



BUYNAK LAW FIRM

LOW-INTEREST FINANCING FOR NONPROFIT CAPITAL PROJECTS

(Nonprofit Law Advisory 2008 – 06)

This advisory discusses how tax free bond financing can provide nonprofits with low interest financing for capital projects. For many nonprofit organizations, seeking financial assistance for capital projects can be a daunting challenge. In today's economy where can a nonprofit turn to receive financing for such projects? The answer: **Tax Free Bond Financing**.

This discussion is neither exhaustive nor tailored to your specific situation, but only intended to give you enough information to discern whether there are options your nonprofit may want to consider in financing capital projects. Our firm representation is only undertaken through a written engagement letter and not by the distribution of this Advisory.

What are Tax Exempt Bonds?

Tax Exempt bonds are a low-interest source of financing for capital projects for qualified nonprofit organizations.

What are the benefits of Tax Exempt Bond Financing?

- **Low Interest Rates** ó tax-exempt bond financing typically offers interest rates that are 20% to 35% less than conventional taxable alternatives.
- **Better Terms** ó tax-exempt debt may, in most cases, be issued on a long-term (e.g. 20-30 years) with an interest rate which can be fixed or variable. The bond is highly flexible in the variable mode with periods of interest only, a variable amortization schedule and partial or full payment without penalty options available.
- **Comprehensive Funding** ó the funds can be used to pay for construction and take-out financing of land, buildings and equipment.
- **Allows Borrower to Retain Accumulated Funds** ó bond proceeds can be used to pay for eligible costs while the borrower's accumulated funds, including donations, can remain invested creating the potential for the creation of incremental financial resources to support programs and services.

How does a Nonprofit Organization qualify for a Tax-Exempt Bond?

- **Eligibility** ó the Nonprofit organization must have received a 501(c)(3) determination letter from the Internal Revenue Service.
- **Public Benefit** ó the financed project must provide a defined public benefit and be in furtherance of the community service mission of the organization.
- **Minimum Project Expense** ó a minimum project funding of \$2 million is needed to make the economics work.
- **Credit Standards** ó bonds issued must meet established minimum credit rating standards, based either on the credit of the borrower or the credit enhancement from a bank, insurance company or other acceptable guarantor.

What are eligible uses of Tax Exempt Bond Proceeds?

- **Capital Improvement Projects** ó including the cost of land, buildings, equipment and/or infrastructure related to the acquisition or construction of a project.
- **Refinancing Prior Debt** ó funds may be used to refinance outstanding taxable debt that was used for eligible capital projects.
- **Reimbursing Prior Capital Expenditures** ó under certain circumstances, capital expenditures that could qualify for financing with tax-exempt bonds, but are made prior to issuance, can be reimbursed with proceeds of the bonds when issued
- **Financing Costs** ó costs incurred, including legal fees, in connection with issuing the bonds, debt service reserve accounts and capitalized interest.

How is the Revenue Bond Structured?

- Bonds are issued by a governmental entity to obtain their tax-exempt status and the proceeds are loaned to the nonprofit to fund the project. The issuer acts only as a conduit to the tax exempt marketplace.
- Bonds are not guaranteed by the governmental entity, they are a special, limited obligation of the Issuer.
- The nonprofit is responsible for repaying the bonds. The commitment is secured by a direct-pay letter of credit (LOC) provided by a bank. The bonds can also be sold directly into the bond market or as a private placement to investors.
- Bond funds are held by a Trustee until used for project costs.

Putting the right team in place – the Buynak Law Firm and Growth Capital Associates, Inc.

- Specialists at providing independent, impartial advice on structuring bond issues for nonprofit organizations.
- Access to experienced, established finance team, including: bond counsel; underwriter; trustee; rating agency and financial advisor.
- The “team” approach eliminates possible confusion, miscommunication and delays in the issuance process.
- Bond related fees and costs are fixed at the beginning of the issuance process creating certainty as to transaction costs.

The Buynak Law Firm is proud to be deeply involved in the Santa Barbara community through the representation of a variety of nonprofit organizations in a range of activities as diverse and sophisticated as those for our for-profit clients. **The Buynak Law Firm** is also pleased to partner with **Growth Capital Associates, Inc.** in creating a strategic alliance to assist non profit organizations obtain low interest financing for capital improvements.

For more information or to set up an initial meeting, please contact David W. Smith, Esq. at (805) 966-7277 or Dan Bronfman at (310) 459-8100. You can also send an email to Mr. Smith at davidsmith@buynaklaw.com or to Mr. Bronfman at dan@gro-cap.com.

This advisory is neither exhaustive nor is it tailored to your specific situation. If you have questions or concerns, you should discuss your individual situation with us or your own attorney.

David W. Smith
Business and Nonprofit Attorney

This Advisory is one of a series of business, nonprofit, estate planning, real estate, land use and tax advisories prepared by the attorneys at the Buynak Law Firm. Should you have further questions regarding the information provided in this Advisory, please contact the author at the number listed above.

The Buynak Law Firm provides business legal services to individuals, business entities and nonprofit organizations from entity formation and start up, through day-to-day operations and exit strategies.