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Build America Bond Update: U.S. Supreme Court Declines to Review Federal Circuit Sequestration Ruling - Kutak Rock

On July 13, 2023, the plaintiffs in *Indiana Mun. Power Agency v. United States* filed a petition for a writ of certiorari with the U.S. Supreme Court for review of a ruling by the United States Court of Appeals for the Federal Circuit in which the Court of Appeals ruled that Build America Bond interest refund payments are subject to sequestration by federal agencies.

On November 20, 2023, the U.S. Supreme Court denied certiorari, effectively ending the possibility of judicial remediation of the reduced interest refund payments.

Background on Build America Bonds

In 2009, in response to the financial crisis, Congress passed the American Recovery and Reinvestment Act (the “ARRA”), which included a new program meant to incentivize infrastructure investments by state and local governments and increase federal tax revenues – the Build America Bonds program (the “Program”). Under the Program, state and local governments would issue taxable bonds instead of their normal tax exempt bonds through an irrevocable election that the bonds be taxable, and in exchange for paying the higher interest rates on taxable bonds, the issuers would receive federal refunds of 35% of the interest payments on said bonds. In reliance on the federal government’s commitment to provide refunds, state and local governments issued over \$181 billion in taxable Build America Bonds.

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by Frederic H. Marienthal III and Anna E. Wilbourn

Client Alert | February 7, 2024

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