

The American Recovery and Reinvestment Act of 2009

Private Activity Bonds Provisions

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Expansion of Definition of Industrial Development Private Activity Bonds

- Definition of "qualifying manufacturing facility" expanded to include any facility used in the manufacture, creation or production of tangible and intangible property.
- Intangible property includes any patent, copyright, formula, process, design, pattern, know how, format or similar item.
- No limitation on amount of bond proceeds (previously 25% limitation) which can be used to finance functionally related and subordinate facilities located on the same site (i.e., warehouse, office, research and development, lunchrooms and restrooms, etc.)
- Currently applies to bonds issued in 2009 and 2010 only.

Recovery Zone Facility Bonds

- New category of tax-exempt private activity bonds.
- Permits the tax-exempt financing of certain capital projects of private companies located in a designated recovery zone.
 - 95% of proceeds used for recovery zone property.
 - bond is issued by a state or local government pursuant to a volume cap allocation.
 - issuer designates bond as a recovery zone facility bond.

- "Recovery zone" is an area designated by the governmental entity as having "significant poverty, unemployment, rate of home foreclosures or general distress."
 - no fixed criteria that must be demonstrated to meet requirement.
 - no limitation on number of recovery zones that may be created.
 - may be the entire jurisdictional boundary of the governmental entity – Muskegon County

- "Recovery zone property" is depreciable property that:
 - was constructed, reconstructed, renovated or acquired by purchase by a private company after the date on which the designation of the recovery zone for the property took effect;
 - the original use of which in the recovery zone commences with the private company (subject to certain substantial renovations and sale-leasebacks); and
 - all of the use of which is in the recovery zone and is in the active conduct of a qualified business by a private company.

- "Qualified business" means any trade or business except (i) residential rental property, (ii) private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility primarily used for gambling, and (iii) any store the principal business of which is the sale of alcoholic beverages for off premises consumption.
 - includes standard industrial uses for manufacturing facilities and ancillary and related uses.
 - includes restaurants, hotels, commercial and retail buildings, etc.

- \$10 million limit for standard IDBs does not apply.
- Currently applies to bonds issued in 2009 and 2010 only.
- National limit of \$15 billion.
 - allocated among the states based on state employment declines from December 2007 to December 2008.
 - reallocated among counties and municipalities with 100,000+ population in proportion to employment declines (allocation can be waived).
 - Minimum allocation of 0.9 percent to each state.

Volume Cap Limitation

- Michigan - \$1.159 billion (second largest)
- Muskegon County - \$20.8 million
- Muskegon County allocation may be used for projects in the City of Muskegon and the rest of Muskegon County.
- Legislative body establishing Recovery Zone must grant allocation.

Issuers of Recovery Zone Facility Bonds

- Economic Development Corporation of the City of Muskegon
- City of Muskegon or other municipality – Act 62 for industrial/manufacturing projects
- Michigan Strategic Fund

Benefits to Purchasers of Bonds

- Increases the "small issuer bank qualified" limit from \$10 million to \$30 million in a calendar year.
- Treats a 501(c)(3) organization as an "issuer" for purposes of meeting the "small issuer bank qualified" limitation of \$30 million.
- Liberalizes bank interest disallowance rule – rule does not apply in an amount up to 2% of its adjusted basis assets.
- Removes the Alternative Minimum Tax exception for tax-exempt private activity bonds.
- Currently applies to bonds issued in 2009 and 2010 only.

Additional Considerations:

- Creditworthy project.
- Size of issue in order benefit from tax exempt interest.
- Bonds must be issued by December 31, 2010.



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