



## Stimulus Package Authorizes Tax-Exempt Bonds for Biotech and Pharmaceutical Projects

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The Internal Revenue Code has long permitted private manufacturing enterprises to take advantage of low-interest-rate tax-exempt financing for capital projects, within various limitations, through the issuance of bonds by governmental economic development agencies. Since 1986, such "qualified small issue bonds" (frequently referred to as industrial development bonds or IDBs) could only be used to finance "manufacturing" facilities - those facilities that produced or processed tangible personal property. The 2009 American Recovery and Reinvestment Act (Stimulus Package) expands the scope of facilities eligible for IDB financing to include facilities used to develop various forms of intangible property, although the broadened provision applies only to bonds issued after the date of enactment through the end of 2010.

For purposes of this new rule, intangible property includes any patent, copyright, formula, process, design, knowhow, format, or other similar item. Most important, the Conference Report emphasizes that Congress specifically wanted to include the creation of computer software and intellectual property associated with biotech and pharmaceuticals.

Qualified small issue bonds are subject to various limits. For example, the amount of the bond issue itself may not exceed \$10 million. In addition, the project owner's capital expenditures made within the incorporated municipality in which the project is located in the six-year period beginning three years before the bond issue date and ending three years after the bond issue date cannot exceed \$20 million (including the bond issue itself). Outstanding aggregate borrowing is limited to \$40 million per borrower (including related parties) regardless of where the property is located. In addition, the aggregate amount of IDBs permitted to be issued in each state annually is limited by a population-based formula.

In Michigan, IDBs are most often issued by the Michigan Strategic Fund or the Economic Development Corporation formed by the municipality where the project is located. In Illinois, the Illinois Finance Authority or a local municipality may issue the IDBs. In all cases, the issuer must adopt a resolution authorizing the project.

Numerous other rules also apply. For example, the borrower generally must expend the bond proceeds within three years. Any "arbitrage profit" (the amount by which the investment yield on the bond proceeds exceeds the interest rate of the bonds) must be rebated to the U.S. government, unless one of several exceptions applies.

Dykema attorneys have extensive experience in representing clients in connection with IDB issues, as company counsel, bond counsel, bank counsel and underwriter's counsel. For more information, please contact Bowden V. Brown ([bbrown@dykema.com](mailto:bbrown@dykema.com); 248-203-0800), Tony Ilardi ([ailardi@dykema.com](mailto:ailardi@dykema.com); 313-568-5446) or Jin-Kyu Koh ([jkoh@dykema.com](mailto:jkoh@dykema.com); 313-568-6627).