



Public Finance Provisions Contained In The Federal Stimulus Act

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the "Act"). Below is a general summary of the tax-exempt bond provisions in the Act.

Ability of Financial Institutions to Hold Bonds

Under current law, corporations generally may invest up to two percent of their assets in tax-exempt bonds without a portion of their interest expense deduction being disallowed. This provision is now expanded to apply to financial institutions that under current law would generally be subject to an automatic disallowance of a portion of their interest deduction in proportion to their tax-exempt bond holdings. This expansion only applies to obligations issued in 2009 and 2010, with refunding bonds treated as issued on the issue date of the original non-refunding bonds being refinanced.

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The existing requirements for bonds to be "bank qualified" and therefore not subject to the automatic interest deduction disallowance rule for financial institution holders are modified. The \$10 million annual issuance limitation on issuers of bank qualified bonds is increased to \$30 million; 501(c)(3) and governmental conduit borrowers are treated as direct issuers for purposes of the qualification requirements; and individual borrowers in a pool or composite issue are treated as if they were separate issuers for purposes of the qualification requirements. These amendments only apply to obligations issued in 2009 and 2010.

Temporary Repeal of AMT for Private Activity Bonds

Interest on private activity bonds is no longer treated as a preference item for purposes of the alternative minimum tax, and also is not included in the current earnings adjustment under the corporate alternative minimum tax. These amendments only apply to bonds issued in 2009 and 2010, and only apply to refunding bonds to the extent that the original non-refunding bonds being refinanced were issued after December 31, 2003.



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Tax Credit Bonds for Schools

A new category of tax credit bonds is created to finance the construction, rehabilitation and repair of public school facilities or for the acquisition of land on which a public school facility will be constructed. These bonds may be issued in 2009 and 2010 and are subject to a national limit of \$11 billion each year. There are requirements as to how the national limit is to be allocated among the States, with a specified portion to be allocated to certain large school districts.

Taxable Bond Option

An option is provided under which an issuer may elect that any bond (other than a private activity bond) that would qualify for tax exemption may instead be issued as a taxable bond with a tax credit to the holder equal to 35% of the interest on the bond. Bonds issued under the option are referred to in the Act as “Build America Bonds.” The arbitrage rules apply based on the actual yield on the bonds net of the credit, and only bonds issued with not more than a *de minimis* amount of premium qualify for the option. The tax credits may also be stripped from the bonds under rules currently applicable to other types of tax credit bonds. This provision applies to new bonds issued before January 1, 2011.

In light of the lack of tax credit appetite under current economic conditions, for a temporary period an issuer electing to issue Build America Bonds may further elect to receive direct payments from the Federal government in the amount of the credit, in lieu of the credit being provided to the bondholders. This refundable credit provision also applies only to bonds issued before January 1, 2011, and is only available for issues where 100 percent of the available project proceeds (i.e., sale proceeds less up to 2 percent costs of issuance) less amounts deposited in a reasonably required fund are used for capital expenditures.

Recovery Zone Bonds

A new category of tax credit bonds, called Recovery Zone Economic Development Bonds, is created with authority for \$10 billion of issuances in 2009 and 2010 to finance economic development purposes in certain designated recovery zones.

In addition, a new category of tax-exempt facility bonds, called Recovery Zone Facility Bonds, is created with authority for \$15 billion of issuances to finance depreciable property to be used in a recovery zone in the active conduct of a trade or business, subject to certain exclusions.

The volume caps for these recovery zone bonds will generally be allocated on the basis of the relative declines in employment in 2008.

Tribal Economic Development Bonds

Indian tribal governments are authorized to issue tax-exempt bonds to finance any purpose that could be financed by a State or local government, other than certain gaming facilities and facilities located outside



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the tribe's reservation, without regard to the "essential governmental function" requirement normally applicable to tribal bonds. These bonds are subject to a nationwide cap of \$2 billion.

Qualified Zone Academy Bonds

Authority for an additional \$1.4 billion of qualified zone academy bonds in each of 2009 and 2010 is provided.

Clean Renewable Energy Bonds and Qualified Energy Conservation Bonds

An additional \$1.6 billion of clean renewable energy bonds is authorized for certain renewable energy projects. An additional \$2.4 billion of qualified energy conservation bonds is authorized to finance governmental programs and initiatives designed to reduce greenhouse gas emissions.

Qualified Small Issue Bonds

The definition of "manufacturing facilities" for purposes of the qualified small issue bond provisions is expanded to include facilities used in the production of intangible property. The scope of a "manufacturing facility" is amended to replace the 25 percent allowance for directly related and ancillary property with an unlimited allowance for functionally related and subordinate property. These provisions apply only to bonds issued in 2009 or 2010.

Bonds for High-Speed Intercity Rail Facilities

The Act clarifies that the definition of the term "high-speed intercity rail facilities" as a category of qualified private activity bonds only requires that the vehicles using the facilities be capable of attaining a maximum speed in excess of 150 miles per hour between scheduled stops (as opposed to being expected to operate at such speeds).

Davis Bacon Requirements

The Davis Bacon prevailing wage requirements generally applicable to certain contracts with the Federal government would be made applicable to projects financed with the proceeds of (i) clean renewable energy bonds, (ii) qualified energy conservation bonds, (iii) qualified zone academy bonds, (iv) qualified school construction bonds and (v) recovery zone economic development bonds.

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