

Quick Takes: Just Out- New Rules That Will Supercharge Recovery Bonds for Economic Development and Public Projects

Good news! On Friday, June 12, the Internal Revenue Service issued Notice 2009-50. These new rules will put ED Bonds and Facility Bonds to work in economic development and public projects.

Recovery Zone Facility Bonds (“**Facility Bonds**”) permit the tax-exempt financing of projects which historically would not qualify (*e.g.*, shopping centers, large manufacturing plants, distribution centers, hotels, research parks, etc.). Recovery Zone Economic Development Bonds (“**ED Bonds**”) are taxable “refund” bonds that can be used to finance (among other things) public infrastructure and public facilities that can serve a private project. Both Facility Bonds and ED Bonds (collectively, “**Recovery Bonds**”) can only be issued by an eligible issuer. They are for Recovery Zone financings. Recovery Bonds are among the “**Stimulus Bonds**” discussed in the last issue of *Quick Takes*.

A “**Recovery Zone**” is an area designated as such by the bond issuer based on findings related to poverty, unemployment, home foreclosures, or general (or BRAC-related) distress (a federal empowerment zone or renewal community automatically qualifies as a Recovery Zone).

The Notice sets forth the allocations of “**volume cap**” (needed to issue Recovery Bonds) for all of the states and for all counties and for all large (100,000 population or more) cities in the United States. But here’s what’s exciting about the new rules-

- A county or large city can transfer part of its allocation to its development authority or public facilities authority so that the authority can issue the Recovery Bonds. This facilitates the types of conduit financings and revenue bond issues that we (and the capital markets) are used to seeing in the field of economic development and related public projects.
- In order to designate an area as a Recovery Zone, the issuer that receives the volume cap allocation can act “in any reasonable manner”. This lessens the issuer’s burden in designating Recovery Zones, as long as it makes its determinations “in good faith in its discretion.”
- If a county or large city waives any portion of its volume cap allocation, the state can

reallocate the waived volume cap. The state just has to act “in any reasonable manner as it shall determine in good faith in its discretion.” This opens the door, for example, to regional cooperation on projects, involving the “pooling” of allocations through the state. This is particularly important given the small amounts allocated to some counties and large cities, which otherwise might go to waste. This also would tend to put pressure on issuers to put their allocations to use, or to waive them or some portion of them in order that they might be put to use elsewhere in the state.

Georgia received allocations of \$355,785,000 for ED Bonds, and \$533,677,000 for Facility Bonds. Gwinnett County received the largest allocations for both types of bonds (\$41,186,000 for ED Bonds, and \$61,778,000 for Facility Bonds). In Georgia, 50 counties received no allocations of volume cap for ED Bonds or Facility Bonds. Allocations were based on the “2008 State employment decline” for each state compared to the nation (except that each state is guaranteed at least 0.9% of the national volume cap for each type of the Recovery Bonds). Within a state, declines for counties and cities were compared to all counties and cities in the state, in order to determine their respective allocations. You can find a list of all of the Georgia allocations on the “White Papers” page of the danmcræ.info website at- <http://danmcræ.info/whitepapers.asp>

This special issue of *Quick Takes* is being sent now in light of the importance of the new rules to economic development and to public projects. The theme of how to get projects done in this economy will continue in the next issue, which is entitled: “P3 Bonds: Public Money for Private Projects.”

If you have any questions or comments on Recovery Bonds or other types of Stimulus Bonds, please do not hesitate to let me know.

Meanwhile, for more information-

GO TO <http://danmcræ.info/quicktakes.asp>

For June 2009 – “*Quick Takes*: Stimulus Bonds- All About Recovery Bonds, Cash Refunds, Tax Credits, and More ”

AND GO TO <http://danmcræ.info/whatsnew.asp>

for updates on an allocation system for Recovery Bonds.

The “Current Bond Rates” page at danmcræ.info is updated weekly. This week’s version is what you see below.

Daniel M. McRae, Partner
Seyfarth Shaw LLP
Suite 700
1545 Peachtree St., N.E.
Atlanta, GA 30309
404.888.1883
404.892.7056 fax
dmcræ@seyfarth.com

dan@danmcrae.info

General note: This issue of *Quick Takes* is a quick-reference guide for economic developers, community developers, participants in the real estate and financial industries, company executives and managers, and their advisors. The information in this issue is general in nature. Various points that could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

CURRENT BOND RATES	
EFFECTIVE JUNE 11, 2009	
	Interest Rates:
tax-exempt-	floating: 0.36% <small>(eff. 06/04/09)</small>
	fixed: 3.47%
taxable-	floating: 1.40% - 2.35%
	fixed: 4.27%
General notes:	
1. Rates are posted weekly. These rates are for the effective date indicated above, or as otherwise indicated. For intra-week rates, <u>Contact Dan.</u>	
2. These are interest rates on revenue bonds that are variable rate demand bonds; i.e., floating. These can be synthetically fixed via interest rate swaps, as noted below.	
3. Tax-exempt rates are for industrial development revenue bonds (IDB's") that are subject to the AMT and are 7 day general market quotes.	
4. Taxable rates are for taxable IDB's or for taxable "corporate bonds".	
5. Fixed rates are for 10 year terms via swaps.	
6. All rates are market extracted and approximations, and are not guaranteed.	
7. These rates do not reflect all-in costs; e.g., annual letter of credit fees are not included.	

If you would like to stop receiving Dan McRae's QuickTakes Newsletter, send an email to unsubscribe@danmrae.info