



## Public Finance Bulletin

### RECOVERY ACT: LOW-COST BORROWING OPPORTUNITIES FOR R&D FACILITIES, INCREASED AVAILABILITY OF TAX-EXEMPT FINANCING FOR MANUFACTURERS

President Obama signed into law the "American Recovery and Reinvestment Act of 2009" on February 17, 2009 (the "Recovery Act"). The Recovery Act provides:

- for the first time, tax-exempt financing options for research and development organizations, and
- an expansion of the types of manufacturing facilities that previously benefitted from tax-exempt financing.

Tax-exempt financing is beneficial to borrowers because tax-exempt rates have historically been 30-40% lower than conventional taxable loan rates. These Recovery Act provisions will "sunset" on December 31, 2010, meaning tax-exempt bonds for these types of projects must be issued by that date.

Prior to the Recovery Act, tax-exempt financing was only available for certain borrowers that manufactured or produced "tangible personal property." In addition, the proceeds of such tax-exempt financing were restricted to expenditures for "core manufacturing", with no more than 25% of such proceeds financing facilities that were "directly related and ancillary" to such core manufacturing. As a result of these stringent rules, the spectrum of projects eligible for tax-exempt financing was limited.

The Recovery Act dramatically liberalizes these rules. First, the

Recovery Act broadens what type of facilities can be financed on a tax-exempt basis to include "facilities used in the creation or production of intangible property". These would include facilities for the creation of patents, copyrights, formulas, processes, designs or patterns — in essence, research and development facilities and software companies. Second, the Recovery Act lifts the restriction that not more than 25% of the proceeds can be used for non-core manufacturing facilities. Under the Recovery Act, facilities that are functionally related and subordinate to the manufacturing facility can be financed so long as such facility is on the same site as the manufacturing facility. This change in the law would permit manufacturers to finance warehouses, distribution facilities and testing facilities where once they would have been limited.

The rules applicable to these types of financings are numerous and complex. If you are interested in learning more about the Recovery Act provisions, or specifically if your organization would qualify, please call any member of the Benesch Public Finance team.

*As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.*

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