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Fiscal Cliff Agreement Contains Two-Year Extension of EZ Bonds

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Hidden away in the fiscal cliff agreement is a two-year extension of empowerment zone tax incentives, including finance authority for enterprise zone bonds.

All federally designated empowerment zones expired at the end of 2011 but have been extended twice, including most recently in the fiscal cliff agreement, passed by Congress on New Years Day. The provision would extend bond authority for those empowerment and enterprise zones with unused bond allocations.

The Joint Committee on Taxation estimated that the two-year extension of the EZ tax incentives program would cost $450 million over 10 years.

Congress created empowerment zones in 1993 and the Department of Housing and Urban Development designated six urban and three rural empowerment zones. In 1999, HUD designated 20 additional empowerment zones, 15 urban and five rural.

The EZ bond program applies to manufacturers, retailers and any service that operates in an empowerment zone. Under federal tax law, only $60 million of these bonds can be issued in designated rural zone areas, $130 million in urban areas with a population less than 100,000 and $230 million in urban areas with a population of at least 100,000.

There is a laundry list of requirements that an issuer must meet in order to finance a building including, at least 35% of the employees of an EZ business must reside within the EZ. And at least 50% of the total gross income of an EZ business must be derived from the active conduct of the business.

The overall goal of the empowerment zone tax incentives was to stimulate job creation and retention and to stimulate business investment in buildings and equipment within distressed communities, according to HUD.

However, most of the bond authority in the empowerment zones have gone unused, said Bill Nusbaum, partner with Williams Mullen in Norfolk, Virginia. Most of the businesses found it difficult to meet the 35% employment test, he said.

Howard Gleckman, a resident fellow at the Urban Institute, EZ bonds and other types of special bonds, such as New York Liberty Zone bonds “are generally a terrible idea.”

“These are remarkably ineffective ways to encourage new economic development,” Gleckman said. “They don’t work.”

Even with a tax subsidy, they aren’t good deals, he said. Most of the deals require a bank loan but because banks haven't been in the business of making many loans since the economic downturn, there is a good deal of unused bond authority, he said.

Most of the tax extenders like the EZ program are mindlessly approved by Congress every year and no one even knows what is in them, he said.