



Updates on Federal Tax Laws Affecting Municipal Bonds

FOCUS: Bond Counsel Corner

Foster Swift Municipal Law News: MTA Edition

January 2011

This chart lists noteworthy federal income tax-related bond provisions that were enacted in the American Recovery and Reinvestment Act of 2009 (ARRA) or other past federal tax legislation. Many of the provisions had been scheduled to expire Dec. 31, 2010. The right-hand column shows their status as of Jan. 1, 2011, reflecting the effects of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, enacted into law at the end of 2010, or other recently-enacted federal tax legislation.

PRACTICE AREAS

Public Finance - Bond

Tax Law

SPECIFIC PROVISIONS BEFORE 2010 YEAR-END FEDERAL LEGISLATIVE ACTIVITY

AFTER 2010 YEAR-END LEGISLATIVE ACTIVITY

Build America Bonds (BABs)

Allowed issuance of bonds (until Dec. 31, 2010) bearing federally taxable interest but subsidized through federal tax credit payments that enabled state and local governments to issue debt attractive to purchasers who were not themselves taxpayers, thereby increasing the supply of bond buyers and pushing down their yields.

Efforts in 2010 tax legislation to extend the BABs program beyond Dec. 31, 2010 sunset date failed. New issuances of BABs are not allowed in 2011. There may be efforts in the new U.S. Congress to resurrect the BABs program in a revised format, but prospects are speculative.

AMT exemption for Private Activity Bonds:

Interest on private activity bonds (PABs) issued in 2009 and 2010, including bonds that refunded prior bonds (if originally issued during 2004 - 2008), were exempted from Alternative Minimum Tax (AMT) preference calculations for individual owners. Corporate owners were permitted to omit this interest in calculating their current earnings adjustment.

Not extended beyond Dec. 31, 2010 sunset. Tax-exempt interest on PABs issued after 2010 is a tax preference item for AMT purposes. This affects industrial revenue bonds and other PABs, but not governmental bonds or qualified 501(c)(3) bonds. Corporate owners include such interest in calculating their current earnings adjustment.

Bank Deductibility and Holding

Subject to Dec. 31, 2010 sunset, allowed more bonds to be bank qualified (BQBs) & hence not subject to interest deduction disallowance for bank holders, by increasing \$10,000,000 annual issuance limitation on issuer's BQBs to \$30,000,000 and treating 501(c)(3) conduit borrowers as direct issuers of BQBs. Banks also were allowed to invest up to 2% of their assets in tax-exempt bonds without a portion of that interest expense deduction being disallowed under §265 of the Internal Revenue Code (IRC).

These provisions were not extended beyond Dec. 31, 2010 sunset date. Bonds issued after 2010 are subject to the old BQB rules. This includes reverting to the \$10,000,000 annual issuance limitation, and counting qualified 501(c)(3) bonds issued after 2010 against the governmental issuer's limit.

Recovery Zone Economic Development Bonds

Not extended beyond Dec. 31, 2010 sunset.

Recovery Zone Facility Bonds

Not extended beyond Dec. 31, 2010 sunset.

Guaranteed by Federal Home Loan Bank

An exception from general prohibition of federally guaranteed bonds permitted bonds guaranteed by Federal Home Loan Bank to be issued until Dec. 31, 2010 and be treated as federally tax-exempt

Not extended beyond Dec. 31, 2010 sunset.

Clean Renewable Energy Bonds (CREBs)

For bonds issued after 2010, the CREB credit rules no longer apply.

Qualified Zone Academy Bonds (QZABs)

Extended for one year (2011 only) and with \$400 million new volume allowed nationally for 2011.

Empowerment Zone Bonds

Empowerment zone and enterprise community provisions, enacted in 1993.

Extended for one year (2011 only).

Qualified School Construction Bonds

Except for carryovers, there is no calendar year volume cap after 2010.



Qualified Public Educational Facility Bonds

Allows for financing of public elementary and secondary schools run pursuant to public-private partnerships

Extended through 2012.

Manufacturing Facilities Definition

Subject to Dec. 31, 2010 sunset, ARRA expanded definition of "manufacturing facilities" to include facilities used in production of intangible property; and ARRA expanded definition of the facilities.

Not extended beyond Dec. 31, 2010 sunset.

Qualified Mortgage Bonds to refinance sub prime loans

Allowed issuance (until Dec. 31, 2010) of federally tax-exempt qualified mortgage bonds to refinance sub-prime loans (IRC § 143(k)(12)).

Not extended beyond Dec. 31, 2010 sunset.

Private activity bonds for housing purposes

Provisions enacted prior to ARRA for a volume cap increase and set-asides for private activity bonds issued for certain housing purposes, contained in IRC §§ 146(d)(5) and 146(f)(6).

Not extended after 2010.

Water and Sewer Exempt Facility Bonds

Efforts in 2010 tax legislation to exempt such private activity bonds from requiring a state unified volume cap allocation failed. Such "exempt facility bonds" remain subject to state volume caps.