



Summary of Clean Renewable Energy Bonds

This document summarizes certain provisions of the Internal Revenue Code and Internal Revenue Service materials relating to Clean Renewable Energy Bonds (“CREBs”) and should be read with reference to each of those items.

Legal Authority

CREBs were initially authorized by the Energy Policy Act of 2005 (“EPACT”) and are codified in Section 54 of the Internal Revenue Code of 1986, as amended (the “Code”). With the enactment of the Tax Relief and Health Care Act of 2006 (the “Extenders Act”), allocation for the CREBs program was increased from \$800,000,000 to \$1,200,000,000, and the deadline for issuance of all CREBs allocations, including reallocations of the initial \$800,000,000, was extended through December 31, 2008. The enactment of the “Energy Improvement and Extension Act of 2008” on October 3, 2008 extended the issuance date for all CREBs through December 31, 2009. At this time, U.S. Treasury has not published temporary or final regulations for CREBs, but in accordance with IRS Notices 2006-7 and 2007-26, regulations are expected. Each of such notices may be found at <http://www.irs.gov/pub/irs-drop/n-06-07.pdf> and <http://www.irs.gov/pub/irs-drop/n-07-26.pdf>, respectively. Notice 2007-26 modifies and supersedes Notice 2005-98.

Purpose, Borrowers and Issuers

The purpose of CREBs is to provide governmental bodies (typically states, D.C., Indian tribal governments, localities, and certain political subdivisions) and mutual and cooperative electric companies, access to interest free capital for certain qualifying renewable energy facilities. Those types of bodies are qualifying borrowers under the statute. Notice 2006-7 provides that future regulations will treat instrumentalities of state and political subdivisions as qualified borrowers, and that the term political subdivision will be interpreted in a manner similar to that for tax-exempt bonds.

The facilities qualifying for CREBs financing include, among others, wind, geothermal, biomass, solar, landfill gas, trash combustion, refined coal production and hydropower, and are described in Section 45(d) of the Code (without regard to placed in service dates). Notice 2006-7 also states that a qualified project includes a facility owned by the qualified borrower that is functionally related and subordinate to the qualifying facility.



Qualified issuers of CREBs are governmental bodies, mutual or cooperative electric companies and clean renewable energy lenders. Such lenders are entities owned by cooperatives or that have loans outstanding to cooperatives. Notice 2006-7 provides that “on behalf of” issuers may also serve as qualified issuers.

Financial Aspects

CREBs are issued in the form of tax credit bonds, and the buyers receive tax credits. The CREB program is partially based on the Qualified Zone Academy Bond program and incorporates many federal tax-exempt bond principles. The tax credit rate and final maturity of the CREB obligation will be determined by U.S. Treasury on a periodic basis and posted on Treasury’s website at <https://www.treasurydirect.gov/SZ/SPESRates?type=CREBS>. CREBs must be ratably amortized over the life of the issue. Notice 2007-26 provides that a separate credit rate will apply to each principal installment using the rates published for the sale date on the foregoing website. The amount of the CREB tax credit is determined and applied quarterly and is one quarter of the annual rate. The annual rate is the product of the published tax credit rate and the outstanding face amount of the bond. On January 22, 2009 IRS Notice 2009-15 was released that affects the credit rate pricing methodology and modifies Notice 2007-26 in that regard. Notice 2009-15 can be found at <http://www.irs.gov/pub/irs-drop/n-09-15.pdf>.

The CREB tax credit is included in gross income, and the included amount is treated as gross income. CREBs can be sold to a wide range of investors and an equal amount of the principal of CREBs must be repaid each year while outstanding. CREBs may also be pooled and refinance existing debt for a qualified project so long as the original debt was issued after enactment of EPACT (August 8, 2005).

Moreover, 2007-26 provides that in determining the yield on an issue of CREBs for arbitrage purposes, each of the credit and the credit rate will be ignored. Additionally, the yield restriction exception for investment in non-AMT tax-exempt securities is not applicable to investments of the proceeds of CREBs. Lastly, Notice 2007-26 states that CREBs will be aggregated with other tax-exempt bonds for purposes of determining the eligibility of the CREBs for the \$5 million small issuer exemption from rebate.

Significantly, it is expected that future regulations will provide guidance on the implementation of the change in use and remedial action provisions and the arbitrage-investment requirements found in Sections 54(d)(2)(D) and 54(i).



Qualified Costs

For purposes of Section 54, 95% of the CREB proceeds must be spent on qualifying capital expenditures, and the proceeds must be spent within five years of issuance. There must also be a binding commitment with a third party to spend at least 10% of the proceeds within 6 months of issuance. Like tax-exempt bonds, proceeds of CREBs may be used to reimburse for prior expenditures so long as the borrower adopted a reimbursement resolution. For CREBs, the prior expenditure must have occurred after August 8, 2005.

Allocation

An issuer of CREBs must receive an allocation of issuing authority from the U.S. Treasury Secretary. Notice 2005-98 detailed the allocation process for the initial round of \$800 million. As mentioned before, that notice has been superceded by Notice 2007-26. The allocation process for the increased allocation under the Extenders Act and reallocation of the initial \$800 million is governed by Notice 2007-26, which contains a sample allocation application. As a result of the changes in the Extenders Act, no more than \$750 million of allocation may be allocated to qualified borrowers that are governmental bodies.

The application must contain certain information that was not required for first round applications, such as any amount of CREBs previously allocated to the project that is described in the application along with any amounts allocated to “related projects.” Related projects are owned by the same borrower or a related party, located on the same site, and integrated, interconnected, or directly or indirectly dependent on each other. The application still requires an engineer to provide a written certification that the project qualifies under Section 54(d)(2)(A).

Any amount of CREBs allocated to a project (including “related projects”) in the first round will be taken into account in determining the amount requested in the second round for that project or a related project. Amounts allocated to qualified issuers in the first round that have been relinquished by the qualified issuers prior to July 13, 2007, will be available for reallocation in the second round.

Notice 2007-26 also states that allocation will continue to be awarded based on the smallest dollar amount requested and proceeding with the next smallest dollar amount until the CREB allocation is exhausted.