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public finance alert

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ARRA Provision for New Recovery Zone Facility Bonds

The American Recovery and Reinvestment Act of 2009 ("ARRA") provides for a new category of tax-exempt private activity bonds called "Recovery Zone Facility Bonds" that can be used to finance facilities to be privately owned or used. Bonds can be issued by counties and large municipalities and must be issued before January 1, 2011. State and local government issuers act as conduits and issue tax-exempt bonds on behalf of projects that, historically, would not qualify for tax-exempt financing — such as retail, commercial, warehouse, distribution, and research facilities. The facility must be located in a "recovery zone," which is an area designated by the issuer as having significant poverty, unemployment, home foreclosure or general distress; any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation; or any area that has been designated as an empowerment zone or renewal community.

The property financed — "recovery zone property" — is generally depreciable property used in a business, provided that the property is acquired after the date on which a recovery zone designation took effect. An additional benefit of Recovery Zone Facility Bonds is their exemption from the private activity bond rule prohibiting the acquisition of existing property — thus such bonds can be used to fund purchases of existing facilities to enhance the range of economic development options.

Up to $15 billion of Recovery Zone Facility Bonds are authorized nationwide. States will be notified of their allocation, which will be based on a state's 2008 employment decline. States will reallocate such allocation among its counties and large municipalities, also on the basis of employment declines.

Other provisions of ARRA make tax exempt bonds a more attractive investment to banks. Thus it may be possible to finance a project with a tax exempt bond purchased by a bank — in essence, a tax exempt commercial loan.

The Treasury Department and the IRS have not yet issued separate guidance on Recovery Zone Facility Bonds; however, due to the limited amount of these bonds permitted to be issued, demand for these bonds could be strong. We encourage you to identify projects that could benefit from Recovery Zone Facility Bonds and be ready to reserve an allocation.

For additional information, please feel free to contact any of the attorneys in Venable's Public Finance Group.