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## **Bank Qualification Increase Provides Additional Financing Opportunity**

### **Introduction**

The American Recovery and Reinvestment Act of 2009 (the "Act") includes among its provisions a modification to the Internal Revenue Code of 1986 (the "Code") which will allow some governmental units and 501(c)(3) organizations to borrow funds at lower interest rates in 2009 and 2010.

Pursuant to the Code, banks may not deduct the carrying cost (the interest expense incurred to purchase or carry an inventory of securities) of tax-exempt municipal bonds. This has the effect of eliminating a portion of the tax-exempt benefit of municipal bonds for banks purchasing them. There is an exception in the Code that allows banks to deduct 80% of the carrying cost of a "qualified tax-exempt obligation" also known as "Bank-Qualified Bonds." For bonds to be bank-qualified they must be (i) issued by a "qualified small issuer," (ii) issued for public purposes, and (iii) designated as qualified tax-exempt obligations. A "qualified small issuer" is (with respect to bonds issued during any calendar year) an issuer that issues no more than \$10 million of tax-exempt bonds during the calendar year.

### **What has changed?**

Under the Act several changes have been made that will increase the supply of bank-qualified bonds and encourage investment by banks in tax-exempt bonds. The changes only apply to tax-exempt bonds issued before December 31, 2010. The Act increases the current \$10 million bank-qualified bond limit to \$30 million. Governmental and 501(c)(3) borrowers who borrow through a conduit issuer will be entitled to bank qualification so long as their (the borrower's) total tax-exempt borrowings are under \$30 million in the calendar year. They will not be limited by other bonds the issuer has or may issue in the current year.

### **What this means?**

This means that some governmental units and 501(c)(3) borrowers who borrow funds through the issuance of tax-exempt bonds will not only be able to take advantage of the savings afforded by borrowing through a tax-exempt bond issuance, but will also be able to secure bank qualification for up to \$30 million during each of calendar years 2009 and 2010.

Designating the bonds as “bank-qualified” will make it more likely banks will buy and hold the debt and will lower the overall interest cost vs. non-bank qualified bonds.

Hall Render’s Commercial Healthcare and Public Finance Group serves as borrower and bond counsel to firm clients as well as counsel to bond underwriters and financial institutions. If you have any questions, please contact:

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