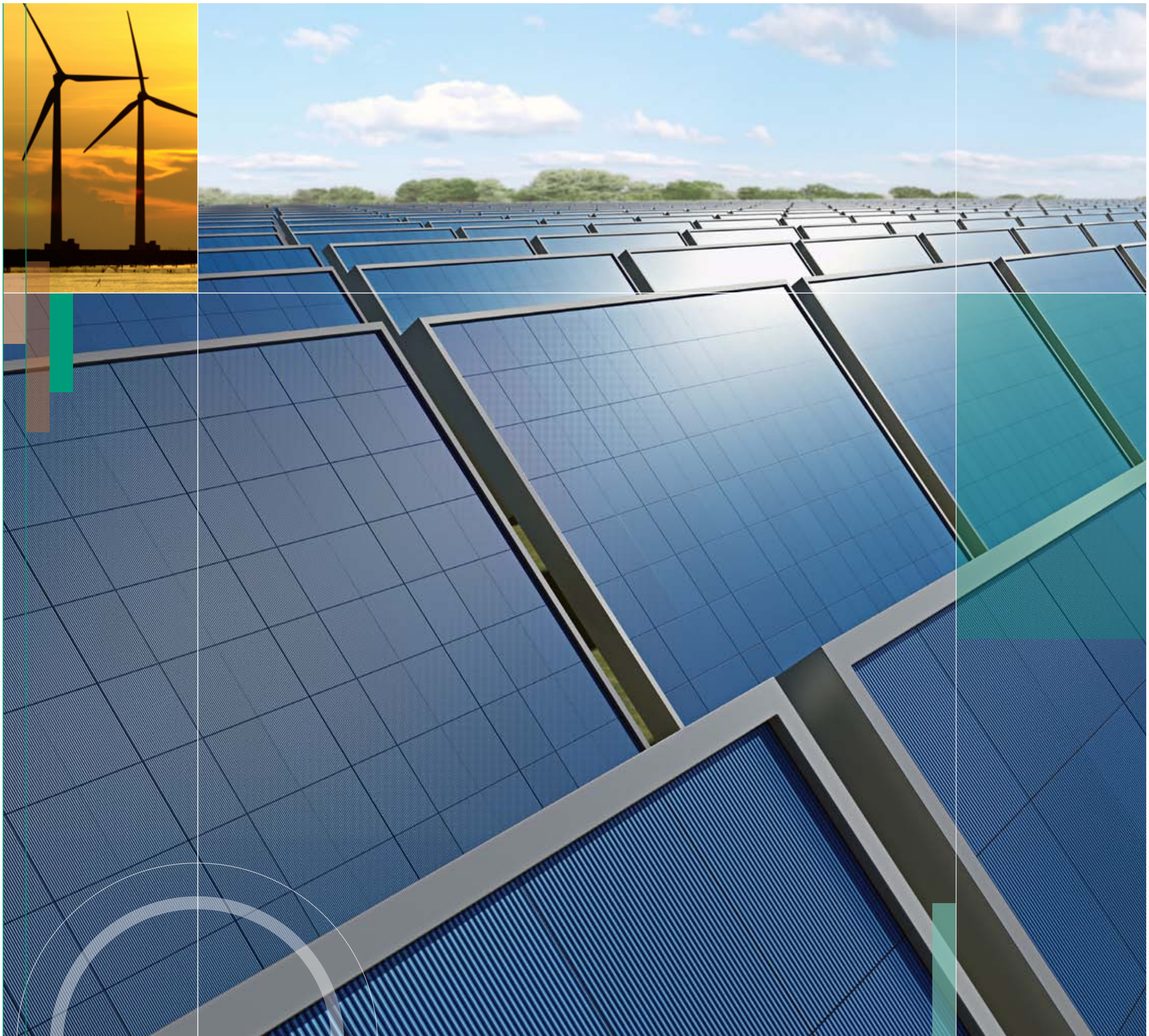


TAX-SUBSIDIZED FINANCING OPTIONS FOR ENERGY PROJECTS AND PROGRAMS

ORRICK

Federal law provides significant opportunities for state and local governments as well as for partnerships and private companies to finance a variety of renewable energy programs and capital projects on a tax-subsidized basis. This brochure will focus on tax-subsidized financing tools available for private sector entities, each of which involves state and local governments or other public bodies in some capacity. The bonds that facilitate such financings include:

- Tax-exempt governmental bonds,
- Tax-exempt qualified private activity bonds,
- Tax credit bonds such as clean renewable energy bonds and qualified energy conservation bonds, a relatively new financing tool substantially expanded by the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"),
- Build America Bonds, a taxable bond created by the Recovery Act that is generating significant interest among state and local governments, and
- Recovery Zone Facility Bonds, a new tax-exempt qualified private activity bond created by the Recovery Act.

Organized in three Parts, this brochure provides a comprehensive overview of tax-subsidized financing options for energy projects and programs through these types of bonds. First, because some readers may not be familiar with tax-subsidized financing, we discuss threshold issues in a question and answer format. Second, to allow you to quickly identify the types of bonds that may be available for a particular type of project, we prepared a "menu" that describes for various categories of facilities and/or activities the types of bonds that may be used, permissible ownership structures, and the level of private sector participation allowed. Finally, we provide a more detailed summary of the various types of bonds.

MEANING OF ACRONYMS USED IN THIS SECTION

PABs	Tax-Exempt Private Activity Bonds
CREBs	Clean Renewable Energy Bonds
QECBs	Qualified Energy Conservation Bonds
BABs	Build America Bonds
RZFBs	Recovery Zone Facility Bonds
Recovery Act	The American Recovery and Reinvestment Act of 2009

PART 1

The following questions and answers are intended to provide a general overview of the threshold issues regarding the municipal market.

Why Should We Consider Tax-Subsidized Financing?

1. Tax-exempt bonds generally offer lower net interest expense than traditional taxable market financing. For qualified projects, tax credit bonds offer even more of a subsidy than tax-exempt bonds. Tax credit bonds such as CREBs and QECBs seek to provide up to a 70% interest subsidy.

2. The municipal market generally imposes less onerous terms and conditions than corporate bonds, bank loans and other conventional lending sources. For example, variable rate and long-term fixed rate debt are both available in the municipal market and the debt is less likely to be accelerated by the lenders for events other than nonpayment default. However, the borrower must be creditworthy enough to induce lenders to buy the bonds, which may be enhanced with project credit, corporate credit, or third-party guarantees.

3. The municipal market is generally more open than the traditional taxable market, but is slightly more complicated and bureaucratic.

4. Recent legislation has created or substantially expanded certain types of bonds that provide the holders with credits against federal income tax instead of tax-exempt interest. These tax credit bonds provide a significant interest subsidy, but applicants must generally receive specific permission from state and local authorities to issue the bonds (generally referred to as "volume cap"), and the market for these new tax credit bonds is not yet well established.

Will Our Project Qualify?

1. With limited exception, proceeds of tax subsidized debt may only be used for capital expenditures.

2. A discussion of the various types of projects that qualify for tax subsidized financing is provided on pages 5 to 7 of this brochure.

What Are Some Differences Between Tax-Exempt Governmental Bonds, PABs, RZFBs, CREBs and QECBs?

1. The rules regarding tax-exempt governmental bonds significantly limit the level of private sector participation with respect to the financed property. These rules are generally referred to as the "Private Use Restrictions." See pages 8 and 9 of this brochure for a description of these limitations.

2. PABs and RZFBs are not subject to the Private Use Restrictions and financed property may be owned, leased and operated by private sector entities, but such bonds may only finance specific types of facilities and property.

3. The Private Use Restrictions do not apply to CREBs, so private sector entities may manage facilities financed with proceeds of CREBs and purchase any output.

4. QECBs may be issued as either "governmental bonds" or as "private activity bonds."

5. Facilities financed with governmental tax-exempt bonds and governmental QECBs may be managed by private sector entities provided such agreements comply with certain IRS "safe harbor management contract" rules (the "IRS Management Contract Rules"). See page 9 of this brochure for a description of the IRS Management Contract Rules.

Are BABs Available for Our Project?

1. BABs are a new form of tax-subsidized bond created by the Recovery Act. BABs are taxable governmental bonds that allow the issuer to choose the form of its tax subsidy—it may elect to receive a direct payment from the U.S. Department of Treasury of 35% of the interest paid on the bonds or, alternatively, it may elect for bondholders to receive a credit against federal income tax of 35% of the interest paid on the bonds.

2. As with tax-exempt governmental bonds, the Private Use Restrictions apply to BABs, so private involvement in projects financed with BABs is limited and any agreements with private sector entities must comply with the IRS Management Contract Rules. See page 9 of this brochure for a description of the IRS Management Contract Rules. In addition, the proceeds of BABs for which the issuer receives the direct federal subsidy must finance new capital expenditures.

Are RZFBs Available for Our Project?

1. RZFBs are a new form of tax-exempt qualified private bond created by the Recovery Act. RZFBs may be issued by counties and large cities and loaned to private parties to finance qualified projects located within a recovery zone. RZFBs must be applied to finance depreciable property the original use of which commences with the taxpayer within a recovery zone.

2. A "recovery zone" includes any area designated by the issuer of the RZFBs as having significant poverty, unemployment, rate of home foreclosures, general distress; any area designated by an 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 any area for which a designation as an empowerment zone or renewal community is in effect as of the effective date of the Recovery Act, which is February 17, 2009.

How Should We Proceed?

1. Contact expert legal counsel to evaluate the eligibility of a specific project for tax subsidized financing. This can usually be done as a preliminary matter without cost.

2. Identify one or more possible state or local governmental issuers and submit an application or proposal for such issuer(s) to issue the bonds. Even though a private company may be obligated to repay the debt, the bonds must be issued by a state or local governmental issuer. Typically, the state or local governmental entity acts as a pure conduit in deals involving private companies by issuing the debt, loaning the proceeds to the private company, and using loan repayments made by the private company to repay the debt.

3. If necessary, apply for an allocation of "volume cap" to allow the issuance of the bonds. In some cases, allocation authority resides with a state and in other cases it is provided directly by the Internal Revenue Service.

4. Find an underwriter or placement agent to sell or place the debt or a lender to buy the debt.

PART 2

Renewable Energy Generation Facilities

- Wind Energy
- Open Loop Biomass
- Solar Energy
- Landfill Gas
- Trash Combustion
- Marine and Hydrokinetic Energy
- Closed Loop Biomass
- Geothermal Energy
- Small Irrigation Power Facilities
- Qualified Hydropower Facilities

PERMITTED OWNER	PERMITTED PRIVATE SECTOR INVOLVEMENT	TYPE OF BOND
Governmental	Purchase of output, Management of facility	CREBs
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Tax-exempt governmental bonds or BABs
Private	Unlimited	Private activity QECBs

Funding of Research Facilities and Research Grants to Support Research in the Following Areas

- Development of cellulosic ethanol or non-fossil fuels
- Technologies for the capture and sequestration of carbon dioxide
- Increasing the efficiency of existing technologies for producing non-fossil fuels
- Automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation
- Technologies to reduce energy use in buildings

PERMITTED OWNER	PERMITTED PRIVATE SECTOR INVOLVEMENT	TYPE OF BOND
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Governmental QECBs
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Tax-exempt governmental bonds or BABs
Private	Ownership, lease or operation permitted, provided all expenditures are capital in nature	Private activity QECBs and RZFBs

Demonstration Projects Designed to Promote Commercialization of the Following Types of Projects

- Green building technology
- Conservation of agricultural waste for use in the production of fuel or otherwise
- Advanced battery manufacturing technologies
- Technologies to reduce peak use of electricity
- Technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity

PERMITTED OWNER	PERMITTED PRIVATE SECTOR INVOLVEMENT	TYPE OF BOND
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Governmental QECBs
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Tax-exempt governmental bonds or BABs
Private	Ownership, lease or operation permitted, provided all expenditures are capital in nature	Private activity QECBs and RZFBs

Mass Commuting Vehicles

- Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting

PERMITTED OWNER	PERMITTED PRIVATE SECTOR INVOLVEMENT	TYPE OF BOND
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Tax-exempt governmental bonds or BABs
Private	Ownership, lease or operation permitted, provided all expenditures are capital in nature	Private activity QECBs

Green Community Programs

Green community programs may include state and local government programs to finance retrofits to reduce energy consumption of existing privately owned buildings and individual homeowners through loans, grants or other prepayment mechanisms.

PERMITTED OWNER	PERMITTED PRIVATE SECTOR INVOLVEMENT	TYPE OF BOND
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Governmental QECBs
Private	Ownership, lease or operation permitted, provided all expenditures are capital in nature	Private activity QECBs
Private	Ownership, lease or operation permitted, provided that financing is in the form of governmental grants to finance capital expenditures	Tax-exempt governmental bonds or BABs

Solid Waste-to-Energy, Sewage Facilities, Water Facilities and Local District Heating or Cooling Facilities

- Solid Waste-to-Energy
- Sewage Facilities
- Water Facilities
- Local District Heating or Cooling Facilities

PERMITTED OWNER	PERMITTED PRIVATE SECTOR INVOLVEMENT	TYPE OF BOND
Private	Ownership, lease or operation permitted, provided all expenditures are capital in nature	PABs and RZFBs
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Tax-exempt governmental bonds or BABs

Financing Energy Assets for State and Local Government Utilities

- Generation
- Transmission
- Distribution
- Prepayments for Natural Gas
- Prepayments for Electricity

PERMITTED OWNER	PERMITTED PRIVATE SECTOR INVOLVEMENT	TYPE OF BOND
Governmental	Limited, subject to IRS Management Contract Rules and Private Use Restrictions	Tax-exempt governmental bonds or BABs, however, it is not currently clear whether BABs can be used for prepayments

Manufacturing and Production Facilities

- Facilities for the manufacturing of solar panels
- Facilities for the manufacturing of wind turbines
- For years 2009 and 2010, small issue industrial development bonds may finance facilities used in the creation or production of intangible property, including patents, copyrights, formulas, processes, designs, know-how and other similar items

PERMITTED OWNER	PERMITTED PRIVATE SECTOR INVOLVEMENT	TYPE OF BOND
Private	Ownership, lease or operation permitted, provided all expenditures are capital in nature	PABs (in the form of small issue industrial development bonds), and RZFBs

PART 3

Tax-Exempt Governmental Bonds

PERMITTED ISSUERS

- All types of state and local governments may issue bonds to finance energy generation, transmission and distribution assets
- Only municipal utilities may issue bonds for prepayments for natural gas and electricity

ELIGIBLE PROJECTS

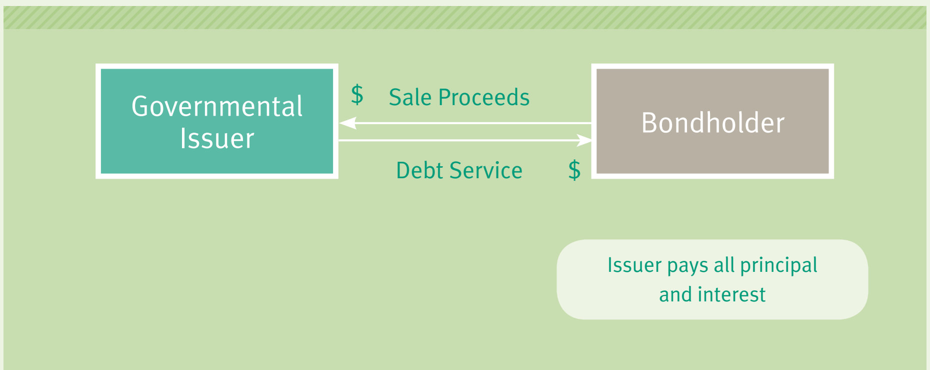
- Governmental purpose projects for generation of electricity as well as transmission and distribution assets for electricity and natural gas
- Prepayments for natural gas
- Prepayments for electricity

PRIVATE INVOLVEMENT

- Subject to Private Use Restrictions
- Subject to IRS Management Contract Rules

VOLUME CAP LIMITATION

- None



General Rules

Interest on tax-exempt governmental bonds is generally excluded from gross income for federal income tax purposes if the proceeds of the bonds are used to finance direct activities of governmental units or if the bonds are repaid with revenues of the governmental units.

Present law provides two primary tests, the Private Business Tests (defined below) and the Private Loan Test (defined below), for determining whether a governmental bond is in substance a taxable private activity bond.

Private Use Restrictions

Private business use of bond-financed assets includes the direct use of such assets by a private business (including the federal government), as well as the purchase of output which occurs pursuant to terms not generally available to members of the general public. For example, the sale of output by a government utility to an investor-owned utility pursuant to a take or take or pay contract will generally constitute private business use.

Generally, no more than the lesser of 10% or $15 million of the proceeds of a governmental bond issue may be used by a non-governmental person (the “Private Business Use Test”) if more than 10% of the debt service on the bond issue is secured by an interest in

property to be used for a private business or to be derived from payments in respect of such property (the "Private Payment Test," together with the Private Business Use Test, the "Private Business Tests"). Furthermore, with respect to energy output facilities, no project may have more than $15 million private use or private payments.

A governmental bond is a taxable private activity bond if an amount exceeding the lesser of 5% of the proceeds of the issue or $5 million is used to make a loan to a non-governmental person (the "Private Loan Test"). The Private Business Tests and the Private Loan Test are referred to collectively as the "Private Use Restrictions."

IRS Management Contract Rules

Generally, the management of property financed by a governmental bond issue by a non-governmental person will meet the Private Business Tests unless the contract satisfies one or more of the specific contract terms described within the IRS "safe harbor" management contract guidelines (the "IRS Management Contract Rules").

These guidelines generally limit the term and compensation of a non-governmental manager of bond financed property. For example, for bond-financed property with an economic life of 20 years or more, a management contract may have a duration of up to 15 years provided that at least 95% of the compensation consists of a periodic fixed fee. Alternatively, 50% of the compensation can be variable if the term of the contract does not exceed 5 years.

Financing Generation, Transmission and Distribution Assets

State and local governments may issue tax-exempt bonds to finance their generation, transmission and distribution facilities for electricity and natural gas.

Prepayments for Natural Gas and Electricity by Municipal Utilities

REGULATORY PREPAYMENTS

Existing Treasury Regulations generally provide that a municipal utility may finance a prepayment for natural gas and electricity (these transactions are sometime referred to as "Regulatory Prepayments").

Regulatory Prepayments may be made for natural gas if at least 90 percent of the natural gas financed by the bond issue is used for a "qualifying use." Natural gas is used for a qualifying use if it is to be:

- Furnished to retail customers of the issuing municipal utility who are located in the natural gas service area of the issuing municipal utility;
- Used by the issuing municipal utility to produce electricity that will be furnished to retail electric customers of the issuing municipal utility who are located in the electricity service area of the issuing municipal utility;
- Used by the issuing municipal utility to produce electricity that will be sold to a utility that is owned by a governmental person and furnished to retail electric customers of the purchaser who are located in the electricity area of the purchaser;
- Sold to a municipal utility and applied as set forth above, treating the purchaser as the issuing municipal utility; and
- Used to fuel the pipeline transportation of the prepaid gas supply acquired in accordance with the above.

Regulatory Prepayments may also be made for electricity if at least 90 percent of the electricity financed by the bond issue is used for a "qualifying use." Electricity is used for a qualifying use if it is to be:

- Furnished to retail electric customers of the issuing municipal utility which are located in the electric service area of the issuing municipal utility, or
- Sold to a municipal utility and furnished to retail electric customers of the purchaser which are located in the electric service area of the purchaser.

In addition to the 90 percent use requirement noted above, the Private Use Restrictions apply to Regulatory Prepayments.

CODE PREPAYMENTS

In addition to the regulatory prepayment structure noted above, the Internal Revenue Code provides a separate prepayment structure for financing "a qualified natural gas supply contract" (these transactions are sometimes referred to as "Code Prepayments"). Generally, a qualified natural gas supply contract means any contract to acquire natural gas for resale by a municipal utility if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of:

- The annual average amount during the "testing period" of natural gas purchased (other than for resale) by retail customers of such utility who are located within the service area of such utility, and
- The amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

For purposes of determining the annual average amount, natural gas used to generate electricity by a municipal utility is counted as retail natural gas consumption if the electricity was sold to retail customers within the service area of the municipal electric utility. The testing period is the 5 calendar year period immediately preceding the calendar year in which the bonds are issued.

In addition to satisfying the sizing requirements imposed by annual average testing period noted above, the Private Use Restrictions apply to Code Prepayments.

Build America Bonds (BABs)

PERMITTED ISSUERS

- All types of state and local government issuers

ELIGIBLE PROJECTS

- Governmental purpose projects

KEY ELEMENTS

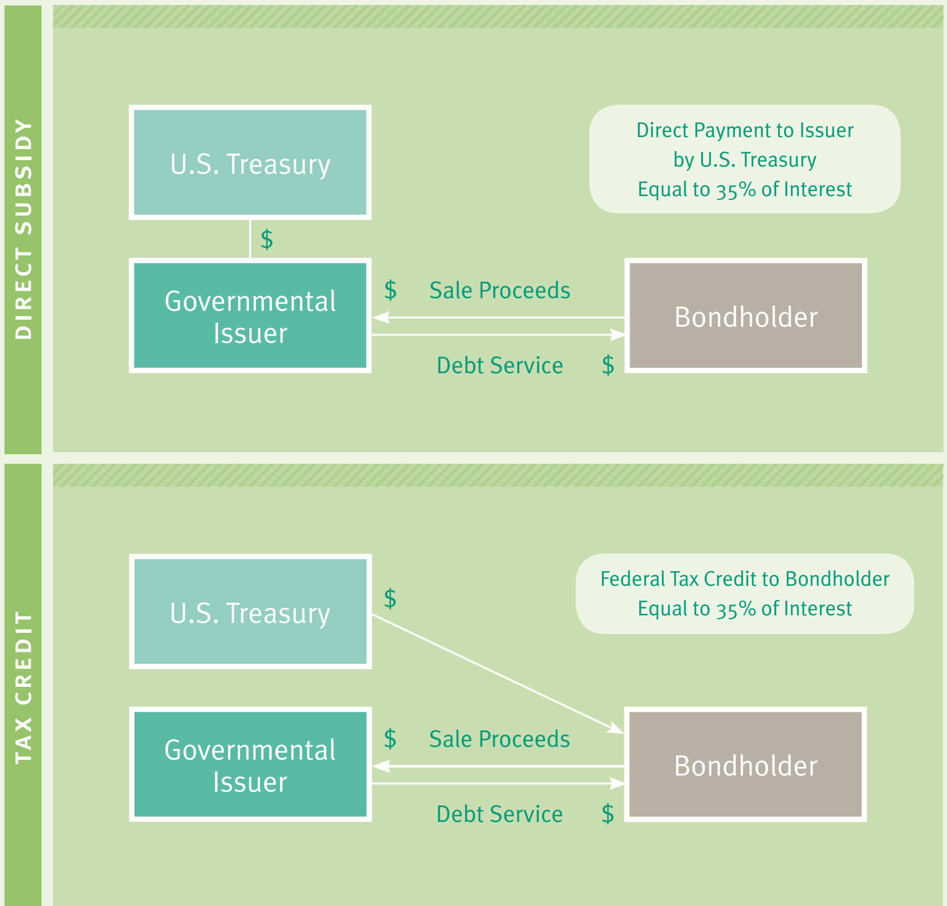
- BABs may only be issued in 2009 and 2010
- A “taxable” bond that at the election of the issuer provides: (i) a 35% direct federal interest subsidy to the issuer, or (ii) a 35% federal tax credit to bondholders

PRIVATE INVOLVEMENT

- Subject to Private Use Restrictions
- Subject to IRS Management Contract Rules

VOLUME CAP LIMITATION

- None



General Rules

State and local government issuers may elect to treat any bonds issued in 2009 and 2010 as BABs provided that such bonds: (1) are governmental bonds rather than private activity bonds, (2) would otherwise be eligible for tax-exempt financing (as tax-exempt governmental bonds) under existing law, and (3) are issued with no more than a de minimis amount of original issue premium. The most notable feature of BABs is that issuers may elect to receive a direct federal cash subsidy with respect to certain BABs (“Subsidy BABs”) in lieu of providing bondholders with tax credits (“Credit BABs”).

Unlike traditional tax-exempt bonds, BABs bear taxable interest for the holder. However, the federal government provides a tax benefit to issuers of BABs through a direct cash subsidy (with Subsidy BABs) or to holders of BABs with a credit against Federal income tax (with Credit BABs). While any tax-exempt, governmental obligation without excess original issue premium may be issued as a BAB, only certain BABs are eligible to be Subsidy BABs. In order for an issuer to elect to treat a BAB as a Subsidy BAB, 100% of the sale proceeds of a BAB must be used for (1) capital expenditures, (2) costs of issuance not exceeding 2% of the issue price, and (3) a reasonably required debt service reserve fund. Thus, neither refundings nor working capital financings are eligible to be issued as Subsidy BABs, while both types of financings may be done as Credit BABs.

Subsidy BABs

If a BAB is issued as a Subsidy BAB, issuers will receive, on or about each interest payment date, a cash subsidy from the federal government equal to 35% of the interest payable on the BAB.

Credit BABs

If a BAB is issued as a Credit BAB, on each interest payment date, bondholders will receive a tax credit equal to 35% of each interest payment payable on such date. The credit is non-refundable, but the unused portion may be carried forward to successive years. As with most tax-credit bonds, other recent tax law changes now permit the credit portion to be “stripped” from the bonds. This mechanism may afford issuers to market Credit BABs to a broader group of investors.

Traditional Tax-Exempt Bond Rules Apply to BABs

Failure of a BAB to satisfy the Private Use Restrictions described on pages 8 and 9 will result in retroactive loss of BAB status, tax credits or the alternative cash subsidy.

Clean Renewable Energy Bonds (CREBs)

PERMITTED ISSUERS

- All types of State and local government issuers
- A Public Power Provider
- A Cooperative Electric Company
- A Clean Renewable Energy Bond Lender
- A Not-For-Profit Electric Utility which has received a loan or loan guarantee under the Rural Electrification Act
- Indian Tribal Governments

ELIGIBLE PROJECTS

- A broad range of renewable generation facilities described in Part 2

KEY ELEMENTS

- A "tax-credit bond" designed to provide the issuer with an interest subsidy
- Bondholders are provided federal tax credits equal to 70% of the interest on the bonds, and the balance of any interest is paid by the issuer
- The project must be owned by a: (i) public power provider, (ii) State or local government or (iii) cooperative electric company
- Federal Davis-Bacon prevailing wage rules apply to projects financed with proceeds of such bonds

PRIVATE INVOLVEMENT

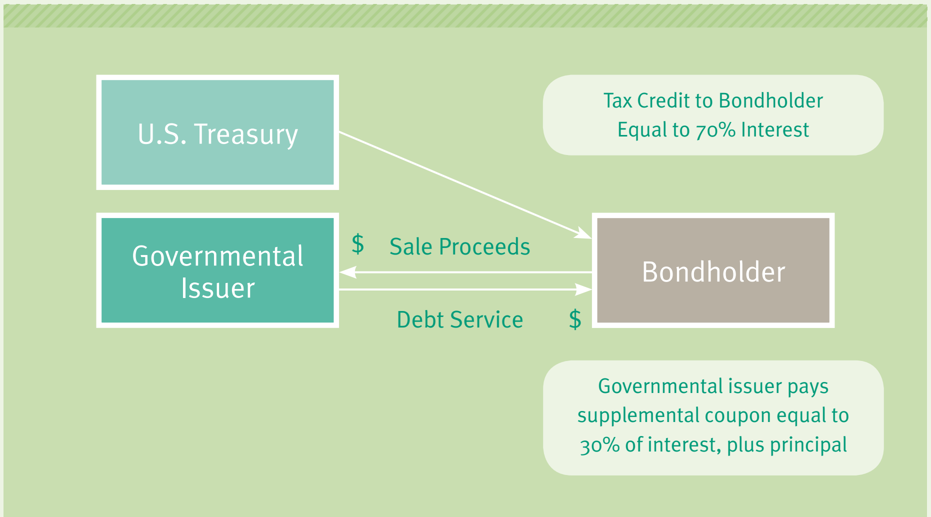
- Purchase of output
- Management of Facility not subject to IRS Management Contract Rules

VOLUME CAP LIMITATION

- Subject to volume cap rules
- Current nationwide cap is $2.4 billion
- Eligible issuers apply to the IRS directly to get a volume cap allocation

APPLICATION PROCESS

- IRS Notice 2009-33 contains the most recent update on the CREB program including an application form



CREBs Are Tax-Credit Bonds

Unlike bonds that bear interest that is exempt from federal gross income tax, tax-credit bonds pay the holder a federal tax credit in lieu of interest. With tax-credit bonds, the federal government is directly providing the subsidy to the bondholder rather than the issuer paying the bondholder interest. The amount of the tax credit is determined by multiplying the bond's "credit rate" by the face amount of the holder's bond. The credit rate is determined by the Treasury Department on the date the bonds are sold. In the case of CREBs, the credit rate is set at a rate which is intended to approximate 70% of the interest on the bonds. In order to sell the bonds at par (or close to par) the issuer is expected to pay a supplemental coupon for the balance of the interest. The tax credit accrues quarterly and is includible in gross income (as if it were a regular interest payment on a bond), and it can be claimed against regular income tax liability and the alternative minimum tax liability. Under existing guidance CREBs are structured as "bullet" maturity bonds, with the Treasury Department establishing the maximum maturity, which is typically between 14 and 15 years.

Use of Bond Proceeds

Issuers must spend 100% of the bond proceeds on eligible capital costs (with an allowance of up to 2% for costs of issuance) within 3 years from issue date. Proceeds for this purpose includes investment earnings. Any proceeds remaining after 3 years must be used to redeem bonds, unless an extension is obtained from the IRS.

Eligible Issuers

CREBs may be issued by a public power provider, a cooperative electric company, a governmental body, a clean renewable energy lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

For purposes of determining issuer eligibility, the above terms have the following meaning:

- "Public power provider" means a state utility with a Service Obligation (as such terms are defined in Section 217 of the Federal Power Act);
- "Cooperative electric company" means a mutual or cooperative electric company described in Internal Revenue Code Sections 501(c)(12) or 1381(a)(2)(C);
- "Governmental body" means any state, any political subdivision thereof or an Indian tribal government; and
- "Clean renewable energy bond lender" means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

Ownership of CREB Facilities

Facilities financed with CREBs must be owned by a public power provider, a governmental body or a cooperative electric company.

No Private Use Limits

Unlike with tax-exempt governmental bonds and BABs, the Private Use Restrictions do not apply to CREBs. Therefore, a facility financed with CREBs can be managed by a private sector entity and the output of the facility can be purchased by a private sector entity (provided such arrangements do not transfer tax ownership of the bond financed facility).

Ability to Earn and Retain Arbitrage

Issuers are allowed to invest proceeds of CREBs for 3 years after issuance at an unrestricted yield and, provided that 100% of project proceeds are spent on qualified costs within that time frame, none of the earnings are subject to arbitrage rebate.

In addition to arbitrage relief noted above, issuers of CREBs are allowed to set aside monies to repay the bonds which may be invested at a favorable interest rate established by the Treasury Department, provided that the issuer does not contribute more to the fund than is necessary to repay the bonds, and contributes to the fund no more rapidly than in equal annual installments. Under this provision, an issuer is able to effectively "arbitrage" a sinking fund in order to have adequate funds on the maturity date to pay off the principal of the bonds.

Tax Credit Stripping

The tax credits may be "stripped" from the bonds, meaning that the holder of the tax credit with respect to the bond may be a different party from the holder of the bond itself. It is expected that this feature will make CREBs more attractive to the marketplace and allow issuers to better tailor these offerings to satisfy buy-side interest.

Allocation of Volume Cap and the Allocation Process

To obtain an allocation, an eligible issuer must submit an application to the IRS in the form provided in Notice 2009-33 describing the project and the amount of volume cap requested. An allocation of authority to issue CREBs is valid for 3 years after the IRS issues the letter granting the allocation.

The amount of volume cap for CREBs, currently $2.4 billion, will be allocated one-third to each of public power providers, governmental bodies, and cooperative electric companies. The allocation of volume cap to governmental bodies and cooperative electric companies will provide priority to the smallest projects. For this two-thirds of volume cap, the project requesting the smallest dollar amount of allocation will be approved, then the project requesting the next smallest dollar amount of allocation will be approved, and so on until the entire $800 million for governmental bodies and the entire $800 million for cooperative electric companies is awarded. On the other hand, the volume cap allocation for public power providers will be allocated on a pro rata basis. Each approved public power provider project will receive an allocation equal to the ratio that the cost of the project bears to the total cost of all approved projects.

Qualified Energy Conservation Bonds (QECBs)

PERMITTED ISSUERS

- All types of state and local government issuers

ELIGIBLE PROJECTS

- A broad array of "green" expenditures described in Part 2

KEY ELEMENTS

- A "tax-credit bond" designed to provide the issuer with an interest subsidy
- Bondholders are provided a federal tax credit equal to 70% of the interest on the bonds, and the balance of any interest is paid by the issuer
- 70% of each state's volume cap allocation may be used for governmental purpose bonds
- No more than 30% of each state's volume cap allocation may be used for private activity bond purposes
- Federal Davis-Bacon prevailing wage rules apply to projects financed with proceeds of such bonds

GOVERNMENTAL PURPOSE QECBS

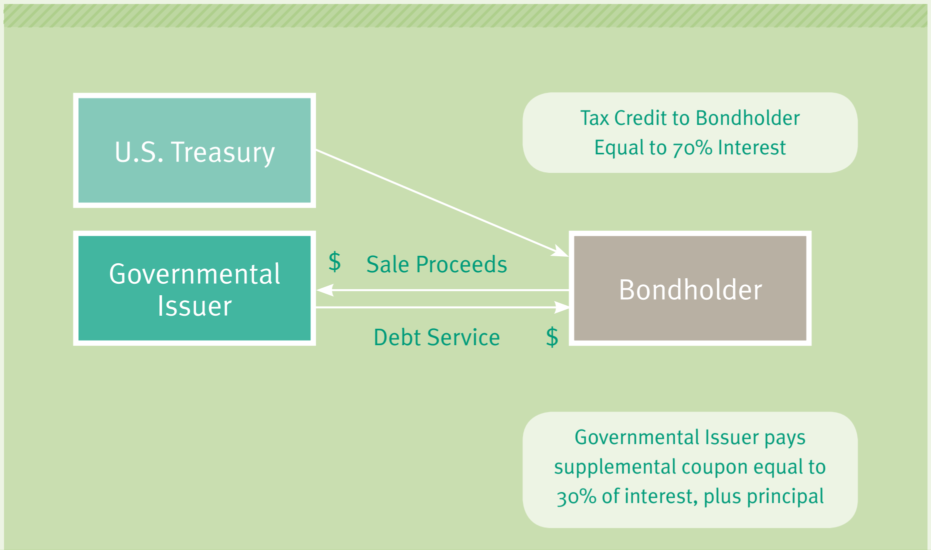
- Subject to Private Use Restrictions
- Subject to IRS Management Contract Rules

VOLUME CAP LIMITATION

- Subject to volume cap rules
- Current nationwide cap is $3.2 billion
- IRS Notice 2009-29 contains the most recent volume cap allocations for states
- See page 18 for each state's volume cap allocation

PRIVATE ACTIVITY QCEBS

- Private ownership, lease or operation permitted, provided all expenditures are capital in nature



QECBs Are Tax-Credit Bonds

Unlike bonds that bear interest that is exempt from Federal gross income tax, tax-credit bonds pay the holder a federal tax credit in lieu of interest. With tax-credit bonds, the federal government is directly providing the subsidy to the bondholder rather than the issuer paying the bondholder interest. The amount of the tax credit is determined by multiplying the bond's "credit rate" by the face amount of the holder's bond. The credit rate is determined by the Treasury Department on the date the bonds are sold. In the case of QECBs, the credit rate is set at a rate which is intended to approximate 70% of the interest on the bonds. In order to sell the bonds at par (or close to par) the issuer is expected to pay a supplemental coupon for the balance of the interest. The tax credit accrues quarterly and is includible in gross income (as if it were a regular interest payment on a bond), and it can be claimed against regular income tax liability and the alternative minimum tax liability. Under existing guidance QECBs are structured as "bullet" maturity bonds, with the Treasury Department establishing the maximum maturity, which is typically between 14 and 15 years.

Use of Bond Proceeds

Issuers must spend 100% of the bond proceeds on project costs (with an allowance of up to 2% for costs of issuance) within 3 years from issue date. Proceeds for this purpose includes investment earnings. Any proceeds remaining after 3 years must be used to redeem bonds, unless an extension is obtained from the IRS.

Governmental Purpose QECBs

Unlike CREBs (see page 13), governmental purpose QECBs are subject to the Private Use Restrictions.

Private Activity QECBs

Up to 30% of a state's QECB volume cap authority can be used for private activity bonds (i.e., such projects are not subject to the Private Use Restrictions). For example, up to 30% of a state's allocation can be applied to finance eligible projects owned and operated by a private business. Unlike governmental purpose QECBs, the proceeds of private activity QECBs must be applied to finance capital expenditures.

Ability to Earn and Retain Arbitrage

Issuers are allowed to invest proceeds of QECBs for 3 years after issuance at an unrestricted yield and, provided that 100% of project proceeds are spent on qualified costs within that time frame, none of the earnings are subject to arbitrage rebate.

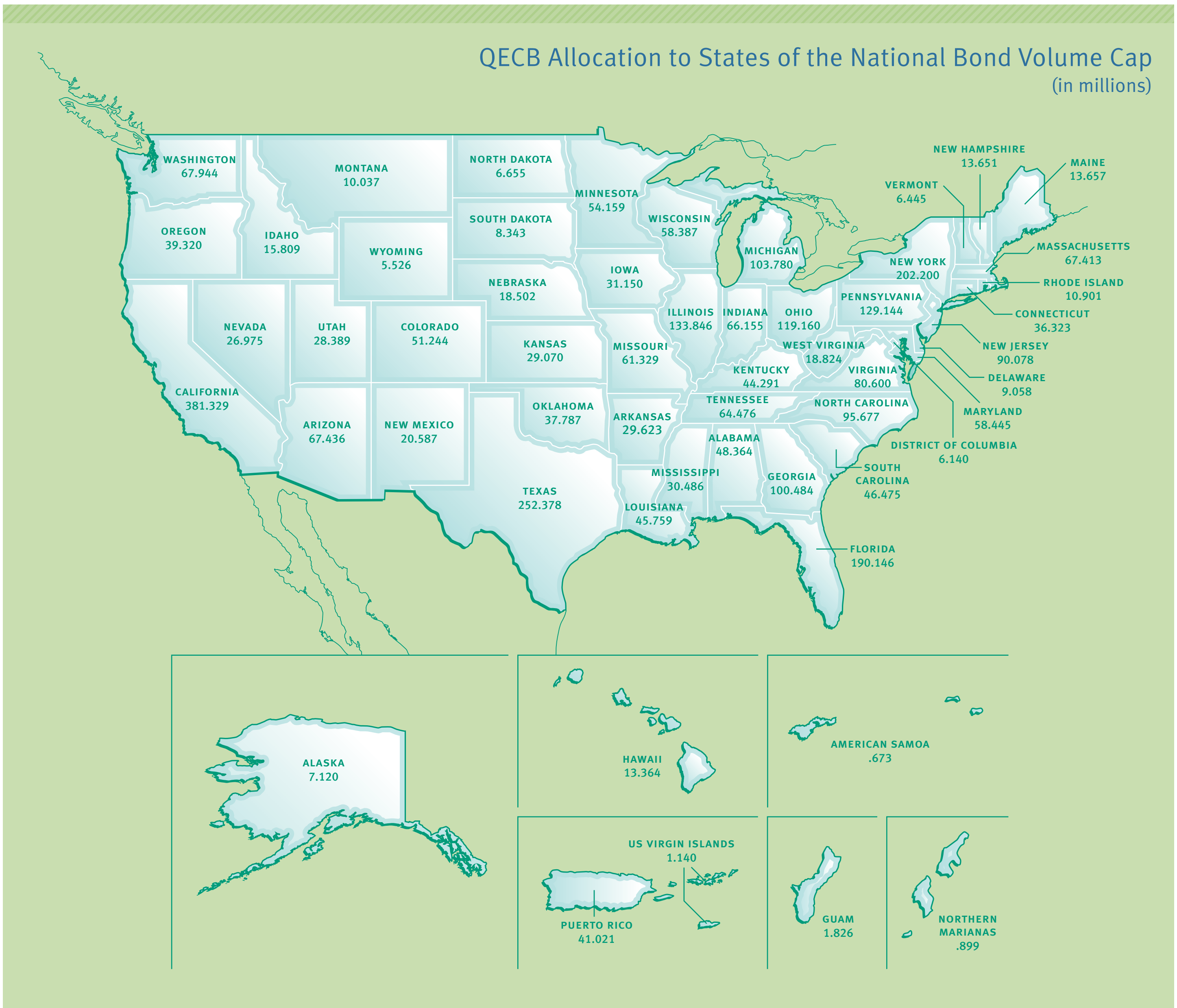
In addition to the arbitrage relief noted above, issuers of QECBs are allowed to set aside monies to repay the bonds which may be invested at a favorable interest rate established by the Treasury Department, provided that the issuer does not contribute more to the fund than is necessary to repay the bonds, and contributes to the fund no more rapidly than in equal annual installments. Under this provision, an issuer is able to effectively "arbitrage" a sinking fund in order to have adequate funds on the maturity date to pay off the principal of the bonds.

Tax Credit Stripping

The tax credits may be "stripped" from the bonds, meaning that the holder of the tax credit with respect to the bond may be a different party from the holder of the bond itself. It is expected that this feature will make QECBs more attractive to the marketplace and allow issuers to better tailor these offerings to satisfy buy-side interest.

Allocation of Volume Cap

States are allocated volume cap for QECBs according to population. IRS Notice 2009-29 provides each state's volume cap allocation.



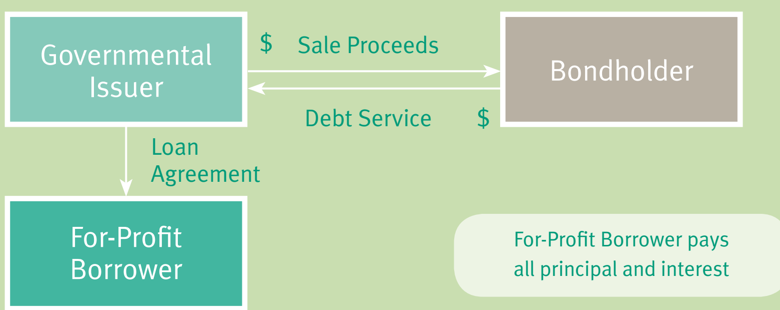
Tax-Exempt Private Activity Bonds (PABs)

PERMITTED ISSUERS
- All types of state and local government issuers

ELIGIBLE PROJECTS
- Sewage Facilities
- Solid Waste-to-Energy Facilities
- Water Facilities
- Local District Heating or Cooling Facilities

KEY ELEMENTS
- Not subject to Private Use Restrictions
- Private ownership, lease or operation permitted, provided all expenditures are capital in nature

VOLUME CAP LIMITATION
- All eligible projects are required to have a volume cap allocation with the exception of Solid Waste-to-Energy Facilities, if such facility is owned by a governmental unit



Use of Bond Proceeds
Under applicable rules, 95% of the proceeds of the bond issue must be applied to finance eligible capital expenditures.

Sewage Facilities
Generally, sewage facilities are defined as facilities for the secondary treatment of wastewater or as facilities that provide other levels of treatment in connection with a secondary treatment process. Also, sewage may be converted to biosolids and then to energy.

Solid Waste-to-Energy Facilities
Solid waste-to-energy facilities generally mean any property or portion thereof used for the collection, storage, treatment, utilization, processing or final disposition of solid waste. Under current regulations, solid waste is solid material that has no value at the place it is located when it is obtained by the user of the bond proceeds (i.e., the material can not be paid for). Only expenditures for that portion of property which is a solid waste disposal facility qualify for tax-exempt financing. Facilities which are governmentally owned, do not require a volume cap allocation. In such cases, the private operator may enter into a "safe harbor lease" (or operating agreement) for the use of the facility. Property leased by a governmental unit to a private lessee shall be treated as owned by the governmental unit provided the following requirements are satisfied:

- The lessee makes an irrevocable election (binding on all successors) not to claim depreciation or an investment tax credit with respect to such property,
- The lease term is not more than 80% of the reasonably expected life of the property, and
- The lessee has no option to purchase the property other than at fair market value (as of the time the option is exercised)

Water Facilities

Water facilities generally means facilities for the furnishing of water to members of the general public and the rates for the furnishing or sale of the water have been approved by a municipal entity or public utility commission.

Local District Heating and Cooling Facilities

A local district heating or cooling facility generally includes property that provides hot or chilled water or steam to two or more users for process steam or for residential, commercial, or industrial heating or cooling as part of a local system. A "local system" for this purpose includes facilities furnishing heating or cooling to an area consisting of the limited geographic area of a city and one contiguous county.

Recovery Zone Facility Bonds (RZFBs)

PERMITTED ISSUERS

- Cities with a population of over 100,000 and counties

PERMITTED BORROWERS

- For-profit private companies

ELIGIBLE PROJECTS

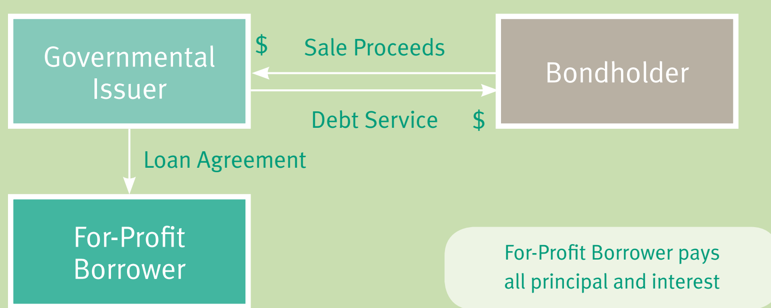
- Private use depreciable property (i.e., equipment, buildings) the original use of which commences with the taxpayer in the recovery zone

KEY ELEMENTS

- The bond-financed property may be privately owned and operated for purposes not limited to those of traditional exempt facility or small issue private activity tax-exempt bonds
- The property must be constructed, reconstructed, renovated or acquired after the area is designated a recovery zone

VOLUME CAP LIMITATION

- $15 billion as provided in IRS Notice 2009-50
- See page 22 for each state's volume cap allocation



Basic Rules

The Recovery Act creates a new tax-exempt qualified private activity bond, known as Recovery Zone Facility Bonds ("RZFBs"), to support trades or businesses in areas suffering from economic distress, and generally provides $15 billion of authority for counties and large cities to issue such bonds. Typically, the bonds would be issued by the city or county and proceeds loaned (or the project leased or sold) to a for-profit company as the true borrower and real party in interest. To qualify as an RZFB, a bond must be designated as such by a governmental issuer and be issued by December 31, 2010, and 95% of the proceeds must be used for recovery zone property.

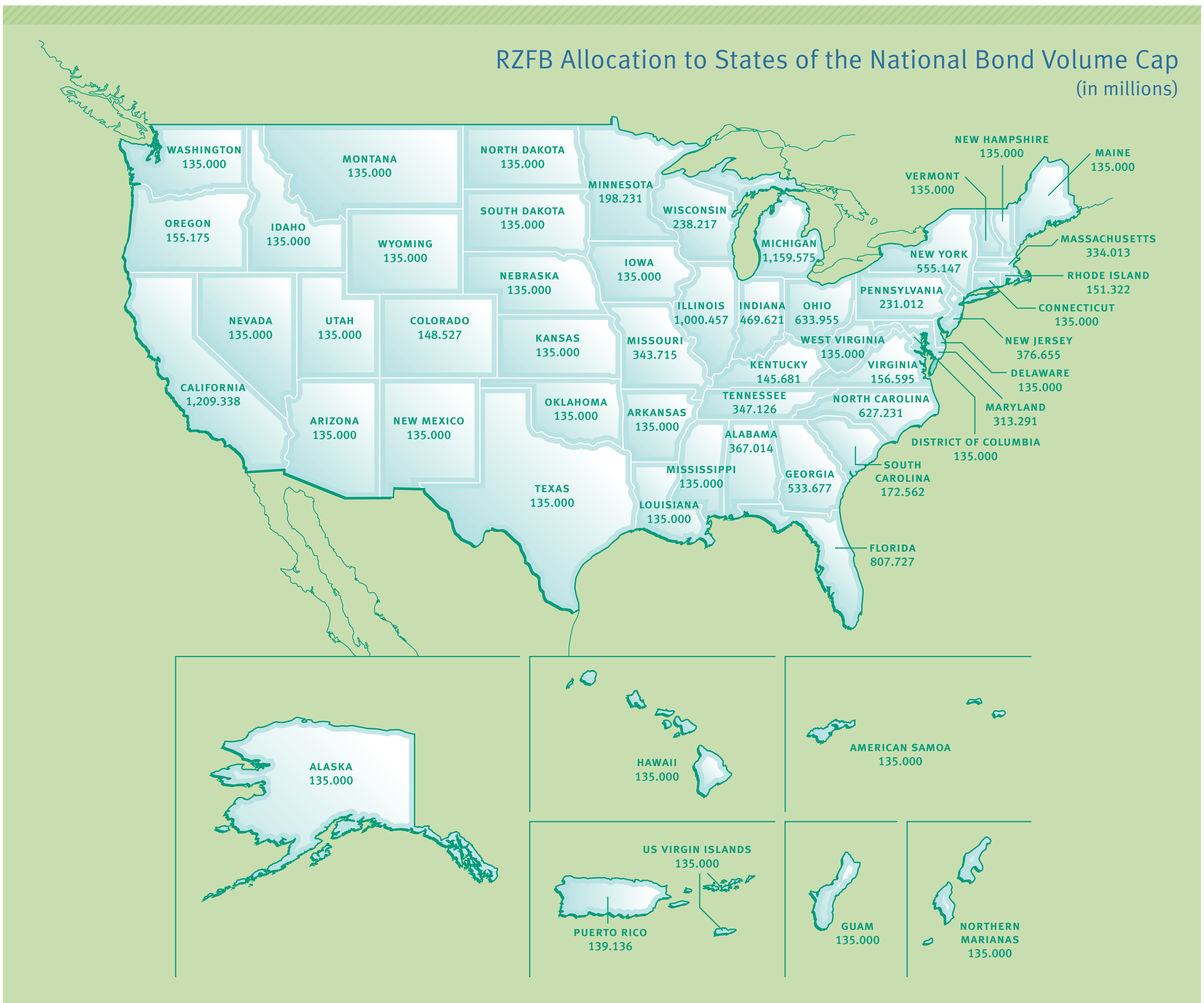
The proceeds of RZFBs may be used by taxpayers engaged in certain types of businesses in recovery zones to finance depreciable property the original use of which commences in the recovery zone with the taxpayer. Land may not be financed with such bonds, because it is not depreciable. Substantially all of the use of the property must occur in the recovery zone, and the property must be constructed, reconstructed, renovated or acquired by the taxpayer after the area is designated as a recovery zone. Generally, any capital asset used in any trade or business will qualify for financing except residential rental property, golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetracks or other gambling facilities, or stores that principally sell alcoholic beverages for consumption offsite.

Definition of a Recovery Zone

A "recovery zone" includes any area designated by an issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress, or any area designated by an 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. This broad authority to designate recovery zones should provide issuers with significant flexibility in designating recovery zones in order to facilitate financing of eligible projects or programs. Presumably, the adoption of a resolution identifying one or more of the factors set forth above in a particular area should suffice as a designation of a recovery zone.
In addition to these newly designated areas, a recovery zone also includes any area currently designated as an empowerment zone or as a renewal community area.

Allocation of Volume Cap

The Recovery Act provides for $15 billion of authority nationwide through December 31, 2010 to issue RZFBs. IRS Notice 2009-50 provides each state's volume cap allocation as well as large cities and counties therein.



Tax-Exempt Small Issue Development Bonds

PERMITTED ISSUERS

- All types of state and local government issuers

ELIGIBLE PROJECTS

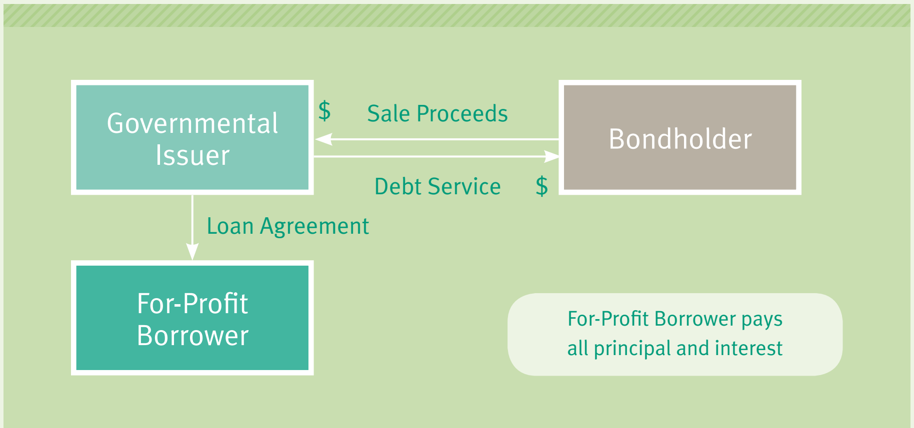
- Facilities for the manufacturing of tangible personal property
- For years 2009 and 2010, such bonds may also be issued to finance facilities that are used in the creation or production of intangible property, including patents, copyrights, formulas, processes, designs, know-how and other similar items

KEY ELEMENTS

- Not subject to Private Use Restrictions
- Not subject to IRS Management Contract Rules
- Facilities may be privately owned and operated
- Maximum bond issue size is $10 million

VOLUME CAP LIMITATION

- Volume cap is required



Use of Bond Proceeds

Under applicable rules, 95% of the proceeds of the bond issue must be applied to finance eligible capital expenditures.

Eligible Projects

Small issue industrial development bonds may be issued to finance facilities to be used in manufacturing tangible personal property. For small issue industrial development bonds issued in 2009 and 2010, the category of eligible facilities is temporarily broadened to include those used in the creation or production of intangible property such as patents, copyrights, formulas, processes, designs, or know-how. Therefore, in the context of energy projects, small issue industrial development bonds may be available to finance facilities that manufacture wind turbines, solar panels, or other tangible personal property and, for 2009 and 2010, to finance facilities that house research and development for intellectual property associated with production, conservation, or other similar activities.

Bond Issue Size Restrictions

Issuances may not exceed $10 million, and all other capital expenditures of the business, in the municipality or unincorporated area of the county in which the financed project is located during the six-year period beginning three years prior to and ending three years after the issuance of the bonds may not exceed $20 million regardless of how such expenditures are financed.

ABOUT ORRICK

For decades, Orrick has been the top-ranked public finance law firm in the United States. We represent clients in every type of energy matter involving state or local governments, as feedstock supplier, as energy user, or as provider of debt financing, tax-exempt or taxable or tax credit bonds like new clean renewable energy bonds, and qualified energy conservation bonds. Our clients include governmental entities as well as private developers taking advantage of public financing for energy projects, including numerous transactions involving renewable energy, such as biomass, solid waste-to-energy, wind and solar power. This practice has become increasingly cooperative and integrated with the firm's very significant energy practice.

Orrick's energy practice comprises nearly 150 lawyers located across the United States, Europe and Asia. We are particularly noted for our leading practices in energy project development and finance, governmental energy funding, public private partnerships, and venture capital and emerging company representation in the clean tech and renewable energy sectors worldwide.

For additional information about tax subsidized financing options for energy projects and programs, please contact one of the attorneys listed below.

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