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Provisions of the American Taxpayer Relief Act of 2012 Affecting School Districts

Passage of the American Taxpayer Relief Act of 2012 avoids in large part the tax increases that would have occurred on January 1, 2013, and delays until March 1, 2013 the automatic spending cuts that were scheduled to have taken effect on January 2, 2013 and that are mandated pursuant to a budgetary sequestration required under the Budget Control Act of 2011. The following provisions of the American Taxpayer Relief Act of 2012 are of special importance to school districts:

1. The delay in the effective date of any sequestration postpones the spending cuts that would be required by sequestration, including but not limited to reductions in federal grants and in the interest subsidies paid by the federal government to issuers of direct payment tax credit bonds, such as Build America Bonds, direct payment Qualified School Construction Bonds, and direct payment Qualified Zone Academy Bonds. The delay in the effective date of the sequestration might also delay a trigger, occasioned by reductions or elimination of the federal interest subsidy, of the issuer's right to exercise certain extraordinary optional redemption provisions relating to direct payment tax credit bonds. The scheduled budgetary sequestration might not occur on March 1, 2013 and other budgetary changes could occur, if there is further congressional action.
2. The increase in the annual small issuer exception to arbitrage rebate for bonds issued to finance the construction of public school facilities is made permanent. Generally, an issue of tax-exempt or tax credit bonds is excepted from the arbitrage rebate requirement if the issuer does not issue more than $5 million of bonds that would otherwise be subject to arbitrage rebate during the calendar year. In the case of bonds issued to finance the construction of public school facilities, this $5 million annual limitation is increased by the lesser of an additional $10 million or the aggregate face amount of bonds attributable to such construction. This increase in the small issuer exception to rebate was scheduled to expire as of January 1, 2013. Although this increase in the small issuer exception to rebate is now permanent, its utility will diminish over time, as the limit does not increase with inflation.
3. The authorization of Qualified Zone Academy Bonds (QZABs) in the total annual amount of $400 million is extended through 2013. QZABs are tax credit bonds designed to require zero (or very low) interest cost. The eligibility requirements that a school district must meet to qualify for QZAB financing remain the same. For a more detailed discussion of QZABs, read Squire Sanders' overview of the program.

As the new Congress deals with sequestration, an increase in the debt ceiling and tax reform, Squire Sanders will continue to monitor the effect that any legislative or other developments have on tax-exempt bonds, tax credit bonds, and school districts. For further information about these provisions, please contact the Squire Sanders public finance lawyer with whom you usually work, or any of our public finance lawyers.