

Part III - Administrative, Procedural and Miscellaneous

Midwestern and Hurricane Ike Disaster Areas and Population Estimates

Notice 2008-109

This Notice informs the States of Arkansas, Illinois, Indiana, Iowa, Missouri, Nebraska, and Wisconsin of those counties that comprise the Midwestern disaster area for purposes of certain provisions of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Public Law 110-343) (Act). In addition, this Notice informs these States of the portion of their State population that is located in the Midwestern disaster area for purposes of determining the (1) Midwestern disaster housing amount under § 1400N(c)(1)(B) of the Internal Revenue Code (Code), as applied and modified by section 702 of the Act, (2) maximum aggregate face amount of qualified Midwestern disaster area bonds (Midwestern Disaster Bonds) which may be designated under § 1400N(a)(3)(A) of the Code, as applied and modified by section 702 of the Act, and (3) maximum aggregate face amount of Midwestern tax credit bonds (Midwestern Tax Credit Bonds) which may be designated under § 1400N(l)(4)(C), as applied and modified by section 702 of the Act.

This Notice also informs the States of Texas and Louisiana of the counties and parishes that comprise the Hurricane Ike disaster area for purposes of certain provisions of the Act. In addition, this Notice informs the States of Texas and Louisiana

of their State population portion for purposes of determining the (1) Hurricane Ike Recovery Assistance housing amount under § 1400N(c)(1)(B) of the Code, as applied and modified by section 704(b) of the Act, and (2) maximum aggregate face amount of qualified Hurricane Ike disaster area bonds (Hurricane Ike Bonds) which may be designated under § 1400N(a)(3)(A), as applied and modified by section 704(a) of the Act.

This Notice also provides instructions for the reporting of the issuance of Midwestern Disaster Bonds, Midwestern Tax Credit Bonds, and Hurricane Ike Bonds.

BACKGROUND

The Act provides certain tax benefits for specified counties in certain Midwestern States affected by severe storms, tornados, or flooding, and for specified counties in Texas and parishes in Louisiana affected by Hurricane Ike.

Section 702(a) of the Act provides that, subject to the modifications described in section 702 of the Act, certain provisions of or relating to the Code shall apply to any Midwestern disaster area in addition to the areas to which such provisions otherwise apply. Section 702(a)(1) provides, in part and with certain modifications, that § 1400N(a), § 1400N(c), and § 1400N(l) of the Code shall apply to the Midwestern disaster area.

Section 702(b) of the Act defines the term “Midwestern disaster area” to mean an area (1) with respect to which a major disaster has been declared by the President on or after May 20, 2008, and before August 1, 2008, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) by reason of

severe storms, tornados, or flooding occurring in any of the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin, and (2) determined by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act for damages attributable to the severe storms, tornados, or flooding.

Under section 702(c) of the Act, any reference in the relevant provisions of § 1400N of the Code to the Gulf Opportunity Zone (GO Zone) is treated as a reference to any Midwestern disaster area and any reference to the GO Zone within a State is treated as a reference to all Midwestern disaster areas within the State.

Section 704(a) of the Act provides that, with certain modifications, § 1400N(a) of the Code shall apply to any Hurricane Ike disaster area in addition to any other area referenced in § 1400N(a). Section 704(b) of the Act provides, with certain modifications, that § 1400N(c) shall apply to any Hurricane Ike disaster area in addition to any other area referenced in § 1400N(c).

Section 704(c) of the Act defines the term "Hurricane Ike disaster area" to mean an area in the State of Texas or Louisiana (1) with respect to which a major disaster has been declared by the President on September 13, 2008, under section 401 of the Stafford Act by reason of Hurricane Ike, and (2) determined by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act for damages attributable to Hurricane Ike.

MIDWESTERN DISASTER AREA COUNTIES

The counties located in the Midwestern disaster area are:

Arkansas-- Arkansas, Benton, Cleburne, Conway, Crittenden, Grant, Lonoke, Mississippi, Phillips, Pulaski, Saline, and Van Buren.

Illinois-- Adams, Calhoun, Clark, Coles, Crawford, Cumberland, Douglas, Edgar, Hancock, Henderson, Jasper, Jersey, Lake, Lawrence, Mercer, Rock Island, Whiteside, and Winnebago.

Indiana-- Adams, Bartholomew, Brown, Clay, Daviess, Dearborn, Decatur, Gibson, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Huntington, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Madison, Marion, Monroe, Morgan, Owen, Parke, Pike, Posey, Putnam, Randolph, Ripley, Rush, Shelby, Sullivan, Tippecanoe, Vermillion, Vigo, Washington, and Wayne.

Iowa-- Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Cass, Cedar, Cerro Gordo, Chickasaw, Clarke, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Iowa, Jackson, Jasper, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Story, Tama, Union, Van Buren, Wapello, Warren, Washington, Webster, Winnebago, Winneshiek, Worth, and Wright.

Missouri-- Adair, Andrew, Barry, Callaway, Cass, Chariton, Clark, Gentry, Greene, Harrison, Holt, Jasper, Johnson, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Monroe, Newton, Nodaway, Pike, Putnam, Ralls, St. Charles, Stone, Taney, Vernon, and Webster.

Nebraska-- Buffalo, Butler, Colfax, Custer, Dawson, Douglas, Gage, Hamilton, Holt, Jefferson, Kearney, Lancaster, Platte, Richardson, Sarpy, and Saunders.

Wisconsin-- Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, and Winnebago.

Although section 702(b) of the Act references the States of Kansas, Michigan, and Minnesota as Midwestern States, no county in these three States has been determined to warrant individual or individual and public assistance under the Stafford Act for damages attributable to severe storms, tornados, or flooding. Accordingly, this Notice does not apply to these States.

HURRICANE IKE DISASTER AREA COUNTIES AND PARISHES

The counties and parishes located in the Hurricane Ike disaster area are:

Louisiana-- Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia, Jefferson, Jefferson Davis, Lafourche, Livingston, Orleans, Plaquemines, Sabine, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, and Vernon.

Texas-- Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Gregg, Grimes, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Madison,

Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Walker, Waller, and Washington.

LOW-INCOME HOUSING TAX CREDIT: ADDITIONAL HOUSING CREDIT AMOUNT

A. Midwestern disaster area.

Section 702(d)(2) of the Act provides, in part, that § 1400N(c) of the Code shall apply [to the Midwestern disaster area] with certain modifications. Section 702(d)(2)(A) of the Act provides that the modifications only apply to calendar years 2008, 2009, and 2010. Section 702(d)(2)(B) of the Act substitutes “Disaster Recovery Assistance housing amount” for “the Gulf Opportunity housing amount” each place it appears in § 1400N(c). As a result, § 1400N(c)(1), as applied and modified by section 702 of the Act, provides that, for purposes of § 42, in the case of calendar years 2008, 2009, and 2010, the State housing credit ceiling of each State, any portion of which is located in the Midwestern disaster area, shall be increased by the lesser of—

(i) the aggregate housing credit dollar amount allocated by the State housing credit agency of such State to buildings located in the Midwestern disaster area for such calendar year, or

(ii) the Disaster Recovery Assistance housing amount for such State for such calendar year.

Section 702(d)(2)(C) of the Act modifies § 1400N(c)(1)(B) of the Code by substituting “\$8” for “\$18” and by substituting “before the earliest applicable disaster date for Midwestern disaster areas within the State” for “before August 28, 2005.” As a result, § 1400N(c)(1)(B), as applied and modified by section 702 of the Act, provides

that the term “Disaster Recovery Assistance housing amount” means, for any calendar year, the amount equal to the product of \$8 multiplied by the portion of the State population that is in the Midwestern disaster area (as determined on the basis of the most recent census estimate of resident population released by the Bureau of the Census before the earliest applicable disaster date for Midwestern disaster areas within the State).

B. Hurricane Ike disaster area.

Section 704(b) of the Act provides, in part, that § 1400N(c) of the Code shall apply to any Hurricane Ike disaster area, but with certain modifications. Section 704(b)(1) of the Act provides that the modifications only apply to calendar years 2008, 2009, and 2010. Section 704(b)(2) of the Act substitutes “Hurricane Ike disaster area” for “the Gulf Opportunity Zone” each place it appears in § 1400N(c) and section 704(b)(3) of the Act substitutes “Hurricane Ike Recovery Assistance housing amount” for “Gulf Opportunity housing amount” each place it appears in § 1400N(c). As a result, § 1400N(c)(1), as applied and modified by 704(b) of the Act, provides that, for purposes of § 42, in the case of calendar years 2008, 2009, and 2010, the State housing credit ceiling of each State, any portion of which is located in the Hurricane Ike disaster area, shall be increased by the lesser of—

(i) the aggregate housing credit dollar amount allocated by the State housing credit agency of such State to buildings located in the Hurricane Ike disaster area for such calendar year, or

(ii) the Hurricane Ike Recovery Assistance housing amount for such State for such calendar year.

Section 704(b)(4) of the Act modifies § 1400N(c)(1)(B) of the Code to provide that for purposes of § 1400N(c)(1)(A), the term “Hurricane Ike housing amount” [i.e., Hurricane Ike Recovery Assistance housing amount] means, for any calendar year, the amount equal to the product of \$16 multiplied by the portion of the State population that is in (1) the Texas counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, and (2) the Louisiana parishes of Calcasieu and Cameron. These population amounts are determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before September 13, 2008.

TAX-EXEMPT BONDS AND TAX CREDIT BONDS

A. Midwestern disaster area.

Midwestern Disaster Bonds. Section 702(d)(1) of the Act provides, in part, that § 1400N(a) of the Code shall apply to a qualified Midwestern Disaster Bond with certain modifications as described therein. Section 702(d)(1)(B) of the Act substitutes “any State in which a Midwestern disaster area is located” for “the State of Alabama, Louisiana, or Mississippi” in § 1400N(a)(2)(B). Section 702(d)(1)(C) of the Act substitutes “designated for purposes of this section (on the basis of providing assistance to areas in the order in which such assistance is most needed)” for “designated for purposes of this section” in § 1400N(a)(2)(C). Section 702(d)(1)(D) of the Act substitutes “January 1, 2013” for “January 1, 2011” where it appears in § 1400N(a)(2)(D). As a result, § 1400N(a), as applied and modified by section 702 of

the Act, provides generally for the designation and issuance of Midwestern Disaster Bonds with respect to any State in which a Midwestern disaster area is located subject to certain limitations including a requirement that such Midwestern Disaster Bonds be issued after the date of enactment and before January 1, 2013.

Section 702(d)(1)(E) of the Act provides the limitation on the amount of Midwestern Disaster Bonds that can be designated for issuance. Section 702(d)(1)(E) substitutes "\$1,000" for "\$2,500" and "before the earliest applicable disaster date for Midwestern disaster areas within the State" for "before August 28, 2005" where it appears in § 1400N(a)(3)(A) of the Code. As a result, § 1400N(a)(3)(A), as applied and modified by section 702(d)(1)(E) of the Act, provides that the maximum aggregate face amount of bonds that may be designated for any State shall not exceed the product of \$1,000 multiplied by the portion of the State population which is in the Midwestern disaster area (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before the earliest applicable disaster date for Midwestern disaster areas within the State).

Midwestern Tax Credit Bonds. Section 702(d)(7) of the Act provides, in part, that § 1400N(l) of the Code shall apply to tax credit bonds issued in connection with Midwestern disaster areas, with certain modifications as described therein. Section 702(d)(7)(A) provides that § 1400N(l) shall apply by substituting "Midwestern tax credit bond" for "Gulf tax credit bond" each place it appears. Section 702(d)(7)(B) provides that § 1400N(l)(4)(A)(i) shall be applied by substituting "any State in which a Midwestern disaster area is located or any instrumentality of the State" for "the State of Alabama,

Louisiana, or Mississippi.” Section 702(d)(7)(C) substitutes “after December 31, 2008 and before January 1, 2010” for “after December 31, 2005, and before January 1, 2007” in § 1400N(l)(4)(A)(vi). As a result, § 1400N(l), as applied and modified by section 702 of the Act, provides generally for the designation and issuance of Midwestern Tax Credit Bonds with respect to any State in which a Midwestern disaster area is located subject to certain limitations including a requirement that such Midwestern Tax Credit Bonds be issued after December 31, 2008, and before January 1, 2010.

Section 702(d)(7)(D) of the Act provides the limitation on the amount of Midwestern Tax Credit Bonds that can be designated for issuance. Section 702(d)(7)(D) provides that § 1400N(l)(4)(C) shall be applied by substituting “shall not exceed \$100,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 2,000,000, \$50,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 1,000,000 but less than 2,000,000, and zero for any other State. The population of a State within any area shall be determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before the earliest applicable disaster date for Midwestern disaster areas within the State” for “shall not exceed” and all that follows in § 1400N(l)(4)(C). As a result, § 1400N(l)(4)(C), as applied and modified by section 702 of the Act, provides that the maximum aggregate face amount of bonds that may be designated shall not exceed \$100,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 2,000,000, \$50,000,000 for any State with an aggregate

population located in all Midwestern disaster areas within the State of at least 1,000,000 but less than 2,000,000, and zero for all other States. For purposes of applying the limitation on the amount of Midwestern Tax Credit Bonds to be issued, the population of a State within any area shall be determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before the earliest applicable disaster date for Midwestern disaster areas within the State.

B. Hurricane Ike disaster area.

Hurricane Ike Bonds. Section 704(a)(1) of the Act provides that § 1400N(a) of the Code shall apply to any Hurricane Ike disaster area in addition to any other areas referenced in § 1400N(a), with certain modifications as described therein. Section 704(a)(2) of the Act substitutes “any State in which any Hurricane Ike disaster area is located” for “the State of Alabama, Louisiana, or Mississippi” in § 1400N(a)(2)(B). Section 704(a)(3) of the Act substitutes “designated for purposes of this section (on the basis of providing assistance to areas in the order in which such assistance is most needed)” for “designated for purposes of this section” in § 1400N(a)(2)(C). Section 704(a)(4) of the Act substitutes “January 1, 2013” for “January 1, 2011” where it appears in § 1400N(a)(2)(D). As a result, § 1400N(a)(2)(D), as applied and modified by section 702 of the Act, provides generally for the designation and issuance of Hurricane Ike Bonds with respect to any State in which a Hurricane Ike disaster area is located subject to certain limitations including a requirement that such Hurricane Ike Bonds be issued after the date of enactment and before January 1, 2013.

Section 704(a)(5) of the Act provides the limitation on the amount of Hurricane Ike Bonds that can be designated for issuance. As a result, § 1400N(a)(3)(A), as applied and modified by section 704 of the Act, provides that the maximum aggregate face amount of bonds that may be designated under § 1400N(a)(3)(A) for any State shall not exceed the product of \$2,000 multiplied by the portion of the State population which is in (1) the Texas counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, and (2) the Louisiana parishes of Calcasieu and Cameron (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before September 13, 2008).

APPLICABLE CENSUS POPULATION AMOUNTS

The most recent census estimate of the resident population released by the U.S. Census Bureau that reflects the portion of State population that is in (1) the Midwestern disaster area, or (2) the Texas counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, and the Louisiana parishes of Calcasieu and Cameron, is the July 1, 2007, Annual Estimates of the Population for Counties released by the U.S. Census Bureau on March 20, 2008, in Press Release CB08-47.

A. Midwestern Disaster Areas.

The portion of each State's population that is in the Midwestern disaster area is determined by adding together the population estimates provided by Press Release CB08-47 for each county located in the Midwestern disaster areas for that State. These results should be used to determine each State's Midwestern disaster housing amount under § 1400N(c)(1)(B) of the Code (as applied by section 702 of the Act), the

maximum aggregate face amount of Midwestern Disaster Bonds that can be designated under § 1400N(a)(3) (as applied by section 702 of the Act), and the maximum aggregate face amount of Midwestern Tax Credit Bonds that can be designated under § 1400N(l)(4)(C) (as applied by section 702 of the Act).

Based on the foregoing, the portion of each State's population that is in a Midwestern disaster area is provided below:

Arkansas	957,100
Illinois	1,515,271
Indiana	3,098,222
Iowa	2,615,995
Missouri	1,414,492
Nebraska	1,136,088
Wisconsin	3,830,112

B. Hurricane Ike Disaster Areas.

The portion of the each State's population that is used in calculating the Hurricane Ike Recovery Assistance housing amount and the aggregate amount of Hurricane Ike Bonds that can be issued is determined by adding together the population estimates provided by Press Release CB08-47 for (in the case of Texas) the counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, and (in the case of Louisiana) the parishes of Calcasieu and Cameron. These results should be used to determine the Hurricane Ike Recovery Assistance housing amount for Texas and Louisiana under § 1400N(c)(1)(B) (as applied by section 704(b) of the Act) and the maximum aggregate

face amount of Hurricane Ike Bonds that may be designated under § 1400N(a)(3) (as applied by section 704(a) of the Act).

Based on the foregoing, the portion of each State's population to be used for these purposes is provided below:

Louisiana	191,926
Texas	931,635

REPORTING REQUIREMENTS FOR TAX-EXEMPT BONDS AND TAX CREDIT BONDS

Pending further guidance from the Internal Revenue Service (IRS) regarding the applicable forms to be used for information reporting, issuers of Midwestern Disaster Bonds, Midwestern Tax Credit Bonds and Hurricane Ike Bonds should report the issuance on IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, with modifications as described below:

Midwestern Disaster Bonds. Issuers of Midwestern Disaster Bonds should report the issuance of bonds as follows:

1. Report the issuance of mortgage revenue bonds on Line 20c of IRS Form 8038 and enter "Midwestern Disaster Mortgage Bonds" on the line provided.
2. Report the issuance of Midwestern Disaster Bonds that are not mortgage revenue bonds on Line 11q of IRS Form 8038 and enter "Midwestern Disaster Exempt Facility Bonds" on the line provided.

Midwestern Tax Credit Bonds. Issuers of Midwestern Tax Credit Bonds should report the issuance on Line 20c of IRS Form 8038 and enter “Midwestern Disaster Tax Credit Bonds” on the line provided.

Hurricane Ike Bonds. Issuers of Hurricane Ike Bonds should report the issuance of bonds as follows:

1. Report the issuance of mortgage revenue bonds on Line 20c of IRS Form 8038 and enter “Hurricane Ike Mortgage Bonds” on the line provided.
2. Report the issuance of Hurricane Ike Bonds that are not mortgage revenue bonds on Line 11q of IRS Form 8038 and enter “Hurricane Ike Exempt Facility Bonds” on the line provided.

DRAFTING INFORMATION

The principal authors of this Notice are Christopher J. Wilson, Office of the Associate Chief Counsel (Passthroughs and Special Industries) and Carla Young, Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding the low-income housing tax credit, contact Mr. Wilson at (202) 622-3040. For further information regarding tax-exempt or tax credit bonds, contact Ms. Young at (202) 622-3980 (not toll-free calls).