



July 2, 2009

TO: «FirstName» «LastName», «Title»
«Organization»
«Address1»
«Address2»
«City», «State» «Zip»

OFFICIAL NOTICE

Re: Federal Stimulus Bill –Recovery Zone Bond Allocations

Dear «mr/ms» «LastName»:

Governor Nixon recently signed into law the omnibus economic development bill, House Bill 191 (HB191). In addition to enhancing state programs facilitating job creation and increasing the transparency and accountability of tax credit programs, the bill included language that complemented programs found in the federal American Recovery and Reinvestment Act of 2009 (ARRA).

ARRA created new bond program opportunities for cities and counties. This Notice provides important information for your community relating to two of those: Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds (“Recovery Zone Bonds”). A brief description of the two types of Recovery Zone Bonds is included in this Notice as Attachment 1.

Each of these bond programs is capped by an overall allocation amount. That allocation amount is provided by ARRA to certain counties and cities (known as “Allocation Designees”) in the State (see Attachment 2). All Allocation Designees should keep in mind that there is a limited window of opportunity to make use of the programs before they expire. Allocation Designees should consult with their legal and financial advisors for the details of these bonds and should not rely solely on this Notice or the attachments.

Since Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds could provide a valuable incentive for both public projects and private developments in your community, and since the allocations and the time to use them are both limited, HB191 created a mechanism to assure the most advantageous use of the bonds statewide. HB191 recognizes the federal allocation amounts but also creates a “reallocation process” for use of the bonding authority that any Allocation Designee does not plan to use. The purpose of the reallocation process is to assure that the state as a whole takes maximum advantage of this federally tax-advantaged bonding opportunity.

Any Allocation Designee may use its original allocation, but the law allows cities and counties to participate in allowing economic activity in other areas of the state if surplus allocation amounts exist. It is a way for local government to participate in the economic recovery of the State

as a whole, without regard to boundary or jurisdiction. HB191 names the Department of Economic Development as the agency to manage the bond allocation and reallocation process. This Notice outlines how the Department will administer the RZB Allocation and how the RZB Allocation must be administered by each Allocation Designee.

Pursuant to Sections 108.1000 to 108.1020 RSMo (HB 191), the Department of Economic Development hereby notifies you that your jurisdiction is an Allocation Designee and has received an allocation of Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds pursuant to Notice 2009-50 issued by the Internal Revenue Service on June 12, 2009, in the amounts specified in Attachment 2 to this Notice (collectively, the RZB Allocation). A copy of IRS Notice 2009-50 is attached to this Notice (see Attachment 3).

Pursuant to HB 191 you are notified as follows:

1. Each Allocation Designee may, at any time, waive any RZB Allocation by providing written notice, included in this Notice as Attachment 4, to the Department at the address set forth above. Timely waivers will benefit those communities that have a need for additional RZB Allocation.

2. Each RZB Allocation will be deemed waived on September 1, 2009 (the sixtieth day following this Notice) unless the Allocation Designee provides the Department with written notice of intent to issue Recovery Zone Bonds stating the amount and type to be issued. The notice of intent form is included in this Notice as Attachment 5.

3. Each Allocation Designee must notify the Department in writing of the issuance of Recovery Zone Bonds, even where an Allocation Designee makes a further allocation of its RZB allocation to another public entity that will actually issue the Recovery Zone Bonds pursuant to paragraphs 6 or 7 below.

4. Any RZB Allocation that is not used by July 1, 2010 is automatically recaptured by the Department for reallocation.

5. Every public entity (including but not limited to an Allocation Designee) may apply to the Department for an RZB Allocation from any amounts that may be reallocated by the Department pursuant to HB 191.

6. An Allocation Designee may authorize a public entity *created by the Allocation Designee* (e.g. a county Industrial Development Authority or a county public building corporation) to issue Recovery Zone Bonds. Similarly, an Allocation Designee may use another public entity authorized by state law to issue bonds (such as the Missouri Development Finance Board) pursuant to an arrangement where the proceeds of the bonds will be loaned to the Allocation Designee and used for the purpose of financing the specific project. As noted in paragraph 3 above, even if the Allocation Designee does not issue the Recovery Zone Bonds directly, it remains responsible for notifying the Department of the issuance of Recovery Zone Bonds.

7. An Allocation Designee may allocate all or a portion of its RZB Allocation to an unrelated political subdivision located *within its jurisdiction*. Such a reallocation will permit that political subdivision to issue Recovery Zone Bonds (e.g. a city located in the county of the applicable Allocation Designee). As noted in paragraph 3 above, even if the Allocation Designee does not issue the Recovery Zone Bonds directly, it remains responsible for notifying the Department of the issuance of Recovery Zone Bonds. We recommend that you discuss the requirements for such a reallocation with your financial advisor or bond counsel.

YOUR RZB ALLOCATION WILL AUTOMATICALLY REVERT TO THE DEPARTMENT FOR REALLOCATION IF (1) YOU DO NOT PROVIDE NOTICE TO THE DEPARTMENT OF YOUR INTENT TO ISSUE RECOVERY ZONE BONDS AS PROVIDED ABOVE BY SEPTEMBER 1, 2009, OR (2) YOU DO NOT USE THE RZB ALLOCATION (ISSUE RECOVERY ZONE BONDS) BY JULY 1, 2010.

Additional information concerning Recovery Zone Bonds can be found at www.ded.mo.gov.

If you have any questions concerning this Notice please contact Sallie Hemenway at 573-522-4157.

**Linda Martinez
Director**

Attachments

- 1. Overview of Recovery Zone Bonds**
- 2. Missouri Allocations**
- 3. IRS Notice 2009-50**
- 4. Form Notice of Waiver**
- 5. Form Notice of Intent to Issue**

Recovery Zone Bonds

The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”) created two new types of bonds that may be issued prior to January 1, 2011. Both are referred to in ARRA as Recovery Zone Bonds, but the two types of bonds are issuable for completely different purposes (Recovery Zone Economic Development Bonds may be issued for public projects, whereas Recovery Zone Facility Bonds may be issued for private projects), and the subsidy/benefit associated with each is completely different.

ARRA imposes a national bond volume limitation (“volume cap”) of \$10 billion for Recovery Zone Economic Development Bonds and \$15 billion for Recovery Zone Facility Bonds. The volume cap for Recovery Zone Bonds is allocated among the States and counties and large municipalities within the States based on relative declines in employment in 2008.

Although ARRA provides that Recovery Zone Bonds must be issued before January 1, 2011, under Missouri law, all unused Recovery Zone Bond allocations revert back to the State on July 1, 2010.

It is important to remember that Recovery Zone Bonds are created by Federal tax law, and thus all Missouri bond laws apply. Before determining whether Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds could benefit your community, you must first determine what type of Missouri bond could be issued. In general, for state law purposes, Recovery Zone Economic Development Bonds will likely be general obligation bonds, utility revenue bonds, leasehold revenue bonds, certificates of participation or special obligation bonds. In contrast, because Recovery Zone Facility Bonds will be used for privately owned or used projects, these bonds will likely be Chapter 100 Bonds, industrial revenue bonds, industrial development bonds or other types of private activity bonds.

ARRA provides that Recovery Zone Economic Development Bonds may be used to finance certain “qualified economic development purposes,” and Recovery Zone Facility Bonds may be used to finance certain “recovery zone property,” both, as described below, generally for use within designated “recovery zones.” The term “recovery zone” means: (1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990; and (3) any area for which a designation as an empowerment zone or renewal community is in effect. The establishment of a “recovery zone” will be by act of the governmental entity and should not, as a general rule, be a significant barrier to using Recovery Zone Bonds. However, projects financed must be located within the jurisdiction of the political subdivision which has received a volume cap allocation either directly or from the Missouri Department of Economic Development as a result of the special reallocation procedure created by Missouri law.

Recovery Zone Economic Development Bonds

Recovery Zone Economic Development Bonds are similar in many respects to another new financing option created by ARRA -- Build America Bonds. Because of the limitation on the aggregate amount of Recovery Zone Economic Development Bonds that may be issued, in many cases, a political subdivision may wish to use both Recovery Zone Economic Development Bonds and Build America Bonds to finance the single project. For that reason it is important to understand the similarities and differences between the two programs

Interest on Recovery Zone Economic Development Bonds and Build America Bonds is taxable, but in each case the issuer of the obligation receives a cash subsidy funded by the United States Treasury. Recovery Zone Economic Development Bonds receive a payment equal to 45% of the total interest payable to investors; while a Build America Bond, receives a subsidy equal to 35% of the interest paid. However, unlike a Recovery Zone Economic Development Bond, a Build America Bond is not subject to any volume cap.

Build America Bonds may be issued by State and local governments as an alternative to issuing traditional tax-exempt governmental bonds. Build America Bonds generally may be used to finance any governmental purpose for which tax-exempt governmental bonds (excluding private activity bonds) could be issued under Internal Revenue Code Section 103 and must comply with all requirements applicable to the issuance of tax-exempt governmental bonds. A key requirement generally is that the project must be governmentally owned and used or otherwise meet the requirements for a governmental bond.

In addition to the requirements imposed on Build America Bonds described above, proceeds of a Recovery Zone Economic Development Bond also must be used for “qualified economic development purposes.” ARRA defines qualified economic development purposes as expenditures for promoting development or other economic activity in a recovery zone, including capital expenditures with respect to property located within the zone and expenditures for public infrastructure, public facilities, job training and educational programs.

Recovery Zone Facility Bonds

Although the name is similar, Recovery Zone Facility Bonds are tax-exempt private activity bonds that do not involve any direct subsidy payment, but instead offer lower interest rates typically associated with tax-exempt bonds. As a general rule, proceeds of these bonds can finance new capital improvements that will be owned and used by almost any industrial, commercial, retail, office or other business activity that is located in a designated recovery zone. Exceptions to this rule exist only for low income rental housing and certain specific property (airplanes, health clubs, liquor stores, race tracks, luxury boxes or gambling establishments). In addition, unlike Recovery Zone Bonds or Build America Bonds, debt service on these bonds can be funded directly by the private business that owns and uses the property.

Missouri Allocation Amounts

Area	Residual	Recovery Zone Economic Development Bond	Recovery Zone Facility Bond
Missouri		229,143,000	343,715,000
Independence city, MO		2,573,000	3,859,000
Kansas City city, MO		10,195,000	15,293,000
St. Louis city, MO		11,826,000	17,739,000
Springfield city, MO		10,067,000	15,100,000
Adair County, MO		2,274,000	3,410,000
Andrew County, MO		739,000	1,108,000
Atchison County, MO		715,000	1,072,000
Audrain County, MO		661,000	992,000
Barry County, MO		1,571,000	2,356,000
Barton County, MO		1,185,000	1,777,000
Bates County, MO		344,000	516,000
Benton County, MO		993,000	1,490,000
Bollinger County, MO		494,000	740,000
Boone County, MO		1,412,000	2,118,000
Buchanan County, MO		3,476,000	5,214,000
Butler County, MO		1,457,000	2,185,000
Caldwell County, MO		191,000	287,000
Callaway County, MO		1,804,000	2,706,000
Camden County, MO		1,529,000	2,293,000
Cape Girardeau County		3,383,000	5,075,000
Carroll County, MO		1,553,000	2,329,000
Carter County, MO		667,000	1,001,000
Cass County, MO	Residual	2,199,000	3,298,000
Cedar County, MO		963,000	1,445,000
Chariton County, MO		550,000	826,000
Christian County, MO		4,640,000	6,960,000
Clark County, MO		580,000	871,000
Clay County, MO	Residual	2,722,000	4,084,000
Clinton County, MO		455,000	682,000
Cole County, MO		3,198,000	4,797,000
Cooper County, MO		912,000	1,369,000
Crawford County, MO		1,696,000	2,544,000
Dade County, MO		530,000	794,000
Dallas County, MO		862,000	1,292,000
Daviess County, MO		853,000	1,279,000
DeKalb County, MO		374,000	561,000
Dent County, MO		1,089,000	1,633,000
Douglas County, MO		622,000	933,000
Dunklin County, MO		2,043,000	3,065,000
Franklin County, MO		4,006,000	6,009,000
Gasconade County, MO		1,550,000	2,324,000
Gentry County, MO		18,000	27,000
Greene County, MO	Residual	6,456,000	9,684,000
Grundy County, MO		0	0
Harrison County, MO		296,000	444,000
Henry County, MO		886,000	1,328,000
Hickory County, MO		565,000	848,000
Holt County, MO		162,000	242,000
Howard County, MO		84,000	126,000
Howell County, MO		2,214,000	3,321,000
Iron County, MO		117,000	175,000
Jackson County, MO	Residual	5,322,000	7,983,000
Jasper County, MO		2,977,000	4,465,000
Jefferson County, MO		8,888,000	13,332,000
Johnson County, MO		1,645,000	2,468,000
Knox County, MO		377,000	565,000
Laclede County, MO		467,000	700,000
Lafayette County, MO		721,000	1,081,000
Lawrence County, MO		1,942,000	2,912,000
Lewis County, MO		915,000	1,373,000
Lincoln County, MO		2,007,000	3,011,000

Linn County, MO	1,472,000	2,208,000
Livingston County, MO	975,000	1,463,000
McDonald County, MO	1,167,000	1,750,000

Area	Residual	Recovery Zone Economic Development Bond	Recovery Zone Facility Bond
Macon County, MO		1,077,000	1,615,000
Madison County, MO		269,000	404,000
Maries County, MO		583,000	875,000
Marion County, MO		1,370,000	2,055,000
Mercer County, MO		138,000	206,000
Miller County, MO		1,352,000	2,028,000
Mississippi County, MO		1,137,000	1,705,000
Moniteau County, MO		592,000	889,000
Monroe County, MO		730,000	1,095,000
Montgomery County, MO		544,000	817,000
Morgan County, MO		1,083,000	1,624,000
New Madrid County, MO		1,490,000	2,235,000
Newton County, MO		1,466,000	2,199,000
Nodaway County, MO		1,059,000	1,589,000
Oregon County, MO		703,000	1,055,000
Osage County, MO		580,000	871,000
Ozark County, MO		419,000	628,000
Pemiscot County, MO		1,059,000	1,589,000
Perry County, MO		1,056,000	1,584,000
Pettis County, MO		1,194,000	1,790,000
Phelps County, MO		1,624,000	2,437,000
Pike County, MO		326,000	489,000
Platte County, MO	Residual	1,107,000	1,660,000
Polk County, MO		1,663,000	2,495,000
Pulaski County, MO		0	0
Putnam County, MO		368,000	552,000
Ralls County, MO		535,000	803,000
Randolph County, MO		521,000	781,000
Ray County, MO		503,000	754,000
Reynolds County, MO		742,000	1,113,000
Ripley County, MO		1,041,000	1,562,000
St. Charles County, MO		14,913,000	22,370,000
St. Clair County, MO		577,000	866,000
Ste. Genevieve County, MO		1,056,000	1,584,000
St. Francois County, MO		1,418,000	2,127,000
St. Louis County, MO		40,362,000	60,544,000
Saline County, MO		778,000	1,167,000
Schuyler County, MO		362,000	543,000
Scotland County, MO		383,000	574,000
Scott County, MO		2,070,000	3,105,000
Shannon County, MO		515,000	772,000
Shelby County, MO		251,000	377,000
Stoddard County, MO		2,411,000	3,617,000
Stone County, MO		200,000	301,000
Sullivan County, MO		24,000	36,000
Taney County, MO		335,000	503,000
Texas County, MO		1,307,000	1,961,000
Vernon County, MO		1,286,000	1,930,000
Warren County, MO		1,233,000	1,849,000
Washington County, MO		739,000	1,108,000
Wayne County, MO		1,089,000	1,633,000
Webster County, MO		1,968,000	2,953,000
Worth County, MO		179,000	269,000
Wright County, MO		730,000	1,095,000

Part III – Administrative, Procedural, and Miscellaneous

Recovery Zone Bond Volume Cap Allocations

Notice 2009-50

SECTION 1. PURPOSE

This notice provides guidance regarding the maximum face amount of recovery zone economic development bonds (“Recovery Zone Economic Development Bonds”) and recovery zone facility bonds (“Recovery Zone Facility Bonds”) (together, “Recovery Zone Bonds”), that may be issued by each State and counties and large municipalities within each State before January 1, 2011 under §§ 1400U-2 and 1400U-3, respectively, of the Internal Revenue Code (“Code”), as provided in § 1400U-1 of the Code. As applicable to §§ 1400U-1 through 1400U-3, § 103(c)(2) provides that the term “State” includes the District of Columbia and any possession of the United States. This notice also provides certain interim guidance for Recovery Zone Bonds. In general, Recovery Zone Bonds provide tax incentives for State and local governmental borrowing at lower borrowing costs to promote job creation and economic recovery that is targeted to areas particularly affected by employment declines.

SECTION 2. BACKGROUND

.01 INTRODUCTION

Section 1401 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”), added §§ 1400U-1 through 1400U-3 to the Code authorizing State and local governments to issue Recovery Zone Bonds. Section 1400U-1 imposes a national bond volume limitation (“volume cap”) of \$10

billion for Recovery Zone Economic Development Bonds and \$15 billion for Recovery Zone Facility Bonds. The volume cap for Recovery Zone Bonds is allocated among the States and counties and large municipalities within the States based on relative declines in employment in 2008.

In general, Recovery Zone Economic Development Bonds may be used to finance certain “qualified economic development purposes” and Recovery Zone Facility Bonds may be used to finance certain “recovery zone property,” both as described further herein, generally for use within designated “recovery zones,” as described below. Section 1400U-1(b) provides that, for purposes of §§ 1400U-1 through 1400U-3, the term “recovery zone” means: (1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990; and (3) any area for which a designation as an empowerment zone or renewal community is in effect as of the effective date of ARRA, which effective date is February 17, 2009.

.02 BACKGROUND ON BUILD AMERICA BONDS

Section 1531 of ARRA added § 54AA to the Code, authorizing State and local governments, at their option, to issue two general types of Build America Bonds (“Build America Bonds”) as taxable governmental bonds with Federal subsidies for a portion of their borrowing costs. Section 54AA(d) of the Code defines the term “Build America

Bond” generally to mean any taxable State or local governmental bond (excluding a private activity bond under § 141) that meets the following requirements: (1) the interest on such bond would (but for § 54AA) be excludable from gross income under § 103; (2) the bond is issued before January 1, 2011; and (3) the issuer makes an irrevocable election to have § 54AA apply. The Federal subsidies for a portion of the borrowing costs on Build America Bonds take the form of either tax credits provided to holders of the bonds or refundable tax credits paid to State and local governmental issuers of the bonds. Build America Bonds have different levels of Federal subsidies and different program requirements with respect to uses of proceeds depending on the particular type of Build America Bond.

The first type of Build America Bond provides a Federal subsidy through Federal tax credits to investors in the bonds in an amount equal to 35 percent of the total coupon interest payable by the issuer on taxable governmental bonds (net of the tax credit), which represents a Federal subsidy to the State or local governmental issuer equal to approximately 25 percent of the total return to the investor (including the coupon interest paid by the issuer and the tax credit). This type of Build America Bond will be referred to in this Notice as “Build America Bonds (Tax Credit).” This type of Build America Bond generally may be used to finance any governmental purpose for which tax-exempt governmental bonds (excluding private activity bonds under § 141) could be issued under § 103 (“tax-exempt governmental bonds”) and must comply with all requirements applicable to the issuance of tax-exempt governmental bonds.

The second type of Build America Bond provides a Federal subsidy through a refundable tax credit paid to State or local governmental issuers by the Treasury

Department and the Internal Revenue Service (“IRS”) in an amount equal to 35 percent of the total coupon interest payable to investors in these taxable bonds. This type of Build America Bond will be referred to in this Notice as “Build America Bonds (Direct Payment).” This type of Build America Bond generally may be used to finance only capital expenditures and certain issuance costs and reasonably required reserve funds.

Recovery Zone Economic Development Bonds under § 1400U-2 represent a third type of Build America Bond. Recovery Zone Economic Development Bonds are comparable to Build America Bonds (Direct Payment), except that they provide for a deeper Federal subsidy through a refundable tax credit paid to State or local governmental issuers in an amount equal to 45 percent (rather than 35 percent) of the total coupon interest payable to investors in these taxable bonds and they have different program requirements regarding eligible uses of proceeds for qualified economic development purposes within recovery zones, as described further herein.

For additional information regarding Build America Bonds generally, see § 54AA and the initial implementation guidance on Build America Bonds set forth in Notice 2009-26, 2009-16 I.R.B 833 (April 20, 2009).

SECTION 3. RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS

.01 RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS TREATED AS QUALIFIED BONDS UNDER § 6431

Section 1400U-2(a) provides that a Recovery Zone Economic Development Bond shall be treated as a “qualified bond” for purposes of § 6431 (relating to the refundable credit for qualified bonds allowed and payable to the issuer in the case of Build America Bonds (Direct Payment)). Section 1400U-2(a) further provides that, for purposes of §

6431(b) (relating to the amount of the refundable credit allowed and payable to the issuer of qualified bonds), the amount of the refundable credit shall be 45 percent of the coupon interest payable on the bonds rather than 35 percent of such interest as is the case with Build America Bonds (Direct Payment). In determining the amount of coupon interest payable on the bonds for purposes of calculating the refundable credit, original issue discount is not treated as a payment of interest. See H.R. Conf. Rep. 111-16, 111th Cong., 1st Sess. (February 12, 2009).

.02 DEFINITION OF RECOVERY ZONE ECONOMIC DEVELOPMENT BOND

Section 1400U-2(b)(1) defines the term “Recovery Zone Economic Development Bond” to mean any bond that is issued as part of an issue that meets the following requirements: (1) the bond is a Build America Bond (as defined in § 54AA(d)); (2) the bond is issued before January 1, 2011; (3) 100 percent of the excess of (i) the available project proceeds (as defined in § 54A to mean sale proceeds of such issue less not more than 2 percent of such proceeds used to pay issuance costs, plus investment proceeds thereon), over (ii) the amounts in a reasonably required reserve (within the meaning of § 150(a)(3)) with respect to such issue, are to be used for one or more qualified economic development purposes, and (4) the issuer designates such bond for purposes of § 1400U-2.

.03 DEFINITION OF QUALIFIED ECONOMIC DEVELOPMENT PURPOSE

Section 1400U-2(c) defines the term “qualified economic development purpose” for purposes of § 1400U-2 to mean any expenditures for purposes of promoting development or other economic activity in a recovery zone, including (1) capital expenditures paid or incurred with respect to property located in the recovery zone, (2) expenditures for public infrastructure and construction of public facilities, and (3) expenditures for job training and

educational programs. This broad definition of qualified economic development purpose includes capital expenditures (as defined in § 1.150-1(b) of the Income Tax Regulations) and working capital expenditures to promote development or other economic activity in a recovery zone. For this purpose, an eligible financing of qualified expenditures includes a reimbursement of those expenditures under the reimbursement rules contained in § 1.150-2. By contrast, Recovery Zone Economic Development Bonds generally may not be issued to refinance expenditures in “refunding issues” (as defined in § 1.150-1). Further, for this purpose, Recovery Zone Economic Development Bonds may be used to reimburse otherwise-eligible expenditures under § 1.150-2 that were paid or incurred after the effective date of ARRA and that were financed originally with temporary short-term financing issued after the effective date of ARRA, and such reimbursement will not be treated as a refunding issue under §§ 1.150-1(d) or 1.150-2(g).

.04 CERTAIN OTHER APPLICABLE RULES

Section 6431(c) provides that for purposes of applying the arbitrage investment restrictions under § 148, the yield on a qualified bond (including, for this purpose, a Recovery Zone Economic Development Bond), shall be reduced by the refundable credit allowed under § 6431. Section 6431(d) provides that, for purposes of § 6431, “interest payment date” means each date on which interest is payable by the issuer under the terms of the bond. Section 54AA(d)(2)(A) provides that, for purposes of the restrictions against Federal guarantees of tax-exempt bonds under § 149(b), a Build America Bond (including, for this purpose, a Recovery Zone Economic Development Bond) shall not be treated as federally guaranteed by reason of the refundable credit allowed under § 6431. Section 54AA(d)(2)(C) provides that a bond (including, for this purpose, a Recovery Zone

Economic Development Bond) shall not be treated as a Build America Bond under § 54AA(d)(1) if the issue price has more than a *de minimis* amount (determined under rules similar to the rules of § 1273(a)(3)) of premium over the stated principal amount of the bond.

SECTION 4. RECOVERY ZONE FACILITY BONDS

.01 RECOVERY ZONE FACILITY BONDS TREATED AS EXEMPT FACILITY BONDS

Section 103(a) provides that, except as otherwise provided in § 103(b), interest on State or local bonds is excludable from gross income for Federal income tax purposes. Under § 103(b), interest on a State and local bond that is a “private activity bond” under § 141(a) generally is not excludable from gross income unless the bond meets the requirements for a qualified private activity bond under § 141(e). Section 141(e) provides that an “exempt facility bond” under § 142 is one type of qualified private activity bond that may be issued with interest thereon excludable from gross income under § 103(a). Section 1400U-3(a) provides that, for purposes of §§ 141 through 150, the term “exempt facility bond” includes any Recovery Zone Facility Bond. Section 1400U-3(b) defines the term “Recovery Zone Facility Bond” to mean any bond issued as part of an issue if: (A) 95 percent or more of the net proceeds (as defined in § 150(a)(3)) of such issue are to be used for recovery zone property; (B) such bond is issued before January 1, 2011; and (C) the issuer designates such bond for purposes of § 1400U-3.

.02 RECOVERY ZONE PROPERTY

Section 1400U-3(c)(1) defines the term “recovery zone property” to mean any property to which § 168 (relating to the accelerated cost recovery system) applies (or would apply but for § 179 (relating to electing to expense certain depreciable business assets)) if: (A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in § 179(d)(2)) by the taxpayer after the date on which the designation of the recovery zone took effect; (B) the original use of which in the recovery zone commences with the taxpayer; and (C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business (as defined in § 1400U-3(c)(2)) by the taxpayer in the recovery zone. For purposes of § 1400U-3(c)(1), which provides that the term “recovery zone property” means, in part, any property to which § 168 applies (or would apply but for § 179), any property of a character generally subject to the allowance for depreciation under § 168 (or that would be generally subject to such allowance but for § 179) will be treated as “recovery zone property,” without regard to whether the particular property is owned by any State or local governmental entity that is not subject to Federal income taxation, provided that such property otherwise meets the requirements under § 1400U-3(c)(1).

.03 USE OF RECOVERY ZONE PROPERTY IN QUALIFIED BUSINESSES

Section 1400U-3(c)(1)(C) requires that substantially all of the use of recovery zone property involve the active conduct of a qualified business (as defined in § 1400U3(c)(2)) by the taxpayer in the recovery zone. Section 1400U-3(c)(2) defines the term “qualified business” to mean any trade or business except that (A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not

residential rental property (as defined in § 168(e)(2)), and (B) such term shall not include any trade or business consisting of the operation of any facility described in § 144(c)(6)(B) (relating to the prohibition on the use of proceeds of a qualified redevelopment bond for any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises).

.04 OTHER APPLICABLE RULES

Section 1400U-3(c)(3) provides that rules similar to rules of § 1397D(a)(2) and (b) (relating to substantial renovations and sale-leasebacks) shall apply for purposes of § 1400U-3(c). Section 1400U-3(d) provides that § 146 (relating to the private activity bond volume cap) and § 147(d) (relating to limitations on acquisition of existing property) shall not apply to any Recovery Zone Facility Bond. Except as otherwise provided in this Notice or in future administrative or regulatory guidance, rules applicable to exempt facility bonds under § 142 apply to Recovery Zone Facility Bonds.

SECTION 5. INTERIM GUIDANCE AND RELIANCE

01. IN GENERAL

Pending the promulgation and effective date of future administrative or regulatory guidance, taxpayers may rely on the interim guidance provided in this Notice.

02. REASONABLY REQUIRED RESERVE OR REPLACEMENT FUND

Section 1400U-2(b)(1)(A) requires that 100 percent of the excess of (i) the available project proceeds (as defined in § 54A to mean sale proceeds of such issue less not more than 2 percent of such proceeds used to pay issuance costs, plus investment proceeds thereon), over (ii) the amounts in a reasonable required reserve

(within the meaning of § 150(a)(3)) for an issue of Recovery Zone Economic Development Bonds be used for qualified economic development purposes. Section 1400U-3(b)(1)(a) requires that 95 percent or more of the “net proceeds” (as defined in § 150(a)(3)) of an issue of Recovery Zone Facility Bonds be used for recovery zone property. Section 150(a)(3) defines the term “net proceeds” to mean, with respect to any issue, the proceeds of such issue reduced by amounts in a “reasonably required reserve or replacement fund.” For these purposes, § 148(d) provides rules for a reasonably required reserve or replacement fund.

Section 148(d)(1) generally provides that a bond shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of the issue of which such bond is a part may be invested in higher yielding investments which are part of a reasonably required reserve or replacement fund. The amount of such proceeds shall not exceed 10 percent of the proceeds of such issue unless the issuer establishes to the satisfaction of the Secretary that a higher amount is necessary. Section 148(d)(2) provides that a bond issued as part of an issue shall be treated as an arbitrage bond if the amount of the proceeds from the sale of such issue which is part of any reserve or replacement fund exceeds 10 percent of the proceeds of the issue (or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary). Section 1.148-2(f) of the Income Tax Regulations provides additional rules regarding reasonably required reserve or replacement funds.

.03 INFORMATION REPORTING FOR RECOVERY ZONE BONDS

(i) Recovery Zone Economic Development Bonds. For information relating to information reporting and direct payments of refundable credits to issuers of Recovery

Zone Economic Development Bonds, rules similar to those applicable for information reporting and payment of credit to issuers of qualified bonds under § 6431 shall apply.

See Notice 2009-26, 2009-16 I.R.B. 833 (April 20, 2009).

(ii) Recovery Zone Facility Bonds. The information reporting requirement for tax-exempt bonds under § 149(e) applies to Recovery Zone Facility Bonds under § 1400U3(a). Information reporting returns for Recovery Zone Facility Bonds are required to be submitted at the same time and in the same manner as those required under § 149(e) for exempt facility bonds on such forms as shall be prescribed by the IRS for such purpose. Pending further guidance from the IRS regarding the applicable forms to be used for such information reporting for Recovery Zone Facility Bonds, in the case of an issue of Recovery Zone Facility Bonds, the issuer must submit to the IRS an information return on Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*, at the same time and in the same manner as required under § 149(e), with modifications as described below. Issuers of Recovery Zone Facility Bonds should complete Part II of Form 8038 by checking the box on Line 11q (Other), writing "Recovery Zone Facility Bonds" in the space provided for the bond description, and entering the issue price of the Recovery Zone Facility Bonds in the Issue Price column. For purposes of this notice, the term "issue" has the meaning used for tax-exempt bond purposes in § 1.150-1(c).

.04 ELIGIBLE ISSUERS IN GENERAL AND ALLOCATIONS OF VOLUME CAP TO
ULTIMATE BENEFICIARIES

Eligible issuers of Recovery Zone Bonds include States, political subdivisions as defined for purposes of § 103, and entities empowered to issue bonds on behalf of any such entity under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for purposes of § 103 and § 1.103-1(b) of the Income Tax Regulations. Further, eligible issuers include otherwise-eligible issuers in conduit financing issues (as defined in § 1.150-1(b)). An eligible issuer may issue Recovery Zone Bonds based on a volume cap allocation received by the eligible issuer itself or by a conduit borrower or other ultimate beneficiary of the issue of the bonds. In all events, the eligible costs for qualified economic development purposes or recovery zone property, as applicable, financed with the proceeds of an issue of Recovery Zone Bonds under §§ 1400U-2 or 1400U-3, respectively, must relate to any such purpose or property that is located within, or attributable to, both the jurisdiction of the issuer of the bonds and the jurisdiction of the entity authorized to allocate volume cap to an issue of bonds for the financing of such purpose or property.

Entities authorized to allocate volume cap to ultimate beneficiaries consist of States (with respect to allocations waived or deemed waived by any county or large municipality), counties, and large municipalities (as defined in § 1400U-1(a)(3)(B)) that receive volume cap allocations under § 1400U-1(a)(3)(A). Such States, counties, and large municipalities may use such volume cap themselves for eligible costs or may allocate such volume cap received to ultimate beneficiaries in any reasonable manner as they shall determine in good faith in their discretion for use for eligible costs for qualified economic development purposes or recovery zone property, as applicable. In the event that a county or large municipality that receives an allocation of volume cap under § 1400U-1(a)(3)(A) of

Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds does not possess substantial taxing, eminent domain, *and* police powers, any entity the jurisdiction of which includes such county or large municipality may issue bonds and designate such bonds as Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds, as applicable, on behalf of, and for the benefit of, such county or municipality, subject to the applicable volume cap limitations for those Recovery Zone Bonds allocated to such county or large municipality. In such case, the proceeds of an issue of Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds under §§ 1400U-2 or 1400U-3, respectively, must be allocated to eligible costs for qualified economic development purposes or recovery zone property, as applicable, that is located within, or attributable to, both the jurisdiction of the issuer of the bonds and the jurisdiction of the county or large municipality that received the volume cap allocation under § 1400U-1(a)(3)(A). Thus, for example, a county or large municipality that received a volume cap allocation under § 1400U-1(a)(3)(A) may issue bonds and designate them as Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds, as applicable, for use of that volume cap by an ultimate beneficiary (including such county or large municipality itself or another entity) or another eligible issuer may issue bonds and designate them as Recovery Zone Economic Development Bonds or Recovery Zone Facility Bonds, as applicable, for use of that volume cap by an ultimate beneficiary (including such county or municipality or another entity), based on an allocation by such county or large municipality of that volume cap to an ultimate beneficiary. In all events, the proceeds of the issue must be used to finance eligible costs for qualified economic development purposes or recovery zone property, as applicable, that is located within, or

attributable to, both the jurisdiction of the issuer of the bonds and the jurisdiction of the county or large municipality authorized to allocate volume cap to an ultimate beneficiary of the issue of Recovery Zone Bonds for the financing of those purposes or property.

05. WAIVERS OF VOLUME CAP ALLOCATIONS

Section 1400U-1(a)(3)(A) provides that a county or large municipality may waive any portion of a volume cap allocation received for Recovery Zone Bonds. Upon any such waiver, the State in which such county or large municipality is located shall be authorized to reallocate the waived volume cap in any reasonable manner as it shall determine in good faith in its discretion.

06. DESIGNATIONS OF RECOVERY ZONES

As further described in Section 2.01 of this Notice, § 1400U-1(b) requires, in part, that issuers “designate” eligible recovery zones based on certain specified criteria. For this purpose, any State, county, or large municipality that receives a volume cap allocation for Recovery Zone Bonds may make these designations of recovery zones in any reasonable manner as it shall determine in good faith in its discretion.

SECTION 6. ALLOCATIONS OF RECOVERY ZONE BOND VOLUME CAP

01. VOLUME CAP DESIGNATIONS IN GENERAL

Sections 1400U-2(b)(2) and 1400U-3(b)(2) provide generally that the maximum face amount of the applicable type of Recovery Zone Bonds designated for issuance by an issuer cannot exceed the amounts of volume cap for the applicable Recovery Zone Bonds allocated to such issuer under § 1400U-1. For this purpose, these designations, including associated determinations of qualified economic development purposes, may be made by an issuer in any reasonable manner as it shall determine in good faith in its discretion,

taking into account the special rules for eligible issuers under Section 5.04 of this Notice.

.02 VOLUME CAP ALLOCATIONS IN GENERAL

Section 1400U-1(a)(1)(A) provides that, subject to § 1400U-1(a)(1)(B) (relating to minimum allocations), generally, the Secretary shall allocate the \$10 billion national volume cap for Recovery Zone Economic Development Bonds and the \$15 billion national volume cap for Recovery Zone Facility Bonds among the States in the proportion that each State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States. Section 1400U-1(a)(1)(B) provides that the Secretary shall adjust the allocations under § 1400U-1(a)(1)(A) for any calendar year for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the national volume cap for Recovery Zone Economic Development Bonds and 0.9 percent of the national volume cap for Recovery Zone Facility Bonds.

Section 1400U-1(a)(2) provides that for purposes of § 1400U-1(a), the term "2008 State employment decline" means, with respect to any State, the excess (if any) of (A) the number of individuals employed in such State determined for December 2007, over (B) the number of individuals employed in such State determined for December 2008. The volume cap allocations provided pursuant to this Notice are based on Local Area Unemployment Statistics ("LAUS") data for December 2007 and December 2008 released by the United States Bureau of Labor Statistics. See generally <http://www.bls.gov/lau/home.htm>.

Section 1400U-1(a)(3)(A) provides generally that each State with respect to which an allocation is made under 1400U-1(a)(1) is required, without discretion, to reallocate such allocation among the counties and large municipalities in such State in the proportion that each county's or municipality's 2008 employment decline bears to the aggregate of the

2008 employment declines for all the counties and municipalities in such State. For purposes of § 1400U-1(a)(3)(A), the term “large municipality” means a municipality with a population of more than 100,000. For purposes of determining the local employment decline under § 1400U-1(a)(3), the employment decline of any county or large municipality is determined in the same manner as the determination of the State employment decline under 1400U-1(a)(2), except that in the case of a municipality any portion of which is in a county, such portion is treated as part of such municipality and not as part of such county.

.03. STATE ALLOCATIONS OF RECOVERY ZONE BOND VOLUME CAP

Pursuant to § 1400U-1(a), the \$10 billion national volume cap for Recovery Zone Economic Development Bonds and the \$15 billion national volume cap for Recovery Zone Facility Bonds under §§ 1400U-2 and 1400U-3, respectively, are allocated among the States as follows:

State	Recovery Zone Economic Development Bond Allocations (in dollars)	Recovery Zone Facility Bond Allocations (in dollars)
Alabama	244,676,000	367,014,000
Alaska	90,000,000	135,000,000
Arizona	90,000,000	135,000,000
Arkansas	90,000,000	135,000,000
California	806,225,000	1,209,338,000
Colorado	99,018,000	148,527,000
Connecticut	90,000,000	135,000,000
Delaware	90,000,000	135,000,000
District of Columbia	90,000,000	135,000,000
Florida	538,485,000	807,727,000
Georgia	355,785,000	533,677,000
Hawaii	90,000,000	135,000,000
Idaho	90,000,000	135,000,000
Illinois	666,972,000	1,000,457,000
Indiana	313,081,000	469,621,000
Iowa	90,000,000	135,000,000
Kansas	90,000,000	135,000,000
Kentucky	97,120,000	145,681,000

Louisiana	90,000,000	135,000,000
Maine	90,000,000	135,000,000
Maryland	208,860,000	313,291,000
Massachusetts	222,676,000	334,013,000
Michigan	773,050,000	1,159,575,000
Minnesota	132,154,000	198,231,000
Mississippi	90,000,000	135,000,000
Missouri	229,143,000	343,715,000
Montana	90,000,000	135,000,000
Nebraska	90,000,000	135,000,000
Nevada	90,000,000	135,000,000
New Hampshire	90,000,000	135,000,000
New Jersey	251,104,000	376,655,000
New Mexico	90,000,000	135,000,000
New York	370,098,000	555,147,000
North Carolina	418,154,000	627,231,000
North Dakota	90,000,000	135,000,000
Ohio	422,637,000	633,955,000
Oklahoma	90,000,000	135,000,000
Oregon	103,450,000	155,175,000
Pennsylvania	154,008,000	231,012,000
Rhode Island	100,882,000	151,322,000
South Carolina	115,041,000	172,562,000
South Dakota	90,000,000	135,000,000
Tennessee	231,417,000	347,126,000
Texas	90,000,000	135,000,000
Utah	90,000,000	135,000,000
Vermont	90,000,000	135,000,000
Virginia	104,396,000	156,595,000
Washington	90,000,000	135,000,000
West Virginia	90,000,000	135,000,000
Wisconsin	158,811,000	238,217,000
Wyoming	90,000,000	135,000,000
American Samoa	90,000,000	135,000,000
Guam	90,000,000	135,000,000
Northern Marianas	90,000,000	135,000,000
Puerto Rico	92,757,000	139,136,000
US Virgin Islands	90,000,000	135,000,000
Total	10,000,000,000	15,000,000,000

**.04. LOCAL SUBALLOCATIONS OF RECOVERY ZONE BOND VOLUME CAP
AMONG COUNTIES AND LARGE MUNICIPALITIES**

The Treasury Department and the IRS recognize that the required local suballocations of the national volume cap for Recovery Zone Bonds among counties and large municipalities impose administrative burdens for the States and involve mandatory

local suballocations without State discretion. Accordingly, the Treasury Department and the IRS undertook to determine these required local suballocations. For purposes of these local suballocations among counties and large municipalities, certain county-equivalent entities (including independent cities that are not otherwise located within counties, parishes, boroughs, and similar entities) are treated as counties in the same manner that the Bureau of Labor Statistics treats such entities as county-equivalent entities in its employment data. This undertaking to provide local suballocations is intended to facilitate prompt availability of Recovery Zone Bonds as a source for State and local governmental borrowing at lower borrowing costs to promote job creation and economic recovery in areas particularly affected by employment declines.

Pursuant to § 1400U-1(a)(3), the State volume caps of the \$10 billion national volume cap for Recovery Zone Economic Development Bonds and the \$15 billion national volume cap for Recovery Zone Facility Bonds under §§ 1400U-2 and 1400U-3, respectively, are reallocated locally among the counties and large municipalities within the States (except that no such local reallocations are being provided for the Possessions of the United States (see Section 6.05 of this Notice below)) in a document regarding the Recovery Zone Bond volume cap allocations being posted on the IRS's website at the following web address: <http://www.irs.gov/taxexemptbond/index.html> under the heading in the index entitled "IRS Releases Guidance on ARRA Bond Provisions," to be available on the same date that this Notice is released publicly. Stated differently, these local suballocations will be accessible by going to the IRS website at <http://www.irs.gov>, then clicking on the heading "Tax-exempt Bond Community" in the top right corner, then clicking on the heading in the index entitled "IRS Releases Guidance on ARRA Bond Provisions," and then clicking on the subheading

regarding the Recovery Zone Bond volume cap allocations, starting on the same date that this Notice is released publicly.

05. SPECIAL RULES FOR VOLUME CAP ALLOCATIONS RECEIVED BY THE POSSESSIONS

In recognition of the disparate local governmental organizational structures and disparate availability of employment data for the Possessions of the United States, the Possessions may allocate locally, reallocate locally, or use directly their respective State allocations of volume cap for Recovery Zone Bonds in any reasonable manner as they may determine in good faith in their discretion.

SECTION 7. EFFECTIVE DATE OF VOLUME CAP ALLOCATIONS

The allocations of national volume cap for Recovery Zone Bonds in Section 6 of this Notice are effective for bonds issued on or after February 17, 2009.

SECTION 8. DRAFTING INFORMATION

The principal authors of this notice are Zoran Stojanovic and Timothy L. Jones of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Mr. Stojanovic or Mr. Jones on (202) 622-3980 (not a toll-free call).

State of Missouri
Notice of Waiver of Allocation of Recovery Zone Bond Allocation

Date _____
City or County _____
Street Address _____
Telephone _____ Fax _____
Name of Chief Elected Official _____
Name of Authorized Representative (if applicable) _____

Amount of Original Allocation of **Recovery Zone Economic Development Bonds**: \$ _____
Amount of Recovery Zone Economic Development Bonds Waived: \$ _____
Amount of Recovery Zone Economic Development Bonds Issued to Date: \$ _____
Amount of Recovery Zone Economic Development Bonds Previously Waived: \$ _____
Remaining Amount of Recovery Zone Economic Development Bond Allocation: \$ _____

Amount of Original Allocation of **Recovery Zone Facility Bonds**: \$ _____
Amount of Recovery Zone Facility Bonds Waived: \$ _____
Amount of Recovery Zone Facility Bonds Issued to Date: \$ _____
Amount of Recovery Zone Facility Bonds Previously Waived: \$ _____
Remaining Amount of Recovery Zone Facility Bond Allocation: \$ _____

I hereby certify that the city/county of _____, as duly authorized by its governing body, has waived all or a portion of its recovery zone economic development bond allocation or recovery zone facility bond allocation, as specified above.

Signature _____ Date _____
Chief Elected Official or Authorized Representative

Submit original form to: Missouri Department of Economic Development
Recovery Zone Bonds
301 West High Street, P.O. Box 1157
Jefferson City, Missouri 65102

State of Missouri
Recovery Zone Bond Notice of Intent to Issue

Date _____
City or County _____
Street Address _____
Telephone _____ Fax _____
Name of Chief Elected Official _____
Name of Authorized Representative (if applicable) _____

Amount of Original Allocation of **Recovery Zone Economic Development Bonds**: \$ _____
Amount of Recovery Zone Economic Development Bonds to be Issued: \$ _____
Estimated Date of Bond Closing: _____
Issuing Entity, if Other than City or County: _____
Amount of Recovery Zone Economic Development Bonds Waived (use Waiver Form): \$ _____
Remaining Amount of Recovery Zone Economic Development Bonds: \$ _____

(Please attach separate page description of project(s) using RZB. Include a description of activities, beneficiaries and numbers of jobs created or retained.)

Amount of Original Allocation of **Recovery Zone Facility Bonds**: \$ _____
Amount of Recovery Zone Facility Bonds to be Issued: \$ _____
Estimated Date of Bond Closing: _____
Issuing Entity, if Other than City or County: _____
Amount of Recovery Zone Facility Bonds Waived (use Waiver Form): \$ _____
Remaining Amount of Recovery Zone Facility Bond Allocation: \$ _____

(Please attach separate page description of project(s) using RZB. Include a description of activities, beneficiaries and numbers of jobs created or retained.)

I hereby certify that the city/county of _____, as duly authorized by its governing body, intends to issue recovery zone economic development bonds or recovery zone facility bonds, as specified above..

Signature _____ Date _____
Chief Elected Official or Authorized Representative

Submit original form to: Missouri Department of Economic Development
Recovery Zone Bonds
301 West High Street, P.O. Box 1157
Jefferson City, Missouri 65102