

Client Alert

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February 22, 2013

Federal Subsidies to Issuers of Build America Bonds and Tax Credit Bonds may be Reduced by Sequestration

If Congress does not act soon to postpone or avoid automatic cuts to federal spending, the federal government may implement certain automatic spending cuts under a “sequestration” law previously enacted by Congress. The automatic cuts, if they occur, will include a reduction in federal payments to issuers of Build America Bonds and certain direct pay tax credit bonds.

In August 2011, Congress voted for the threat of “sequestration” of certain federal funds, which means automatic across-the-board cuts in certain categories of federal spending, as a mechanism to force itself to act on deficit reduction. Congress can still take action to avoid or delay sequestration as it did in January, 2013, when Congress delayed sequestration for two months (from January, 2013 to March, 2013).

Currently, the sequester order for cuts to federal spending is scheduled to be issued on March 1, 2013. Although the order, if issued, will not have to be implemented until March 27, 2013, some federal agencies may take action on the sequester order prior to that date. The expected cuts to federal spending will include cuts to payments that are scheduled to be made by the federal government to issuers of Build America Bonds (BABs), Qualified Zone Academy Bonds (QZABs), Qualified School Construction Bonds (QSCBs) and Qualified Energy Conservation Bonds (QECBs). It is possible that cuts may also be made to payments to issuers of New Clean Renewable Energy Bonds (NCREBs). The U.S. Treasury or the Internal Revenue Service may release guidance concerning payments to be made to issuers of Build America Bonds and direct pay tax credit bonds if the sequestration order is issued.

The current sequester is for the fiscal year ending September 30, 2013. Accordingly, it appears that the sequester’s cuts may take place over a period of under seven months, rather than twelve, because the 2013 fiscal year has already started.

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