How COVID-19 Has Affected Tax-Exempt Bonds

Michele Allgood
mallgood@mwlaw.com
(501) 688.8874

Ashley Edwards
aedwards@mwlaw.com
(501) 688.8878

John Bryant
jbryant@mwlaw.com
(501) 688.8823

Jill Grimsley
jgrimsley@mwlaw.com
(479) 464.5655

08/18/2020

First published on ArkansasBusiness.com.

The COVID-19 pandemic has changed the landscape for many of us, including issuers of tax-exempt bonds. Many state and local governments rely on tax-exempt bonds to fund major projects for their communities. In order to remain compliant as well as identify opportunities, issuers should be aware of certain situations and matters that may arise during the pandemic.

COVID-19 and the Impact on Interest Rates

Because of the pandemic's effect on the financial markets, tax exempt bond interest rates are at an all time low – one of the very few positives resulting from the pandemic. Lower interest rates provide issuers with the opportunity to fund projects at a lower than anticipated cost making them more affordable. Additionally, issuers may be able to refund outstanding debt at lower rates. Discussing these options with bond counsel may provide issuers with opportunities for significant savings. However, issuers should anticipate that their investment bankers will make sure that the pandemic has not adversely impacted the issuer's ability to repay the bonds.

Proper Guidelines of Public Hearings

Under Arkansas law, before issuing bonds for new improvements, a hearing providing the public with an opportunity to express their views regarding a project and the issuance of bonds must be held. Social distancing requirements and other limitations make it difficult to hold public hearings.

If a locality is permitting in-person meetings, then public hearings can proceed as previously conducted with a few extra precautions. Issuers can provide an opportunity for written comments to be submitted prior to the hearing as well as access to a public hearing via toll-free telephone numbers. Issuers must require any person attending an in-person public hearing to comply with any applicable mandate, for example, wearing a mask. Other guidelines encourage the posting of signs at entrances advising attendees not to enter if they have any symptoms of, or have had known exposure to someone with, COVID-19 as well as marking off six-foot increments establishing where individuals should stand or sit to maintain physical distance. Following the guidelines and mandates in the applicable jurisdiction ensures that a safe public hearing that meets the requirements under Arkansas law can be held.

Important Disclosure Requirements

Issuers with outstanding bonds frequently have an obligation to provide certain on-going disclosures. Disclosure requirements may include the filing of notices through the Electronic Municipal Market Access (EMMA) for situations caused by the pandemic's effect on revenues and operations. Late annual filings of financial statements or delinquencies in principal and interest payments are obvious disclosures. Some non-payment related defaults, such as sales tax receipts or other revenues falling below a certain threshold, may also trigger a disclosure obligation. If an issuer takes advantage of resources related to COVID-19 relief that involve a repayment obligation, this may be a financial obligation that should be disclosed. Issuers should review their disclosure requirements and covenants with this in mind.

Requirement to Spend

For bonds recently issued to finance capital projects, issuers should remember that proceeds of the bonds need to be spent within certain time periods. On the date the bonds were issued, an issuer may have reasonably expected that at least 85 percent of the proceeds will be spent for the capital project within three years. Delays in spending proceeds of bonds issued before the pandemic may occur that result from supply chain disruptions, stay at home orders, or labor disruptions not reasonably expected when the bonds were issued and that may not be within the issuer's control. While delays in spending resulting from these events should not be treated as a failure to comply with federal tax law, these occurrences should be documented and monitored. When issuing bonds in the midst of the pandemic, an issuer should work with bond counsel so that expectations and certifications made with respect to spending of bond proceeds are reasonable considering the pandemic and its possible effects on the capital project.

The COVID-19 pandemic is impacting all aspects of our lives, and municipal finance projects are not immune from these impacts. Being aware of potential impacts is the first step to ensuring compliance with the applicable laws and regulations as well as any covenants contained in the bond documents. Working with bond counsel can help issuers maintain compliance with these laws, regulations and covenants.