

### MEMORANDUM

**TO:** Georgia Local Government Clients      **DATE:** October 2, 2009  
**FROM:** Douglass P. Selby, Esq.                      **FILE:** 99999.000502  
Caryl Greenberg Smith, Esq.

### Georgia Procedures on Waiver and Re-allocation of Recovery Zone Bonds

One month from today, November 2, 2009, local governments in Georgia must notify the Georgia Department of Community Affairs (“**DCA**”) of your intent to use or waive any allocation of Recovery Zone Bond financing authorization received earlier this year. On August 20, 2009, the Georgia State Financing and Investment Commission (“**GSFIC**”) promulgated rules governing the allocation of Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds (together, “**Recovery Zone Bonds**”) by the Internal Revenue Service (the “**IRS**”) to counties and large municipalities in Georgia<sup>1</sup>. The rules include a provision pursuant to which **all unused amounts previously allocated by the IRS will be “deemed waived” and will automatically be transferred to the State unless the local government files a “Notice of Intent to Issue” with DCA by November 2, 2009.**

The rules also provide for:

- (i) optional waiver of unwanted or unused allocation and return the allocation of Recovery Zone Bond issuance authority to the State; and
- (ii) for “Eligible Issuers”<sup>2</sup> in Georgia to apply for re-allocation of amounts waived to the State (the “**Georgia Recovery Zone Bond Re-Allocation Process**”).

This memorandum summarizes the Georgia Recovery Zone Bond Re-allocation Process (hereinafter referred to as the “**Georgia Re-allocation Process**”), and highlights important dates for local governments interested in preserving current allocations or applying to the State for re-allocation of allocations waived to the State by other jurisdictions.

---

<sup>1</sup> These allocations were released by the IRS on June 12, 2009 and can be located at: <http://www.irs.gov/pub/irs-tege/rzbllocalreallocations.pdf>.

<sup>2</sup> As discussed in further detail in Hunton & Williams’ June 16, 2009 client memorandum on Recovery Zone Economic Development Bonds, **eligible issuers** of Recovery Zone Bonds include: (i) states, (ii) political subdivisions, (iii) entities empowered to issue bonds on behalf of a State or political subdivision (e.g. statutory, local act or constitutional development authorities and other such entities) and (iv) otherwise-eligible issuers in conduit financing issues (as defined in §1.150-1(b) of the Treasury Regulations). As provided in IRS Notice 2009-50, released on June 12, 2009, local governments that have received an allocation, may re-allocate all or a portion of that allocation to an eligible issuer, provided that the eligible issuer is authorized to and will use the allocation to finance projects within the jurisdiction of the local government.

## Waiver of Unused Allocation

### Deemed Waived

If your jurisdiction received allocation from the IRS pursuant to the June 12, 2009 Notice, unless certain steps are taken by no later than November 2, 2009, your allocation will be “deemed waived” and will automatically be transferred to the State. To preserve your local government’s allocation a **“Notice of Intent to Issue”** (a form of which is attached to this memorandum) must be filed by the deadline. The Notice of Intent to issue requires the following information:

- (i) the amount of allocation the local government intends to use<sup>3</sup>;
- (ii) the estimated date(s) of closing for the bond(s);
- (iii) the issuing entity/entities; and
- (iv) the name of the bond attorney(s).

The Notice of Intent does not require that the local government provide information on the specific projects to be financed with Recovery Zone Bond or evidence of the designation of a recovery zone in order to preserve its allocation.

Local governments that preserve their allocation by filing a Notice of Intent must complete the associated financing by July 1, 2010. Unused allocations as of July 1, 2010, will be “deemed waived” and will be automatically transferred to the State, unless the local government has submitted an extension request to DCA by June 15, 2010. DCA is currently developing the form for an extension request as well as any other requirements for applying for an extension.

### Optional Waiver by Notice

If your jurisdiction received an allocation from the IRS, you may also elect to waive all or a portion of an allocation to the State, at any time, by (i) adopting a resolution of waiver and (ii) filing a “Notice of Waiver of Allocation of Recovery Zone Bond Allocation” (a **“Notice of Waiver”**) with DCA.<sup>4</sup> In order to be effective, a resolution of waiver must be adopted by the governing body of the local government in receipt of the allocation. This requirement that the governing body of the local government adopt the resolution applies even when the local government has re-allocated its authorization to an Eligible Issuer (as that term is defined in footnote 2 of this memorandum). After adopting a resolution of waiver, local governments that wish to waive all or part of an allocation to the State, must file a Notice of Waiver with DCA.

## Re-allocation of Waived Amounts

---

<sup>3</sup> An allocation is considered used when a local government or other eligible issuer has completed recovery zone financings in an amount equal to the allocation.

<sup>4</sup> The GSFIC has appointed DCA to administer, operate, and manage the Re-allocation Process.

As provided in IRS Notice 2009-50 (<http://www.irs.gov/pub/irs-drop/n-09-50.pdf>), released on June 12, 2009, re-allocations of Recovery Zone Bonds that are waived or deemed waived by a local government, may be re-allocated by that state in any reasonable manner as it shall determine in its good faith and discretion. The Georgia Re-allocation Process authorizes any Eligible Issuer to apply for re-allocation by submitting the following items:

- (i) an “**Application for Notice of Re-Allocation**” (a form of which is to be provided by DCA);
- (ii) a certificate from the Eligible Issuer that (a) the Eligible Issuer has properly designated a Recovery Zone within its jurisdiction or area of operation, and (b) the project to be financed with the proceeds of the bonds is located within such Recovery Zone;
- (iii) a written opinion of legal counsel, addressed to DCA, that the bonds which are covered by the application will qualify as recovery zone economic development bonds or recovery zone facility bonds, as applicable, when issued;
- (iv) with respect to recovery zone facility bonds only (unless waived), a letter of intent from a lender, financial institution, underwriter, investment banker, or other purchaser, to purchase the bonds upon satisfaction of certain conditions in the market; and
- (v) any other information as reasonably required by DCA (thus far, no further requirements have been released).

Prior to applying for re-allocation, therefore, an Eligible Issuer must first designate a Recovery Zone<sup>5</sup> within which the Projects to be financed with the proceeds of the Recovery Zone Bonds will be located. Applications for Notice of Re-allocation will be accepted by DCA through November 1, 2010. All applications must be for even amounts of \$1,000. As noted above, the form of Applications for Notice of Re-allocation have not yet been released by DCA. We will notify all recipients of this when a form of Application has been released.

---

<sup>5</sup> For information on designating a recovery zone please see Hunton & Williams’ June 16, 2009 client memorandum.

Please contact me or my partners, Caryl Greenberg Smith and Wally McBride, if you have any questions.

**Caryl Greenberg Smith, Esq.**

Firmwide Co-Head, Public Finance Team  
Hunton & Williams LLP  
Bank of America Plaza - Suite 4100  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216

Direct: (404) 888-4025  
E-mail: carylsmith@hunton.com

**Douglass P. Selby, Esq.**

Partner, Public Finance Team  
Hunton & Williams LLP  
Bank of America Plaza - Suite 4100  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216

Direct: (404) 888-4207  
E-mail: dselby@hunton.com

**William H. McBride, Esq.**

Tax Partner  
Hunton & Williams LLP  
1900 K Street, N.W.  
Washington, D.C. 20006

Direct: (202) 778-2242  
E-mail: wmcbride@hunton.com

DPS

**State of Georgia**  
**Recovery Zone Bond Notice of Intent to Issue**

Date: \_\_\_\_\_

City or County: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Name of Chief Elected Official: \_\_\_\_\_

Name of Authorized Representative (if applicable): \_\_\_\_\_

Amount of Original Allocation of **Recovery Zone Economic Development Bonds**: \$ \_\_\_\_\_

Amount of Recovery Zone Economic Development Bonds to be Issued: \$ \_\_\_\_\_

Estimated Dates of Bond Closing: \_\_\_\_\_

Issuing Entities: \_\_\_\_\_

Name of Bond Attorney \_\_\_\_\_

Amount of Recovery Zone Economic Development Bonds Waived: \$ \_\_\_\_\_

Remaining Amount of Recovery Zone Economic Development Bond Allocation: \$ \_\_\_\_\_

Amount of Original Allocation of **Recovery Zone Facility Bonds**: \$ \_\_\_\_\_

Amount of Recovery Zone Facility Bonds to be Issued: \$ \_\_\_\_\_

Estimated Dates of Bond Closing: \_\_\_\_\_

Issuing Entities: \_\_\_\_\_

Name of Bond Attorney \_\_\_\_\_

Amount of Recovery Zone Facility Bonds Waived: \$ \_\_\_\_\_

Remaining Amount of Recovery Zone Facility Bond Allocation: \$ \_\_\_\_\_

Allocation designees are not required to have specific projects or financing by November 1 in order to retain their allocation but should have plans and capacity to issue RZ bonds before July 1, 2010.

*I hereby certify that the city/county of \_\_\_\_\_, intends to issue recovery zone economic development bonds or recovery zone facility bonds, as specified above.*

Signature \_\_\_\_\_  
Chief Elected Official or Authorized Representative

Date \_\_\_\_\_

Submit original form to: Georgia Department of Community Affairs  
Bond Allocation Manager  
60 Executive Park South, NE  
Atlanta, GA 30329