



RECOVERY ZONE BONDS

FREQUENTLY ASKED QUESTIONS

[IMPORTANT NOTICE - This document is designed to provide interested persons with certain information relating to Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds under the American Recovery and Reinvestment Tax Act of 2009. This document is provided for informational purposes only and does not constitute legal or other professional advice or opinions on specific facts or matters. Gilmore & Bell assumes no liability in connection with the use of this Form. Anyone using this Form is advised to contact an attorney.]

[If you have any questions regarding this FAQ or how the Recovery Zone Bond allocation is allocated and/or reallocated or ARRA, please contact any Gilmore & Bell attorney in the St. Louis or Kansas City office. If you do not have a regular contact at Gilmore & Bell please contact Nancy Morris in the Kansas City office at nmorris@gilmorebell.com or (816) 218-7542.]

INTRODUCTION

This FAQ discusses generally certain topics of importance to communities relating to Recovery Zone Economic Development Bonds (the taxable, 45% interest subsidy type of recovery zone bonds) and Recovery Zone Facility Bonds (the tax-exempt type of recovery zone bonds) (collectively, “Recovery Zone Bonds”), including: general criteria for establishing a “Recovery Zone” (an area having significant levels of poverty, unemployment, rate of home foreclosure or general distress), the timing and mechanics of designating a Recovery Zone, and making use of an allocation of the national Recovery Zone Bond limitations (the “Allocations”). There are other available standards for designating an area as a Recovery Zone (an existing empowerment zone or renewal community or a finding that the area is economically distressed because of a military base closing or realignment), but these are not likely to be useful to most issuers.

FAQ 1. Can the Recovery Zone include the entire boundaries of the county or municipality that received an Allocation?

Yes, provided that the governing body can, in good faith, state that conditions of significant poverty, unemployment, rate of home foreclosures or general distress exist throughout the county or municipality, but in no event can a Recovery Zone designation extend beyond the geographic boundaries

of the county or municipality. In this regard, it is relevant that the Allocations were made initially to counties and large municipalities (population over 100,000) on the basis of increases in unemployment and that not all counties and large municipalities received a portion of the Allocations. Also, because counties in Missouri, Kansas and Nebraska are fairly small (as opposed to Arizona for example), it should not be very difficult for the governing body to make a determination in good faith that the entire county suffers from significant levels of poverty, unemployment, rate of home foreclosure or general distress. Having said that, these are the criteria and such a finding will be a necessary prerequisite in the vast majority of cases.

FAQ 2. How should the Recovery Zone designation be made?

The designation must be made in writing by the governing body of the county or municipality receiving an Allocation. An ordinance or resolution would seem to be a logical format, but that is a matter of local law and custom. The written document must make a finding that at least one of the factors - “conditions of significant poverty, unemployment, rate of home foreclosures or general distress” - exists throughout the area to be designated as a Recovery Zone.

If the area sought to be designated a Recovery Zone consists of the entire county or municipality, then the finding(s) must relate to the entire county or municipality. This determination should be based on common-sense analysis, taking into account the specific area and historic economic conditions. No detailed data is required to be incorporated as part of the written declaration, but reference to supporting evidence would certainly be helpful if such information is available. Also, there does not appear to be a benchmark level of poverty, unemployment or home foreclosures that must be realized before an area is eligible to be designated a Recovery Zone, and the standard may vary for among counties and municipalities. For example, while Johnson County, Kansas most likely does not qualify as an area of “significant poverty,” it may nonetheless be eligible for designation as a Recovery Zone by reason of recent layoffs at Sprint and other large employers in the area, historically high rates of home foreclosures, business failures, and vacant businesses and commercial developments throughout the entire county. This could be the basis under which the county commission finds that there exists high rates of unemployment and home foreclosures, all of which certainly have caused, and are presently causing, “general distress” throughout Johnson County.

A finding by a county or municipality of significant poverty, unemployment, rate of home foreclosures or general distress should be sufficient if articulated, made in good faith and not erroneous on its face. Available on the Gilmore & Bell website is an example of findings that could be a part of an ordinance or resolution, but we must stress that this sample document should not be prepared as a mere formality; the governing body is required under applicable law to consider specific facts and circumstances and render a rational decision in each case. In addition, while the factors leading to a determination may be similar, there almost assuredly exists unique local situations relevant only to that county or municipality, and reciting these would be helpful to dispel any later concern that the document was adopted as a mere formality. If less than the entire county or municipality is designated as a Recovery Zone, the exact geographic boundaries must be carefully identified in the written declaration, because, for example, Recovery Zone Facility Bonds must be used to finance property used in a business located within the Recovery Zone (this “physical location” requirement does not necessarily apply to Recovery Zone Economic Development Bonds).

FAQ 3. When should the recovery zone designation be made?

The designation need not be made immediately, but must be made at any time before or at the time the bonds are issued. However, costs incurred by a business prior to the time the Recovery Zone designation is made may not be reimbursed with the proceeds of Recovery Zone Facility Bonds, even if

otherwise qualifying as an eligible cost for purposes of the Recovery Zone Facility Bond program. The statute provides that only costs incurred “after the date the Recovery Zone designation took effect” may be financed with Recovery Zone Facility Bond proceeds. No similar limitation applies to Recovery Zone Economic Development Bonds, which are subject to the standard reimbursement rules that apply to ordinary tax-exempt bonds.

FAQ 4. Does making a Recovery Zone designation impact a later decision to transfer an Allocation to another issuer?

Only the entity actually issuing the bonds is required to designate as a Recovery Zone the area where the project is located or to which the project relates, but a previous Recovery Zone designation made by the county or municipality transferring an Allocation to the issuing entity does not affect the issuing entity’s subsequent designation. Therefore, for example, a county could designate the entire county as a Recovery Zone and later transfer an Allocation to an independent city located within the county so that the city could issue Recovery Zone Bonds. However, the city must also make a separate Recovery Zone designation, presumably the boundaries of the entire city, at any time before or at the time the bonds are issued. With respect to Recovery Zone Facility Bonds, the county’s original designation should suffice for purposes of the requirement that the costs incurred and financed by Recovery Zone Facility Bonds must be made after the date the Recovery Zone designation took effect, even if the city is issuing the bonds and makes its Recovery Zone designation at a later date.

FAQ 5. Can a county or municipality use an Allocation to finance a project located outside its geographic boundaries?

Perhaps, but only if the bonds are Recovery Zone Economic Development Bonds, and then only if the financed project relates or is attributable to the Recovery Zone. The feasibility of using Recovery Zone Economic Development Bonds for such a project will necessarily depend on the entirety of facts and circumstances, including the location and type of project and its impact on the Recovery Zone. With respect to Recovery Zone Facility Bonds, the answer appears to be no, because the financed property must be used in a business that is located in the Recovery Zone and a Recovery Zone designation cannot extend beyond the jurisdiction of the county or municipality receiving an Allocation. The only option in this case would be for the county or municipality to waive all or a portion of its Allocation and for the State to reallocate Recovery Zone Bond volume cap to the appropriate public entity for the project.