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AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

TAX CREDIT AND TAX-EXEMPT BOND PROVISIONS

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the "Act") into law. The law contains several borrower and investor friendly changes to current tax-exempt bond law. The following is a brief synopsis of these changes.

Section 265

Interest Expense Deduction

The administrative safe harbor that allows corporations to invest up to 2 percent of their gross assets in tax-exempt bonds without losing a portion of their interest expense deduction under Section 265 of the Internal Revenue Code of 1986, as amended (the "Code"), has been extended by the Act to apply to financial institutions. Such interest will be a financial institution's preference item resulting in a 20 percent disallowance of the interest deduction. This change replaces the automatic disallowance for a financial institution of the interest deduction for tax-exempt bonds but applies only to tax-exempt obligations issued in 2009 and 2010 (refunding bonds are treated as issued on the date of issue of the original bonds).

Bank Qualified Bonds

Section 265 of the Code previously provided that the general rule denying financial institutions an interest expense deduction for tax-exempt obligations does not apply if the tax-exempt obligation is a "qualified tax-exempt obligation," *i.e.*, a governmental bond or a qualified 501(c)(3) bond issued after August 7, 1986 by a "qualified small issuer" that is designated by the issuer under Section 265(b) of the Code. A "qualified small issuer" is an issuer that reasonably anticipates that it, and all entities subordinate to it, will issue $10 million or less of tax-exempt obligations during a calendar year. The Act has changed these provisions with respect to qualified tax-exempt obligations (governmental or qualified 501(c)(3) bonds) issued during 2009 and 2010. The $10 million limit has been increased to $30 million and consequently, issuers of tax-exempt obligations may issue an aggregate total of $30 million of tax-exempt bank qualified bonds in each of the calendar years 2009 and 2010 for any one 501(c)(3) organization. There is no limitation on the number of 501(c)(3) organizations for each of which an issuer could issue up to $30 million of bonds. In addition, an issuer of tax-exempt obligations may issue up to $30 million of tax-exempt obligations in each of the 2009 and 2010 calendar years for its own governmental purposes.

Manufacturing Bonds (Qualified Small Issue Bonds)

The definition of manufacturing facilities has been expanded by the Act to include facilities for the production of intangible property. Intangible property includes any patent, copyright, formula, process, design, knowhow, format or other similar item and is intended to include the creation of computer software and intellectual property associated with the biotech and pharmaceutical industries.

For tax-exempt bonds issued in 2009 and 2010, the Act provides that facilities that are functionally related and subordinate to the manufacturing facility and located at the same site are to be treated as part of the manufacturing facility, and eliminates the prior 25% of net proceeds limitation.

Alternative Minimum Tax

Interest on all private activity bonds issued in 2009 and 2010 will no longer be treated as a preference item for purposes of the alternative minimum tax and will not be included in the current earnings adjustment under the corporate alternative minimum tax. Refunding bonds issued in 2009 and 2010 are treated as issued on the date of issue of the original bonds, except if the original bonds were issued between 2004 and 2008, in which case, the issue date of the refunding bonds shall be the date of issue for purposes of this provision and not the date of issue of the original bonds.

Build America Taxable Bonds

Under the Act, an issuer of governmental bonds may elect that any governmental bond issued between February 17, 2009 and January 1, 2011 that would qualify for tax-exemption under Section 103 of the Code can be issued as a taxable bond with a tax credit to the holder equal to 35 percent of the interest on the bond. These bonds will be known as Build America Bonds. The tax credits may be stripped and sold separately. In the alternative, the issuer of Build America Bonds may elect to receive direct payments from the Federal government in the amount of the credit.

Tax Credit Bonds for Public Schools

The Act creates a new category of tax credit bonds for construction, rehabilitation and repair of public schools. These bonds can be issued only in 2009 and 2010 and are subject to a national limit of $11 billion each year.

Recovery Zone Bonds

The Act creates a new category of tax credit bonds to finance economic development in designated recovery zones. These bonds can only be issued in 2009 and 2010 and may not exceed a national total of $10 billion for such two-year period. A recovery zone must have significant poverty, unemployment, general distress or home foreclosures and be an area that is already designated as an empowerment zone or renewal community.

The Act also creates a new category of tax-exempt facility bonds known as Recovery Zone Facility Bonds to finance depreciable property to be used in a designated recovery zone in the active conduct of a trade or business. An issuer can designate bonds as Recovery Zone Facility Bonds up to the amount allocated to such issuer. These bonds are not subject to volume cap limitations and the restrictions on acquisition of existing property do not apply.

Qualified Zone Academy Bonds

The Act adds $1.4 billion to the amount of qualified zone academy bonds that can be issued in 2009 and 2010.

Energy Bonds

The Act permits an additional $1.6 billion of clean renewable energy bonds ("CREBs") with the authorization divided so that one-third will be available to state, local and tribal governments, one-third to public power providers and one-third to electric cooperatives.

The Act provides an addition $2.4 billion of qualified energy conservation bonds to finance state, local and tribal government programs to reduce greenhouse gas emissions, including programs that make loans and grants to implement green community programs and programs in which utilities provide ratepayers with energy efficient property.

High-Speed Intercity Rail Facilities

The Act permits the issuance of tax-exempt bonds to finance rail facilities for high speed trains (exceeding 150 miles per hour).

Tribal Bonds

Tribal governments will be permitted to issue $2 billion of tax-exempt bonds during 2009 and 2010 for any purpose that could be financed by a state or local government under Section 103 of the Code without regard to the "essential governmental function" requirement normally applicable to tribal bonds.

Davis Bacon

Davis Bacon prevailing wage requirements applicable to Federal government contracts will be applicable to projects financed with (a) CREBs, (b) qualified energy conservation bonds, (c) qualified zone academy bonds, (d) qualified school construction bonds and (e) recovery zone economic development bonds.

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