



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR Charles M. Anderson
Manager, Tax-Exempt Bonds - Field Operations

FROM: Timothy L. Jones
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SUBJECT: QUALIFIED ZONE ACADEMY BONDS AND PRE-ISSUANCE
PRIVATE BUSINESS CONTRIBUTIONS

This written technical assistance is to inform you of our position regarding a question that has been raised by potential issuers of qualified zone academy bonds under § 1397E of the Internal Revenue Code (the "Code"). In accordance with § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

Whether private business contributions received prior to the issuance of bonds can be qualified contributions that count toward the private business contribution requirement for purposes of issuing qualified zone academy bonds under § 1397E(d)(2).

CONCLUSION

If the facts and circumstances demonstrate that there is a sufficient nexus between the contribution and the issuance of bonds, private business contributions received prior to the issuance of the bonds may be taken into account for purposes of determining whether the bonds are qualified zone academy bonds.

FACTS

The Issuer is a local government. The Agency is the eligible local education agency under § 1397E(d)(4)(B) that established the Academy. The Academy is a qualified zone academy under § 1397E(d)(4)(A) within the Issuer's jurisdiction. The Contributor is a private entity.

On Date 1, the Academy accepted computers from the Contributor for use by the Academy. At the time, the Issuer had adopted an official intent to issue qualified zone academy bonds 95 percent of the proceeds of which would be used to provide equipment for use at the Academy. Shortly after the contribution, both the Contributor

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and the Agency acknowledged in writing that the contribution had been made with respect to the Academy and in anticipation of the issuance of the bonds.

On Date 2, twelve months after Date 1, the Issuer issued the bonds 95% of the proceeds of which were reasonably anticipated to be used to provide equipment to be used at the Academy. Before issuing the bonds, the Issuer designated the proceeds of the bonds to be used to purchase of equipment for use at the Academy. It also certified that (1) it had written assurances that the private business requirement would be met with respect to the academy, and (2) it had the written approval of the eligible local education agency for the bond issue. The certification was based on the Academy's receipt of the computers and the written acknowledgments of the Contributor and the Agency that the contribution was made in respect of the Academy and in anticipation of the issuance of the bonds.

LAW AND ANALYSIS

Section 1397E(a) provides a tax credit to certain holders of a qualified zone academy bond. Section 1397E(d)(1) defines "qualified zone academy bond" to mean any bond issued as part of an issue if--

(A) 95 percent or more of the proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

(B) the bond is issued by a State or local government within the jurisdiction of which such academy is located,

(C) the issuer--

(i) designates such bond for purposes of this section,

(ii) certifies that it has written assurances that the private business contribution requirement of paragraph § 1397E(d)(2) will be met with respect to such academy, and

(iii) certifies that it has the written approval of the eligible local education agency for such bond issuance, and

(D) the term of each bond which is part of such issue does not exceed the maximum term permitted under paragraph § 1397E(d)(3).

The private business contribution requirement of § 1397E(d)(2) is met with respect to an issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions

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having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

A "qualified contribution" is defined by § 1397E(d)(2)(B) to include equipment for use in a qualified zone academy (including state-of-the-art technology and vocational equipment) that is of a type and quality acceptable to the eligible local education agency).

Under § 1397E(d)(5), a qualified purpose for the use of the proceeds of qualified zone academy bonds includes providing equipment for use at a qualified zone academy.

Neither § 1397E nor its legislative history limits when a private business contribution must be made. The written commitment to make a private business contribution must be made in respect of the bond issue. The Code's requirement of a written commitment from private entities is presumably to enable the eligible local education agency to assure the issuer that contributions will be made as promised. This assurance already exists if, as in this case, the contribution is made before the bonds are issued.

There also must be a nexus between the bond issue and the private business contribution. Whether a sufficient nexus exists depends upon the facts and circumstances of the transaction. The timing of the contributions and the intent of the parties are important in making this determination.

Under the facts described above, there is sufficient nexus between the contribution and the bonds. The Contributor donated the computers for use in a qualified zone academy and that is where the computers will be used. At the time of the contribution, the Issuer had adopted an official intent to issue the bonds, and the computers were contributed in anticipation of the issuance of the bonds. The period of time between the time of the contribution and when the bonds were issued was within the period permitted for a reimbursement allocation under § 1.150-2(d)(2).

This written technical assistance is advisory only and does not represent an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case. If there are questions regarding whether the facts and circumstances in a particular case establish a sufficient connection between a contribution and a later bond issue, please seek the input of this office.

If you have any questions, please feel free to contact me at (202) 622-3980.