Georgia Department of Revenue
Policy Statement IT-2010-11-29
Taxability of Certain Georgia Municipal Bonds

November 29, 2010

1) **Purpose/Subject:** This policy statement provides the Department's position regarding certain federally taxable municipal bonds.

2) **Supersedes:** All previous documents and any oral directives in conflict herewith.

3) **Authority:**
   a) Internal Revenue Code Sections 54AA, 6431, and 1400U-2

   b) The American Recovery and Reinvestment Act of 2009 ("ARRA")

   c) Hiring Incentives to Restore Employment Act ("HIRE Act")

4) **Scope:** A policy statement is intended to provide procedural guidance to the general public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing procedural guidance that may be followed in order to comply with the law. A policy statement does not have the force or effect of law, and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

5) **Issue:**

   Whether the interest on Build America Bonds, Recovery Zone Economic Development Bonds, and Qualified School Construction Bonds may be subtracted in arriving at Georgia taxable income.

6) **Discussion:**

   a. **Build America Bonds**

   Section 1531(d) of the ARRA provides that "Except as otherwise provided by a State after the date of the enactment of this Act, the interest on any build America bond (as defined in section 54AA of the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the income tax laws of such State as being exempt from Federal income tax."

   As such, interest on any Build America Bond that is federally taxable may be subtracted in arriving at Georgia taxable income.

b. **Recovery Zone Economic Development Bonds**

Internal Revenue Code Section 1400U-2(b)(1) provides that "For purposes of this section, the term "recovery zone economic development bond" means any build America bond (as defined in section 54AA(d)) …"

As such, since a Recovery Zone Economic Development Bond is a Build America Bond, the interest on any Recovery Zone Economic Development Bond may be subtracted in arriving at Georgia taxable income.

c. **Qualified School Construction Bonds**

Under Section 6431 of the Internal Revenue Code, issuers of Build America Bonds (including Recovery Zone Economic Development Bonds) are entitled to a subsidy payment for "qualified bonds". The term "qualified bond" under Internal Revenue Code Section 6431(e) "has the meaning given such term in Section 54AA(g)" of the Internal Revenue Code. Under Section 54AA(g) of the Internal Revenue Code, the term qualified bond means "any build America Bond issued as part of an issue if …"

Qualified School Construction Bonds were provided with the same direct payment subsidy option under the HIRE Act, which was enacted after the ARRA. The HIRE Act added a new subsection (f) to 6431, that provided the option to issuers of certain "specified tax credit bonds" to issue federally taxable bonds and to receive a subsidy check from the Treasury equal to a portion of the interest costs, just like Build America Bonds and Recovery Zone Economic Development Bonds. Under Internal Revenue Code Section 6431(f), specified tax credit bonds "shall be treated as a qualified bond for purposes of this section" [meaning Section 6431].

Since a Qualified School Construction Bond is treated as a "Qualified Bond" under Section 6431, and 6431(e) says a qualified bond is determined under Section 54AA(g), which states it's a Build America Bond, the same state exemption that applies to Build America Bonds applies to Qualified School Construction Bonds which are "specified tax credit bonds" under Internal Revenue Code Section 6431(f).

Further, the conference report to the ARRA provides "interest on a taxable governmental bond and the related credit are includible in gross income to the holder for Federal tax purposes. The provision provides that until a State provides otherwise, the interest on any taxable governmental bond and the amount of any credit, determined with respect to such bond shall be treated as being exempt from Federal income tax for purposes of State income tax laws." While this did not specifically apply to Qualified School Construction Bonds at the time of enactment of ARRA, it does clearly provide Congress' intention regarding taxable federal governmental bonds with the same characteristics as Build America Bonds.

Based on the foregoing, interest received on Qualified School Construction Bonds which are "specified tax credit bonds" under Internal Revenue Code Section 6431(f) may be subtracted in arriving at Georgia taxable income.

FOR MORE INFORMATION

For more information on this subject, contact the Taxpayer Services Division at 1-877-GADOR11 (1-877-423-6711), from 8:00 am to 4:30 pm EST, Monday through Friday, excluding holidays. Persons with hearing or speech impairments may call our TDD number at 404-417-4302. For forms and other information, visit our website (www.dor.ga.gov).