ask the *legal* ***professional***

**Waller Lansden** Dortch & Davis

www.wallerlaw.com

# Q: *Are economic benefits available for developing or redeveloping business in the region hit by Hurricane Katrina?*

**The enormity of the economic impact of Hurricane Katrina has been matched by the opportunities now presented to companies wishing to do business in the GO Zone.**

A: In response to the destruction caused by Hurricane Katrina, in December 2005 new federal tax legislation was enacted to spur investment in portions of Louisiana, Mississippi and Alabama called the “Gulf Opportunity Zone” or “GO Zone.”

The legislation offers powerful incentives for companies to invest in the GO Zone. The primary incentives are: (i) the availability of lower interest tax-exempt bond financing, subject to state approval, to creditworthy borrowers and (ii) various tax incentives, including accelerated depreciation, expensing, tax credits and net operating loss carrybacks. The bottom line is that the cost of capital to invest in the GO Zone has been significantly lowered.

The GO Zone geographic area is much broader than generally thought. In addition to the devastated coastal areas, the GO Zone includes larger portions of the affected states which saw comparatively little hurricane damage or disruption to local economies or infrastructure. For example, the GO Zone reaches north of Jackson, Miss. and over to Tuscaloosa, Ala. and includes not only New Orleans but also Baton Rouge in Louisiana.

One of the primary benefits of the GO Zone tax legislation is the substantially increased availability of lower interest tax-exempt bonds for projects (including immovable equipment) constructed or renovated within the GO Zone. The total bond authorization for the GO Zone is approximately $15 billion. Since the mid-1980s, the use of tax-exempt bonds for private companies has been limited generally to manufacturing (with a $10 million capital expenditure limitation per project) and multi-family rental housing, in which a certain percentage of residents must have incomes below federally established income levels. The GO Zone legislation, however, revives the days of yesteryear, when eligible projects included hotels, shopping centers, office buildings, hospitals and other medical facilities, bank branches, warehouses and free-standing multiple locations for restaurants, grocery stores and drugstores. Further, the income limitations applicable to the requisite percentage of multi-family rental housing tenants have been favorably modified, qualifying many tenants who would not have qualified previously. Very importantly, the $10 million capital expenditure limitation is not applicable in the GO Zone.

Another benefit of the GO Zone tax legislation is that the use of tax-exempt bonds (or any other tax incentive under the legislation) is not limited to companies doing business in the GO Zone before Hurricane Katrina or building replacement facilities. Therefore, considerable opportunities exist for the construction of entirely new facilities by businesses currently operating both inside or outside the GO Zone.

Prior to the GO Zone tax legislation, non-profit healthcare entities, including hospitals, could benefit from the use of tax-exempt bonds. Following the enactment of the GO Zone tax legislation, however, for-profit hospitals and other healthcare facilities now qualify for such financing.

The other primary tax benefit of the legislation is the ability to immediately deduct 50 percent of the capital cost of a facility and movable equipment in the year a facility or movable equipment is placed in service. This means, when combined with normal depreciation on the other 50 percent of project costs, that the federal government, in the first year, is effectively paying approximately 20 percent of the cost of the facility. The 50 percent deduction is not available for facilities financed with tax-exempt bonds. Notwithstanding the attractiveness of tax-exempt debt, for many companies the use of the 50 percent deduction will be more advantageous. Determining which financing alternative is preferable for a company depends upon the company’s financial situation, including its earnings expectations, and requires a present value benefit analysis. In many instances, even where the 50 percent deduction alternative is utilized, most qualifying companies would be advised to finance a project with taxable bonds.

**H. Wynne James III**
***Partner,***
***Waller Lansden Dortch & Davis, LLP***
***wynne.james@wallerlaw.com***

**J. Leigh Griffith**
***Partner,***
***Waller Lansden Dortch & Davis, LLP***
***leigh.griffith@wallerlaw.com***

While taxable bonds are simply another means of conventional financing, a project that has been bond financed may qualify the borrower for valuable state and local tax benefits, including property tax reductions.

For those companies that decide to construct or renovate projects in the GO Zone, the use of the tax benefit alternatives is time restricted. To qualify for the 50 percent deduction, a project must be placed in service by the end of 2008 (2007 for most equipment), and, in the case of tax-exempt bonds, the bonds must be issued before 2011.

The enormity of the economic impact of Hurricane Katrina has been matched by the opportunities now presented to companies wishing to do business in the GO Zone. Making decisions to construct or renovate facilities in or expand into the GO Zone requires considerable legal, accounting and financing capabilities in addition to a consideration of other factors, such as transportation and labor costs.