



JOINT COMMITTEE ON TAXATION

March 16, 2010

JCX-14-10

**DESCRIPTION OF AN AMENDMENT IN THE NATURE OF
A SUBSTITUTE TO THE PROVISIONS OF H.R. 4849,
THE “SMALL BUSINESS AND INFRASTRUCTURE
JOBS TAX ACT OF 2010”**

The Chairman’s amendment in the nature of a substitute modifies the provisions relating to Build America Bonds and adds the following proposals to H.R. 4849.

I. INFRASTRUCTURE INCENTIVES

A. Extension of Build America Bonds

The Chairman's amendment modifies the extension of Build America Bonds from bonds issued before July 1, 2013, to bonds issued before April 1, 2013.

**B. Tax-Exempt Bonds Issued by Indian Tribal Governments
for Sewage and Water Supply Facilities**

The Chairman’s amendment permits Indian tribes to issue tax-exempt private activity bonds for sewage and water supply facilities.

Present Law

Under present law, gross income does not include interest on State or local bonds.¹ State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental facilities or that are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For these purposes, the term “nongovernmental person” includes the Federal government and all other individuals and entities other than States or local governments.²

¹ Sec. 103.

² Sec. 141(b)(6); Treas. Reg. sec. 1.141-1(b).

Interest on private activity bonds is taxable, unless the bonds are issued for certain purposes permitted by the Code and other requirements are met.³

Although not States or subdivisions of States, Indian tribal governments are provided with a tax status similar to State and local governments for specified purposes under the Code.⁴ Among the purposes for which a tribal government is treated as a State is the issuance of tax-exempt bonds. Under section 7871(c), tribal governments are authorized to issue tax-exempt bonds only if substantially all of the proceeds are used for essential governmental functions.⁵ The term essential governmental function does not include any function that is not customarily performed by State and local governments with general taxing powers. Section 7871(c) further prohibits Indian tribal governments from issuing tax-exempt private activity bonds (as defined in section 141(a) of the Code) with the exception of certain bonds for manufacturing facilities.

Description of Proposal

The proposal allows Indian tribal governments to issue tax-exempt private activity bonds for two additional types of facilities. These new facilities are facilities for the furnishing of water⁶ and sewerage facilities.⁷ These bonds would not be subject to the private activity bond volume limitation nor the essential government function test.

Effective Date

The proposal applies to obligations issued after the date of enactment.

³ Secs. 103(b)(1) and 141.

⁴ Sec. 7871.

⁵ Sec. 7871(c).

⁶ Sec. 142(a)(4).

⁷ Sec. 142(a)(5).