

## Recovery Zone Bonds

The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”) created two new types of bonds that may be issued prior to January 1, 2011. Both are referred to in ARRA as Recovery Zone Bonds, but the two types of bonds are issuable for completely different purposes (Recovery Zone Economic Development Bonds may be issued for public projects, whereas Recovery Zone Facility Bonds may be issued for private projects), and the subsidy/benefit associated with each is completely different.

ARRA imposes a national bond volume limitation (“volume cap”) of \$10 billion for Recovery Zone Economic Development Bonds and \$15 billion for Recovery Zone Facility Bonds. The volume cap for Recovery Zone Bonds is allocated among the States and counties and large municipalities within the States based on relative declines in employment in 2008.

Although ARRA provides that Recovery Zone Bonds must be issued before January 1, 2011, under Missouri law, all unused Recovery Zone Bond allocations revert back to the State on July 1, 2010.

It is important to remember that Recovery Zone Bonds are created by Federal tax law, and thus all Missouri bond laws apply. Before determining whether Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds could benefit your community, you must first determine what type of Missouri bond could be issued. In general, for state law purposes, Recovery Zone Economic Development Bonds will likely be general obligation bonds, utility revenue bonds, leasehold revenue bonds, certificates of participation or special obligation bonds. In contrast, because Recovery Zone Facility Bonds will be used for privately owned or used projects, these bonds will likely be Chapter 100 Bonds, industrial revenue bonds, industrial development bonds or other types of private activity bonds.

ARRA provides that Recovery Zone Economic Development Bonds may be used to finance certain “qualified economic development purposes,” and Recovery Zone Facility Bonds may be used to finance certain “recovery zone property,” both, as described below, generally for use within designated “recovery zones.” The term “recovery zone” means: (1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990; and (3) any area for which a designation as an empowerment zone or renewal community is in effect. The establishment of a “recovery zone” will be by act of the governmental entity and should not, as a general rule, be a significant barrier to using Recovery Zone Bonds. However, projects financed must be located within the jurisdiction of the political subdivision which has received a volume cap allocation either directly or from the Missouri Department of Economic Development as a result of the special reallocation procedure created by Missouri law.

### Recovery Zone Economic Development Bonds

Recovery Zone Economic Development Bonds are similar in many respects to another new financing option created by ARRA -- Build America Bonds. Because of the limitation on the aggregate amount of Recovery Zone Economic Development Bonds that may be issued, in many cases, a political subdivision may wish to use both Recovery Zone Economic Development Bonds and Build America Bonds to finance the single project. For that reason it is important to understand the similarities and differences between the two programs

Interest on Recovery Zone Economic Development Bonds and Build America Bonds is taxable, but in each case the issuer of the obligation receives a cash subsidy funded by the United States Treasury. Recovery Zone Economic Development Bonds receive a payment equal to 45% of the total interest payable to investors; while a Build America Bond, receives a subsidy equal to 35% of the interest paid. However, unlike a Recovery Zone Economic Development Bond, a Build America Bond is not subject to any volume cap.

Build America Bonds may be issued by State and local governments as an alternative to issuing traditional tax-exempt governmental bonds. Build America Bonds generally may be used to finance any governmental purpose for which tax-exempt governmental bonds (excluding private activity bonds) could be issued under Internal Revenue Code Section 103 and must comply with all requirements applicable to the issuance of tax-exempt governmental bonds. A key requirement generally is that the project must be governmentally owned and used or otherwise meet the requirements for a governmental bond.

In addition to the requirements imposed on Build America Bonds described above, proceeds of a Recovery Zone Economic Development Bond also must be used for “qualified economic development purposes.” ARRA defines qualified economic development purposes as expenditures for promoting development or other economic activity in a recovery zone, including capital expenditures with respect to property located within the zone and expenditures for public infrastructure, public facilities, job training and educational programs.

#### Recovery Zone Facility Bonds

Although the name is similar, Recovery Zone Facility Bonds are tax-exempt private activity bonds that do not involve any direct subsidy payment, but instead offer lower interest rates typically associated with tax-exempt bonds. As a general rule, proceeds of these bonds can finance new capital improvement that will be owned and used by almost any industrial, commercial, retail, office or other business activity that is located in a designated recovery zone. Exceptions to this rule exist only for low income rental housing and certain specific property (airplanes, health clubs, liquor stores, race tracks, luxury boxes or gambling establishments). In addition, unlike Recovery Zone Bonds or Build America Bonds, debt service on these bonds can be funded directly by the private business that owns and uses the property.