Private Activity Bond Authority Review Board

Exempt Facility Application
Policies and Procedures

The State of Utah created the Private Activity Bond Review Board (PAB) for the purpose of allocating tax-exempt private activity bonds (Volume Cap) to finance eligible capital facilities for exempt facility businesses in Utah. The objective of PAB is to provide the developers of exempt facilities in Utah with an alternative, low-cost source of funds to finance capital expenditures for their facility.

PAB BOARD POLICIES AND PROCEDURES

1. The PAB Board has approved the Exempt Facility Application and adopted the guidelines below to evaluate applications by certain criteria as outlined and written in the Federal and State Legislation.
2. PAB reserves the right to change or amend the criteria when deemed necessary and will give sufficient notice to the public.
3. The competitive evaluation criteria are used by the applicants, staff and the PAB Review Board.
4. The PAB Board reserves the right to accept or reject the conclusions from the staff's evaluations and recommendations.
5. The Board will exercise its' prerogative in a prudent manner; furthermore, it reserves the right not to allocate any tax-exempt Volume Cap for that purpose.
6. Only those projects that best meet the goals and objectives of the PAB Program will be selected for an allocation.
7. All awards of tax-exempt bonds shall take place at the public PAB Board Meetings.
8. PAB will determine the time and place of the public meetings for the allocation of Volume Cap.
9. Once the PAB Board votes to give the applicant the amount of volume cap requested, the allocation is final; assuming, the applicant has met all requirements of the program and has not misled, falsified or otherwise misinformed the PAB Board.

This document covers the following subjects. The information given is general in nature. It is not intended to be comprehensive legal advice. Please seek legal advice from qualified bond counsel about your specific manufacturing project.

- Eligibility
- Bond Limitations
- Other Requirements
- Criteria and Goals
- Public Benefits
- Public Requirement
- Application & Extension Request Process
- Compliance
- Bonding Process
- FAQ's

ELIGIBILITY

Eligible Uses for Bond Proceeds

1. Land

Cost of the land cannot exceed 25% of the bond financing. This includes acquisition, site preparation and improvements, infrastructure development (e.g., water, sewer and rail, etc.), environmental testing and landscaping. If land costs exceed 25%, user can contribute equity toward the land cost without violating this rule.

2. Buildings

Bond proceeds can be used for new construction of an exempt facility.

Office, warehousing and research and development space can be financed with bond proceeds, provided they are: 1) located on the same site as the manufacturing facility; and 2) directly related to the manufacturing operation. No more than 25% of the bond financing can be used for these facilities.

Corporate headquarter offices do not qualify because they exceed what is needed to supervise the specific manufacturing facility being financed.

Existing building acquisition requires at least 15% of the bond proceeds to renovate the facility and any equipment contained in the building. Rehabilitation must be done within two (2) years of the funding date.

3. Equipment

New equipment includes acquisition, delivery and installation of new machinery, equipment and fixtures used in production lines.

Used equipment may only qualify if contained in a building acquired through tax-exempt financing. No used equipment can be financed with proceeds, even if 100% rehabilitated.

The used components in Remanufactured Equipment are regarded as only a small portion of the cost basis; then, it may be treated as new property.

4. Soft Costs

These include legal, architectural, engineering, surveying, test boring, title insurance, appraisals, accounting and financing costs for the project.

BOND PROCEEDS CANNOT BE USED TO REFINANCE DEBT, INVENTORY OR OPERATING CAPITAL.

BOND LIMITATIONS

1. Bond Proceed Use

95% of the net proceeds from the bond issuance must be used for the defined project.

2. Issuance Costs

These costs cannot exceed **2%** of bond proceeds.

3. Other Limitations

Please see other limitations on use of the bond proceeds are outlined in the U.S. Code, Title 26, Subtitle A, Chapter 1, Subchapter B, Part IV, Subpart A, § 142.

OTHER REQUIREMENTS

1. Exempt Facility projects require a **volume cap allocation** from the PAB Review Board. The project must be approved by the Board before an allocation is awarded.

2. Developments **must meet PAB threshold qualifications**, which are:

- Appropriate zoning for the facility.
- Evidence of site control.

CRITERIA AND GOALS

A **qualified** exempt facility must meet the following criteria and goals in order to receive an allocation of volume cap:

1. Creation of New Jobs

- Only the direct jobs at the facility created in the first three years of the facility's operations are considered.
- Companies operating a new facility or renovating an older building in areas of high unemployment receive special consideration.

2. Above Average Wages

- Salaries of new jobs or retention of existing jobs are higher than average wages.
- Distribution of wages for new and existing jobs is considered.
- Wages will be compared to the community where facility is located. If data is not available, comparison will be done to the countywide wages.

3. Retention of Jobs

- Retention of existing jobs is as important as creating new jobs.
- To quantify retention, applicant should present as much information and data as possible and its impact on the community.

4. **Training and Education of Employees**
   - Companies offering job training, education and assistance to an employee's education will be favorably considered.
   - Applicant is required to detail the job and education programs offered by the company. If possible, provide data summarizing employee participation.

5. **Bonds/Job Ratio**
   - Efficient use of Volume Cap – bond per job ratio. (Amount of bonds requested per new job created. The lower the amount of bonds per job the better).
   - Applicant is encouraged to combine bonds with other financing to achieve this objective.

6. **Community Support**
   - Includes: 1) approved TEFRA Hearing; 2) financial support; 3) zoning approval; 4) reaction of special improvement districts; 5) tax increment financing; 6) public infrastructure provided; and/or 7) deferral or waiver of fees.
   - Community support must be a tangible contribution to the proposed project.

7. **Building and Equipment**
   - Applicant must demonstrate building and equipment costs are competitive and reasonable.

8. **Need for Volume Cap**
   - Realistic cash flow analysis for first three (3) years of operation demonstrating need for tax-exempt financing.
   - Cash flow analysis must compare variable and fixed interest rates with explanation for rate selected.
   - Detailed explanation for applicant equity contribution.

Please see the PAB Application Scoring Criteria for specific point values assigned to the criteria listed above.

PUBLIC BENEFITS

Projects must:

1. Demonstrate the primary public benefits of job creation.

2. In addition to the creation of new jobs, PAB also looks favorably on projects that employ:
   - Workers affected by industrial relocations.
   - New entrants or re-entrants to the work force.
   - Unemployed persons.
   - Persons participating in job training programs.

3. In addition to employment, PAB looks favorably on projects that:
   - Pay wages that are between 105% and 125% of the state median for similar jobs and skills.

- Are located in towns, cities or areas of high unemployment defined as 150% of the state average.
- Are located in towns, cities, and areas of high poverty rates defined as 125% of the state average.
- Offer on-site job training.
- Offer educational benefits; tuition reimbursement or part tuition.
- Work with local high schools in job training.
- Contribute to the community by sponsored employee volunteerism programs.
- Pay property taxes.
- Purchase goods and services from other Utah companies.
- Export their products out of state.
- Retain jobs from relocations and plant closings.

PUBLIC REQUIREMENTS

Public Inducement Hearing

1. Public Inducement approval **must** be obtained with respect to the bond issuance.
2. State law authorizes local agencies, cities, or counties to induce projects that create jobs and provide a public benefit to the community.
3. Approval must be done in a city/county council meeting where an Inducement Resolution will be adopted for the project.
4. Once the project is induced the applicant can use the bond proceeds to reimburse them for all project costs paid or incurred 60 days prior to the date of the inducement resolution. Bond proceeds may also be used under specific conditions to pay for "preliminary costs."

Public TEFRA Hearing

1. Before issuance of the bonds there must be a noticed public hearing, commonly referred to as a "TEFRA Hearing."
2. An elected official or elected body responsible for the bond issue, and with jurisdiction over the project site, must give its approval.
3. While an applicant can apply for tax-exempt bonds prior to a TEFRA Hearing, the applicant **must** provide evidence from the jurisdiction, in the form of an Inducement Resolution that states they are aware of the project and that a TEFRA Hearing is scheduled.
4. Applicants should be aware that the TEFRA process can take longer than anticipated.

APPLICATION AND EXTENSION REQUEST PROCESS

Application Process

The application process can take from three to nine months from the date of application to the issuance of the bonds. The length of time is usually dependent upon how long it takes to conclude the bank negotiations.

Applicants are strongly encouraged to do the following actions before submitting their application:

1. Begin discussions with appropriate jurisdiction and issuer of the bonds, regarding the Inducement Resolution and TEFRA Hearing.
2. Select bond counsel and obtain bond counsel's opinion letter stating the project qualifies to use tax-exempt bonds.
3. Initiate discussions with financial institutions willing to issue a letter of credit for the full amount of the bonds to be issued (if public offering).
4. Select investment banker; or, if a private placement, the buyer of the bonds. Obtain detailed commitment letters from all financial entities involved.
5. Complete the necessary financing steps at the time of submission.
6. Contact applicant's principal bank in all instances.

PAB Staff is willing to assist applicants and answer questions regarding the application process and evaluation **before** the application is submitted. A preapplication meeting can also be arranged with staff. Staff is not allowed to make suggestions, recommendations or otherwise assist an applicant regarding the proposed project.

Application Procedures

Persons or entities applying for tax-exempt bond financing must comply with the following procedures. Failure to comply with any procedure or requirement can result in disqualification of the application.

1. The application is available at http://business.utah.gov/programs/pab/applications-and-fees/ on the PAB web site. Application components include, but are not limited to:
   - Complete application with **signature** and all necessary exhibits.
   - **Non-refundable fee**. (Schedule of fees available on the PAB website.)
   - Brief narrative/description of the development.
   - Preliminary Opinion from Bond Counsel.
   - Evidence of site control.
   - Inducement Resolution.
   - Signed letters of intent or commitment from all financial sources (banks, lenders, investors) detailing terms and conditions of commitment(s).
   - Resumes and financial statements for the project sponsor (borrower).
   - Evidence of property zoning.
   - Current title report and site plan of project.
   - Building description, if available. (Include in construction costs.)
   - Construction readiness (plans, specs approved, permit ready).
   - Development schedule of activities, including commencement and completion dates of construction and bond closing dates.
   - Infrastructure proximity to site and special infrastructure need (i.e. spur line).
   - Environmental study, if required by the lender.

2. Applicants are responsible to provide complete, accurate and verifiable information on the application. Two (2) paper copies and one (1) electronic copy e-mailed to

roxanneg@utah.gov of the completed and **signed** PAB Application, including all applicable exhibits and **application fees** must be delivered no later than 5:00 p.m., on the final date of submission to the Utah Governor's Office of Economic Development, 60 East South Temple, 3rd Floor, Salt Lake City, 84111. Late applications will **not** be accepted for that cycle. Once the application is submitted no further information can be submitted unless requested by staff.

3. PAB Staff will review the application as to its completeness, including contacting the lender and appropriate city and/or county departments. In the event staff requests additional information or clarification, the applicant has 10 working days to respond. Failure to do so can result in the rejection of the application for the current round of funding. PAB reserves the right to disqualify any application for incompleteness or other failings. If disqualified, the applicant will be notified via e-mail or letter. A meeting with PAB Staff can be requested for clarification of the disqualification.

4. Applicants will have the opportunity to present the details of their project to the PAB Review Board at the scheduled public meeting. Only the applicant can make the presentation. The applicant can invite others to the meeting but unless asked a specific question by the Board, they may not add to the presentation. Applicants will have a specified amount of time to make the presentation unless extended by the Board.

5. Applicants awarded Volume Cap may not transfer the award to other projects and/or persons. **All costs incurred in the application or development process are the sole responsibility of the applicant**.

6. PAB may disallow developments with a conflict of interest, identity or affiliation between any of the principal parties. PAB may consider the applicant's financial, development and/or management abilities beyond the information provided in the application as factors for selection.

7. All decisions of the PAB Board are subject to additional conditions, restrictions and requirements as determined by PAB in its sole discretion. Applicants will be notified in writing of the additional requirements.

PAB is committed to a policy, which prohibits discrimination against persons based on race, religion, gender, national origin, handicap, familial status or age in its program.

Extension Request Process

Applicants awarded Volume Cap are given a Certificate of Allocation, which is good for 90 days. Recognizing the complexity of tax-exempt financing, extensions may be requested if the bonds are not sold with that 90-day period. Approval of the Board is required for all extensions. Extensions are valid for 90 days.

The PAB Board will approve the first 90-day extension request without requiring a fee or imposing any special conditions.
All extension requests after the first extension **must** meet the following:

- Payment of fee for the extension required (see web site).

- Completion of the "Extension Request Project Activity Progress Report" for projects requesting three or more extension. All information requested and the progress report **must** be submitted at least two (2) weeks before the Board Meeting. Failure to comply with this requirement may result in a denial of the extension request.
- Notify staff of **any** changes to a project, as soon as it occurs. If the changes significantly alter the project, the applicant may be asked to relinquish their current volume cap allocation and submit a new application for volume cap. PAB reserves the right to withdraw the original allocation and evaluate the newer application.
- Submit a revised schedule of activities, if any changes occur with the project.

At the discretion of the PAB Board, applicants may make a brief presentation explaining the need for the extension. PAB reserves the right to postpone a decision for any reason.

If the PAB Board does not grant an extension, the volume cap is automatically relinquished back to the Board. The applicant can compete for an award of volume cap by resubmitting an application and paying the appropriate application resubmission fee.

COMPLIANCE

1. Any conditions or restrictions required by PAB must be adhered to.
2. Applicants agree to provide documentation demonstrating compliance.
3. Applicants understand that representations made in the application are binding and subject to verification by PAB or its agent(s). (PAB understands the uncertainty of meeting some representations (sales and cash flow projections, construction costs, financing costs, etc.) and acknowledges the applicant is not strictly held to these representations.)
4. If for any reason, applicants are unable to meet the conditions or restrictions required, they will notify PAB in writing as to the circumstances preventing or modifying compliance. PAB reserves the right to accept or reject explanation.

BONDING PROCESS

The participants in a bond deal are:

1. Developer and Developer's Counsel.
2. Bond Counsel. (Usually acts as special counsel to the Issuer.)
3. Issuer and Issuer's Counsel.
4. Credit Enhancer and Credit Enhancer's Counsel.
5. Tax Credit Purchaser and Tax Credit Purchaser's Counsel.
6. Bond Trustee and Bond Trustee's Counsel.
7. Underwriter and Underwriter's Counsel.

The following steps outline the bonding process for a tax-exempt project. The time period shown for each step is the anticipated amount of time it should take to complete

that particular phase. These are projected times only. Each project will vary in the amount of time it takes to complete each phase and sell the bonds.

1. **Planning Phase** (1 – 12 Months)

- Inducement Resolution adopted by Issuer.
- Application for and receipt of Volume Cap allocation.
- Interview and retain participants.
- Determine bond structure (Private Placement, Public Offering, Fixed or Variable Rate, Credit Enhancement Program, etc.).
- Application for Credit Enhancement/purchase and receipt of preliminary approval.

2. **Document Drafting/Due Diligence Phase** (1 – 2 Months)

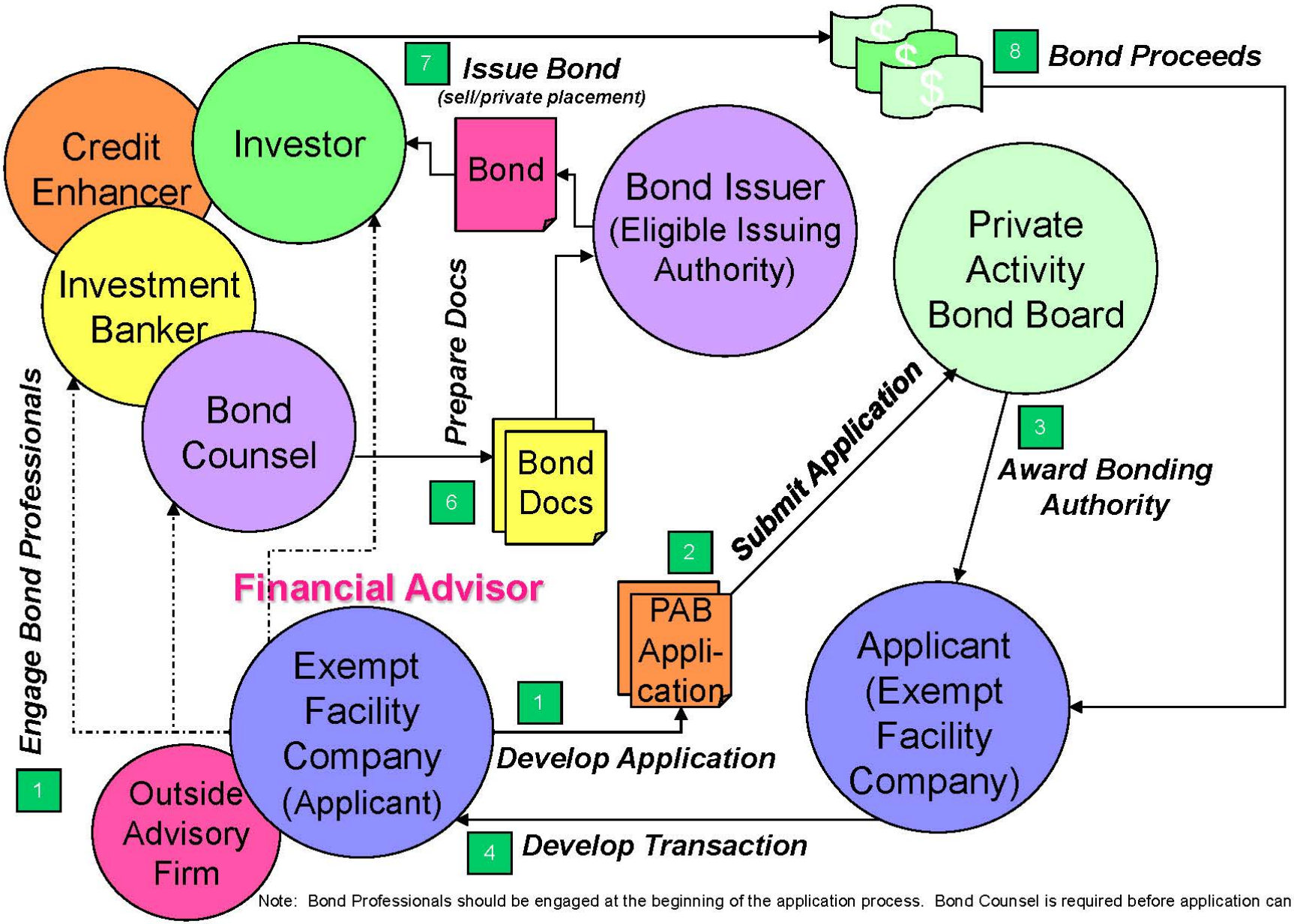
- Drafting and approval of bond documents and terms.
- Drafting of Offering/Sale Documents.
- Real Estate Due Diligence (appraisals, environmental reports, surveys, etc.).
- Drafting and execution of Construction Contracts and Cost Determination.
- Drafting of Partnership Documents.

3. **Sale and Closing Phase** (2 Weeks – 1 Month)

- Drafting opinions and closing documents.
- Mailing Offering Documents.
- Public Hearing Notice Publication and Hearing.
- Adoption of Bond Resolution by Issuer.
- Sale of Bonds and Execution of Bond Purchase Agreements.
- Preclosing and Closing (Delivery of executed Documents and Opinions).

The **Flow Chart for Exempt Facility Bonds** on the next page shows each step in the process for issuing tax-exempt bonds for exempt facility projects.

Exempt Facilities Bond Process



Note: Bond Professionals should be engaged at the beginning of the application process. Bond Counsel is required before application can be submitted.

FREQUENTLY ASKED QUESTIONS

Introduction

Tax-exempt financing is a financing tool available to eligible borrowers as a means of raising funds for capital needs.

What is a tax-exempt bond (TEB)?

A TEB is:

- An obligation of a state or political subdivision.
- The interest is exempt from federal income taxation.
- The interest income is also usually exempt from state income taxation where the issuer of the obligation is located.

What are Private Activity Bonds (PAB)?

PAB are:

- Issued for the benefit of private individuals or entities.
- Issued on a tax-exempt basis if they are "qualified." This means they fit under any of the seven categories of qualified bonds outlined by the Internal Revenue Code ("IRC"). (Utah uses four of the categories.)
- The owner (buyer) of a tax-exempt bond does not pay federal income tax on the interest received on such bonds; consequently, tax-exempt bonds bear lower interest rates than bank loans or taxable bonds. This lower borrowing cost is passed on directly to the borrowing entity.

Who is Eligible to Receive Tax-Exempt Bond Financing for Exempt Facility Projects?

Tax-exempt financing for a qualified exempt facility means any bond issue used to provide any of the following per Section 142(a) :

1. Airports
2. Docks and Wharves
3. Mass Commuting Facilities
4. Facilities for the Furnishing of Water
5. Sewage Facilities
6. Solid Waste Disposal Facilities
7. Qualified Residential Rental Projects
8. Facilities for the Local Furnishing of Electric Energy or Gas
9. Local District Heating or Cooling Facilities
10. Qualified Hazardous Waste Facilities
11. High-Speed Intercity Rail Facilities
12. Environmental Enhancements of Hydroelectric Generating Facilities
13. Qualified Public Educational Facilities
14. Qualified Highway or Surface Freight Transfer Facilities

Governmentally Owned Facilities

Certain Exempt Facilities must be governmentally owned. Facilities #1, 2, 3, and 12 are treated as such if all the property to be financed by the bond issue is owned by a governmental unit.

What are the Benefits of Tax-Exempt Bonds?

Interest rates on tax-exempt bonds are considerably lower than rates on comparable taxable bonds.

What are the Benefits of Exempt Facility Bonds?

The major advantage is:

- A lower interest rate on financing compared to a taxable bond or conventional financing.
- Example: investor in 25% tax bracket receives same after-tax income from tax-exempt bond at 6% interest compared to taxable bond at 8% interest.
- Long-term capital is available at 100 to 300 basis points (1 to 3 percentage points) less than market rates for periods of 20-40 years.

How does a Local Community Benefit from having a PAB Funded Exempt Facility?

- Long-term creation and/or addition of new jobs with above average wages.
- Financial profits produced by the construction of the project.
- Dollars spent in local businesses.
- Additional tax revenues generated.

What are the Limitations of Tax-Exempt Financing?

- Nationwide Limitation on Outstanding Tax-Exempt Bonds of $40 million.
  - Applies to project owner and other principal users:
  - Proposed issue, plus the **principal** of any outstanding Qualified Small Issues or tax-exempt issues for exempt facilities, whenever or wherever they were issued.
  - All prior issues are counted nationwide; not just the ones in the same jurisdiction of a proposed project.
  - No time period limitations.

What can be Financed with Tax-Exempt Bond Proceeds?

Proceeds can be used for the following purposes:

- New construction of facility.
- New Equipment and fixtures used in production lines.
- New Machinery.
- Land, Landscaping (not to exceed 25%).
- Issuance costs (not to exceed 2%).
- Cost of architects, engineers, attorneys, permits (limited amounts).

Bond proceeds cannot be used to refinance debt, inventory, or operating capital.

What are the Restrictions for Using Exempt Facility Bonds Proceeds?

Projects must comply with the following Internal Revenue Code Requirements:

- No more than twenty-five percent (25%) of net bond proceeds can be used to pay for land costs. (If land costs exceed twenty-five percent (25%), user can contribute equity toward the cost of the land without violating the rule.)
- Maximum of 25% for ancillary facilities, such as offices, warehouse space, parking, etc.; (only if directly related to the manufacturing operation function.)
  - Not subject to the 25% limit if:
    - (a) Functionally related and subordinate to facility.
    - (b) Located at the same site.
- Corporate headquarter offices will not qualify if it exceeds what is needed to supervise the particular manufacturing facility being financed.
- Issuance costs cannot exceed two percent (2%) of bond proceeds.
- Ninety-five percent (95%) of proceeds must be used for the defined project.
- Existing building acquisition:
  - Minimum fifteen percent (15%) of proceeds must be used to renovate facility.
  - Rehabilitation must be completed within two years of acquisition or date of bond issuance.
  - Can include used equipment if contained in the building when acquired.
- No used equipment can be financed with proceeds, even if 100% rehabilitated.
- Remanufactured Equipment – only a small portion of the cost basis is attributable to used components then it may be treated as new property.

Can Eligible Project Costs be Paid Prior to the Bond Issuance Date?

Eligible project costs may be paid prior to the date the bonds are issued if:

- Issuer of the bonds (the tax-exempt entity, not the company) takes “official action,” typically in the form of an “Inducement Resolution” or “Declaration of Intent.”
- “Official Action” must be taken within 60 days after eligible project expenditures are paid.
- Exceptions to 60 day requirement:
  - “Preliminary Expenditures” – not in excess of 20% of bond proceeds (architectural, engineering, surveying, construction, project rehabilitation, other land acquisition, site preparation, beginning construction costs, etc.
  - “Official Action” does not need to be taken if expenditures do not exceed the lesser of $100,000 for any issue or 5% of the issue proceeds.

Eligible projects costs **cannot** be paid from bond proceeds if it was paid for:

- More than 18 months after the later of the following dates:
  - When the financed facility was placed in service **OR**
  - The reimbursed cost was paid.
- More than three (3) years prior to receiving volume cap allocation.

How Does the Financing Work?

- Applicants are responsible for arranging the necessary financing steps, including a buyer for the bonds. **PAB is not a fiscal advisor or an authorized issuer of tax-exempt bonds**.
- Applicants are encouraged to have financing completed at the time of application submission.
- Applicant must detail status of the project's financing at the time of application.
- Applicants are responsible to provide complete, accurate and verifiable information.
- PAB staff may contact lender to verify financing information.

What Other Steps are Involved in a Tax-Exempt Bond Transaction?

- Selection of bond counsel.
- Selection of investment banker or if private placement, buyer of the bonds.
- Detailed commitment letters from all financial entities involved.
- Opinion letter from bond counsel stating project qualifies for PAB.

What Are the Fees for Using Private Activity Bonds?

Application Amount	First Time Application Fee	Application Resubmission Fee
Under $3,000,000	$1,500	$750
$3,000,000 - $5,000,000	$2,000	$1,000
Over $5,000,000	$3,000	$1,500

Confirmation Fee
A confirmation fee of $300 per million of allocated volume cap is charged.

Extension Fees
First 90-Day Extension - $0
Second 90-Day Extension - $2,000
Third 90-Day Extension - $4,000
Any Additional 90-Day Extension - $4,000

Additional Information and Helpful Tools

The Private Activity Bond Authority Program Web Site can provide additional information. http://business.utah.gov/programs/pab/

The Exempt Facility Application is available at the following link on the Private Activity Bond web site: http://business.utah.gov/programs/pab/applications-and-fees/

The following tools can be found on the Private Activity Bond Authority Program web site. http://business.utah.gov/programs/pab/helpful-tools/

- Provider List of Bond Counsel
- Provider List of Financial Advisors
- Pertinent Team Players and Their Roles for tax-exempt bond issues.
- Bond Process Flow Chart
- Information Packet

If you have any additional questions, please feel free to contact:

Roxanne C. Graham, Program Director
Phone: (801) 538-8699
Cell: (801) 580-3317
E-mail: roxanneg@utah.gov

John Brereton, Consultant
Cell: (801) 556-7589
E-mail: johnebrereton@gmail.com