

# PUBLIC FINANCE LAW

## Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

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### Recovery Zone Bonds

November 12, 2009

As you are probably aware, the American Recovery and Reinvestment Act of 2010 (aka, the Stimulus Act) created two new types of municipal bonds - recovery zone economic development bonds (RZEDBs) and recovery zone facility bonds (RZFBs) - designed to spur spending in economically-burdened areas. The Stimulus Act provided direct allocations of the authority to issue these bonds to every county in the U.S. and also to large municipalities (defined as cities with population greater than 100,000). The direct allocation amounts made to Tennessee counties and large municipalities [are listed here](#) (click on "TN").

Under the Stimulus Act, a Tennessee county or large municipality may:

- Use its direct allocations to issue RZEDBs and RZFBs
- Sub-allocate its direct allocations to other issuers (such as a city or industrial development board within a county) to finance projects located within the county or large municipality, or
- Waive its allocation, in which case the Tennessee Department of Economic and Community Development (ECD) will re-allocate such amount to other issuers to finance projects located in the state of Tennessee.

On September 25, 2009, ECD announced its plan for reallocating recovery zone bond allocations that are waived by counties and large municipalities. In addition to setting out the procedure for obtaining such reallocations, the Economic and Community Development Plan provides that any direct allocation made to a county or large municipality that is not used by May 1, 2010, will be deemed to have been waived and will be re-allocated by the ECD in accordance with the allocation plan.

In determining whether to attempt to "beat the clock" and issue RZEDBs or RZFBs prior to EDC's May 1, 2010 deadline, Tennessee counties and large municipalities should consider the following basic requirements of these bonds:

- The proceeds of both RZEDBs and RZFBs may only be spent in "recovery zones" designated by the county or large municipality as areas "having significant poverty, unemployment, rate of home foreclosures or general distress." The IRS announced that a county or large municipality may make the determination of a recovery zone "in any reasonable manner as it shall determine

in good faith in its discretion," thereby signaling that it will give great deference to the county's or large municipality's designation.

- RZEDBs are taxable governmental bonds that are potentially attractive to issuers because the U.S. Treasury makes subsidy payments to the issuer in amounts equal to 45% of the interest due on each interest payment date. (RZEDBs are very similar to "build America bonds," which were also created by the Stimulus Act and carry subsidy payments equal to 35% of the interest due on each interest payment date.) Generally, RZEDBs may only be issued to finance new money capital expenditures in a designated recovery zone and must meet all of the requirements that apply to traditional tax-exempt bonds, such as restrictions on private use and payment, arbitrage yield restriction and rebate. The federal Davis-Bacon "prevailing wage" requirements apply to RZEDBs, potentially increasing the project costs.
- RZFBs are tax-exempt, exempt facility bonds, similar to qualified small issue bonds (formerly known as "industrial development bonds") and low-or-moderate income multifamily housing bonds. The proceeds of RZFBs must be used to finance capital improvements for a business located in a designated recovery zone. RZFBs will generally be issued by an industrial development board, which will loan the proceeds of the RZFBs to a for-profit business.

Please feel free to call any of the Bass, Berry & Sims PLC bond lawyers listed below to discuss any questions you may have about RZEDBs, RZFBs or the ECD's allocation plan.

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**Our Nashville office is moving.**

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