

Midwestern Disaster Area Bonds

- I. A new type of private activity tax-exempt bond
 - a. Interest is exempt from federal income tax. Bondholder accepts a lower interest rate for the tax-free income. (Interest is also exempt from state income tax if a Community Development Authority or a Redevelopment Authority issues the bonds.)

- II. The proceeds must be used in a county declared as a federal disaster area.
 - a. Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Winnebago
 - b. Total allocation for WI: \$3,830,112,000 (\$1,000 X Disaster Area Population)
 - c. Bonds must be issued before January 1, 2013.

- III. Applicants for a designation to allow the issuance of Midwestern Disaster Area Bonds are only eligible if, in each case,
 - a. The person using the property suffered a loss in a trade or business attributable to the disaster occurrence (severe storms, tornadoes, flooding) or
 - b. The cost is incurred by a person designated as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such a loss.
 - i. In the case of each designation of Midwestern Disaster Area Bonds for a project involving private business use by a person who did not directly suffer a loss in a trade or business attributable to the severe storms, tornadoes, or flooding, the person undertaking the project shall be deemed to be designated by the Governor as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such a loss.

- IV. Proceeds of the bonds may be used to finance:
 - a. The cost of acquisition, construction, reconstruction or renovation of nonresidential real property (including fixed improvements associated with such property, **but not movable fixtures and equipment**).
 - b. Qualified residential rental housing.
 - c. A public utility project.

- V. Other requirements
 - a. Similar to exempt facility Industrial Revenue Bonds. There is no \$20.0 million capital expenditure limitation and no \$10.0 million bond size limit.

- b. The bonds do not require an allocation of Commerce's existing volume cap, but do require an allocation of the volume cap that has been specifically designated for the issuance of Midwestern Disaster Area Bonds.
 - c. The bonds cannot be used to refinance existing debt.
 - d. If the bonds are used to acquire existing buildings, the borrower must spend at least 50% of the cost of acquisition on rehabilitation of the building.
 - e. No more than 25% of the bond proceeds can be used to acquire land.
 - f. No more than 2.0% of the bond proceeds can be used to pay issuance costs.
 - g. Borrower can only use the bond proceeds to reimburse eligible costs that are incurred within 60 days prior to the adoption of the initial resolution.
 - h. Nonresidential real property projects can include:
 - i. Manufacturing facilities
 - ii. Retail businesses and shopping centers
 - iii. Auto dealerships
 - iv. Restaurants
 - v. Office buildings
 - vi. Warehouses and storage facilities
 - vii. Medical office buildings and other medical facilities
 - viii. Commercial development
 - ix. Agricultural facilities
 - i. Proceeds of the bonds may not be used to finance any skybox or other private luxury box, health club facility, golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other gambling facility, or liquor store. This is stipulated under federal law.
- VI. Participants in the process (in addition to the borrower)
- a. Issuer
 - i. City, town, village, redevelopment authority, community development authority.
 - ii. Initial resolution, public hearing, final resolution
 - b. Bond Counsel
 - i. Eligibility determination; qualifying opinion
 - c. Lender
 - i. Buy the bonds in a bank held deal or
 - ii. Issue a letter of credit
 - d. Commerce
 - i. Project/application review
 - ii. Recommendation of designation to the Governor's office
 - iii. Program administration and monitoring
 - e. Governor's office
 - i. Designation as Midwestern Disaster Area Bonds
- VII. Application and approval process
- a. Prospective borrower contacts Commerce Area Development Manager and completes application for designation. Contact information for the Area Development Managers is available at <http://commerce.wi.gov/BD/BD-AreaDevManagers.html>.

- i. Prospective borrower should consult with bond counsel, municipality, and lender prior to completing application.
- b. Commerce reviews application.
 - i. To determine if application is complete and meets requirements.
- c. Commerce recommends designation to the Governor's office.
- d. Governor's office designates the bonds as Midwestern Disaster Area Bonds.
- e. Issuer/Borrower has 120 days from designation date to issue bonds.
- f. Issuer/Borrower has 15 days after the bond issue to notify Commerce of the issuance.
- g. \$300 nonrefundable application fee. Nonrefundable closing fee of 0.1% of the bond amount up to a maximum of \$10,000. The closing fee will be reduced by the application fee.

VIII. Allocation distribution

- a. \$50.0 million reserved for each of the counties prior to January 1, 2011. Balance (\$2,330,112,000) is available for designations for any of the affected counties.
- b. Starting on January 1, 2011, designations to be made from the entire unused balance to finance projects in any of the affected counties.

For more information contact Steve Sabatke at Commerce at 608-267-0762 or at Steven.Sabatke@Wisconsin.gov.

SECTION 1. Chapter Comm 136 is created to read:

CHAPTER Comm 136, MIDWESTERN DISASTER AREA BONDS

Comm 136.01 Purpose. The purposes of this chapter are as follows:

(1) To establish a procedure for the designation by the governor of bonds issued by, or on behalf of, the state of Wisconsin, or any political subdivision thereof, as qualified Midwestern disaster area bonds for the purposes of 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(2) To implement allocation of the qualified Midwestern disaster area bonding authority provided to Wisconsin under the Act specified in sub. (1), for eligible projects in affected counties, with a basis of providing assistance to areas in the order in which such assistance is most needed.

Comm 136.02 Definitions. In this chapter:

(1) "Affected county" means any of the following counties in Wisconsin: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha and Winnebago.

(2) "Department" means the department of commerce.

(3) "Issuer" means any of the following:

(a) A municipality.

(b) An agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including any redevelopment authority, community development authority, or housing authority established by or on behalf of these entities.

(c) A person acting for or on behalf of an entity listed in par. (a) or (b).

(d) Any public corporation or commission established by or on behalf an entity listed in par. (a) or (b).

(4) "Limitation on aggregate amount" means the limitation on the aggregate amount for the issuance of bonds designated as Midwestern disaster area bonds applicable to the state of Wisconsin, which is \$3,830,112,000.

(5) "Midwestern disaster area bonds" or "MDA bonds" means bonds described in, and designated for the purposes of, 26 USC 1400N(a), as modified and applied by section 702(d)(intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(6) "Municipality" has the meaning given in s. 67.01 (5), Stats.

Note: Section 67.01 (5) of the Statutes reads as follows: " 'Municipality' means any of the following which is authorized to levy a tax: a county, city, village, town, school district, board of park commissioners, technical college district, metropolitan sewerage district created under ss. 200.01 to 200.15 or 200.21 to 200.65, town sanitary district under subch. IX of ch. 60, transit authority created under s. 66.1039, public inland lake protection and rehabilitation district established under s. 33.23, 33.235, or 33.24, and any other public body empowered to borrow money and issue obligations to repay the money out of public funds or revenues. 'Municipality' does not include the state."

(7) "Nonresidential real property project" means a project located in any of the affected counties for which private activity bonds, as defined in 26 USC 141(a), may be issued for the cost of acquisition, construction, reconstruction or renovation of nonresidential real property, including fixed improvements associated with such property.

(8) "Project" means any residential rental project, owner-occupied residence financed with a qualified mortgage issue, public utility property project, or nonresidential real property project for which exempt facility bonds may be issued under 26 USC, as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

(9) "Public utility property project" means a project that includes public utility property, as defined in 26 USC 168(i)(10), located in any of the affected counties.

(10) "Qualified mortgage issue" means a qualified mortgage issue as defined in 26 USC 143(a)(2) and as modified and applied by section 702(d) (intro.) and (1) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, the proceeds of which are used to finance owner-occupied residences located in any of the affected counties.

(11) "Residential rental project" means a qualified residential rental project under 26 USC 142(d)(1) and 1400N(a), as modified and applied by section 702(d) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A, located in any of the affected counties.

Comm 136.03 Reservation for each affected county. (1) Prior to January 1, 2011, \$50,000,000 of the limitation on aggregate amount shall be reserved and made available for designations in respect to bonds issued for projects located in each affected county, and the balance of the limitation on aggregate amount shall be available for designations without regard to the affected county in which the project to be financed is located.

(2) Commencing on January 1, 2011, the \$50,000,000 of designations reserved for each affected county under sub. (1) shall terminate, and thereafter designations may be made from the entire unused balance of the limitation on aggregate amount for bonds to finance projects located in any of the affected counties without regard to the affected county in which the project is located.

Comm 136.04 Eligible applicants. Applicants for a designation to allow the issuance of MDA bonds are eligible only if either of the following conditions is met:

(1) The person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding, in an affected county, in 2008.

(2) The cost is or will be incurred by a person who is designated as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered a loss as specified in sub. (1).

Comm 136.05 Request, review and designation process. (1) A request for a designation under this chapter shall be made to the department on a form prescribed by the department and shall include all of the following:

(a) The name and address of the issuer.

(b) A description of the project, including, except for bonds expected to qualify as a qualified mortgage issue, the name and address of the owner, operator or sponsor of the project.

(c) The location of the project in one or more of the affected counties.

(d) Evidence that official action has been taken by the issuer with respect to the issuance of the bonds, which, for bonds issued pursuant to s. 66.1103, Stats., shall be the initial resolution previously filed with the department with respect to the bonds.

(e) A certification of the applicant to the effect that a preliminary determination has been made by bond counsel that the obligations would constitute private activity bonds under federal tax law and that the bonds are expected to qualify as one or more of the following:

1. Bonds for a nonresidential real property project.

2. Bonds for a public utility property project.

3. Bonds for a residential rental project.

4. A qualified mortgage issue.

(f) The requested amount of the designation.

(g) Evidence of compliance with s. Comm 136.04.

(h) A nonrefundable payment of \$300 by cash or by a certified or cashiers check payable to the department.

Note: The application form prescribed by the Department can be obtained from the Department at P.O. Box 7970, Madison, WI 53707.

(2) Upon receipt of a completed application, the department shall evaluate whether it meets the requirements of sub. (1).

(3) The department shall forward a request for a designation to the governor, in the order in which qualifying requests are received, if the department determines all of the following:

(a) The application meets the requirements of sub. (1).

(b) A designation in the requested amount would not cause the aggregate amount of bonds designated under this chapter to exceed \$3,830,112,000 and would be in compliance with s. Comm 136.03.

Note: The \$3,830,112,000 limitation on aggregate amount is established under 26 USC 1400N(a), as modified and applied by section 702(d) (1) (E) (i) of the federal Heartland Disaster Tax Relief Act of 2008, Public Law 110-343, title VII, subtitle A.

Comm 136.06 Emergency. Based upon the extensive damage to property in the affected counties that resulted from severe storms, tornados or flooding in 2008 and the resulting substantial adverse economic impact to the affected counties caused thereby, the department's review and evaluation of each application shall be completed expeditiously and in any event within 30 days unless the department provides notice to the applicant of a need to extend the 30-day period for review and evaluation.

Comm 136.07 Post-designation process. (1) After the governor makes a designation, the department shall record that the corresponding portion of the limitation on aggregate amount has been designated.

(2) All MDA bonds shall be issued no later than 120 days after a corresponding designation by the governor, or before January 1, 2013, whichever comes first.

(3) (a) Each issuer shall notify the department in writing as to the amount of MDA bonds issued pursuant to the designation from the limitation on aggregate amount, within 15 business days after the issuance of the bonds.

(b) 1. Each notification under par. (a) shall include a nonrefundable payment of 0.1% of the amount issued in the bonds, up to a maximum of \$10,000, by cash or by a certified or cashiers check payable to the department.

2. The payment in subd. 1. may be reduced by the amount paid to the department under s. Comm 136.05 (1) (h).

(4) An issuer shall notify the department if it chooses to surrender all or any part of its rights to a designation under this chapter. Upon receipt of such notice, the department shall record the surrender.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

File reference: Comm 136/rules 2009LRac