



To: **Recovery Zone Facility Bond Allocation Recipients;** ESD Regional Office Directors; Industrial Development Authorities; NYS Association of Counties; NY Conference of Mayors & Municipal Officials; Association of Towns of NYS; NYS Economic Development Council

From: Frances Walton, ESDC Senior Vice President & Chief Financial Officer;
Kay Wilkie, ARRA Contact for ESD/NYS Department of Economic Development

Date: December 29, 2009

Subject: Guidance and Timelines for Recovery Zone Facility Bond Issuance, Submission of Waivers and Reallocation Process

We hope that elected officials for counties and municipalities that have received allocations for both types of Recovery Zone Bonds (RZBs), and other interested parties, may find the attached brief helpful for their planning purposes related to RZ Economic Development Bonds and RZ Facility Bonds (*please see Attachment A for additional background, and the attached pdf showing all RZB allocations by the IRS to New York State counties and municipalities*).

As you may be aware, Empire State Development is the duly authorized New York State government entity responsible for providing guidance related to RZBs, particularly with respect to **RZ Facility Bonds**. In order to plan effectively for New York State's RZ Facility Bond usage, we hereby request that those of you representing counties and municipalities having received RZB allocations submit your Issuance Plans for RZ Facility Bonds to Kay Wilkie at ESD's Albany headquarters **no later than January 29, 2010**.

Such **RZ Facility Bond Issuance Plans** should include:

- A brief description of the project(s) to be funded by the RZ Facility Bond (RZFB) allocation, specifying the projected amount(s), outlining the qualifying project(s) purpose, and sponsor contact information.
- A copy of the Recovery Zone Designation Resolution related to the RZFBs.
- A timeline summarizing RZFB project readiness, including all efforts undertaken and approvals secured to date, all planned or pending local actions and approvals (public hearings, SEQRA, etc.), and dates for issuance and for commencing project.

Following submission of the RZFB Issuance Plans by allocation recipients, you are also asked to keep ESD advised of project updates, schedule changes, revisions or deletions.

In the event that you do not intend to use your RZFB allocations, each recipient has the option of immediately waiving allocations *in full or in part*, and assigning such amounts to ESDC for reallocation to other eligible and essential projects throughout New York State. Your full cooperation in this process would be most sincerely appreciated.

Authorized officials of NYS counties and municipalities that wish to waive all or part of RZFB allocations are required to provide a written confirmation of such waiver to ESDC as soon as possible, or no later than March 1, 2010, using the **Waiver Form, (*included as Attachment B, indicating Alternative 1 for full waivers, or Alternative 2 for partial waivers*); to be available on ESDC's website, www.empire.state.ny.us.**

For more information regarding RZBs, RZFB Issuance Plans, and the RZFB reallocation process outlined in this memo, please contact Kay Wilkie at 518-292-5270; kwilkie@empire.state.ny.us. Thank you for your consideration.

New York State Department of Economic Development

30 South Pearl Street Albany New York 12245 Tel 518 292 5100

Web Site: www.empire.state.ny.us

ATTACHMENT A:

The American Recovery and Reinvestment Act (ARRA) passed on 2/17/09 includes a variety of temporary financing programs relevant to economic development projects, including new categories of tax exempt, tax credit and subsidy bonds under "Build America Bonds" and other provisions. Given their enhanced benefits for economically distressed areas, Recovery Zone Bonds merit particular attention, as outlined below:

Recovery Zone Bonds

Program Description: Recovery Zone Bonds (RZBs): are two new types of bonds, designed to provide tax incentives for state and local governments through lower borrowing costs, thereby spurring job creation and economic recovery in distressed areas.

Permitted issuers include municipalities with populations over 100,000 and counties.

Deadline: RZBs must be issued in 2009 and 2010; before January 1, 2011.

"**Recovery Zones**" are defined as: any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; areas that are economically distressed due to closure or realignment of military installations (BRAC), and any areas designated (as of ARRA effective date of 2/17/09) as empowerment zones or renewal communities.

The two types of RZBs have differing purposes as outlined below:

- **Recovery Zone Economic Development Bonds** (*taxable*), for government purpose projects (not available for 501(c)(3) not-for-profit organizations or for private activity purposes) using capital and working capital expenditure to promote development and other economic activity in a recovery zone, such as:

- new money capital expenditures for property located in a recovery zone;
- new money capital expenditures for public infrastructure and construction of public facilities;
- and
- expenditure for job training and educational programs.

Federal Davis-Bacon prevailing wage rules apply to projects.

National Volume cap: \$10 billion.

Tax incentive: the issuer would get a direct federal subsidy of 45% of the interest (an enhancement over the Build America Bond direct subsidy of 35%).

- **Recovery Zone Facility Bonds** (*tax exempt*), designed to support private business and trade activity in recovery zones. Generally, bonds would be issued by the county or municipality and proceeds loaned, or project leased or sold, to a private, for-profit company as the true borrower. Key elements for eligible projects include:

- private use depreciable property, such as equipment and buildings (but not land), whose original use begins with the taxpayer;
- ineligible properties include residential rental properties, golf courses, country clubs, massage parlors, hot tub or suntan facilities, racetracks or gambling facilities or stores primarily selling alcohol;
- the property must be constructed, reconstructed, renovated or acquired after the location is designated as a recovery zone.

Tax incentive: the interest on the bonds is excluded from federal gross income.

To qualify as this type of bond, 95% of the proceeds must be used for recovery zone property.

National Volume cap: \$15 billion.

NYS Total for both RZB

types: \$925,245,000:

\$370,098,000 for Recovery Zone Economic Development Bonds (taxable);

\$555,147,000 for Recovery Zone Facility Bonds (tax exempt)

This pdf link provides detail on the allocations by NYS municipalities and counties, as determined by the Treasury/IRS formula: <http://www.irs.gov/pub/irs-tege/rzbllocalreallocations.pdf>

Obligation Deadline: Bonds must be issued before **January 1, 2011**

Reporting Requirements: IRS reporting (Form 8038-CP) Instructions:

<http://www.irs.gov/pub/irs-pdf/i8038cp.pdf>

Form: <http://www.irs.gov/pub/irs-pdf/f8038cp.pdf>

Federal Agency: Treasury/IRS; www.irs.gov

State Agency: Empire State Development/ NYS Department of Economic Development

State Agency Website: www.empire.state.ny.us

State Agency Technical Contact: Kay Wilkie

Additional Information: <http://www.irs.gov/taxexemptbond/index.html?navmenu=menu1> and

<http://www.irs.gov/taxexemptbond/article/0,,id=206034,00.html>

ATTACHMENT B:

RECOVERY ZONE FACILITY BOND ALLOCATION

WAIVER FORM

The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, added Sections 1400U-1 and 1400U-3 of the Internal Revenue Code of 1986 (the “Code”), authorizing counties and large municipalities to issue recovery zone facility bonds (“RZFBs”). Section 1400U-1(a) of the Code provides that the Secretary of the Treasury shall allocate the national recovery bond limitation among counties and large municipalities pursuant to specific guidelines. Code Section 1400U-1(a)(3)(A) provides in part that a county or large municipality may waive any portion of its limitation.

The Secretary of the Treasury allocated such limitation (an “Allocation”) among counties and large municipalities and set forth substantive guidance on recovery zone bonds in Notice 2009-50 (the “Notice”).

Alternative 1 (to be used in a full waiver situation) [Pursuant to the Notice, [Name of County/City/Town] received an Allocation in the amount of [\$] for RZFBs. As of the date hereof, the [Name of County/City/Town] has not issued RZFBs using such Allocation or otherwise transferred such Allocation to another party authorized to issue such bonds.]

Alternative 2 (to be used in a partial waiver situation) [Pursuant to the Notice, [Name of County/City/Town] received an Allocation in the amount of [\$] for RZFBs. As of the date hereof, the [Name of County/City/Town] has not issued RZFBs in an amount in excess of [\$] using such Allocation or otherwise transferred the remaining portion of such Allocation to another party authorized to issue such bonds.]

As the Authorized Representative of the [Name of County/City/Town], I hereby represent to the Urban Development Corporation (dba Empire State Development Corporation), which is the duly authorized New York State government entity responsible for recovery zone bond reallocations, that the [Name of County/City/Town] will be unable to use all or a portion of its designated Allocation as set forth below.

Pursuant to Code Section 1400U-1(a)(3)(A) and Section 4.05 of the Notice, the [Name of County/City/Town] HEREBY EXPRESSLY, IRREVOCABLY AND AFFIRMATIVELY WAIVES its right to use its Allocation in the amount of \$_____ with respect to RZFBs. In connection with this waiver, the [Name of County/City/Town] acknowledges that ESDC will reallocate such RZFB Allocation to another eligible issuer within the State as it shall determine in its discretion.

Signature of Authorized Government Official for RZFB Allocation Recipient:

Date:

Print: Name _____ Title _____

Contact information: phone (____) _____ email _____