With Option 033F003 Installed: Modification, Replacement, and Installation

(g) For airplanes with option 033F003 installed: Within 12 months after September 6, 2005, do the actions in Table 2 of this AD in accordance with the Accomplishment Instructions of AvCraft Service Bulletin SB–328J–00–198, dated August 23, 2004.

TABLE 2—REQUIREMENTS FOR AIRPLANES WITH OPTION 033F003 INSTALLED

Do the following actions—	By accomplishing all the actions specified in—
(1) Modify the electrical wiring of the left-hand and right-hand fuel pumps.	Paragraph 2.B(1) of the service bulletin.
(2) Replace the wiring harness of the auxiliary fuel system with a new wiring harness.	Paragraph 2.B(2) of the service bulletin.
(3) Install markings at fuel wiring harnesses.	Paragraph 2.B(3) of the service bulletin.
(4) Install insulated couplings in the fuel system.	Paragraph 2.B(5) of the service bulletin.

Revision to Airworthiness Limitations

(h) Within 12 months after September 6, 2005, revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate the information in AvCraft Temporary Revision (TR) ALD–028, dated October 15, 2003, into the AvCraft 328JET Airworthiness Limitations Document. Thereafter, except as provided by paragraph (k) of this AD, no alternative inspection intervals may be approved for this fuel tank system.

Note 2: This may be done by inserting a copy of AvCraft TR ALD–028, dated October 15, 2003, in the AvCraft 328JET Airworthiness Limitations Document. When this TR has been included in general revisions of the AvCraft 328JET Airworthiness Limitations Document, the temporary revision no longer needs to be inserted into the revised Airworthiness Limitations document.

New Requirements of This AD

Revised Initial Compliance Time

(i) For Sub-tasks 28–00–00–02 and 28–00–00–03 (''Detailed Inspection of Outer and Inner Fuel Tank Harness Internal''), as identified in AvCraft TR ALD–028, dated October 15, 2003; or Section G, ''Fuel Tank System Limitations,'' Revision 2, dated January 31, 2005, of the Dornier 328 JET Airworthiness Limitations Document (ALD), the initial compliance time is within 8 years after the effective date of this AD. Thereafter, except as provided by paragraph (k) of this AD, these tasks must be accomplished at the repetitive interval specified in Section G, ''Fuel Tank System Limitations,'' Revision 2, dated January 31, 2005, of the Dornier 328 JET Airworthiness Limitations Document.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(j) After accomplishing the actions specified in paragraphs (f), (g), and (h), and the initial inspections in paragraph (i) of this AD, no alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs) may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Related Information

(l) EASA airworthiness directive 2006–0197 [Corrected], dated July 11, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on July 29, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–18434 Filed 8–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149404–07]

RIN 1545–BH34

Amendments to New Markets Tax Credit Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the new markets tax credit under section 45D of the Internal Revenue Code (Code). The proposed regulations revise and clarify certain rules relating to recapture of the new markets tax credit and will affect certain taxpayers claiming the new markets tax credit. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 10, 2008. Outlines of topics to be discussed at the public hearing scheduled for December 12, 2008, at 10 a.m. must be received by November 3, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149404–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–149404–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–149404–07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Julie Hanlon-Bolton, (202) 622–7028; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide and clarify rules relating to the new markets tax credit under section 45D of the Code. Section 45D was added to the Code by section 121 of the Community Renewal Tax Relief Act of 2000, Public Law 106–554 (114 Stat. 2763 (2000)) and amended by section 221 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418 (2004)), section 101 of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 25 (2005)), and Division A, section 102 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922 (2006)). On December 28, 2004, the IRS and the Treasury Department published final regulations under section 45D (69 FR 77625), with corrections on January 28, 2005 (70 FR 4012).

Groups and organizations representing investors, qualified community development entities, businesses, and other entities involved with the new markets tax credit program have since submitted comments requesting further guidance on the

recapture of the credit. The commentators suggested that revising the final regulations to reduce recapture uncertainty would encourage investors to bring increased amounts of capital to low-income communities.

General Overview

Section 45D(a)(1) provides a new markets tax credit on a taxpayer's qualified equity investment (QEI) in a qualified community development entity (CDE). To qualify for the credit, among other requirements, substantially all of the taxpayer's cash must be used by the CDE to make qualified low-income community investments (QLICIs) pursuant to section 45D(b)(1)(B).

A CDE is any domestic corporation or partnership if, among other requirements, the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons pursuant to section 45D(c)(1). Section 45D(d)(1) provides that a QLICI is: (A) Any capital or equity investment in, or loan to, any qualified active low-income community business (QALICB); (B) the purchase from another CDE of any loan made by the entity that is a QLICI; (C) financial counseling and other services to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any CDE. A QALICB is any corporation or partnership in which at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community, provided certain other requirements are met pursuant to section 45D(d)(2).

Section 45D(g)(1) provides that, if there is a recapture event at any time during the 7-year period beginning on the date of the original issue of a QEI in a CDE, then the tax imposed by this chapter for the taxable year in which the event occurs must be increased by the credit recapture amount. Section 45D(g)(3) provides that a recapture event occurs with respect to an equity investment in a CDE if (A) such entity ceases to be a CDE, (B) the proceeds of the investment cease to be used to make QLICIs as required by section 45D(b)(1)(B), or (C) the QEI is redeemed by the CDE.

Explanation of Provisions

Redemption Safe Harbor for Partnership CDEs

Section 1.45D–1(e)(3)(iii) provides that, in the case of an equity investment that is a capital interest in a CDE that is a partnership for Federal tax purposes, a pro rata cash distribution by the CDE to its partners based on each partner's capital interest in the CDE during the taxable year will not be treated as a redemption for purposes of § 1.45D–1(e)(2)(iii) if the distribution does not exceed the CDE's operating income for the taxable year. In addition, a non-pro rata *de minimis* cash distribution by a CDE to a partner or partners during the taxable year will not be treated as a redemption provided the distribution does not exceed the lesser of 5 percent of the CDE's operating income for that taxable year or 10 percent of the partner's capital interest in the CDE.

Commentators expressed the concern that a CDE may not be able to calculate its operating income in time to make a distribution during the taxable year. Because most CDEs will make a low estimate of operating income in order to lessen the risk of not satisfying the requirements of the redemption safe harbor, many CDEs may not distribute the entire amount of operating income during the taxable year. In response to this concern, the proposed regulations provide that, in the case of an equity investment that is a capital interest in a CDE that is a partnership for Federal tax purposes, a pro rata cash distribution by the CDE to its partners based on each partner's capital interest in the CDE during the taxable year will not be treated as a redemption for purposes of § 1.45D–1(e)(2)(iii) if the distribution does not exceed the sum of the CDE's operating income for the taxable year and the CDE's undistributed operating income (if any) for the prior taxable year.

Additionally, for purposes of the redemption safe harbor for partnership CDEs, § 1.45D–1(e)(3)(iii) defines *operating income* as the sum of (A) the CDE's taxable income as determined under section 703 (except that (*1*) the items described in section 703(a)(1) shall be aggregated with the non-separately stated tax items of the partnership; and (*2*) any gain resulting from the sale of a capital asset under section 1221(a) or section 1231 property shall not be included in taxable income); (B) deductions under section 165 (but only to the extent the losses were realized from QLICIs under § 1.45D–1(d)(1)); (C) deductions under sections 167 and 168 (including the additional first-year depreciation under section 168(k)); (D) start-up expenditures amortized under section 195; and (E) organizational expenses amortized under section 709. The proposed regulations add tax-exempt income under section 103 and any other depreciation and amortization deductions under the Code to the list of Code sections that determine the amount of operating income.

Commentators have indicated that some CDEs are adding their distributive share of the deductions listed in § 1.45D–1(e)(3)(iii) from another partnership to the CDE's calculation of operating income. For example, some CDEs are adding their distributive share of the amortization and depreciation deductions under sections 167 and 168 from another partnership to the CDE's calculation of operating income. The proposed regulations clarify that a CDE may rely on § 1.704–1(b)(1)(vii) to determine its allocable share of the deductions listed in § 1.45D–1(e)(3)(iii) from another partnership to the CDE's calculation of its operating income. Therefore, § 1.704–1(b)(1)(vii) applies to treat an allocation to a partner of its share of partnership net or ''bottom line'' taxable income or loss as an allocation to such partner of the same share of each item of income, gain, loss, and deduction that is taken into account in computing the partner's net or ''bottom line'' taxable income or loss.

Termination of a Partnership CDE Under Section 708(b)(1)(B)

Under section 708(b)(1)(B), a partnership is considered as terminated if within a twelve-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits. Section 1.708–1(b)(4) provides, in part, that if a partnership is terminated by a sale or exchange of an interest, the following is deemed to occur: The partnership contributes all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, the terminated partnership distributes interests in the new partnership to the purchasing partner and the other remaining partners in proportion to their respective interests in the terminated partnership in liquidation of the terminated partnership, either for the continuation of the business by the new partnership or for its dissolution and winding up.

If the terminating partnership is a CDE, because of the deemed distribution of interests in that new partnership to the purchasing partner and the other remaining partners, a recapture event may be triggered under section 45D(g)(3)(C) and § 1.45D–1(e)(2)(iii). However, because the sale of a QEI is not a recapture event under section 45D(g)(3) and because the remaining partner or partners are not being cashed out, the IRS and the Treasury Department do not believe that the sale

of a QEI that causes the termination of a CDE partnership under section 708(b)(1)(B) should trigger recapture. Accordingly, the proposed regulations provide that a termination under section 708(b)(1)(B) of a CDE partnership is not a recapture event.

Reasonable Expectations

Section 1.45D–1(d)(6)(i) provides that an entity is generally treated as a QALICB for the duration of the CDE's investment in the entity if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a QALICB under § 1.45D–1(d)(4)(i) throughout the entire period of the investment or loan.

The proposed regulations clarify how the reasonable expectations rule of § 1.45D–1(d)(6)(i) applies when a CDE makes an investment in or loan to another CDE. The proposed regulations provide that a CDE may rely on § 1.45D–1(d)(6)(i) to treat an entity as a QALICB even if the CDE's investment in or loan to the entity is made through other CDEs under § 1.45D–1(d)(1)(iv)(A).

Commentators indicated that some CDEs are unsure whether they may rely on § 1.45D–1(d)(6)(i) if their investments involve the portions of business rule under section 45D(d)(2)(C), the rental to others of real property under sections 45D(d)(3)(A), and the exclusions from the definition of a qualified business under § 1.45D–1(d)(5)(iii). Section 1.45D–1(d)(6)(i) already applies to all of these rules in determining whether an entity meets the requirements to be a QALICB under § 1.45D–1(d)(4)(i). Nevertheless, the proposed regulations clarify that CDEs may rely on these rules when applying § 1.45D–1(d)(6)(i).

Proposed Effective Date

The rules contained in these regulations are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Request for Comments

The IRS and the Treasury Department invite taxpayers to submit comments on issues relating to this notice of proposed rulemaking. In particular, the IRS and the Treasury Department encourage taxpayers to submit comments on how to define, under § 1.45D–1(d)(2)(i), the dollar amounts received by a CDE ''in payment of, or for, capital, equity, or principal'' that are set aside either for financial counseling and other services, for an equity investment, or as principal received on a loan. Section 1.45D–1(d)(2)(i) provides that such amounts must be reinvested by the CDE in a QLICI no later than twelve months from the date of receipt to be treated as continuously invested in a QLICI. Commentators suggested defining amounts received ''in payment of, or for, capital, equity, or principal'' by using the same rules and redemption safe harbor in § 1.45D–1(e)(3), which defines when an investment is redeemed or otherwise cashed out by a CDE. The proposed regulations do not adopt this suggestion. The IRS and the Treasury Department believe this approach may be inappropriate because redeeming one dollar of an equity investment is a recapture event under section 45D(g)(3)(C), while failing to reinvest one dollar in a QLICI under § 1.45D–1(d)(2)(i) lowers the dollar amount treated as meeting the substantially-all requirement by one dollar.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 12, 2008, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by November 10, 2008. Outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by November 3, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Julie Hanlon-Bolton with the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.45D–1 is amended by:

1. Redesignating the paragraph (a) entries for paragraphs (e)(4), (e)(5), (e)(6), and (e)(7) as paragraphs (e)(5), (e)(6), (e)(7), and (e)(8), respectively, adding a new entry for paragraph (e)(4), and revising the entry for paragraph (h)(2).

3. Revising paragraph (d)(6)(i).

4. Revising paragraph (e)(3)(iii) introductory text.

5. Redesignating paragraphs (e)(3)(iii)(B), (e)(3)(iii)(C), (e)(3)(iii)(D), and (e)(3)(iii)(E) as paragraphs (e)(3)(iii)(C), (e)(3)(iii)(D), (e)(3)(iii)(E), and (e)(3)(iii)(F), respectively, and adding new paragraph (e)(3)(iii)(B).

6. Revising newly-designated paragraph (e)(3)(iii)(D).

7. Redesignating paragraphs (e)(4), (e)(5), (e)(6), and (e)(7) as paragraphs

(e)(5), (e)(6), (e)(7), and (e)(8), respectively, and adding new paragraph (e)(4).

8. Revising the heading for paragraph (h)(2) and adding a sentence at the end of the paragraph.

The additions and revisions read as follows:

§ 1.45D–1 New markets tax credit.

(a) * * *

(e) * * *

(4) Section 708(b)(1)(B) termination.

* * * * *

(h) * * *

(2) Exception for certain provisions.

* * * * *

(d) * * *

(6) * * *

(i) * * * Except as provided in paragraph (d)(6)(ii) of this section, an entity is treated as a qualified active low-income community business for the duration of the qualified community development entity's (CDE's) investment in the entity if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a qualified active low-income community business under paragraphs (d)(4)(i) and (d)(5) of this section (including, if applicable, portions of business under paragraph (d)(4)(iii) of this section) throughout the entire period of the investment or loan. A CDE may rely on this paragraph (d)(6)(i) to treat an entity as a qualified active low-income community business even if the CDE's investment in or loan to the entity is made through other CDEs under paragraph (d)(1)(iv)(A) of this section.

(e) * * *

(3) * * *

(iii) *Capital interest in a partnership.* In the case of an equity investment that is a capital interest in a CDE that is a partnership for Federal tax purposes, a pro rata cash distribution by the CDE to its partners based on each partner's capital interest in the CDE during the taxable year will not be treated as a redemption for purposes of paragraph (e)(2)(iii) of this section if the distribution does not exceed the sum of the CDE's ''operating income'' for the taxable year and the CDE's undistributed ''operating income'' (if any) for the prior taxable year. For purposes of this paragraph (e)(3)(iii), § 1.704–1(b)(1)(vii) applies to treat an allocation to a partner of its share of partnership net or ''bottom line'' taxable income or loss as an allocation to such partner of the same share of each item of income, gain, loss, and deduction that is taken into account in computing the partner's net or ''bottom line'' taxable income or loss. In addition, a non-pro rata ''de minimis'' cash distribution by a CDE to a partner or partners during the taxable year will not be treated as a redemption. A non-pro rata ''de minimis'' cash distribution may not exceed the lesser of 5 percent of the CDE's ''operating income'' for that taxable year or 10 percent of the partner's capital interest in the CDE. For purposes of this paragraph (e)(3)(iii), with respect to any taxable year, ''operating income'' is the sum of:

* * * * *

(B) Tax-exempt income under section 103;

* * * * *

(D) Deductions under sections 167 and 168, including the additional first-year depreciation under section 168(k), and any other depreciation and amortization deductions under the Code;

* * * * *

(e) * * *

(4) *Section 708(b)(1)(B) termination.* A termination under section 708(b)(1)(B) of a CDE that is a partnership is not a recapture event.

* * * * *

(h) * * *

(2) *Exception for certain provisions.* * * * Paragraph (d)(6)(i) of this section as it relates to a CDE's investment under paragraph (d)(1)(iv)(A), paragraph (e)(3)(iii) of this section as it relates to the distribution of undistributed ''operating income'' for the prior taxable year and to the application of § 1.704–1(b)(1)(vii), paragraph (e)(3)(iii)(B) of this section, paragraph (e)(3)(iii)(D) of this section as it relates to any other depreciation and amortization deductions under the Code, and paragraph (e)(4) of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulation in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–18442 Filed 8–8–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 419

[CMS–1404–P]

RIN 0938–AP17

Medicare Program: Proposed Changes to the Hospital Outpatient Perspective Payment System and CY 2009 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates

Correction

In proposed rule document E8–15539 beginning on page 41416 in the issue of Friday, July 18, 2008, make the following correction:

On pages 41504 through 41505, Table 30 should be replaced to appear as follows:

BILLING CODE 4120–01–D