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LAW ALERT: AMERICAN RECOVERY AND REINVESTMENT ACT

ECONOMIC DEVELOPMENT OPPORTUNITIES UNDER ARRA

The American Recovery and Reinvestment Act of 2009 ("ARRA") was signed into law on February 17, 2009 and includes several provisions that may directly benefit economic development and redevelopment efforts in California. Below is a brief summary of provisions in ARRA that may be available to stimulate local economic development and redevelopment.

Build America Bonds

Build America Bonds are a new category of taxable government bonds. Prior to December 31, 2010, a state or local government can issue Build America Bonds in lieu of ordinary tax-exempt government bonds by making an election to designate the issue as Build America Bonds. Build America Bonds may be used only for purposes for which tax-exempt governmental bonds may currently be issued, including the funding of infrastructure, public improvements and public buildings.

The same restrictions that apply to tax-exempt governmental purpose bonds also apply to Build America Bonds (e.g., private-use prohibition and arbitrage), but the bonds are not tax-exempt government bonds; rather, a bondholder is entitled to a tax credit of 35% of the interest paid on the bonds.

Alternatively, the issuer can elect to receive a cash grant directly from the federal government equivalent to the value of the tax credit if the proceeds of the cash grant are used for capital expenditures, funding of reserves, and limited issuance costs.

Recovery Zone Economic Development Bonds

Recovery Zone Economic Development Bonds ("RZ Economic Development Bonds") are a new type of taxable bond that can be used for one or more qualified economic development purposes that promote development and economic activity in a recovery zone. Allowable uses include: expenditures for public infrastructure, construction of public facilities, and expenditures for job training and educational programs. The bonds will be treated similarly to the Build America Bonds, but bond holders will be allowed a tax credit of 45% (instead of the 35% credit applicable to Build America Bonds) of the interest on the bonds.

Alternatively, the issuer can elect to receive a cash grant directly from the federal government equivalent to the value of the 45% tax credit. RZ Economic Development Bonds will be allocated to states based on their share of 2008 employment losses as a percentage of the national average, and sub-allocated to counties and large municipalities that designate an area within their community as a recovery zone based on factors including significant poverty, unemployment, general distress, or high rates of home foreclosures, or any area designated as economically distressed by reason of the closure or realignment of a military installation. RZ Economic Development Bonds must be issued prior to January 1, 2011.

Recovery Zone Facility Development Bonds

Recovery Zone Facility Bonds ("RZ Facility Bonds") are a new type of tax-exempt private activity bond, the proceeds of which can be used to finance property eligible for depreciation, or used for a qualifying business and located within a designated recovery zone. The RZ Facility Bonds have a national volume limit of $15 billion and will be allocated in the same way as RZ Economic Development Bonds. RZ Facility Bonds must be issued prior to January 1, 2011.

Qualified Small Issue Bonds for Manufacturing Facilities

Under current law, tax-exempt private-activity bonds can be issued to improve property used to manufacture tangible personal property. ARRA expands the definition of manufacturing facilities to include facilities used to create intangible property as well, such as patents and copyrights, formulas, processes, designs. The change in definition can potentially help fund the creation of manufacturing facilities for software, pharmaceuticals, and biotechnology companies.

Under ARRA, facilities that are functionally related and subordinate to the manufacturing facility and are located on the same site are treated as manufacturing facilities, and as such, the existing restriction that not more than 25% of net proceeds of the bond issue may be expended for such ancillary facilities does not apply. ARRA's definitions only apply to bonds issued after the date of enactment and prior to January 1, 2011. The Manufacturing Facilities tax-exempt private-activity bonds are subject to the State's volume cap.

New Markets Tax Credits

The existing New Markets Tax Credit ("NMTC") Program provides tax credits to entities that make equity investments in Community Development Entities (CDEs), whose primary purpose is to serve low income communities or low income persons by investing in Qualified Active Low-Income Community Businesses ("QALICB"). CDEs have used NMTC allocations to help finance the development of QALICB's such as, community centers, public schools, theaters, and health care centers, and, to a limited degree, mixed-use housing developments in low income communities.

ARRA increases the annual appropriation for the NMTC Program from $3.5 billion to $5 billion for 2008 and 2009. The increased 2008 appropriation will be allocated to CDEs that submitted an allocation application in 2008 and either did not receive an allocation or received an allocation in an amount less than the amount requested.

For more information, please call Jack Nagle, Luis Rodriguez, Erica Williams Orcharton, Rafael Yaquian, or any Goldfarb & Lipman attorney at 510-836-6336.