**Opinion Letter**

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| **Letter Number:** | **O-2011-015** |

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| **Tax Type:** | **Individual Income Tax** |
| **Brief Description:** | **Tax treatment of Build America Bonds.** |
| **Keywords:** |  |

**Body:**

Office of Policy & Research

February 11, 2011

XXXXX  
XXXXX  
XXXXX  
XXXXX  
  
  
Re: Kansas Income Tax  
  
Dear XXXXX:  
  
Your correspondence of February 9, 2011 has been referred to me for response. Thank you for your inquiry.  
  
Your e-mail requests our advice regarding Build America Bonds issued by Kansas. You note that in 2009, when Build America Bonds were conceived literature from the Internal Revenue Service called them “taxable”. You also note that the Kansas individual income tax instructions talk about an exemption for “any bond interest on bonds issued by Kansas since 12/31/1987.” By your e-mail you ask how these bonds should be treated for Kansas income tax purposes.  
  
It is our understanding that Build America Bonds are taxable municipal bonds that carry special tax credits and federal subsidies for either the bond issuer or the bond holder. Build America Bonds were created under Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act which was signed into law on February 17, 2009. The program expired December 31, 2010.  
  
Build America Bonds (BABs) are either “Direct Payment BABs” or “Tax Credit BABs”. Direct Payment BABs provide a federal subsidy to the issuer of 35% of the interest paid on the bonds. Tax Credit BABs provide a federal subsidy in the form of a refundable tax credit directly to the bond holders.  
  
As you are aware, Kansas law requires the use of federal adjusted gross income as the starting point for computing the Kansas income tax. In the absence of a specific modification, items that are subject to federal tax will be subject to Kansas tax. Similarly, those items that are exempt from federal tax will be exempt from Kansas tax.  
  
Addition modifications are found in K.S.A. 79-32,117(b). Clause (i) of subsection (b), which is an addition modification, also contains language which acts as a subtraction modification. The clause states:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. (Emphasis added).

While the financing cost of bonds issued as Build America Bonds is subsidized in one form or another by the federal government, the bonds are issued by state and local governments. As a result, we believe that when these bonds are issued by the state of Kansas or its political subdivisions they should be treated as any other bonds issued by the state of Kansas or its political subdivisions. Therefore, in accordance with K.S.A. 79-32,117(b)(i), interest income from Build America Bonds is not subject to Kansas income tax.  
  
I trust this information is of assistance. If I can be of further service, please feel free to contact me.  
  
Sincerely,  
  
  
  
Jim Weisgerber  
Attorney  
Tax Specialist  
  
JW:jw  
  
*NOTE: This opinion letter is based solely on the facts provided in your request for advice. If material facts or information were not disclosed this letter is null and void. This letter will be revoked without further action by the Department if the statutes, administrative regulations, published revenue rulings, or court decisions that materially affect this opinion are changed.*  
  
  
  
**Date Composed: 04/18/2013 Date Modified: 04/18/2013**