

TAX-EXEMPT INDUSTRIAL DEVELOPMENT BONDS

IMPROVEMENTS BY THE AMERICAN RECOVERY AND REINVESTMENT ACT ("ARRA")

The Good News:

ARRA made the following helpful changes for tax-exempt IDBs issued before January 1, 2011:

- Eligible Manufacturing Facilities include property used in the manufacture, creation or production of intangible property. Intangible property ("IP") means any patent, copyright, formula, process, design, pattern, know how, format or other similar item.

Examples:

- Creation of Software.
- R&D Facility.
- IP associated with Biotech and Pharmaceuticals.

This provision should be particularly useful to technology companies for financing equipment.

At least 95% of the bond proceeds must be used to finance depreciable tangible property.

We expect guidance from the IRS shortly.

- Facilities that are functionally related and subordinate to a manufacturing facility are not subject to the normal limitation of 25% of bond net proceeds.
- IDBs will not be subject to the Alternative Minimum Tax.
- **A Bank or other financial institution will be entitled to deduct 80% of the cost of funding for tax exempt securities it purchases up to 2% of its total assets. This will make purchasing IDBs more attractive to Banks and other financial**

institutions. In addition selling IDBs to a Bank could substantially reduce IDB transaction costs

The Bad News:

- IDBs are still limited to \$10 million of tax exempt bonds.
- IDBs are still limited by the \$20 million capital expenditure rules.
- IDBs are still subject to the State level overall cap on Private Activity Bonds; but it does not appear likely that the cap will be a factor for bonds issued in 2009.

If you have any questions about the matters discussed in this memorandum, please contact John Gornall, Andrew Schutt or any member of the Arnall Golden Gregory Economic Department Team.

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