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MEMORANDUM FOR Charles M. Anderson
Manager, Tax-Exempt Bonds - Field Operations

FROM: Timothy L. Jones
Assistant Chief, Tax-Exempt Bond Branch

SUBJECT: DEFINITION OF EMPOWERMENT ZONE FACILITY BONDS

This written technical assistance is to inform you of our position regarding a question that has been raised by potential issuers of empowerment zone facility bonds under § 1394(f) of the Internal Revenue Code (the "Code"). In accordance with § 6110(k)(3), this Chief Counsel Advice may not be cited as precedent.

ISSUE

Whether the definition of empowerment zone facility bonds in § 1394(f)(3), as amended, defines the "new" empowerment zone facility bonds referred to in §§ 1394(f)(1) and 1394(f)(2).

CONCLUSION

The definition of empowerment zone facility bonds in § 1394(f)(3), as amended, defines the "new" empowerment zone facility bonds referred to in §§ 1394(f)(1) and 1394(f)(2).

LAW AND ANALYSIS

Section 1394(f)(1) states "In the case of a new empowerment zone facility bond, such bond shall not be treated as a private activity bond for purposes of § 146, and subsection (c) of this section shall not apply." Instead of being subject to the volume cap limitations of § 146 or the limitations on enterprise zone facility bonds in § 1394(c), the § 1394(f) bonds have their own volume limitations, which are prescribed in § 1394(f)(2).

Prior to being amended by the Congress in 2000, § 1394(f)(3) defined "new empowerment zone facility bond" as follows:

For purposes of this subsection, the term "new empowerment zone facility bond" means any bond which would be described in (a) if only empowerment zones designated under § 1391(g) were taken account under sections 1397B and 1397C.

This definition meant that the special volume limitations of § 1394(f) applied only to empowerment zones designated by either the Secretary of Housing and Urban Development or the Secretary of Agriculture under § 1391(g).

In 2000, the Congress amended § 1394(f)(3) for purposes of bonds issued after December 31, 2001. P.L. 106-554, Sec. 1(a)(7). The new language of (f)(3) provides as follows:

For purposes of this subsection, the term "empowerment zone facility bond" means any bond which would be described in subsection (a) if--

(A) in the case of obligations issued before January 1, 2002, only empowerment zones designated under section 1391(g) were taken into account under sections 1397C and 1397D, and

(B) in the case of obligations issued after December 31, 2001, all empowerment zones (other than the District of Columbia Enterprise Zone) were taken into account under sections 1397C and 1397D.

We have been asked whether the definition of empowerment zone facility bonds in § 1394(f)(3), as amended, defines the "new" empowerment zone facility bonds referred to in §§ 1394(f)(1) and 1394(f)(2).

The clearest indication of Congress' intent is in the language of the statute itself. The new definition begins with the phrase, "for the purpose of this subsection." This language indicates that Congress intended its new definition to apply to § 1394(f). The term "empowerment zone facility bond" has the word "new" before it everywhere it appears in § 1394(f), except when defined in (f)(3).

The legislative history indicates that several earlier versions of the bill contained a conforming amendment that would have dropped the word "new" throughout § 1394(f). See S. 2779, 106th Cong. (2000) and S. 2936, 106th Cong. (2000). The version that passed, however, left the word "new" in the statute. There is no record of why the conforming amendment was not included in the final version.

We conclude that the definition of empowerment zone facility bonds in § 1394(f)(3), as amended, defines the "new" empowerment zone facility bonds referred to in §§ 1394(f)(1) and 1394(f)(2).

The Chief Counsel advice in this letter is not in connection with any particular taxpayer or bond issue and is not binding on the Internal Revenue Service. It will be disclosed to the public pursuant to § 6110(a).

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