

ATTENTION QZAB ISSUERS: Form 1097-BTC Required For Certain Tax Credit Bonds

Form 1097-BTC required for certain tax credit bonds.

The Internal Revenue Service (the “IRS”) generally requires issuers (or their agents) to file Form 1097-BTC, Bond Tax Credit, for each tax credit provided by the following tax credit bonds: (i) Clean Renewable Energy Bonds, (ii) New Clean Renewable Energy Bonds, (iii) Qualified Energy Conservation Bonds, (iv) Qualified Zone Academy Bonds and (v) Qualified School Construction Bonds. Filing of the form may also be required for Gulf tax credit bonds. The form is generally required to be filed for all outstanding tax credit bonds listed above and not just for future bond issues.

Form not required for direct pay bonds. It is important to note that issuers (or their agents) are *not* required to file a Form 1097-BTC for the tax credit bonds set forth above if those bonds were issued as direct pay bonds (*i.e.* the federal government pays the issuer of the bonds an amount representing all or a portion of the interest on the bonds) and not as tax credit bonds (*i.e.* the holder of the bonds receive a federal tax credit in lieu of all or a portion of the interest payable on the bonds).

Who must file. Issuers (or their agents) generally must file Form 1097-BTC for each person who is allowed a tax credit as a holder, directly or indirectly, of a tax credit bond or a stripped credit coupon for a tax credit bond on a credit allowance date during the calendar year for tax credits of at least \$10. Copy A of the form must be filed with the Internal Revenue Service (annually), Copy B of the form must be sent to the recipient of the tax credit (on a quarterly basis), and Copy C of the form is kept by the payer. Filing must be made on a separate Form 1097-BTC for each bond. Recipients of Form 1097-BTC from the issuer (or the issuer’s agent), such as mutual funds or partnerships, who are further distributing the tax credit also have filing responsibilities. Issuers (or their agents) may also have filing responsibilities for tax credits (which are treated as taxable interest income for federal tax purposes) to report such tax credits on Form 1099-INT or Form 1099-OID, as applicable.

The instructions for Form 1097-BTC generally state that the form must be filed by the issuer or one who qualifies as an “agent” of an issuer. Who is an “agent” of the issuer will depend on the transaction and the type of agreements between the issuer and a third party. In some circumstances, a registrar of the bonds or the paying agent for the bonds may be an agent of the issuer. Issuers should consult their tax advisors or auditors about filing Form 1097-BTC and to determine whether a third party in a transaction (such as a registrar or paying agent) is an agent of the issuer for Form 1097-BTC filing purposes.

Statements to tax credit recipients. The filer of Form 1097-BTC must also provide a statement to the recipients for each tax credit amount (Copy B of the form).

When to file form. Issuers (or their agents) are required to (i) file an annual Form 1097-BTC with the IRS (Copy A of the form) and (ii) report tax credits to recipients in the time and manner as required by the instructions on the form (which require a quarterly filing). Issuers (or their agents) are required to file Form 1097-BTC for outstanding tax credit bonds for the 2012 calendar year with the IRS on February 28, 2013 (April 1, 2013, if filed electronically). The requirement concerning providing a statement (Copy B of the Form 1097-BTC) to tax credit recipients began in August, 2012.

Future filing information. Issuers (and their agents) are encouraged to consult their tax advisors with respect to filing Form 1097-BTC. The IRS has created a page about Form 1097-BTC (and its instructions) at www.irs.gov/form1097btc. Information concerning future developments affecting Form 1097-BTC (such as future legislation) will be posted on that page.

For a copy of the **2012 form**, please follow this link: <http://www.irs.gov/pub/irs-prior/f1097btc--2012.pdf>

For a copy of the **2012 instructions**, please follow this link: <http://www.irs.gov/pub/irs-prior/i1097btc--2012.pdf>

For a copy of the **2013 form**, please follow this link: <http://www.irs.gov/pub/irs-pdf/f1097btc.pdf>

For a copy of the **2013 instructions**, please follow this link: <http://www.irs.gov/pub/irs-pdf/i1097btc.pdf>

To discuss any topic covered in this Client Alert, please contact Erin Bartholomy at (312) 845-3893 or Brent Feller at (312) 845-3822. For more information, visit us online at Chapman.com.

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