



Summary of H.R. 3525: New Exempt Facility Bond Categories for Renewable and Energy Efficiency Projects

On July 31, 2009, Representative Mike Thompson (D-CA), who serves on the House Ways and Means Committee, introduced H.R. 3525 (the "bill") which, among other things, would expand the categories of "exempt facility bonds" for purposes of Section 142 of the Internal Revenue Code of 1986, as amended (the "Code"). Exempt facility bonds are federally tax-exempt private activity bonds, the proceeds of which are used to finance or refinance certain qualifying facilities or projects. The modifications contained in Thompson's bill include the creation of three new categories of "exempt facilities" eligible to be financed or refinanced with the proceeds of exempt facility bonds under Section 142 of the Code. As more particularly described below, the proposed new categories are (i) renewable energy resource facilities, (ii) conservation and efficiency facilities and projects and (iii) zero emission vehicles and related facilities or projects.

New Types of Exempt Facilities

Renewable Energy Resource Facilities. Renewable energy resource facilities are facilities used to produce electric or thermal energy (including a distributed generation facility) from (i) solar, wind or geothermal energy, (ii) marine and hydrokinetic renewable energy, (iii) incremental hydropower, (iv) biomass or (v) landfill gas. In addition, any facility or project used for the manufacture of facilities referred to in the foregoing qualifies as a renewable energy resource facility.

Conservation and Efficiency Facilities and Projects. Conservation and efficiency facilities and projects include (i) any facility used for the conservation or the efficient use of energy, including energy efficient retrofitting of existing buildings, or for the efficient storage, transmission, or distribution of energy, including any facility or project designed to implement smart grid technologies and (ii) any facility used for the conservation of or the efficient use of water (except for facilities and projects that store water), including any facility or project, or any individual component thereof, designed to (a) reduce the demand for water, (b) improve efficiency in use and reduce losses and waste of water and (c) improve land management practices to conserve water. Additionally, any facility or project used for the manufacture of the foregoing qualifies as a conservation and efficiency facility and project.

Zero Emission Vehicles and Related Facilities or Projects. Zero emission vehicles are vehicles that have no tailpipe emissions, evaporative emissions, or onboard emission-control system that can deteriorate over time. A facility or project is related to a zero emission vehicle if it is real or personal property to be used in the design, technology transfer, manufacture, production, assembly, distribution, or service of zero emission vehicles.

Volume Cap Not Required

Prior to issuing most types of private activity bonds, Section 146 of the Code currently requires the issuer to obtain State volume cap, or allocation, in an amount not less than the aggregate face amount of bonds to be issued. The bill, however, eliminates this requirement for bonds issued for any of the three new types of exempt facilities.



Business-Related Tax Credits

Along with creating the aforementioned categories of exempt facilities for purposes of Section 142 of the Code, the bill establishes an exception under Sections 45 and 45K of the Code (which, in general, provide tax credits for the sale to unrelated third parties of electricity produced from certain renewable resources, and fuel produced from a nonconventional source, respectively) for each such category of bonds when calculating the amount of the tax credit allowable to a taxpayer under those provisions for a taxable year. Currently, under Sections 45 and 45K of the Code, the sum of the proceeds of any tax-exempt obligations used to finance a project, along with any grants, subsidized energy financing and other tax credits in connection with certain projects is used to reduce the amount of the tax credit allowed to a taxpayer qualifying under those provisions. The bill would modify each of these sections to specifically exclude proceeds of any of the three new categories of exempt facility bonds when calculating such tax credits. In essence, the tax credit otherwise allowable to a taxpayer under Sections 45 and 45K of the Code would not be reduced as a result of the taxpayer receiving proceeds of these new categories of exempt facility bonds. The obvious benefit of this bill to developers of renewable energy or nonconventional fuel projects is that it would effectively reduce their financing costs while still allowing them to take full advantage of the production tax credits to which they would otherwise be entitled.

Effective Date

The changes to the Code made by the bill would apply to obligations issued after the date of the enactment of the bill.