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BONDS - INDIANA

Indiana Municipal Power Agency v. United States

United States Court of Appeals, Federal Circuit - February 17, 2023 - F.4th - 2023 WL 2052785

Issuers of Direct Payment Build America Bonds under authority of American Recovery and Reinvestment Act (ARRA) brought action against the United States, claiming violation of statutory duty under ARRA and breach of contract based on IRS failing to refund 35% of interest payable under bonds.

The Court of Federal Claims granted government's motion to dismiss for failure to state a claim and denied issuers' motion for reconsideration. Issuers appealed.

The Court of Appeals held that:

- Sequestration applied to tax refunds, and
- ARRA section authorizing bonds did not create contract requiring government to pay tax refund equal to 35% of interest paid by issuers.

Sequestration pursuant to Budget Control Act and American Taxpayer Relief Act applied to tax refunds of 35% of interest payable on Direct Payment Build America Bonds issued under authority of American Recovery and Reinvestment Act (ARRA), since refunds were issued from permanent, indefinite appropriation of necessary amounts for refunding internal revenue collections provided by statute, which constituted direct spending.

Section of American Recovery and Reinvestment Act (ARRA) authorizing Direct Payment Build America Bonds did not create contract requiring government to pay tax refund equal to 35% of interest paid by bond issuers; ARRA did not provide for execution of written contract on behalf of United States or reflect any language establishing a contract, but instead, it merely set forth payment program for bond issuers.

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