

## **Build Now, Finance Later**

### ***Use Reimbursement Bonds for projects that can't wait***

*by Ryan J. Johannes*

Imagine that your entire capital reserve fund is about to be sucked into a giant emergency sewer line failure repair or water well failure. Or, your nonprofit needs to purchase land or invest capital before bonds can be issued. These are occasions where your bond counsel, by following strict rules in the Internal Revenue Code (Code), can enable an issuer, nonprofit or developer to finance or reimburse unexpected, or even planned expenditures, by the issuance of tax exempt bonds after the expenditure.

These rules do not apply where you have a contract with a developer for purchase or reimbursement for facilities, or where you are paying off a separate loan for the expenditure. This technique applies when you need (or want) to use cash for a purpose you would like to finance with bonds to recoup your cash.

In order to properly reimburse expenditures rather than refund them with the proceeds of the bond issue (which could be determined to be your only available advance refunding), the Treasury regulations of the Code require the issuer adopt a declaration, such as an official resolution, stating that it is the issuer's official intent to reimburse the expenditure in the future with an obligation such as a bond. In the past, conduit issuers called this resolution an "inducement resolution." The regulations call these "official intent" or "reimbursement resolution."

### ***Plan Ahead***

This statement must contain several specific elements to be considered an official intent. First, the statement must be in a reasonable form. This can be in any form as long as it is appropriate for the organization such as a resolution, an action by the appropriate representative of the organization or specific legislative authorization for the obligation for the particular project. Secondly, this official statement must describe the project for which the original expenditure to be reimbursed is paid and the maxim amount of the obligation expected to be issued by the organization. All that is required of this description is to identify the name of the project or the purpose of the fund from which the original expenditure was made (e.g. parks and recreation fund).

On the date of this declaration, the issuer must have a reasonable expectation that it will reimburse the original expenditure with the proceeds of the bond. Official intents issued as a matter of course or in amounts that are much larger than are expected to be used for the project (blanket declarations) will not be considered to be reasonable. A pattern of failures to reimburse actual expenditures is considered to be evidence of unreasonableness, rendering your official intents useless in the future.

### ***Pay Back in a Timely Way***

Also, in order to be considered a reimbursement bond, the expenditure from the proceeds of the bonds for the reimbursement must be made within 180 months of the original expenditure or the date the project was placed in service, but not more than three years. This time period can be extended to five years if a licensed architect or engineer

certifies that at least 5 years are necessary to complete the project. Additionally, the expenditure to be reimbursed must be a capital expenditure, a cost of issuance for a bond, extraordinary working capital, a grant, a qualified student loan, a qualified mortgage loan or a qualified veteran's mortgage loan.

There are several exceptions to the official intent rules. These include the costs of issuance of any bond that does not exceed 5% of the proceeds or \$100,000, whichever is less, or up to 20% of the issue price of the bonds if that amount is used for preliminary expenditures. Preliminary expenditures include architectural, engineering, surveying, soil testing, reimbursement bond issuance and similar cost that are incurred prior to the commencement of the acquisition or construction of the project.

*For more information on reimbursement bonds contact Ryan Johannes.*