

## Re-Allocation of Recovery Zone Bond Volume Cap in Illinois

By Charles Katz

The American Recovery and Reinvestment Act of 2009 (the Stimulus Act), signed into law February 17, 2009, by President Obama, included -- among its many provisions -- authorization for the issuance of: (a) \$15 billion of Recovery Zone Facility Bonds (RZF Bonds), providing the option of tax-exempt (*i.e.*, lower-cost) financing to many private, for-profit borrowers for many types of commercial facilities that have not qualified for tax-exempt financing since 1986;<sup>1</sup> and (b) \$10 billion of Recovery Zone Economic Development Bonds (RZED Bonds), providing the option of taxable financing (with federal tax credits to bondholders or federal subsidies to bond issuers) to municipalities of: (i) qualifying capital expenditures; (ii) costs of public infrastructure and construction of public facilities; and (iii) certain expenditures for job training and educational programs.

Absent extension by Congress, all RZF Bonds and RZED Bonds (collectively, RZ Bonds) must be issued no later than December 31, 2010<sup>2</sup>, in areas that have been designated as "recovery zones" by the particular county or large municipality (Authorized Municipalities) in which a proposed facility (a Qualifying Project) is located.

### Original Allocations of Volume Cap

Pursuant to the Stimulus Act, the Treasury Department provided both "state-by-state allocations" and "sub-allocations to each Authorized Municipality within each state" of the volume cap for RZ Bonds. These allocations and sub-allocations can be found on the IRS website or in published Treasury guidance.<sup>3</sup>

<sup>1</sup> For information regarding Recovery Zone Facility Bonds, see the Recovery Zone Facility Bond Primer on the Drinker Biddle website, at [www.drinkerbiddle.com](http://www.drinkerbiddle.com) (click on "publications", type "Katz" under "Author" and click "search").

<sup>2</sup> Legislation is pending before Congress that would extend the issuance of RZ Bonds through the end of 2011, but the probability that this legislation will be enacted is uncertain.

<sup>3</sup> Go to [www.irs.gov](http://www.irs.gov) (click on "Tax Exempt Bond Community," then click on "IRS Releases Guidance on ARRA Bond Provisions," then click on "Notice 2009-50 (Recovery Zone Bond Volume Cap Allocations)" [for the state-by-state allocations] or click on "Click here to access these sub-allocations" [for the sub-allocations within each state].

---

## The Illinois Allocation Situation

The state of Illinois has been allocated more than \$1 billion for the issuance of RZF Bonds and nearly \$667 million for the issuance of RZED Bonds. While large municipalities like the city of Chicago (\$199 million of RZF Bonds, \$133 million of RZED Bonds), Cook County (\$196 million of RZF Bonds, \$131 million of RZED Bonds), DuPage County (\$69 million of RZF Bonds, \$46 million of RZED Bonds), Lake County (\$59 million of RZF Bonds, \$39 million of RZED Bonds) and Will County (\$41 million of RZF Bonds, \$27 million of RZED Bonds) have received sub-allocations significant enough to make issuance of these bonds an attractive option, much of the Illinois statewide volume cap amount has been sub-allocated by the Treasury Department to counties in amounts too small to make issuance of RZ Bonds a realistic option. Of the 102 counties in Illinois, approximately half have sub-allocations for RZF Bonds of less than \$2.5 million and approximately three-quarters have sub-allocations for RZED Bonds of less than \$2.5 million. Not surprisingly, outside of the larger Illinois municipalities, almost no RZ Bonds have been issued to date and issuance of these bonds has received very little consideration.

---

## Re-Allocation of Volume Cap

The Stimulus Act provisions permit Authorized Municipalities to waive their sub-allocations, but the voluntary undertaking of this waiver has so far flown under the radar of most municipalities. Because many Authorized Municipalities have very little allocation, the RZ Bonds program has generated scant attention and few Authorized Municipalities have focused on the decision-making process necessary to waive the allocation.

Luckily, Treasury Guidance permits states to re-allocate the volume cap to better facilitate the issuance of RZ Bonds. Many states have started to pass legislation or otherwise take the steps necessary to enable such re-allocations to be made, in order to remove volume cap from Authorized Municipalities that have no need for it, and make it available to those Authorized Municipalities that have been approached regarding the issuance of RZF Bonds for Qualifying Projects (or have expenditures that would qualify for financing with RZED Bonds) but lack sufficient volume cap to issue RZF Bonds for every Qualifying Project (or RZED Bonds for every qualifying governmental expenditure).

---

## Illinois Legislation

Effective July 12, 2010, Illinois enacted Public Act 096-1020 (the Illinois Re-Allocation Legislation), the intent of which is to address the re-allocation problem described above. The Illinois Re-Allocation Legislation provides for the following:

- A. Waiver to Illinois Finance Authority
  - > An Authorized Municipality may enter into a “waiver agreement” with the Illinois Finance Authority (IFA), under which all, or a portion of, the Authorized Municipality’s allocation is waived to the IFA;

- > The IFA may use the allocation to issue RZ Bonds for Qualifying Projects or elect to reallocate all or a portion of the waived amount to another Authorized Municipality for the issuance of RZ Bonds by the Authorized Municipality for Qualifying Projects.
- B. Voluntary Waiver to IFA for Re-Allocation to Regional Authority
- > An Authorized Municipality may voluntarily waive (by passage of a resolution or ordinance) all or a portion of its sub-allocation to the IFA, and instruct the IFA to re-allocate such waived allocation to a regional authority<sup>4</sup> specifically designated by the Authorized Municipality;
  - > The IFA must then reallocate the waived allocation to the designated regional authority;
  - > Any portion of the “waived allocation” not used by the regional authority to issue RZ Bonds on or before August 16, 2010, is deemed waived by the regional authority back to the IFA;
  - > The IFA may reallocate all or a portion of this “deemed waived allocation” to qualifying projects within the jurisdiction of the regional authority from which the IFA received the deemed waived allocation.

The Illinois Re-Allocation Legislation also authorizes the IFA to designate areas within the state as recovery zones (this designation is necessary for the issuance of RZ Bonds) and to issue RZ Bonds for any authorized project within the state

Under the provisions of the Illinois Re-Allocation Legislation, for any projects (or qualifying governmental expenditure) to be financed within the jurisdiction of an Authorized Municipality that lacks sufficient allocation to enable the project (or expenditure) to be financed with proceeds of RZ Bonds, allocation may now be available.

---

For more information about the matters discussed in this publication, please contact the author at [Charles.Katz@dbr.com](mailto:Charles.Katz@dbr.com) or (312) 569-1248, or your regular Drinker Biddle contact.

---

<sup>4</sup> According to the Illinois Re-Allocation Legislation, the regional authorities are the following: Central Economic Development Authority, Eastern Illinois Economic Development Authority, Joliet Arsenal Development Authority, Quad Cities Regional Economic Development Authority, Riverdale Development Authority, Southeastern Illinois Economic Development Authority, Southern Illinois Development Authority, Southwestern Illinois Development Authority, Tri-County River Valley Development Authority, Upper Illinois River Valley Development Authority, Illinois Urban Development Authority, Western Illinois Economic Development Authority and Will-Kankakee Regional Development Authority.