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Bond Provisions in Senate Finance Version of Stimulus Resemble House Bill and Expand Manufacturing Bonds

On January 28, 2009, the House of Representatives passed its version of the stimulus bill by a vote of 244-188. The tax credit bond and municipal bond provisions in the version passing the House remain as described in our [client alert](#) dated January 22, 2009.

Also, on January 28, 2009, the Senate Finance Committee, by a vote of 14-9, passed its version of the tax title of the [“American Recovery and Reinvestment Tax Act of 2009,” as amended by Chairman Baucus](#), that differs from the House bill with respect to, among other things, certain tax credit bond and municipal bond provisions. These differences will need to be reconciled in conference committee. The Joint Committee on Taxation released descriptions dated January 27, 2009 and January 23, 2009, respectively, of the [changes made by the Chairman’s Mark](#) and the [proposed version of the Senate Finance Committee bill](#). The Senate is expected to debate and vote on the bill some time next week.

For those tax credit bond and municipal bond provisions described in our aforementioned alert about the House version, the Senate Finance Committee version makes the following changes, among others:

- For purposes of small issue manufacturing bonds found in Section 144(a) of the Internal Revenue Code of 1986, as amended (the “Code”), Section 1301 of the Senate Finance Committee version provides that any such bond issued before January 1, 2011 is considered used for a manufacturing facility if the bond proceeds are expended on the creation or production of “intangible property” or a “facility functionally related and subordinate” to a manufacturing facility. Intangible property is defined as “any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item” as contained in Section 197(d)(1)(C)(iii) of the Code. Functionally related and subordinate facilities are further described in Treasury Regulations Section 1.103-8(a)(3).
- The taxable governmental tax credit bond provisions have been dubbed “Build America Bonds.” These bonds must be issued before January 1, 2012.
- For Recovery Zone Bonds, each state is guaranteed a one percent allocation for each category of recovery zone economic development bonds and recovery zone facility bonds.

- For qualified school construction bonds, the requirement that 40 percent of the allocation be reserved for large school districts has been eliminated, and the Senate version reduces the allocation to \$5 billion for each of 2009 and 2010 from \$11 billion that was proposed in the House version.
- These are additional provisions of the Senate version that differ from the House bill and affect municipal bond provisions (e.g. high-speed rail facility bonds found in Code Section 142) that are not discussed here.

For more information on tax credit bonds, please contact [Doug Lamb](#) or [Laura Jones](#).

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