

# Quick Takes

AUGUST 2009

*Quick Takes*: Deadlines and Guidelines for Recovery Bonds

## **Deadlines**

Georgia counties or large cities with allocations of volume cap for Recovery Zone Economic Development Bonds (ED Bonds) and Recovery Zone Facility Bonds (Facility Bonds) need to file a Notice of Intent with DCA by November 2, 2009 in order to retain those allocations. At the end of this issue of *Quick Takes* is a summary with more information taken from GSFIC – approved rules that are administered by DCA. I have also posted a presentation with details on my website at- <http://danmcrae.info/whitepapers.asp>

In order to see whether or not it received such an allocation, a Georgia city or county can check the list posted on my website at- <http://danmcrae.info/whitepapers.asp>

The Recovery Act authorizes ED Bonds as a new way to finance public infrastructure and public facilities. It also authorizes Facility Bonds as a new way to finance private economic development projects. Both types of bonds are for Recovery Zone financings, and can collectively be called “Recovery Zone Bonds.” For more information about these bonds, please refer to my two June 2009 newsletters on my website at- <http://danmcrae.info/quicktakes.asp>

Let me know if you need help with the preparation and filing of the Notice of Intent.

## **Guidelines**

A number of questions about Recovery Zone Bonds keep recurring. Here are those Frequently Asked Questions, and guidelines to answer them.<sup>1</sup>

### **Facility Bond FAQ's**

#### **Incentives to Use Facility Bonds**

**What incentive does the Recovery Act provide for using Facility Bonds?** The interest on Facility Bonds is federally tax-exempt. This federal “subsidy” creates an incentive to finance private property constituting a Qualified Business within a Recovery Zone (see below for definitions of both terms). Facility Bonds are essentially a new tool for private sector borrowing.

#### **Land**

***Can Facility Bonds be used to finance the cost of land acquired after the designation of a Recovery Zone?*** No. Recovery Zone Facility Bonds can only finance depreciable property, and land is not depreciable.

#### **Refinancing a Building**

***Can an owner refinance its debt on a new building with Facility Bonds after the designation of a Recovery Zone?*** No. Recovery Zone Property only includes property constructed, reconstructed, renovated or acquired by purchase after the designation of the Recovery Zone.

#### **Partially Constructed New Buildings**

***After the designation of a Recovery Zone, can an owner use Facility Bonds to finance the completion of a partially constructed building?*** Yes, provided the post-designation construction costs are segregated from the pre-designation construction costs.

#### **Acquisitions of Used Buildings**

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<sup>1</sup> Capitalized terms used herein have the meaning ascribed to them in Public Law 111 – 5, the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”) or in the June 2009 newsletters mentioned below. “New” denotes unused. The guidelines below are only summaries and are qualified in their entirety by reference to the Recovery Act statute and I.R.S. guidance, and tax law generally. Compliance with all tax law requirements is needed, including, without limitation, timely adoption of an inducement resolution.

*After the designation of a Recovery Zone, can a buyer use Facility Bonds to finance the acquisition of an existing building which has been used?* No. The original use of Recovery Zone Property must commence with the taxpayer.

### **Tenant Improvements**

*After the designation of a Recovery Zone, can an owner or buyer use Facility Bonds to finance new construction or tenant improvements to an existing building?* Yes, provided the new construction costs or tenant improvements are incurred after the designation of the Recovery Zone.

### **Acquisition of New Building/Spec Building**

*After the designation of a Recovery Zone, can a buyer use Facility Bonds to finance the acquisition from the owner of a new building constructed before the Recovery Zone designation?* Yes, but only if the building has not yet been occupied. Facility Bonds cannot finance the acquisition of a used building.

### **Owner- Occupied Buildings**

*After the designation of a Recovery Zone, can an owner use Facility Bonds to finance the construction of a new building for use by the owner?* Yes. Recovery Zone Property includes property constructed, reconstructed, renovated or acquired by purchase after the designation of the Recovery Zone.

### **Developer-Owned Buildings**

*After the designation of a Recovery Zone, can an owner sign a lease and use Facility Bonds to finance the construction of a building to be leased to a user?* Yes, the rental of real property (other than residential real property) to others is a Qualified Business. Only a Qualified Business can be financed with Facility Bonds.

*Can a developer who has signed a lease with a user before the designation of a Recovery Zone, use Facility Bonds to finance the construction of the project after the designation of the Recovery Zone?* Yes, to the extent the developer has not completed construction of the project before the Recovery Zone designation.

A “**Qualified Business**” is any trade or business except for the rental of residential rental property (i.e., multifamily) or the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

The term “**Recovery Zone**” means: (1) any area designated by the issuer, in any reasonable manner and acting in good faith, as (a) having significant poverty, unemployment, rate of home foreclosures, or general distress, or (b) being economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990, or (2) any area for which federal designation as an empowerment zone or renewal community was in effect as of the effective date of the Recovery Act.

### ED Bond FAQ’s

#### **Incentives to Use ED Bonds**

**What incentive does the Recovery Act provide for using ED Bonds?** The interest on ED Bonds is federally taxable. However, the federal government will make a direct payment, or “refund”, back to the bond issuer amounting to 45% of the issuer’s interest expense on the ED Bonds. This federal “subsidy” creates an incentive to finance public property (public facilities or public infrastructure) that promotes qualified economic development purposes within a Recovery Zone. ED Bonds can be issued as general obligation bonds or revenue bonds (or even as certificates of participation, or COPS).

#### **Land**

***Can ED Bonds be used to finance the cost of land acquired after the designation of a Recovery Zone?*** Yes, assuming compliance with the other tax rules.

#### **Qualification as an Economic Development Project.**

**What types of projects might qualify for ED Bond financing?** The first ED Bond issue took place in Louisiana in July 2009, and financed streets, drainage and recreation areas. Other types of projects that might qualify for ED Bond financing include utilities, convention centers, educational and employment training facilities, parking, public safety facilities, cultural facilities, etc.

#### **Public/Private Partnerships**

**Can ED Bonds be used in connection with financings for public/private partnerships?** Yes, assuming compliance with applicable federal tax law and state statutory and Constitutional laws. For example, the U.S. Treasury Department in July 2009 addressed the use of ED Bonds to assist a Michigan manufacturer to relocate its foreign operations back to the United States. It said that ED Bonds “generally [are] only available for use for public or governmental projects rather than projects for private business use”, but went on to conclude: “One limited exception would allow a State or local government to

subsidize costs of a private manufacturing project with [ED Bonds] if the State or local governmental issuer did not receive any significant payments from the private business for use of the project.” (In Georgia, proper structuring would be needed to achieve this result in light of certain Constitutional provisions.) The condition stated by the Treasury Department relates to the need to maintain the bonds’ status for tax purposes as governmental purpose, rather than private activity, bonds. There are a number of ways to satisfy this condition while establishing various structures for public/private partnerships using new bonds or new bond features created by the Recovery Act.

**Can ED Bonds be used to finance property located outside of a Recovery Zone?** Yes, assuming compliance with the requirements of the Recovery Act and other tax laws, including, without limitation, that the ED Bond-financed property in fact promotes economic activity in a Recovery Zone.

**Are there any other federal “strings” attached to the use of ED Bonds.** Yes, among other things, the federal prevailing wage law (Davis-Bacon Act) applies to ED Bond-financed projects. See next question for more.

**How are ED Bonds like Build America Bonds?** ED Bonds are a variety of Build America Bonds (“BABS”). Both are “taxable” bonds which offer an interest “refund”, at the 45% rate for ED Bonds, or at the 35% rate for BABS (a tax credit for the BAB purchaser is an alternative, at the issuer’s option). However, ED Bonds have to promote a qualified economic development project, whereas BABS can be used to finance anything that tax-exempt governmental purpose bonds could finance. (Many Recovery Zone projects will be financed using both ED Bonds and BABS.) Further, ED Bonds have some “strings” attached that are not attached to BABS; e.g., territory and volume cap. Territory- ED Bonds are for economic activity in a Recovery Zone, whereas BABS are for financings anywhere in the issuer’s jurisdiction. Volume cap- the issuer must have and use an allocation of volume cap from the federal government for ED Bonds, whereas no volume cap of any kind is required for BABS. Finally, both types of these bonds (and Facility Bonds, for that matter) have to be issued before the end of 2010. So, plan now to take advantage of them!

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

Meanwhile, for more information-

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

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

And for June 2009- "*Quick Takes*: Just Out- New Rules That Will Supercharge Recovery Bonds"

The "Current Bond Rates" page at [danmcrae.info](http://danmcrae.info) is updated weekly. This week's version is what you see below.

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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.)

### **DCA Deadlines Summary**

#### **"Section 7. Waiver of Local Allocation**

A local government may waive its allocation to the State at any time. Allocation designees are required to file a notice of intent with the Department no later than November 2, 2009 with respect to their intent to utilize all or a portion of their allocation or to return all or a portion of their allocation to the State. Allocation of local governments failing to file a notice of intent by November 2, 2009 shall be deemed waived.

Allocation designees declaring their intent to use all or a portion of their allocation must complete the associated financing by July 1, 2010. Allocation designees requesting an extension to that deadline must submit an extension request no later than June 15, 2010. The Department shall develop requirements and forms for such a request. Any unused allocation of allocation designees who fail to issue recovery zone debt by July 1, 2010 shall be deemed waived as of July 2, 2010 unless an extension is granted by DCA.

Allocations to Re-allocation Designees shall be deemed waived if not issued within 100 days of notice of re-allocation. Re-allocation Designees may request an extension of

the 100 day issuance deadline up to 15 days prior to the deadline."

**CURRENT BOND RATES**  
**EFFECTIVE AUGUST 27, 2009**

**Interest Rates:**

**tax-exempt-**

**floating: 0.43%**

**fixed: 4.01%**  
(eff. 08/20/09)

**taxable-**

**floating: 1.25% - 2.90%**

**fixed: 3.93%**

**General notes:**

1. Rates are posted weekly. These rates are for the effective date indicated above, or as oth indicated. For intra-week rates, Contact Dan.
2. These are interest rates on revenue bonds that are variable rate demand bonds; i.e., float 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 subjec 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.

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| 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. |  |
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