

Financing School Construction and Modernization

Using Tax-Credit Bonds Under the American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (“ARRA”) includes provisions authorizing the issuance of new types of taxable tax-credit bonds to provide public schools with funds for acquisition, new construction, renovation, modernization, and repair of facilities. ARRA also increased the volume caps for existing tax-credit bonds. In this publication, we present the highlights of and major differences between the various tax-credit bonds available. ***Please contact one of our Public Finance attorneys listed on the back for additional information about tax-credit bonds and evaluation of the options that best serve your school facility financing needs.***

Qualified School Construction Bonds (“QSCBs”)

- A new type of non-interest-bearing tax credit bonds.
- The amount of the tax credit is intended to allow issuers to borrow at an interest rate of 0%.
- Less restrictive than QZABs:
 - Eligible expenditures include land acquisition, new construction, rehabilitation and repair, and equipment acquisition.
 - Not limited to low income areas; no private contribution requirement.
- National volume caps of \$11 billion in 2009 and in 2010. California Department of Education (“CDE”) will allocate \$700,000,000 to school district applicants for 2009. The California School Finance Authority (“CSFA”) will also allocate \$73,525,000 to Charter Schools.
- Applications are due to the CDE by August 25, 2009. If oversubscribed, allocations will be made by lottery. If undersubscribed, applications will be accepted through October 1, 2009, and allocations will be made in date order. A second round of applications starts after October 1 if the program is still undersubscribed.
- Applications to CSFA are due August 31, 2009. If oversubscribed, allocations will be based on priorities established by CSFA.
- \$25,000,000 maximum allocation to any district.
- See also “General Information – Qualified Tax Credit Bonds”
- For further information see: <http://www.cde.ca.gov/ls/fa/qs/index.asp>



Build America Bonds (“BABs”)

- A new type of interest-bearing tax credit bonds.
- Two forms of BABs are available, and the election of either type is irrevocable:
 - “**Tax Credit**” BABs provide a tax credit to the bondholder equal to 35% of the interest payable by the issuer (which is designed to allow issuers to borrow at rates of about 74% of taxable rates). Bond proceeds may be used for any of the purposes of a tax exempt bond -- capital and working capital expenditures and refunding.
 - “**Direct Payment**” BABs provide issuers with a direct federal subsidy payment in the amount of 35% of the interest paid to investors. Bond proceeds may only be issued for capital expenditures and not for working capital expenditures or refunding. Not more than 2% of bond proceeds can be used to pay costs of issuance.
- No bond may be sold with an original issue premium in an amount greater than ¼% multiplied by the number of years to maturity.
- No limit placed on bond maturity.
- Bonds must be issued before January 1, 2011.
- All or any portion of a bond issuance may be treated as BABs.
- No volume limitations (therefore, no application and allocation process).
- For further information see: http://www.irs.gov/irb/2009-16_irb/ar08.html IRS Notice 2009-26, IRB 2009-16, 4.20.09.

Qualified Zone Academy Bonds

- An existing type of non-interest-bearing tax credit bonds.
- The amount of the tax credit is intended to allow issuers to borrow at an interest rate of 0%.
- Eligible expenditures include rehabilitation and repairing of school facilities; acquisition of equipment; development of course materials; and training of teachers and other school personnel.
- Financed projects must be for a “qualified zone academy” in a low-income area.
- QZABs are no longer subject to any restrictions on who may purchase them.
- ARRA increased the national volume caps to \$1.4 billion for 2009 and 2010 and extended the issuance dates to December 31, 2011 and 2012 respectively. California’s allocation for 2009 is \$155,275,000.
- See also “General Information – Qualified Tax Credit Bonds”
- For further information, including information about the California Department of Education application process, see: <http://www.cde.ca.gov/lis/fa/qz/index.asp>

General Information–Qualified Tax Credit Bonds

QSCBs, QZABs, and QECBs (but not BABs) are classified as “qualified tax credit bonds (“QTCB”),” which are subject to a common set of rules, some significant ones of which are described below:

- Maturity limited to term set by US Treasury (which has ranged from 12 to 16 years).
- Within six months, must incur binding commitment to spend 10% of the proceeds. Must spend 100% of the proceeds and investment earnings within three years.
- Not more than 2% of bond proceeds can be used to pay costs of issuance.
- Proceeds cannot finance a reserve fund.
- Projects are subject to the prevailing wage rules of the federal Davis-Bacon Fair Labor Act.
- The current tax-credit rate, maturity limit, and permitted sinking fund yield for QTCBs may be found at: <http://www.treasurydirect.gov/govt/rates/rates.htm>

If you have any questions or if we can assist you, please contact one of our Public Finance attorneys in our Sacramento office at **916.321.4500**:

Qualified Energy Conservation Bonds (“QECBs”)

- An existing type of interest-bearing tax credit bonds.
- Tax credit is set at 70% of the tax credit amount for QZABs and QSCBs, which is designed to allow issuers to borrow at rates of about 30% of taxable rates.
- Bond proceeds must be used for a “qualified conservation purpose,” which includes a project to reduce energy consumption in a public building by at least 20%.
- No deadline established for bond issuance.
- ARRA increased the national volume cap to \$3.2 billion. California has been allocated \$381,329,100.
- State has not yet established an application and allocation process.
- See also “General Information – Qualified Tax Credit Bonds”
- For further information see: <http://www.treasurer.ca.gov/caeatfa/qecb.asp>



Coming soon will be information regarding H.R. 2187, which was passed by the House and is pending in the Senate that provides for grants to states for the modernization, renovation, or repair of public schools; and H.R.3221, which has been introduced in the House, which provides for grants for repair to high schools and community colleges. Look for status updates on H.R. 3221 and H.R. 2187 on our website at www.kmtg.com.

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