modifications manifest a power to vary the investment of the certificate holders; and

.04 The Service will not challenge a securitization vehicle's qualification as a REMIC on the grounds that the modifications result in a deemed reissuance of the REMIC regular interests.

SECTION 7. OTHER GUIDANCE

For the treatment of mortgage loans modified pursuant to certain foreclosure prevention programs, see Rev. Proc. 2008-47, 2008-31 I.R.B. 272, and Rev. Proc. 2008-28, 2008-23 I.R.B. 1054.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for loan modifications on or after March 4, 2009.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information, contact Ms. Imholtz at (202) 622-3930 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part I, §§ 280F; 1.280F-7.)

Rev. Proc. 2009-24

SECTION 1. PURPOSE

.01 This revenue procedure provides: (1) limitations on depreciation deductions for owners of passenger automobiles first placed in service by the taxpayer during calendar year 2009, including a separate table of limitations on depreciation deductions for trucks and vans; and (2) the amounts to be included in income by lessees of passenger automobiles first leased by the taxpayer during calendar year 2009, including a separate table of inclusion amounts for lessees of trucks and vans.

.02 The tables detailing these depreciation limitations and lessee inclusion amounts reflect the automobile price inflation adjustments required by § 280F(d)(7) of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 For owners of passenger automobiles, § 280F(a) imposes dollar limitations on the depreciation deduction for the year that the passenger automobile is placed in service by the taxpayer and each succeeding year. Section 280F(d)(7) requires the amounts allowable as depreciation deductions to be increased by a price inflation adjustment amount for passenger automobiles placed in service after 1988. The method of calculating this price inflation amount for trucks and vans placed in service in or after calendar year 2003 uses a different CPI “automobile component” (the “new trucks” component) than that used in the price inflation amount calculation for other passenger automobiles (the “new cars” component), resulting in some-

what higher depreciation deductions for trucks and vans. This change reflects the higher rate of price inflation that trucks and vans have been subject to since 1988.

.02 Section 168(k)(1)(A) provides a 50 percent additional first year depreciation deduction for certain new property acquired by a taxpayer after December 31, 2007, and before January 1, 2010, if no written binding contract for the acquisition of the property existed before January 1, 2008. Section 168(k)(2)(F)(i) increases the first year depreciation allowed under § 280F(a)(1)(A) by \$8,000 for passenger automobiles to which the 50 percent additional first year depreciation deduction applies.

.03 Section 168(k)(2)(D)(i) provides that the 50 percent additional first year depreciation deduction does not apply to any property required to be depreciated under the alternative depreciation system of § 168(g), including property described in § 280F(b)(1). Section 168(k)(2)(D)(iii) permits a taxpayer to elect to not claim the 50 percent additional first year depreciation deduction for any class of property. Section 168(k)(4) permits a corporation to elect to not claim the 50 percent additional first year depreciation deduction for all eligible qualified property (that is extension property or that is not extension property, as applicable) and instead to increase the business credit limitation under § 38(c) or the alternative minimum tax credit limitation under § 53(c). Accordingly, this revenue procedure provides tables for passenger automobiles for which the 50 percent additional depreciation deduction applies and tables for passenger automobiles for which the 50 percent additional first year depreciation deduction does not apply, including passenger automobiles in a class of property for which the taxpayer “elects out” of the 50 percent additional first year depreciation deduction or passenger automobiles that are eligible qualified property to which the § 168(k)(4) election applies.

.04 For leased passenger automobiles, § 280F(c) requires a reduction in the deduction allowed to the lessee of the passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under § 1.280F-7(a) of the Income Tax Regulations, this reduction requires a lessee to in-

clude in gross income an inclusion amount determined by applying a formula to the amount obtained from a table. One table applies to lessees of trucks and vans and another table applies to all other passenger automobiles. Each table shows inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased.

SECTION 3. SCOPE

.01 The limitations on depreciation deductions in section 4.02(2) of this revenue procedure apply to passenger automobiles (other than leased passenger automobiles) that are placed in service by the taxpayer in calendar year 2009, and continue to apply for each taxable year that the passenger automobile remains in service.

.02 The tables in section 4.03 of this revenue procedure apply to leased passenger automobiles for which the lease term begins during calendar year 2009. Lessees of these passenger automobiles must use these tables to determine the inclusion amount for each taxable year during which the passenger automobile is leased. See Rev. Proc. 2002-14, 2002-1 C.B. 450, for passenger automobiles first leased before January 1, 2003, Rev. Proc. 2003-75, 2003-2 C.B. 1018, for passenger automobiles first leased during calendar year 2003, Rev. Proc. 2004-20, 2004-1 C.B. 642, for passenger automobiles first leased during calendar year 2004, Rev. Proc. 2005-13, 2005-1 C.B. 759, for passenger automobiles first leased during calendar year 2005, Rev. Proc. 2006-18, 2006-1 C.B. 645, for passenger automobiles first leased during calendar year 2006, Rev. Proc. 2007-30, 2007-1 C.B. 1104, for passenger automobiles first leased during calendar year 2007, and Rev. Proc. 2008-22, 2008-12 I.R.B. 658, for passenger automobiles first leased during calendar year 2008.

SECTION 4. APPLICATION

.01 *In General.*

(1) *Limitations on depreciation deductions for certain automobiles.* The limitations on depreciation deductions for passenger automobiles placed in service by the taxpayer for the first time during calendar year 2009 are in Tables 1 through 4 in section 4.02(2) of this revenue procedure.

(2) *Inclusions in income of lessees of passenger automobiles.* A taxpayer first leasing a passenger automobile during calendar year 2009 must determine the inclusion amount that is added to gross income using Tables 5 and 6 in section 4.03 of this revenue procedure. In addition, the taxpayer must follow the procedures of § 1.280F-7(a).

.02 Limitations on Depreciation Deductions for Certain Automobiles.

(1) *Amount of the inflation adjustment.*

(a) *Passenger automobiles (other than trucks or vans).* Under § 280F(d)(7)(B)(i), the automobile price inflation adjustment for any calendar year is the percentage (if any) by which the CPI automobile component for October of the preceding calendar year exceeds the CPI automobile component for October 1987. The term “CPI automobile component” is defined in § 280F(d)(7)(B)(ii) as the “automobile component” of the Consumer Price Index for all Urban Consumers published by the Department of Labor. The new car component of the CPI was 115.2 for October 1987 and 134.837 for October 2008. The October 2008 index exceeded the October 1987 index by 19.637. The Internal Revenue Service has, therefore, determined that the automobile price inflation adjustment for 2009 for passenger automobiles (other than trucks and vans) is 17.05 percent (19.637/115.2 x 100%). This adjustment is applicable to all passenger auto-

mobiles (other than trucks and vans) that are first placed in service in calendar year 2009. The dollar limitations in § 280F(a) therefore must be multiplied by a factor of 0.1705, and the resulting increases, after rounding to the nearest \$100, are added to the 1988 limitations to give the depreciation limitations applicable to passenger automobiles (other than trucks and vans) for calendar year 2009.

(b) *Trucks and vans.* To determine the dollar limitations applicable to trucks and vans first placed in service during calendar year 2009, the new truck component of the CPI is used instead of the new car component. The new truck component of the CPI was 112.4 for October 1987 and 133.640 for October 2008. The October 2008 index exceeded the October 1987 index by 21.24. The Service has, therefore, determined that the automobile price inflation adjustment for 2009 for trucks and vans is 18.90 percent (21.24/112.4 x 100%). This adjustment is applicable to all trucks and vans that are first placed in service in calendar year 2009. The dollar limitations in § 280F(a) therefore must be multiplied by a factor of 0.1890, and the resulting increases, after rounding to the nearest \$100, are added to the 1988 limitations to give the depreciation limitations applicable to trucks and vans.

(2) *Amount of the limitation.* For passenger automobiles placed in service by the taxpayer in calendar year 2009, Tables

1 through 4 contain the dollar amount of the depreciation limitation for each taxable year. Use Table 1 for a passenger automobile (other than a truck or van) placed in service by the taxpayer in calendar year 2009, for which the 50 percent additional first year depreciation deduction does not apply, including a passenger automobile (other than a truck or van) in a class of property for which the taxpayer elects out of the 50 percent additional first year depreciation deduction or a passenger automobile that is eligible qualified property to which the § 168(k)(4) election applies. Use Table 2 for a passenger automobile (other than a truck or van) placed in service by the taxpayer in calendar year 2009, for which the 50 percent additional first year depreciation deduction applies. Use Table 3 for a truck or van placed in service by the taxpayer in calendar year 2009, for which the 50 percent additional first year depreciation deduction does not apply, including a truck or van in a class of property for which the taxpayer elects out of the 50 percent additional first year depreciation deduction or a truck or van that is eligible qualified property to which the § 168(k)(4) election applies. Use Table 4 for a truck or van placed in service by the taxpayer in calendar year 2009, for which the 50 percent additional first year depreciation deduction applies.

REV. PROC. 2009-24 TABLE 1

DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE BY THE TAXPAYER IN CALENDAR YEAR 2009, FOR WHICH THE 50 PERCENT ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION DOES NOT APPLY

<i>Tax Year</i>	<i>Amount</i>
1st Tax Year	\$2,960
2nd Tax Year	\$4,800
3rd Tax Year	\$2,850
Each Succeeding Year	\$1,775

REV. PROC. 2009-24 TABLE 2

DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE BY THE TAXPAYER IN CALENDAR YEAR 2009, FOR WHICH THE 50 PERCENT ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES

<i>Tax Year</i>	<i>Amount</i>
1st Tax Year	\$10,960
2nd Tax Year	\$4,800
3rd Tax Year	\$2,850
Each Succeeding Year	\$1,775

REV. PROC. 2009-24 TABLE 3

DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE BY THE TAXPAYER IN CALENDAR YEAR 2009, FOR WHICH THE 50 PERCENT ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION DOES NOT APPLY

<i>Tax Year</i>	<i>Amount</i>
1st Tax Year	\$3,060
2nd Tax Year	\$4,900
3rd Tax Year	\$2,950
Each Succeeding Year	\$1,775

REV. PROC. 2009-24 TABLE 4

DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE BY THE TAXPAYER IN CALENDAR YEAR 2009, FOR WHICH THE 50 PERCENT ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES

<i>Tax Year</i>	<i>Amount</i>
1st Tax Year	\$11,060
2nd Tax Year	\$4,900
3rd Tax Year	\$2,950
Each Succeeding Year	\$1,775

.03 *Inclusions in Income of Lessees of Passenger Automobiles.*

The inclusion amounts for passenger automobiles first leased in calendar year

2009 are calculated under the procedures described in § 1.280F-7(a). Lessees of passenger automobiles other than trucks and vans should use Table 5 of this revenue

procedure in applying these procedures, while lessees of trucks and vans should use Table 6 of this revenue procedure.

REV. PROC. 2009-24 TABLE 5

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES (THAT ARE NOT TRUCKS OR VANS) WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2009

Fair Market Value of Passenger Automobile		Tax Year During Lease				
		1st	2nd	3rd	4th	5th & Later
Over \$18,500	Not Over \$19,000	9	19	28	34	38
19,000	19,500	10	21	32	38	43
19,500	20,000	11	24	36	42	48
20,000	20,500	12	27	39	46	54

REV. PROC. 2009-24 TABLE 5

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS)
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2009

Fair Market Value of Passenger Automobile		Tax Year During Lease				
		1st	2nd	3rd	4th	5th & Later
Over	Not Over					
20,500	21,000	13	29	43	51	58
21,000	21,500	15	31	47	55	64
21,500	22,000	16	34	50	60	68
22,000	23,000	17	38	56	66	76
23,000	24,000	20	42	64	75	86
24,000	25,000	22	47	71	84	96
25,000	26,000	24	52	78	93	107
26,000	27,000	26	58	85	101	117
27,000	28,000	29	62	93	110	127
28,000	29,000	31	67	100	119	138
29,000	30,000	33	72	108	128	147
30,000	31,000	35	77	115	137	157
31,000	32,000	38	82	122	146	167
32,000	33,000	40	87	129	155	178
33,000	34,000	42	92	137	163	188
34,000	35,000	44	97	144	172	199
35,000	36,000	47	102	151	181	208
36,000	37,000	49	107	159	189	219
37,000	38,000	51	112	166	199	228
38,000	39,000	53	117	173	208	239
39,000	40,000	56	122	180	216	250
40,000	41,000	58	127	188	225	259
41,000	42,000	60	132	195	234	269
42,000	43,000	62	137	203	242	280
43,000	44,000	65	141	210	252	290
44,000	45,000	67	146	218	260	300
45,000	46,000	69	151	225	269	311
46,000	47,000	71	157	232	278	320
47,000	48,000	74	161	240	286	331
48,000	49,000	76	166	247	296	340
49,000	50,000	78	171	255	304	351
50,000	51,000	80	176	262	313	361
51,000	52,000	83	181	269	322	371
52,000	53,000	85	186	276	331	381
53,000	54,000	87	191	284	339	392
54,000	55,000	89	196	291	349	401
55,000	56,000	92	201	298	357	412
56,000	57,000	94	206	306	365	423
57,000	58,000	96	211	313	375	432
58,000	59,000	98	216	320	384	442
59,000	60,000	101	221	327	393	452
60,000	62,000	104	228	339	406	467
62,000	64,000	109	238	353	424	488
64,000	66,000	113	248	368	441	509
66,000	68,000	118	258	382	459	529
68,000	70,000	122	268	397	476	550
70,000	72,000	127	277	413	493	570
72,000	74,000	131	288	427	511	590
74,000	76,000	136	297	442	529	610
76,000	78,000	140	307	457	546	631
78,000	80,000	145	317	471	564	651
80,000	85,000	152	335	497	595	686
85,000	90,000	164	359	534	639	737
90,000	95,000	175	384	570	683	789

REV. PROC. 2009-24 TABLE 5

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS)
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2009

Fair Market Value of Passenger Automobile		Tax Year During Lease				
		1st	2nd	3rd	4th	5th & Later
Over	Not Over					
95,000	100,000	186	409	607	727	839
100,000	110,000	203	446	662	793	916
110,000	120,000	226	495	736	881	1,018
120,000	130,000	248	545	809	970	1,119
130,000	140,000	271	594	883	1,058	1,220
140,000	150,000	293	644	956	1,146	1,322
150,000	160,000	316	693	1,030	1,234	1,424
160,000	170,000	338	743	1,103	1,322	1,526
170,000	180,000	361	792	1,177	1,410	1,628
180,000	190,000	383	842	1,250	1,498	1,730
190,000	200,000	406	891	1,324	1,586	1,831
200,000	210,000	428	941	1,397	1,675	1,932
210,000	220,000	451	990	1,471	1,762	2,035
220,000	230,000	473	1,040	1,544	1,851	2,136
230,000	240,000	496	1,089	1,618	1,939	2,238
240,000	And up	518	1,139	1,691	2,027	2,340

REV. PROC. 2009-24 TABLE 6

DOLLAR AMOUNTS FOR TRUCKS AND VANS
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2009

Fair Market Value of Electric Automobile		Tax Year During Lease				
		1st	2nd	3rd	4th	5th and Later
Over	Not Over					
\$18,500	\$19,000	8	17	25	30	35
19,000	19,500	9	19	29	35	40
19,500	20,000	10	22	33	38	45
20,000	20,500	11	25	36	43	50
20,500	21,000	12	27	40	48	55
21,000	21,500	13	30	43	52	60
21,500	22,000	15	32	47	56	66
22,000	23,000	16	36	52	64	72
23,000	24,000	18	41	60	72	83
24,000	25,000	21	45	68	81	93
25,000	26,000	23	50	75	90	103
26,000	27,000	25	56	82	98	114
27,000	28,000	27	61	89	107	124
28,000	29,000	30	65	97	116	134
29,000	30,000	32	70	104	125	144
30,000	31,000	34	75	112	134	154
31,000	32,000	36	80	119	143	164
32,000	33,000	39	85	126	151	175
33,000	34,000	41	90	134	160	184
34,000	35,000	43	95	141	169	195
35,000	36,000	45	100	148	178	205
36,000	37,000	48	105	155	187	215
37,000	38,000	50	110	163	195	226
38,000	39,000	52	115	170	204	236
39,000	40,000	55	120	177	213	246
40,000	41,000	57	125	185	221	256
41,000	42,000	59	130	192	231	266

REV. PROC. 2009-24 TABLE 6
DOLLAR AMOUNTS FOR TRUCKS AND VANS
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2009

Fair Market Value of Electric Automobile		Tax Year During Lease				
		1st	2nd	3rd	4th	5th and Later
Over	Not Over					
42,000	43,000	61	135	199	240	276
43,000	44,000	64	139	207	249	286
44,000	45,000	66	144	215	257	296
45,000	46,000	68	149	222	266	307
46,000	47,000	70	155	229	274	317
47,000	48,000	73	159	237	283	327
48,000	49,000	75	164	244	292	338
49,000	50,000	77	169	251	301	348
50,000	51,000	79	174	259	310	357
51,000	52,000	82	179	266	318	368
52,000	53,000	84	184	273	328	378
53,000	54,000	86	189	281	336	388
54,000	55,000	88	194	288	345	399
55,000	56,000	91	199	295	354	408
56,000	57,000	93	204	302	363	419
57,000	58,000	95	209	310	371	429
58,000	59,000	97	214	317	381	439
59,000	60,000	100	219	324	389	450
60,000	62,000	103	226	336	402	465
62,000	64,000	107	236	351	420	485
64,000	66,000	112	246	365	438	505
66,000	68,000	116	256	380	455	526
68,000	70,000	121	266	394	473	546
70,000	72,000	125	276	409	491	566
72,000	74,000	130	286	423	509	586
74,000	76,000	134	296	438	526	607
76,000	78,000	139	305	454	543	627
78,000	80,000	143	316	467	561	648
80,000	85,000	151	333	493	592	684
85,000	90,000	163	357	531	635	735
90,000	95,000	174	382	567	680	785
95,000	100,000	185	407	604	724	836
100,000	110,000	202	444	659	790	912
110,000	120,000	225	493	733	878	1,014
120,000	130,000	247	543	806	966	1,116
130,000	140,000	270	592	880	1,054	1,218
140,000	150,000	292	642	953	1,143	1,319
150,000	160,000	315	691	1,027	1,230	1,421
160,000	170,000	337	741	1,100	1,319	1,522
170,000	180,000	360	790	1,174	1,407	1,624
180,000	190,000	382	840	1,247	1,495	1,726
190,000	200,000	405	889	1,321	1,583	1,828
200,000	210,000	427	939	1,394	1,671	1,930
210,000	220,000	450	988	1,468	1,759	2,031
220,000	230,000	472	1,038	1,541	1,847	2,134
230,000	240,000	495	1,087	1,615	1,935	2,235
240,000	and up	517	1,137	1,688	2,024	2,336

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to passenger automobiles (other than leased passenger automobiles) that are first placed in service by a taxpayer during calendar year

2009, and to leased passenger automobiles that are first leased by a taxpayer during calendar year 2009.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Bernard P. Harvey of the Office of Associate Chief Counsel (Income

Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Harvey at (202) 622-4930 (not a toll-free call).

Part IV. Items of General Interest

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2009-35

Announcement 2009-35

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

Suspended from practice before the IRS—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents,

enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a con-

sent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Un-

less otherwise indicated, section numbers
(*e.g.*, §10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Alabama				
Stockton	Aiken, Karen H.	CPA	Suspended by decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from March 30, 2009
Alaska				
Anchorage	Labahn, William S	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment in New York)	Indefinite from April 3, 2009
California				
Downey	Veen, Steven C.	CPA	Suspended by decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from March 9, 2009
Florida				
Crawfordville	Strickland, Beverly A.	Enrolled Agent	Suspended by consent for violation of § 10.51 (failure to file several tax returns)	Indefinite from March 23, 2009
Illinois				
Burbank	Roupas, Dean J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (conviction under 18 U.S.C. § 666, corruptly offering and giving cash intending to influence and reward)	Indefinite from March 30, 2009
Kentucky				
Lexington	Sebastian, Ruth A.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from April 3, 2009
Louisiana				
Baton Rouge	Sims, Carvel A.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from April 3, 2009

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Massachusetts				
Swansea	Scallon, Edwin T.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from April 3, 2009
Nebraska				
Omaha	Hubbard, John E.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from April 3, 2009
New Jersey				
South Orange	Davis, Jr., Edwin	CPA	Disbarred by decision on appeal for violation of §10.51 (willfully failing to make a Federal tax return)	Indefinite from March 10, 2009
Metuchen	Hronich, Michael A.	CPA	Suspended by consent for violation of § 10.51 (failure to file several tax returns)	Indefinite from March 6, 2009
New York				
Brooklyn	Fein, Leonard	CPA	Suspended by decision on appeal for violation of §10.51 (willfully failing to make a Federal tax return)	Indefinite from October 17, 2008
Suffern	Ginsberg, Martin	Enrolled Agent	Suspended by consent for violation of § 10.51 (failure to file several tax returns)	Indefinite from March 23, 2009
Port Washington	Holzberg, Bryan J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from March 31, 2009
	Labahn, William S., see Alaska			
North Carolina				
Concord	Black, Pamela	Enrolled Agent	Suspended by consent for violation of § 10.51 (failure to file several tax returns)	Indefinite from March 23, 2009

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
North Carolina (Continued)				
Charlotte	Cardinal, Roger C.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from April 3, 2009
Rolesville	Robinson, Amy	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 31, 2009
Elm City	Watson, Hilda G.	CPA	Suspended by default decision in expedited proceeding under §10.82 (revocation of CPA license)	Indefinite from April 3, 2009
Ohio				
Beachwood	Rubin, Kimball E.	CPA	Suspended by decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. § 7203, failure to file tax returns)	Indefinite from December 17, 2008
Pennsylvania				
Devon	Moose, Richard E.	Attorney	Disbarred by decision on appeal for violation of §10.51 (willfully failing to make a Federal tax return)	Indefinite from March 16, 2009
Norristown	Noonan, Gregory	CPA	Disbarred by default decision for violation of §10.51 (failure to file Federal income tax returns)	Indefinite from February 4, 2009
Texas				
Brownsville	Altemeyer, Sandra L.	CPA	Suspended by decision in expedited proceeding under §10.82 (suspension CPA license)	Indefinite from March 31, 2009
Dallas	Ngoyi, Ngoyi P.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 25, 2009
Houston	Sandel, Michael W.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 25, 2009

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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