



Tax-Exempt Financing for Wyoming Municipalities

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Tax-Exempt for Whom?

- Tax-Exempt financing benefits a municipality as it is able to borrow for certain governmental projects at lower rates than would be available in the taxable marketplace.
- Interest received by a holder of a tax-exempt obligation is not subject to federal taxation. This tax advantage is passed through to a municipality in the form of lower borrowing costs (interest rates).

Fundamental State Law Consideration: Constitutional Debt Limitation

- Creation of county or municipal debt
 - “No debt in excess of the taxes for the current year shall, in any manner, be created by any county or subdivision thereof, or any city, town or village or any subdivision thereof in the State of Wyoming, unless the proposition to create such debt shall have been submitted to a vote of the people thereof and by them approved.” Wyoming Constitution Article 16, Section 4

Fundamental State Law Consideration: Constitutional Debt Limitation

- Debt Limits
 - “No city or town shall in any manner create any indebtedness exceeding four percent (4%) of the assessed value of taxable property therein...” Wyoming Constitution Article 16 Section 5

Types of Financing Structures

General guiding principle: In any tax-exempt financing structure, a tax-exempt financing should (1) provide tax-exempt interest to the holder of obligation (*reliant upon an opinion of bond counsel*) and (2) comply with state and federal law.

- General Obligation Bonds
- Revenue Bonds (Special Fund Doctrine)
- Lease Financings
- Other types of obligations, e.g., refunding, industrial development revenue bonds, multifamily housing revenue bonds, single-family mortgage revenue bonds and non-profit

General Obligation Bonds

- Projects: General Governmental Improvements
- Revenue: General Fund Revenues
- Considerations: Elections; Debt Limitations

Revenue Bonds (Special Fund Doctrine)

- Projects: General Governmental Improvements
- Revenue: Revenues from a particular facility or project
- Considerations: No election required; exempt from debt provisions; does require specific statutory authorization (state law)

Lease Financings (property or equipment)

- Bank Lease Financings (Direct Placement)
- Certificate of Participation (Publicly Offered Lease Arrangement)
- Lease Revenue Bonds (through an Authority, Joint Powers Board, Non-Profit Corporation)

Bank Lease Financings (Direct Placement)

- Project: Governmental Projects (equipment, facilities, property)
- Revenue: Annually appropriated general fund payments or other specified revenues received by the municipality; is often correlated to the leased property.
- Considerations: Terms negotiated often directly with a single bank; real estate components; compliance with Wyoming unique lease law

Other Types of Lease Financings

- Certificates of Participation
- Joint Powers Authority Lease Revenue Bonds
- Single Purpose Non-Profit Corporation or Authority Lease Revenue Bonds (possibly)

Wyoming State-Specific Law – Municipal Lease

- Be aware that Wyoming has specific requirements provided for in Wyoming Supreme Court and Attorney General Opinions that are unique to Wyoming and are meaningfully different from other states.
- At the end of the lease term, the lessee may exercise an option to purchase the building or equipment for a fixed amount that is *twice* the amount of the lessee's annual rental payments under the terms of the lease;
- The lessor (not the municipality) pays the cost of upkeep, repair, taxes, insurance on the building or equipment during the lease term (i.e., not a triple net lease). This would include all gas, water, steam, electric, heat, power and other utility charges; casualty and property damage insurance; and public liability insurance;
- The municipality or the state's full faith and credit shall not be pledged for any payments under the lease;
- The lessee may terminate the lease *at any time*, without penalty or recourse against the lessee. This includes if the municipality or the state does not appropriate sufficient funds to pay any annual rental payment.

Other types of obligations

- Municipalities can act as a conduit issuer for a manufacturing facility (industrial development revenue bonds) and non-profit to receive the benefit from tax-exempt bonds.
- Refunding of existing obligations.

“Findings” Required for IDRBs

- Project furthers the public purpose of providing health care facilities in the state or meets the following public purposes:
 - Creating new or additional employment opportunities;
 - Expanding the tax base and increasing sales, property or other tax revenues to the municipality or county;
 - Maintaining and promoting a stable, balanced and diversified economy among agriculture, natural resource development, business, commerce and trade (must be evidence concerning the area’s current economic base);
 - Promoting or developing use of agricultural, manufactured, commercial or natural resource products within or without the state.
- Wyoming Statute Section 15-1-705; *Little America v. Board of Commissioners of Laramie County*

Roles of Counsel in Transaction

Bond Counsel

Underwriter's Counsel

Disclosure Counsel

Special Tax Counsel

Role of Bond Counsel

Why have a bond opinion?

- History of practice of obtaining bond opinion
 - Began after widespread railroad bond defaults in 19th Century
 - Market requirement
- Today bond opinion covers:
 - Valid and binding obligation
 - Source of payment and security for bonds
 - Tax exemption

Disclosure and Publicly Offered Bonds

Considerations

Issuers are Exempt from SEC Registration and Regulation

Section 17 of 1933 Act

Rule 10b5

Disclosure - Role of Disclosure Counsel

- Official Statement – Municipal issuers subject to the “antifraud provisions” of the 1933 Act and Rule 10b-5
 - Requires disclosure of material information about the bonds to allow investors to make informed decisions
 - 10b-5 opinion – no untrue statement of material fact or material omission in connection with offer and sale of security. (POS and Final OS)
 - Underwriters and municipal advisors are subject to SEC and MSRB oversight

Secondary Market Disclosure

- Rule 15c2-12 Applies to Underwriters but indirectly imposes requirements on Muni Issuers.
- Continuing Disclosure Undertaking – Issuer provides annual update to EMMA of Financial Information and Operating Data in OS.
- Material Event Notices.

Material Events

- Principal and interest payment delinquencies
- Nonpayment-related defaults, if material
- Unscheduled draws on debt service reserves reflecting financial difficulties
- Unscheduled draws on credit enhancements reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions, affecting the tax status of bonds
- Modifications to rights of bondholders
- Bond calls, if material, and tender offers
- Defeasances
- Release, substitution or sale of property securing repayment of the securities
- Rating changes
- Bankruptcy, insolvency, receivership or similar event of the Issuer
- Merger, consolidation or acquisition involving the Issuer or the sale of assets
- Appointment of a successor trustee or the change of name of a trustee

Questions?

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