

## **TAX-EXEMPT FINANCING FOR NONPROFIT FACILITIES**

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### **Overview**

Tax-exempt financing provides a unique financial incentive for eligible nonprofit organizations to purchase or develop headquarters and other facilities used in furtherance of their charitable purposes. Tax-exempt financing typically yields interest rates in the range of two percentage points per year lower than conventional debt, and as discussed below, may often result in other cost savings and benefits. The use and benefit of this form of financing for nonprofits can be seen throughout the country as more and more eligible associations seek to purchase or develop real estate. The combination of ever-rising rents for real estate and the low interest rates available through tax-exempt debt allows associations not only to fix occupancy costs (as would be the case in a conventionally-financed acquisition), but also in most instances to lower total occupancy costs in both the near and long terms. Further, when applicable, nonprofits may access further savings through real estate tax exemptions which arise in the ownership setting but not in leased real estate settings. Tax-exempt financing is also used by 501(c)(3) associations, museums, hospitals, universities and private primary and secondary schools, whether or not heavily endowed, to develop, renovate and improve facilities at the lowest available cost of funds.

### **Benefits of Tax-Exempt Financing**

The principal benefit of tax-exempt financing is the lower interest rate at which funds can be borrowed. Typically, the all-inclusive cost of tax-exempt financing (including credit enhancement fees) is approximately two percentage points below comparable taxable financing. Lower interest costs, of course, make viable a range of activities which would not be affordable at market rates. Financing a facility with a low-interest loan may therefore enable a borrower to move to a larger or more efficient site than it would otherwise have been able to purchase outright, or to rent or finance at market rates.

The actual rate of interest on a bond financing depends on several factors, including the supply and demand for bonds at the time the bonds are priced, the term for which they are sold, the financial strength of the borrower and, where applicable, the nature of any credit enhancement provided. Normally, the shorter the term and the stronger the credit of the borrower or the credit enhancement provided, the lower the interest rate. Most letters of credit are issued for a term of five to ten years, while bond insurance generally applies for 25-35 years. Credit-enhanced bonds cannot generally be marketed successfully for a term longer than that of the credit enhancement; therefore, in such transactions the initial term of the borrowing (as distinguished from the final maturity of the bonds) will correspond to the term of the credit enhancement. It is usually anticipated, however, that the standard thirty-year bond issue secured by a letter of credit will be amortized over its full term as it is expected that the applicable letter of credit will be periodically renewed or replaced.

A collateral benefit of any financing is that, by using debt, a borrower may retain both greater liquidity (which most typically lowers its borrowing cost since a more liquid borrower presents a lower credit risk to a lender in most cases than a cash-poor borrower) and the earnings it realizes on any monies it would otherwise have spent to acquire or develop the financed facilities (subject to the limitations below imposed on the investment of bond proceeds). Such savings, when present, in effect further reduce the all-in cost of a project when compared to either conventionally financed or equity financed alternatives. Of course, as with all debt financing, tax-exempt financing permits the borrower to spread the cost of its capital assets over a term close to their useful lives.

### **Key Tax Limitations**

In considering tax-exempt financing for nonprofits, several key tax eligibility criteria must be taken into consideration. The principal threshold restrictions include (i) the “reimbursement rule,” (ii) the “five percent rule,” (iii) the “pledged funds” doctrine, and (iv) investment limitations. First and foremost, only entities that are exempt from tax under Section 501(c)(3) of the Internal Revenue Code are eligible to utilize this form of debt. As an extension of this rule, portions of a financed facility to be used in activities that constitute unrelated trade or business activities to either the borrower or any applicable user of the facility including tenants or subtenants, may not be financed with bond proceeds, though an allocation of equity or taxable debt to such space is allowed. In some cases, these rules create awkwardness where an entity seeks to acquire a facility that has expansion space; however, we have found that appropriately structured subleases to “like minded” nonprofits can be used effectively to allow the purchasing entity to “warehouse” space in its building for future growth. In addition, certain forms of nonprofit co-ownership may allow smaller organizations to share space, realize efficiencies and manage expansion and contraction issues.

Under the reimbursement rules, generally, in order to use bond proceeds to pay for a cost paid before the bonds were issued, the borrower must have evidenced its intent to finance that expenditure in a form and within time frames set out in the tax regulations.

The regulations require the following with respect to such evidence of the borrower’s “official intent”:

- The borrower, or any person or entity authorized by the borrower to take such actions, must formally declare that it intends to reimburse expenditures attributable to a project with proceeds of either a tax-exempt or taxable borrowing.
- The declaration of official intent must contain a reasonably accurate description of the type, location and use of the property for which the expenditure to be reimbursed is paid.

- The declaration of official intent must identify that borrowed funds will be used to pay the reimbursement expenditure and how much borrowing is then expected for the project as a whole.
- The declaration of official intent must be reasonable.

Typically, one would expect that the expression of official intent as described above would, in a Qualified 501(c)(3) financing, take the form of a formal resolution of the board of trustees or executive committee of the borrower, and would include the substantive elements described. This resolution is called a “reimbursement resolution”.

If the foregoing tests are met, then expenses paid prior to bond issuance may generally be reimbursed with bond proceeds if the applicable expenditures were paid or repaid with bond proceeds not more than 18 months after the later of when expenditure was originally made or incurred or the project placed in service. Furthermore, the official-intent resolution must generally occur not more than 60 days after the expense was originally incurred. Exceptions to these requirements include “preliminary expenditures” such as preconstruction soil tests, certain architectural fees, and the like, provided they do not exceed twenty percent (20%) of the total project cost. Conversely, even if these tests are met, bond proceeds may not be used to reimburse expenditures paid before the reimbursement bonds were issued if the bond proceeds are used directly or indirectly as follows: to create, increase, or replace a “sinking fund” for a tax-exempt obligation of the borrower (*e.g.*, using reimbursement proceeds to redeem other tax-exempt bonds); or to create, increase, or replace a reserve or replacement fund for tax-exempt obligations of the borrower.

Under the “five percent (5%) rule,” only five percent (5%) of the proceeds of a tax-exempt bond issue can be used to acquire property that is not occupied by a 501(c)(3) nonprofit entity and used in furtherance of its exempt purpose. Therefore, equity funds or conventional (taxable) financing must be utilized to acquire such facilities or portions thereof. Furthermore, to the extent that a nonprofit intends to use the financed facility to benefit any for-profit subsidiaries or to lease portions to taxable entities, this rule may affect the sizing of the proposed issue. Certain costs of issuance of the bonds that, in an amount not in excess of two percent (2%) of the issue, may be financed with bond proceeds must be counted against this five percent (5%) amount (effectively reducing the amount of proceeds available to finance “bad” costs to three percent (3%). On the other hand, most all soft costs, construction costs, construction period interest, furniture, fixtures and equipment, certain transactions costs and in certain cases working capital can be financed, adequate financing can typically be made available for most projects.

Under the pledged funds doctrine, a nonprofit organization must generally reduce its tax-exempt borrowing by the amount of its funds that are restricted (by the donor or otherwise) to project purposes. Similarly, restricted amounts raised after closing must be applied promptly to reducing the bond amount. Any funds held by the organization but subject to a pledge or lien in favor of the bondholders or a credit enhancer are also subject to investment limitations under this doctrine. Restrictions can arise from limits placed by a donor, by restrictions imposed by the recipient, or by actions taken by the recipient such as segregating gifts not otherwise restricted.

Investments acquired with bond proceeds (except for those deposited properly sized debt service reserve funds) are generally required to be invested at a yield not in excess of the bond yield unless subject to certain exceptions referred to in the tax regulations as “temporary periods.” The primary temporary periods are (i) the three years temporary period in the case of bond proceeds used to fund construction costs (in some case extended to five years), (ii) the thirteen month temporary period for investments in debt service funds, (iii) the one year temporary period for investment earnings, (iv) the 90 days temporary period in the case of current refunding issues (*i.e.* refunding bonds issued to not more than 90 prior to the redemption of the refunded bonds), and (v) a 30 day temporary period in the case of advance refunding bonds (*i.e.* refunding bonds issued to more than 90 prior to the redemption of the refunded bonds). Investment of proceeds in excess of their temporary period can result in taxability of the bonds.

In most cases, the investment of bond proceeds at yields in excess of the bond yield will result in a required rebate of the arbitrage earnings to the federal government. The rebate calculation must be made at least every five years and any rebate payment to the federal government must also be made every five years. Exceptions to rebate apply in certain cases, particularly as to monies intended for construction where the construction is to be completed within two years of the date the bonds are issued.

Investments acquired with bond proceeds must be acquired at fair market value. This includes not only direct investments such as Treasury Department obligations or guaranteed investment contracts acquired with proceeds deposited into a construction fund but also any derivative investments such as swap agreements entered into to hedge the interest rate on the bonds (*e.g.*, issuing variable rate coupon bonds then entering into a fixed rate swap so as to treat the bonds a fixed rate bonds). Fair market value is normally determined on the basis of receiving at least three independent bids for the investments (although this is not required for swaps it is recommended where the determination of the yield on the bonds is crucial such as in an advance refunding issue).

### **Gift Solicitation and Qualified 501 (c)(3) Bonds**

Qualified 501(c)(3) Bonds are often used by tax-exempt organizations to finance facilities which at the same time are the subject of fundraising campaigns. While the rules in this area are complex and at times subtle, what follows is a brief summary of the tax rules arising from the use of tax-exempt bonds as those rules intersect with such fundraising efforts.

At the outset, it should be noted that monies that are deemed “restricted” for bond purposes must be used either to pay costs of the bond financed facility or to pay down the bonds themselves. Thus, it is critical to identify which of the funds which may be realized by an organization through fundraising will be treated for bond purposes as “restricted.” The bond rules do not entirely mirror State law or generally accepted accounting principles in this regard. For bond purposes, monies are treated as restricted only if they have a meaningful nexus to the financed facility. Thus, even if a donor restricts the use of its money (or the earnings thereon) to support a program (classically, an “endowed chair”), such a restriction is of no moment for bond

purposes. Conversely, for bond purposes a restriction may be deemed to arise from the express terms of a donor’s gift (“this money is for the financed building”), from the implied donative intent arising from solicitation materials (if the solicitation focuses solely on the financed facility) or from the treatment by the recipient (the borrower) of the money as though it were restricted to pay the cost of a financed facility (or to pay debt service on the financing which funded such costs).

The most awkward basis for the creation of restricted gifts in this regard may be the doctrine of inferred donative intent. (An express donor restriction is easy to recognize, and comingling of gifts and earned revenues and restricted and unrestricted gifts largely addresses the internal [mis] treatment problem.) Basically, inferred restricted donative intent arises if the solicitation materials imply that the money being raised is intended to be used to pay specifically for the financed project. That said, naming agreements (if worded properly) do not give rise to inferred restrictive donative intent (although excessively pervasive naming benefits may give rise to other types of bond related tax problems if the donor is a business entity), but many customary fundraising techniques may give rise to such an inferred restriction. Basic suggestions for avoiding implied restrictions follow:

<i><b>DO.....</b></i>	<i><b>DON'T.....</b></i>
<ul style="list-style-type: none"> <li>• use multi-purpose solicitation (<i>i.e.</i>, discuss needs for buildings <u>and</u> programs)</li> <li>• describe broad mission goals</li> <li>• use the term “campaign” or “development campaign”</li> <li>• disclose that “gifts will be treated as unrestricted unless otherwise agreed”</li> <li>• if applicable, provide naming opportunities for programs as well as buildings or rooms (<i>e.g.</i>, the “Ms. X Seminar” or the “Ms. X Conference Room”</li> </ul>	<ul style="list-style-type: none"> <li>• assign dollar values to each purpose in a multipurpose solicitation (<i>i.e.</i>, pie charts)</li> <li>• say “please pay for our building”</li> <li>• use the term “capital campaign” (“capital” implies capitalizable assets)</li> <li>• use the term “endowment” (unless you mean that principal will not be invaded)</li> <li>• say “this room given by Ms. X” in acknowledgements</li> </ul>

Of course, restricted monies are better than no monies, so we are not suggesting that restricted gifts should be shunned; rather, the tax rules governing the use of tax-exempt bonds require that restricted gifts be used to pay for the capital projects to which they relate or used promptly to pay down the applicable bonds. Where there is an equity or taxable debt component in a financing, the restricted gifts may be allocated to those components first, but when applied to paying down bonds, the payment of prepayment penalties must be made out of other monies. Further, as noted above and while perhaps counterintuitive, a borrower with more cash reserves and more

debt will typically be seen as a better credit risk and thus will be able to borrow at a lower interest rate than a more cash-poor borrower. (Lenders worry about the sort of “what-ifs” which can be worked through better with cash than without.) Thus, while restricted gifts are better than no gifts at all, unrestricted gifts (or at least gifts not deemed restricted for bond purposes) are the best.

### **Underwriting Considerations**

Qualified 501(c)(3) Bond financings have been routinely successfully accomplished throughout the country. Many associations, including organizations that are not heavily endowed, have bought existing facilities, including buildings in which the association was already or was to become the principal occupant; in many cases, bonds have also financed new construction. In addition to financing total development costs including soft costs, related equipment purchases and certain transactions costs may also be financed. More importantly, because these transactions can be and are often underwritten from a credit standpoint as a commercial loan rather than as a real estate credit deal, the loan-to-value and similar limitations which often cause conventional financing to be unappealing do not typically inhibit the use of Qualified 501(c)(3) Bonds for appropriate borrowers. Similarly, these financings generally are done on a long-term basis (*i.e.*, 30 years), and combine construction and permanent financing in one vehicle (which achieves further transactions costs savings). Further, bonds can be issued on either a fixed, variable, or combined fixed and variable basis. While transaction’s costs are greater for this form of financing than conventional debt, lower interest costs typically offset these up front costs and result in substantial savings within the first two years when compared to conventional debt.

### **Structure**

In order to understand the structure of tax-exempt financings for nonprofits, it is important to realize that while these Qualified 501(c)(3) Bonds are, economically, private loan transactions between a nonprofit borrower and a lender (the “bondholder”), legally, tax-exempt debt constitutes an obligation of a county, municipality or other governmental entity which is sold to the public or privately placed with investors. Proceeds of the sale are then loaned to the nonprofit borrower by the governmental entity at the below-market interest rates borne by the bonds. This lower interest rate is made possible because the bondholder is not required to pay income tax on the interest income realized on a bond, while it must on a conventional loan. The repayment of the loan of bond proceeds is in turn secured only by the nonprofit borrower’s credit and, where appropriate or desirable, such additional property as the borrower may pledge (in this manner, such financings are substantially similar to conventional bank loan financings) but not by the credit of the governmental issuer. The principal difference between these two financing mechanisms, however, is that, as noted above, Qualified 501(c)(3) Bond financing runs through a governmental body (although no credit of the issuer is pledged to support the repayment of the debt evidenced by the bonds). For this reason, Qualified 501(c)(3) Bond issues are known as “conduit financings”.

To the extent that a bond issue cannot be sold solely on the borrower's credit and that of the financed property, many borrowers obtain and pledge third party credit enhancement, typically in the form of bond insurance or a letter of credit. The credit enhancement provider lends its credit rating to bonds, thereby making them more marketable, and is in turn secured by the borrower's credit and frequently also by a first lien on the financed property. Because many conduit bond financings are credit enhanced (for various reasons, not solely due to the borrower's creditworthiness, such as enhanced liquidity of variable rate tender bonds) the following discussion describes credit-enhanced models, though is equally applicable with minor modification to unenhanced financings.

### **Public Approval Process**

As noted above, tax-exempt financing involves a governmental body issuing debt. This entity is called an issuer. While local procedures vary, generally speaking, the issuance of conduit bonds by a local governmental entity or industrial development authority follows the following pattern:

Step 1 - Inquiry. A preliminary determination is made by borrower's counsel as to whether bond financing is available and appropriate for the proposed project and, if applicable, what issuer is available to issue the subject bonds.

Step 2 - Preliminary Steps. A preliminary discussion is held among the applicant, its counsel and the issuer to discuss the proposal and to alert the issuer to the applicant's intention to submit a letter of intent and/or a formal application.

Step 3 - The Letter of Intent or Application. A proposed letter of intent and/or an application and appropriate back-up data is submitted for the issuer's review. Many issuers do not have a formal application form, but rather issue a suggested outline of issues and considerations. Just prior to or coincident with the submission of an application or letter of intent, direct discussions with appropriate members of the legislative body of the issuer are often appropriate, particularly where a particular elected representative has jurisdiction over a project site.

Step 4 - Administrative Review. Upon receipt of a letter of intent or application package, the issuer typically reviews the application, with particular attention to the creation or retention of jobs and local tax revenues.

Step 5 - Resolution. At this point, the issuer's bond counsel prepares a resolution for the legislative body of the issuer seeking approval of the proposed financing. (Prior to the public introduction of the resolution there is a two-week advertising requirement in which the financed project is described and the public is invited to comment on the public policy implications of indirect governmental support for the borrower's proposed project.) Typically, within a month after the introduction of the resolution, there is a public hearing at which the issuer determines whether to adopt the resolution. Some issuers adopt a preliminary resolution and, where relevant, a second resolution when bond documents are substantially finalized to authorize those documents. This two-step process is also often used where borrowers want preliminary

assurance that the issuer will issue the bonds before bond documents are prepared. If not before, the borrower will at this time also adopt its own reimbursement resolution as discussed above.

Step 6 - Preparation of Bond Documents. After the adoption of an authorizing resolution, the issuer's bond counsel, together with the borrower, the credit facility provider (if any), the underwriter and their respective counsel, work to draft proposed bond documents. The period of time required for this step varies depending on the complexity of the transaction and may take from as little as three weeks to approximately three months on average to complete.

Step 7 - Closing. Upon finalization of major bond documents, bond closing may be scheduled, closing certificates prepared, and the transaction consummated. Shortly before closing, the borrower will adopt a final authorizing resolution authorizing the financing and the specific economic terms of the financing.

Generally, the process can be completed in approximately 120 days.

## **Documentation Process**

Concurrent with the legislative process, the borrower, together with its counsel, financial advisor (if any) and/or underwriter, analyze the proposed financing, select financing models, prepare "loan" packages for credit enhancers, if applicable, and for prospective bond purchasers, and negotiate credit commitments--in effect, negotiate the loan transaction itself. As the underlying borrowing is essentially a private business matter, the issuer does not typically interject itself actively into this process except indirectly through its bond counsel, which must pass on the legality and tax ramifications of the structure and documentation used to evidence the transaction.

Typically, bond financing documentation follows familiar patterns. The following provides a brief summary of the principal bond related documents typically used in connection with an insured financing. The named documents are listed in order of legal complexity, though not necessarily in order of financial importance. In some jurisdictions, certain documents may be styled in a different manner (in fact, the indenture and loan agreement are sometimes combined into one instrument), however, the functions of each are the same. In letter of credit financings, a letter of credit reimbursement agreement and letter of credit are typically substituted for the insurer's documents. Following the document summary is an outline of the process of review and negotiation which would normally be employed.

## **Principal Documents**

### **Indenture of Trust**

The Indenture will set forth the terms of the financing in sufficient detail to facilitate administration for 30 years or more, including: interest rate(s); amortization rate(s); prepayment provisions, both mandatory and voluntary (for example, in the event of taxability, condemnation, casualty, excess proceeds); the constraints on investment of undisbursed bond proceeds and the

application of investment income; certain default and cure provisions; and various mechanical aspects of the issuance process. In addition, the credit enhancement structure, its relation to the bond holders, and its role in securing the transaction should be detailed.

### Loan Agreement

The Loan Agreement will specify: disbursement mechanisms (including requisition format); aspects of the security for the loan of the bond proceeds to the borrower, including aspects of certain of the prepayment provisions; insurance requirements, including the obligation of the borrower to rebuild or prepay in the event of casualty (or condemnation); and certain default provisions. Further, the Loan Agreement will contain numerous representations concerning the borrower (ex: tax-exempt status, inducement) and the project (ex: zoning), and warranties concerning future actions of the borrower (ex: maintenance of existence and tax exemption) and the project (ex: proceeding with diligence). The Loan Agreement will also incorporate by reference the terms of the Indenture and the Tax Certificate (discussed below). In some states a financing lease structure is also used, with the asset to be owned by the nonprofit leased to the issuer and then leased back from the issuer, with the nonprofit entitled to buy back the asset for one dollar over the outstanding bond amount at the end of the lease term.

### Insurance Policy or Letter of Credit and Commitment Letter

The insurance policy or letter of credit will specify the terms and conditions of the credit enhancer's undertaking, though any financial covenants (ex: limitations of future borrowings) and security provisions, representations and warranties it requires will typically be contained in the Loan Agreement in an insured financing or in a separate letter of credit reimbursement agreement in a letter of credit backed financing. These terms are frequently negotiated in great detail prior to proceeding with the transaction, often through the vehicle of a commitment letter. Because a commitment fee may be required upon execution of a commitment letter and because little flexibility can be expected after the execution of such a commitment, the commitment letter's importance equals that of any other document in the transaction.

Ancillary to the insurance policy or letter of credit reimbursement agreement may be a Deed of Trust (mortgage), Security Agreement and Financing Statements, which together will provide the details of certain of the security which may be required.

### Offering Materials

The Preliminary Official Statement ("POS") and the (final) Official Statement ("OS") are fundamentally marketing and disclosure documents and, therefore, will contain significant historical, statistical and financial information about the borrower. Though typically prepared in whole or in part by underwriter's counsel, the borrower bears the ultimate legal responsibility for the accuracy and completeness of the information about it contained in these documents, and may suffer substantial damages if inaccuracy or incompleteness is found in a securities fraud action.

## Bond Purchase Agreement

The “BPA”, as it is called, will lock in the bond structure, terms, rate, and most of the underwriter’s charges, will describe the (limited) circumstances under which the Underwriter may withdraw from the financing, and will contain representations and warranties similar to those described above and in the Tax Certificate (discussed below), and concerning the accuracy and completeness of the OS.

## Tax Certificates

(Sometimes called the Non-Arbitrage Certificate). This document, which is fundamentally a disclosure document, requires detailed information about the borrower’s legal and financial status, the anticipated project costs and other uses of bond proceeds, the anticipated sources of income and other security for the repayment of the bonds, the investment and use limitations imposed upon the bond proceeds and other similar matters. The disclosure required by this certificate is designed to elicit in detail all the facts necessary to enable bond counsel to conclude that the bonds are structured to assure ongoing tax exemption.

## Negotiation Process

With the exception of the Tax Certificate, the typical process involved in the development of bond documents is as follows:

- (i) A preliminary session with all counsel and principals is held (often by phone) to develop a broad outline of each aspect of the transaction and the proposed calendar for achieving a closing.
- (ii) Bond Counsel (or underwriter’s counsel as to the BPA, POS and OS and bank counsel as to the letter of credit reimbursement agreement) draft proposed forms based on the structure established in step (i) above and, often, more detailed instructions from the borrower or underwriters.
- (iii) Each set of participants independently reviews the proposed documents, and then, together with their counsel, all parties review the documents and develop a consensus approach (often a joint “mark-up” of the relevant document).
- (iv) Counsel and, if desirable, key personnel of the principals meet to negotiate and collectively “mark-up” the relevant documents, each simultaneously commenting on and responding to the comments of the other participants. (At certain stages this process may be affected merely by the mutual exchange of markups.)
- (v) Bond counsel (and/or bank and underwriter’s counsel, as appropriate) revise the documents and circulate redlined copies showing changes. The review and meeting process (steps (iii) and (iv) above) is then repeated as

often as necessary for all parties to achieve a consensus on each point in the documents. In a simple transaction and assuming experienced parties and counsel, and assuming no significant deal changes are necessitated by changing conditions, this process will typically occur only one or two times until consensus on all points is reached. Minor changes, however, typically continue to be made until shortly before closing.

The Tax Certificate will usually be negotiated separately, principally by bond counsel and borrower's counsel in response to preliminary discussions among borrower personnel and borrower's counsel and in light of an agreed approach to the tax exemption conclusions.

The participants in the above process include, at a minimum, the borrower and its counsel, the underwriter and its counsel and bond counsel, the Issuer and its counsel, the credit enhancer and its counsel, the trustee, and, at the very end, the rating agencies if the transaction is to be rated.

Typically, the documentation and public approval processes overlap and a transaction can be consummated within a total 120-day time span in most cases.

### **Costs**

In addition to the below market interest rate born by the bonds, a borrower should anticipate that in a typical case, it will have to pay the following fees ("R" indicates annual recurring fees, "I" indicates initial, one-time charges):

1. Letter of Credit (I and R) or Bond Insurance (typically only I)
2. Bond Underwriting (I) and/or Financing Advisor (I)
3. Bond Counsel (I)
4. Trustee and Trustee's Counsel (I and R)
5. Borrower's Legal (I)
6. Rating, if applicable (I)
7. Printing, if applicable (I)
8. Remarketing (I and R)
9. Issuer's Fee(s) (Application and/or Administrative) (I)

The most significant fees are for credit enhancement and underwriting. It is important to note that, subject to certain tax law limitations, most of these fees can be financed and thereby amortized over the term of the bonds. In any event, a portion of these fees would be incurred under a conventional financing approach. Further, in many jurisdictions the mortgages given to

secure a bond financing are exempt from recordation and transfer tax. Thus, as noted above, together with interest rate savings in the two point range per year, the incremental higher initial costs of the tax-exempt bond approach are more than offset, often within the financing's first one or two years.

### **Conclusion**

Tax-exempt financing is an important tool for nonprofits seeking to acquire or develop properties for use in their exempt purpose activities. Though somewhat complex, the benefits of the use of this tool are substantial, and in this era of increasing financial pressures, nonprofits may wish to seriously examine all such opportunities to make their growth and development more affordable.