

# Client Alert

Current Issues Relevant to Our Clients

July 15, 2013

## Attention QZAB Issuers: Reminder to timely spend QZAB proceeds and to send quarterly statements to QZAB holders.

**Three year spending requirement.** The Internal Revenue Code (the “Code”) requires issuers of qualified zone academy bonds (“QZABs”) to spend 100 percent of the sale proceeds and investment earning thereon for qualified purposes within three years of the date of issuance of the QZABs. To the extent that the issuer fails to spend 100 percent of the sale proceeds and investment earnings thereon within three years from the date of issuance of the QZABs, the issuer must generally redeem a portion of the QZABs within ninety days of the end of the three-year spending period.

**Under certain circumstances the three-year spending period may be extended.** An issuer may extend the three-year spending period only if the issuer receives permission to extend such three-year spending period from the Secretary of the Treasury. In order to extend the three-year spending period, the issuer must submit an extension request prior to the expiration of the three-year spending period and must establish that the failure to expend the proceeds within the three-year spending period was due to reasonable cause.

The Code does not provide a procedure for submitting an extension request to the Secretary of the Treasury. It appears from recent private letter rulings released by the Internal Revenue Service (the “IRS”), however, that the IRS expects such extension requests to be submitted to the IRS in the form of a private letter ruling request. Preparation of such requests are time-consuming and costly. In addition, such requests must be based on the facts and circumstances of a transaction and the Secretary of the Treasury might not grant the extension.

**Accordingly,** issuers should monitor the expenditure of QZAB proceeds to meet the three year spending requirement and avoid either having to redeem QZABs or submit an expensive and time-consuming extension request to the IRS.

**Form 1097-BTC required for certain tax credit bonds.** As discussed in our February, 2013 Client Alert, the IRS generally requires issuers (or their agents) to file a Form 1097-BTC, Bond Tax Credit, for each tax credit provided

by tax credit bonds, including QZABs. The form is generally required to be filed for all outstanding tax credit bonds and not just for future bond issues.

**Form not required for direct pay QZABs.** It is important to note that issuers (or their agents) are not required to file a Form 1097-BTC for QZABs 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 IRS (annually), Copy B of the form must be sent to the recipient of the tax credit (quarterly), 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 a responsibility to report tax credits (which are treated as taxable interest income for federal tax purposes) 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 2013 calendar year with the IRS on February 28, 2014 (March 31, 2014 if filed electronically). A Form 1096, Annual Summary and Transmittal of U.S. Information Returns, must accompany the Form 1097-BTC filed with the IRS. Issuers of QZABs (or their agents) must provide a statement (Copy B of the Form 1097-BTC) to tax credit recipients for the 2013 calendar year on a quarterly basis.

**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](http://www.irs.gov/form1097btc). Information concerning future developments affecting Form 1097-BTC will be posted on that page.

## For More Information

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*To discuss any of the issues covered in this client alert, please contact Brent Feller at 312.845.3822 or [feller@chapman.com](mailto:feller@chapman.com), or visit us online at [chapman.com](http://chapman.com).*

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