

Hall, Render, Killian, Heath & Lyman is a full service health law firm with offices in Indiana, Kentucky, Michigan and Wisconsin. Since the firm was founded by William S. Hall in 1967, Hall Render has focused its practice primarily in the area of health law and is now recognized as one of the nation's preeminent health law firms serving clients in multiple states. 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. For more information about the firm please visit us at [www.hallrender.com](http://www.hallrender.com).

#### **Office Locations**

##### Indiana Offices

One American Square  
Suite 2000  
Indianapolis, IN 46282  
(317) 633-4884  
Contact: John C. Meade or  
Jerimi J. Ullom

8402 Harcourt Road  
Suite 820  
Indianapolis, IN 46260  
(317) 871-6222

##### Kentucky Office

614 West Main Street  
Suite 4000  
Louisville, KY 40202  
(502) 568-1890  
Contact: William D. Roberts

##### Michigan Office

Columbia Center, Suite 315  
201 West Big Beaver Road  
Troy, MI 48084  
(248) 740-7505  
Contact: Mark R. Adams

##### Wisconsin Office

111 East Kilbourn Avenue  
Suite 1300  
Milwaukee, WI 53202  
(414) 721-0442  
Contact: Tom Streifender or Patrick  
D. Walsh

#### **Contact Us**

[hallrender@hallrender.com](mailto:hallrender@hallrender.com)

## **CREATIVE TAX-EXEMPT FINANCING**

### **Preserve Cash, Borrow Cheap, Be Efficient**

We've all heard the phrase "Cash is King" for many years, but in the current credit environment it has taken on even more relevance. Days Cash on Hand and other liquidity measures are fast becoming among the most important credit measures in any organization. When coupled with the general difficulty accessing credit, the need for liquidity has many 501(c)(3) organizations delaying capital expenditures, leasing capital equipment at less than favorable terms, or slowly depleting their cash by making cash capital expenditures. Often, organizations have paid cash for relatively "small" (\$5 million or less) purchases because they thought executing a tax-exempt borrowing for such a small amount would be inefficient. While it is often the case that legal fees, financial advisory fees and other costs are similar in a \$1 million borrowing to those in a \$10 million borrowing, there are several ways borrowers may structure and plan their activities to preserve cash, take advantage of tax-exempt interest rates and keep transaction costs low.

#### **Adopt Reimbursement Resolutions and Issue Tax-Exempt Bonds Periodically**

501(c)(3) organizations have the ability, subject to certain restrictions, to reimburse themselves for cash expenditures and/or taxable financings with the proceeds of tax-exempt bonds. In order to do so, the board of the 501(c)(3) must adopt a reimbursement resolution not later than 60 days following the respective expenditure and must reimburse the organization with the proceeds of tax-exempt bonds not later than 18 months following the expenditure or 18 months following the date the respective equipment or project is placed in service, and in any event not later than 3 years following the original expenditure.

In order to maximize the flexibility of the organization to reimburse itself with subsequent tax-exempt bond proceeds, the Board of Directors should regularly adopt reimbursement resolutions which identify capital expenditures with sufficient specificity and evidence the organization's intent to reimburse those expenditures with tax-exempt bonds. Then, subject to the time restrictions noted above, the borrower may combine several reimbursements into a single tax-exempt bond transaction thereby making the tax-exempt bond transaction efficient from a cost perspective.

Note that for private activity bonds *other than those issued by 501(c)(3) tax-exempt borrowers* (governmental units and others), the reimbursement resolution must be adopted by the issuer of the bonds rather than the conduit borrower.

#### **Finance on a Taxable Basis and Re-Finance to Tax-Exempt at Efficient Intervals**

501(c)(3) organizations also have the ability to re-finance taxable debt with tax-exempt bonds. This flexibility (which is unique to 501(c)(3) entities) provides organizations the ability to finance relatively small projects with simple, taxable bank loans or lines of credit (provided the proceeds of the line are utilized for capital expenditures and not working capital) and then, when the cumulative amount warrants, issue tax-exempt bonds to re-finance the taxable debt. This strategy would also allow borrowers to finance equipment purchases with taxable loan proceeds and then roll that debt into any larger project financing the organization may have planned for the future.

## **New Bank Qualified Limits Make Draw-Down Bonds More Attractive**

The recent stimulus package enacted by Congress increased the limit for "bank-qualified" bonds from \$10,000,000 per year to \$30,000,000 per year and, more importantly, shifted this determination from the bond issuer to the underlying borrower. This effort is designed to make tax-exempt bonds more attractive to banks and financial institutions and to provide borrowers with the benefits of bank qualification up to the \$30,000,000 threshold. For borrowers who won't expend the \$30,000,000 limit at one time, structuring a bank-qualified draw-down bond may provide much needed flexibility and the ability to draw-down proceeds over time and at a tax-exempt rate. Note the bank qualification changes apply to bonds issued in 2009 and 2010.

### **Consider Tax-Exempt Leasing**

When considering an equipment lease, ask the vendor or leasing company to offer you a tax-exempt lease option. Often vendors and others simply present the package that they prefer rather than a tax-exempt option which may be more advantageous to the lessee. Equally as often, 501(c)(3) organizations take the deal without considering all their options because it is simply easier to accept the entire package. Many leasing companies have developed pre-printed or "form" tax-exempt lease documents which keep closing costs down. These form documents may require minor modifications to meet the particular requirements of the conduit issuer. It should also be noted that leasing is not limited to tangible equipment, but may include related capital costs, such as software and implementation costs, which can represent a significant portion of the overall project cost.

### **The Bottom Line**

In today's environment every bit of cash preservation helps. As one strategy for preserving cash, borrowers such as healthcare providers should consider several, flexible, tax-exempt borrowing structures. When structured and planned appropriately, these financings can provide borrowers with the ability to efficiently access tax-exempt financing, even in relatively small increments.

To discuss these or other creative financing strategies, please contact:

Jerimi J. Ullom at 317-977-1488 or [jullom@hallrender.com](mailto:jullom@hallrender.com)

John C. Meade at 317-977-1416 or [jmeade@hallrender.com](mailto:jmeade@hallrender.com)

Patrick D. Walsh at 414-721-0450 or [pwalsh@hallrender.com](mailto:pwalsh@hallrender.com)

Thomas R. Streifender at 414-721-0452 or [tstreifender@hallrender.com](mailto:tstreifender@hallrender.com)

*This publication is intended for general information purposes only and does not and is not intended to constitute legal advice. The reader must consult with legal counsel to determine how laws or decisions discussed herein apply to the reader's specific circumstances.*