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Ohio Education ALERT

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Certain Financing Provisions of the Economic Stimulus Act

The American Recovery and Reinvestment Act of 2009, signed into law last week, contains several provisions of interest to Ohio school districts that are pursuing or contemplating the construction and financing of permanent improvements. This Alert summarizes certain of those provisions. To learn more, please contact one of the lawyers listed in this Alert or any Squire Sanders lawyer with whom you work.

Qualified School Construction Bonds (QSCBs)

- QSCBs are a new type of tax-credit bond, the holders of which are entitled to claim federal income tax credits at a rate set by the US Treasury intended to enable the QSCBs to be sold with zero (or very low) interest rates.
- QSCBs are not grants, do not provide a new or additional revenue source for repayment of the obligations and require independent state law authority for the underlying bond, note or lease transaction. QSCBs do represent a unique financing approach that may result in lower finance costs for a given project.
- QSCB proceeds are to be used for construction, rehabilitation or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the QSCB proceeds.
- $11 billion of QSCB authority is to be allocated in each of 2009 and 2010.
    - Sixty percent of the authorized amount is generally to go to states for allocation "to issuers within such [states]." An unused allocation may be carried forward, creating the possibility that QSCBs might be issued in 2011 and thereafter.

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- Forty percent of the authorized amount is to go to "large local educational agencies" including:
    - The 100 agencies with the largest numbers of 5- to 17-year-old children from families living below the poverty level; and
    - Up to 25 additional agencies selected generally at the discretion of the Secretary of Education.

- The maturity of QSCBs is the term the US Treasury estimates will result in the present value of the obligation to repay principal being equal to 50 percent of par (using a discount rate of the average annual interest rate of tax exempt obligations having a term of 10 years or more that are issued during the month the QSCBs are issued). This may result in a shorter amortization period than a school district could otherwise obtain. For example, QZABs (discussed below) have operated under a similar maturity limit that in recent years has ranged from 13 to 16 years.

- One hundred percent of the QSCB proceeds (deemed to include proceeds from the original sale, less issuance costs not exceeding 2 percent, and investment earnings) is to be spent on qualifying costs within three years, unless an extension is granted. Unspent proceeds after three years are to be used within 90 days to redeem bonds.

- QSCBs are subject to less restrictive arbitrage rules compared to tax exempt bonds (assuming compliance with the 100-percent/three-year spend-down requirement described above).

Qualified Zone Academy Bonds (QZABs)

- The Act makes no substantive changes to current QZAB law, but increases the QZAB allocation to $1.4 billion in each of 2009 and 2010 – up from $400 million in 2009 – and no amount thereafter (except possible carryover).

- QZABs are tax-credit bonds, like QSCBs, designed to require zero (or very low) interest cost and have the following basic features:
    - States allocate federal QZAB issuance authority to qualified zone academies, which are:
        - Public schools providing education and training below college level;
        - Operating a special academic program in cooperation with business to enhance curriculum and increase

graduation/employment rates; and

        - Either located in an empowerment zone or enterprise community, or having at least 35 percent of their students reasonably expected to be eligible for free/reduced-cost lunches under the National School Lunch Act.

    - Private entities must promise a contribution equal to at least 10 percent of the QZAB proceeds toward certain equipment, technical assistance or training, or employee services, etc.

    - QZAB proceeds must be used for renovating, providing equipment to, developing course materials for use at or providing training in the academy and are subject to the same 100-percent/three-year spend-down requirement as for QSCBs described above.

    - The maximum term of QZABs, determined by the US Treasury Department, is set as described above for QSCBs.

    - Like QSCBs, QZABs are subject to less restrictive arbitrage rules compared to tax exempt bonds.

- Like QSCBs, QZABs are not grants, do not provide a new or additional revenue source for repayment of the obligations and require independent state law authority for the underlying bond, note or lease transaction. Like QSCBs, QZABs do represent a unique financing approach that may result in lower finance costs for a given project.

- More information about QZABs is available here.

Qualified Tax Exempt Obligations (QTEOs or "Bank-Qualified" Obligations)

- The Act increases the QTEO limit from $10 million to $30 million for obligations issued in 2009 and 2010. This may serve to reduce interest costs and transaction costs resulting from the need to divide bond issues to meet QTEO thresholds.

Other Provisions of the Act

The Act contains other provisions of interest to Ohio school districts including provisions relating to financing and funding of facilities improvements. For additional information on the Act, please follow the links below:

- Public Finance Provisions of the Economic Stimulus Act Enacted February 17, 2009

- Economic Stimulus Act – Overview of New Clean Renewable Energy Bonds and Qualified Energy

Conservation Bonds

Also, please check our publications page for an Alert on the appropriation provisions in the Economic Stimulus Act most affecting state and local governments, coming soon.

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