

# PUBLIC FINANCE LAW

## *Update*

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

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## Important Information Concerning Tax-Exempt Bonds for 501(c)(3) Entities

**March 10, 2009**

The Stimulus Act signed into law by President Obama on February 17, 2009 contains some important changes affecting tax-exempt financing for 501(c)(3) entities, but the Act provides that such changes will only apply to financings incurred in 2009 and 2010.

The changes relate to what bonds can be "bank qualified." If a bond is bank qualified it may provide the borrower with a lower interest rate. Furthermore, if a bond is bank qualified it is more likely to cause banks to structure the financing like a normal loan agreement thus doing away with the expense of an underwriter, bond trustee and letter of credit fees.

The benefit of these changes for 501(c)(3) entities are several.

First, the Stimulus Act increased the \$10 million annual limit on issuers of bank qualified bonds to \$30 million for bonds issued during 2009 and 2010, thereby significantly increasing the number of issues that can be designated as bank qualified bonds. Bonds issued in 2009 or 2010 that refund non-bank-qualified bonds could also be bank qualified if they fit under the \$30 million limit.

Second, the determination of whether the 501(c)(3) entity can come under the \$30 million annual ceiling no longer takes into account bonds issued by or on behalf of the city or county which is issuing bonds for the benefit of the 501(c)(3) entity.

Third, even if the 501(c)(3) entity exceeds the \$30 million annual ceiling (and hence its debt is not bank qualified) it no longer has to worry about the effect of its debt on the ability of the city or county (which is issuing debt for its own benefit) to issue bank qualified debt. Many cities and counties have previously required financial compensation from 501(c)(3) entities if the debt issued for such entities causes the city or county to have to issue non-bank qualified for its governmental projects.

Please contact any of the attorneys in Bass Berry & Sims' Public Finance Group listed below if you have any questions about this alert.

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