

PUBLIC FINANCE LAW ALERT

Recovery Zone Bonds Available for Public and Private Development

Recovery Zone Bonds

President Obama signed into law the "American Recovery and Reinvestment Tax Act of 2009" (the "Recovery Act") on February 17, 2009. The Recovery Act creates a new category of bonds entitled Recovery Zone Bonds which must be issued by December 31, 2010. Recovery Zone Bonds are split into two categories: 1) Recovery Zone Economic Development Bonds; and 2) Recovery Zone Facility Bonds.

In order to issue Recovery Zone Bonds, a municipality must first designate certain areas within its borders as "Recovery Zones" which must be areas of significant poverty, unemployment, home foreclosure, general distress, an area affected by military realignment, or an area that has been designated as an empowerment zone or a renewal community.

Recovery Zone Economic Development Bonds

Recovery Zone Economic Development Bonds (RZEDBs) are bonds which can only be used for governmental purposes (subject to all tax-exempt bond requirements) and can not be issued as private activity bonds. Interest on RZEDBs are taxable to bondholders, but issuers are entitled to receive a direct payment from the U.S. Treasury equal to 45 percent of the interest payable on the bonds. With the 45 percent subsidy, RZEDBs should generate a lower net interest cost than traditional tax-exempt governmental bonds. In order to issue RZEDBs, 100 percent of the available project proceeds must be used for "qualified economic development purposes." A qualified economic development purpose is one in which the bond proceeds are used to promote development or other economic activity in a Recovery Zone such as public infrastructure, construction of public facilities, capital expenditures, job training or educational programs. RZEDBs are subject to a 2 percent cost of issuance cap and projects financed with RZEDB proceeds are subject to Davis-Bacon prevailing wage requirements.

The state of Connecticut has been allocated a total of \$90,000,000 of RZEDBs. Included in this \$90,000,000 are allocations of \$5,386,000 to the city of Waterbury,

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\$4,428,000 to the city of Stamford, \$4,003,000 to the city of Bridgeport, \$2,248,000 to the city of New Haven and \$1,006,000 to the city of Hartford. The remaining RZEDB allocations are expected to be distributed by the State on a county-by-county basis for qualifying projects. County allocations are \$26,837,000 for Fairfield County, \$18,791,000 for New Haven County, \$9,935,000 for Hartford County, \$6,459,000 for New London County, \$4,468,000 for Windham County, \$2,700,000 for Middlesex County, \$1,944,000 for Tolland County and \$1,795,000 for Litchfield County.

Recovery Zone Facility Bonds

Recovery Zone Facility Bonds (RZFBs) are private activity bonds which are classified as "exempt facility bonds" for tax purposes and permit municipalities to provide tax-exempt financing for projects which would ordinarily not qualify. RZFBs can be used to finance both privately owned projects and publicly owned projects that are managed or leased in a way that gives rise to private use. At least 95 percent of the RZFB net proceeds must be used for "Recovery Zone Property" which is defined as any depreciable property constructed, reconstructed, renovated, or acquired after the date the pertinent Recovery Zone was designated by the municipality. The original use of the property in the Recovery Zone must start with the taxpayer and must be used by the taxpayer in the active conduct of a "qualified business." A qualified business is any trade or business excluding residential rental facilities or specifically listed "bad projects."

The state of Connecticut has been allocated a total of \$135,000,000 of RZFBs. Included in this \$135,000,000 are allocations of \$8,079,000 to the city of Waterbury, \$6,642,000 to the city of Stamford, \$6,004,000 to the city of Bridgeport, \$3,371,000 to the city of New Haven and \$1,509,000 to the city of Hartford. The remaining RZFB allocations are expected to be distributed by the State on a county-by-county basis for qualifying projects. County allocations are \$40,255,000 for Fairfield County, \$28,187,000 for New Haven County, \$14,903,000 for Hartford County, \$9,689,000 for New London County, \$6,702,000 for Windham County, \$4,050,000 for Middlesex County, \$2,916,000 for Tolland County and \$2,693,000 for Litchfield County.