



Major Tax Incentives for Development After the Gulf Opportunity Zone Act of 2005

OVERVIEW

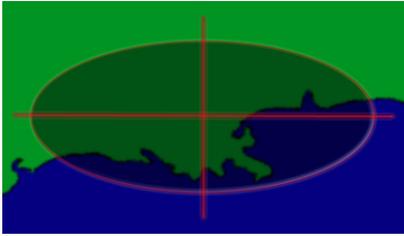
THE GULF OPPORTUNITY ZONE ACT OF 2005 signed into law in December 2005 (the “GO ZONE ACT”) provides major tax incentives to business development in the Gulf Opportunity Zone. The Gulf Opportunity Zone comprises those parishes in Louisiana and counties in Mississippi and Alabama that were declared major disaster areas by President Bush as a result of Hurricanes Katrina and Rita (the “GO Zone”). For a map of the GO Zone in each state (areas shown in orange), click on the links below:

- [Louisiana Parishes in the Gulf Opportunity Zone](#)
- [Mississippi Counties in the Gulf Opportunity Zone](#)
- [Alabama Counties in the Gulf Opportunity Zone](#)
(see next page for detail of listed parishes/counties)

The **GO ZONE ACT** contains numerous tax incentives for businesses in the GO Zone; however, two of the key provisions of the act are expanded tax-exempt qualified private activity bonds and 50% bonus depreciation.



THE ZONE



Alabama counties:

Baldwin
Chocktaw
Clarke
Greene
Hale
Marengo
Mobile
Pickens
Sumter
Tuscaloosa
Washington

Louisiana parishes:

Acadia
Ascension
Assumption
Calcasieu
Cameron
East Baton Rouge
East Feliciana
Iberia
Iberville
Jefferson
Jefferson Davis
Lafayette
Lafourche
Livingston
Orleans
Pointe Coupee
Plaquemines
St. Bernard
St. Charles
St. Helena
St. James
St. John the Baptist
St. Mary
St. Martin
St. Tammany
Tangipahoa
Terrebonne
Vermilion
Washington
West Baton Rouge
West Feliciana

Mississippi counties:

Adams
Amite
Attala
Claiborne
Choctaw
Clarke
Copiah
Covington
Forrest
Franklin
George
Greene
Hancock
Harrison
Hinds
Holmes
Humphreys
Jackson
Jasper
Jefferson
Jefferson Davis
Jones
Kemper
Lamar
Lauderdale
Lawrence
Leake
Lincoln
Lowndes
Madison
Marion
Neshoba
Newton
Noxubee
Oktibbeha
Pearl River
Perry
Pike
Rankin
Scott
Simpson
Smith
Stone
Walthall
Warren
Wayne
Wilkinson
Winston
Yazoo

GO ZONE BONDS

The **GO ZONE ACT** allows Louisiana, Mississippi and Alabama to issue two types of tax-exempt bonds for private development projects:

- Exempt Facility Bonds – used for Non-Residential Real Property - projects such as:
 - Shopping Centers
 - Hotels
 - Restaurants
 - Office Buildings
 - Warehouses
 - Industrial Plants
 - Medical Facilities
 - Almost any commercial facility
- Qualified Residential Rental Projects
 - Moderate income apartment complexes
 - Income rules are relaxed. Now the issuer can choose to either have:
 - At least 20% of the units occupied by individuals whose income is 60% or less of area median gross income; or
 - At least 40% of the units occupied by individuals whose income is 70% or less of area median gross income.

Each Exempt Bond Offering must adhere to the following:

- 95% of the proceeds must be used for acquisition, new construction, rehabilitation or renovation
- No movable equipment can be financed unless it becomes a component part of the facility
- No more than 25% of issuance can be used directly or indirectly to acquire land
- If acquiring existing building, must spend 50% of the bond-financed portion of the acquisition cost on the rehabilitation (as opposed to expansion) within 2 years
- Cannot be used for golf course, country club, massage/hot tub/suntan facility, racetrack, casino or liquor store, skybox or luxury box
- No more than 2% of the bond proceeds may be used to pay the expenses associated with issuing the bonds (including legal fees, underwriter's fee, printing costs, bond commission application fee)
- Cannot claim bonus depreciation for any portion which is financed by tax-exempt bonds
- Expenses incurred not more than 60 days prior to preliminary approval of the bond issuance may be reimbursed to the borrower from the proceeds of the bonds
- Cannot acquire property from related party



GO ZONE BONDS - continued

VOLUME CAP AND APPROVALS

- Louisiana: State Bond Commission gives approval, GO Zone Bonds limited to \$7.9 Billion tax-exempt bonds to be issued by 2011
- Mississippi: Governor issues approval, GO Zone bonds limited to \$4.8 Billion tax-exempt bonds to be issued by 2011
- Alabama: Governor issues approval, GO Zone bonds limited to \$2.1 Billion tax-exempt bonds to be issued by 2011

CONDUIT ISSUERS

Although there are other conduit issuers, most Louisiana bonds will be issued by Louisiana Community Development Authority (LCDA) or the Louisiana Public Facilities Authority (LPFA). Most Mississippi Bonds will be issued by the Mississippi Business Finance Corporation (MBFC). The Alabama residential bonds will be issued by the Alabama Housing Finance Authority, while its non-residential bonds will likely be issued by economic development authorities at the county level. The most common structure of issuance will be credit enhancement through the borrower's regular bankers. The most common type of enhancement is the letter of credit enhancement.

ADVANTAGES OF TAX-EXEMPT BOND FINANCING

The most important advantage is the substantial reduction in interest rate. In most cases, using the credit enhancement structure on a variable rate tax exempt bond financing, the borrower will reduce its overall interest rate by 150-250 basis points. The higher cost of issuance will offset some of those reduced rates in the initial year of borrowing.



GO ZONE BONDS - continued

ADDITIONAL ADVANTAGES OF BOND FINANCING IN MISSISSIPPI

The following tax incentives are available for tax-exempt and taxable bonds in Mississippi:

- Purchases of machinery, equipment and construction materials are exempt from sales tax of 1½% to 7% depending on the item (except the 3.5% contractor's tax on the labor portion of a project).
- Property purchased with bond proceeds qualifies for ad valorem exemption if approved by the appropriate local taxing authority, except for school district taxes.
- Certain manufacturing facilities, certain distribution or warehouse facilities, certain telecommunication companies, certain national or regional headquarters, certain research and development facilities or certain technology intensive enterprises may qualify to receive Mississippi state income tax credits. A company will be allowed to reduce the amount of state income tax paid by the amount it pays in annual debt service on the bonds. The credit may be taken for up to a maximum of 80% of the company's state income tax liability in each year. If the annual debt service payments exceed income tax credits allowed in any year, the company may apply those debt service payments against its taxes for up to three (3) years following the year in which the credits were earned.

GO ZONE BONUS DEPRECIATION

- Qualifying Property:
 - Nonresidential real property
 - Residential rental property
 - Has MACRS recovery period of 20 years or less
 - Computer software
 - Qualified leasehold improvements (improvements to nonresidential real property, occupied exclusively by lessee, placed in service more than 3 years after the building is placed in service)
 - Water utility property
- Substantially all of the use of property must be in the GO Zone, and in the active conduct of a trade or business
- Original use of the property (by anyone) in the GO Zone must begin on or after August 28, 2005
- Used property can be depreciated if first use in GO Zone after August 28, 2005
- Rehabilitation expenditures acceptable in certain cases
- Property must be acquired by the taxpayer by purchase on or after August 28, 2005
- Cannot acquire property from related party
- Cannot have existing purchase contract before August 28, 2005
- Property must be placed in service by:
 - December 31, 2008 (nonresidential real property)
 - December 31, 2008 (residential rental property)
 - December 31, 2007 (all other qualifying property)
- Cannot claim bonus depreciation for property any portion of which is financed with tax-exempt bonds
- Bonus depreciation is subject to recapture if property ceases to qualify (moved out of GO Zone, etc.)
- If the bonus depreciation creates a net operating loss for the year, it may qualify for a special 5-year carryback (in lieu of the normal 2-year carryback), possibly entitling the taxpayer to an immediate refund.



COMPARISON OF BENEFITS

The **GO ZONE ACT** provides two very beneficial tax programs that are mutually exclusive. The developer must analyze the competing benefits to decide which program to pursue. GO Zone Bonds provide reduced interest rates over time. The bonus depreciation provides the tax benefit up front, but only for those borrowers who have income to be offset. Phelps Dunbar can assist you and your financial analysts in determining whether your project qualifies for each of the competing incentives, and help you develop a financial model to complete the analysis. Some important questions to consider include:

- Does the project qualify for one or both programs?
- What is the recovery period for the property under GDS and ADS?
- What is the borrower's expected level of income over the life of the project?
- What is the borrower's creditworthiness and access to banks?
- How quickly does the property need to be financed?
- When will the property be placed in service?
- What is the expected holding period of the asset?

ADDITIONAL TAX & BUSINESS DEVELOPMENT INCENTIVES FOR LOUISIANA AND MISSISSIPPI

Summaries of the information identified below is linked to Phelps Dunbar's Web site:

- GO Zone Employee Retention Tax Credit and Work Opportunity Tax Credit:
www.phelpsdunbar.com/pages/hurricane/Tax_Credit.pdf
- All Post-Katrina Louisiana Business Development Incentives:
www.phelpsdunbar.com/pages/hurricane/LA_Incentives.pdf
- Additional Tax Incentives for Economic Development in Mississippi:
www.phelpsdunbar.com/pages/hurricane/MS_Incentives.pdf



EXPERIENCE COUNTS

Phelps Dunbar has qualified Tax Counsel, Bond Counsel and Commercial Financing Counsel to guide you through the analysis. If it is determined that Tax-Exempt Bond Financing is the most advantageous for your project, Phelps Dunbar will guide you through the bond issuance process. If your project will best be developed using the Bonus Depreciation, Phelps Dunbar will assist you in negotiating conventional financing terms. In either case, Phelps Dunbar stands ready to provide counsel with construction contracts, financing and collateral documentation, title insurance, advice relating to enterprise zones and other tax incentives, and general business advice.

Founded in 1853 in New Orleans, Phelps Dunbar is one of the oldest law firms in continuous practice in the South. Our firm is a progressive and diverse partnership, with a practice that is international in scope. We now have offices in New Orleans and Baton Rouge, Louisiana; Jackson, Tupelo, and Gulfport, Mississippi; Houston, Texas; Tampa, Florida; and London, England. We continue to look for expansion opportunities as we seek to become the Southeast's premier regional law firm.

Through our network of regional offices, clients have access to more than 250 attorneys representing an extensive range of talent and experience. No matter how intricate a client's legal needs, the firm's professional depth and experience offer accessible, cost-effective, and reliable service.

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