ECKERT SEAMANS

Public Finance

OVERVIEW

The Public Finance Group at Eckert Seamans has many years of experience serving as counsel in all types of public finance transactions involving the issuance of tax-exempt and taxable debt, including general obligation as well as structured, revenue-driven, or credit-enhanced, for or on behalf of governments (states, political subdivisions, municipalities, and school districts), not-for-profits, governmental authorities (including mass transit, airport, water, sewer, low and moderate income housing, educational, cultural, health care, and student loan), and private entities (including public/private transactions). The Public Finance Group maintains a multistate practice. The roles as counsel include serving as bond counsel, disclosure counsel, underwriter's counsel, bank counsel (credit enhancement, loan and lines of credit, direct purchase and derivatives), borrower's counsel, trustee's counsel, and tax counsel. The attorneys in the group are fully conversant with the state and federal laws applicable to the issuance of any particular debt, the federal tax law provisions that may be applicable in any issuance, and applicable federal and state securities laws. We enjoy an excellent working relationship with the other members of a financing team. We are technologically adept and are happy to use extranets, emailed documents, or any other form of communication that works for the finance team.

The Public Finance Group's practice includes drafting legislation for debt and finance matters for state and local governments and representing debtors and creditors in bankruptcies and workouts for debtors who are obligors on tax-exempt bonds.

Below is a further description of the Public Finance Group's experience:

501(C)(3) BONDS

- **Health Care:** Attorneys in the Group have represented clients in transactions involving all sizes of hospital/health care systems; specialty and community hospitals; nursing homes, ambulatory care facilities, mental health treatment facilities, substance abuse rehabilitation facilities, and other sub-acute care facilities. Additionally, the Group has been involved in financings for medical schools and academic medical centers and their affiliates. We have drafted and negotiated master trust indentures and interest rate swap and other derivatives documents, provided advice on ongoing tax and securities compliance, and represented health care institutions and other issuers in IRS tax audits. We have also drafted and negotiated credit enhancement facilities for health care transactions, including letters of credit and standby bond purchase agreements, bond insurance and guarantees issued by financial institutions, credit support from governmental entities, and inter-creditor arrangements among health care creditors.
- **Continuing Care Retirement Community ("CCRC") Financings and Workouts:** The Group has extensive experience as bond counsel, bank counsel, underwriter's counsel and borrower's counsel for CCRC financings. We have structured complex, master trust indenture undertakings involving multiple members of an obligated group and covenant undertakings designed to provide flexibility to an obligated group in a changing environment. Increasingly, we have been called upon by participants in a CCRC transaction to assist in covenant modifications, and restructurings of CCRC financings
- **Education:** The Group has participated as bond counsel, borrower's counsel, and underwriter's counsel in financings involving higher education institutions, especially colleges and universities. These financings have supported the development of campus facilities, research buildings, student housing (both university-owned and privatized housing), auxiliary facilities, and athletic facilities. We have negotiated trust indentures and structured dedicated revenue streams and enhancements designed to permit the effective sale of bonds. As underwriter's counsel, we have addressed disclosure and due diligence issues and regularly prepared offering documents. We serve as bond counsel, underwriter's counsel, and as borrower's counsel for financings for K-12 private schools and for charter schools, performing the same services described above for these types of schools.
- **Cultural and Recreational Facilities:** The Group has served as bond counsel, underwriters' counsel, and borrower's counsel for a range of cultural and recreational facilities, including performing arts venues, museums, and zoos.

AFFORDABLE HOUSING FINANCING

The Group has represented public housing and mortgage finance agencies and authorities, private lenders, underwriters, tax credit syndicators, government-sponsored enterprises, and other government agencies in all aspects of housing transactions. These transactions have involved state, local, and private agency loan programs and the issuance of single-family and multifamily bonds, in addition to Freddie Mac, HUD, GNMA, and Fannie Mae programs, including FHA-insured mortgage transactions; housing bond financings for 501(c)(3) organizations; HOPE VI transactions and project-based Section 8 transactions.

- **Tax Credits:** We have served as counsel in transactions involving the monetization of tax credits in the areas of low and moderate income housing, historic tax credits and new market tax credits and have drafted and negotiated leases and partnership agreements to reflect those structures and combine them with other types of debt and equity financing.

AIRPORT AND PORT FINANCINGS

The Group has experience in a wide range of matters involving airport, port, and marine terminal sector financings by state and local government entities. We have represented governmental issuers in the issuance of governmental bonds and exempt facilities bonds for airport projects and port and marine terminal projects as well as airline and terminal operators participating in those projects.

ASSESSMENT AND SPECIAL TAX BONDS AND LAND SECURED FINANCING

The Group has focused on infrastructure financing techniques that primarily use land-secured revenues (i.e. et al. assessments or special taxes levied on benefited property) to pay for public improvements.

CONTINUING DISCLOSURE AND SECURITIES LAW COMPLIANCE

S.E.C. Rule 15c2-12 requires issuers of most bonds or certain other "obligated persons" to agree in writing, at the time the bonds are issued, to provide continuing disclosure to the marketplace for the life of the bond issue. The continuing disclosure obligation not only obligates the issuer (or obligated person) to provide annual financial information and current material event disclosures, but also exposes the issuer (or obligated person) to potential liability for securities fraud under S.E.C. Rule 10b-5 if those disclosures are not timely made or contain material misstatements or omit any material information, whether or not required by the continuing disclosure obligation, necessary to make the information contained in such disclosures not misleading in any material respect. These liabilities also include liability in a primary offering if compliance with continuing disclosure obligations is misstated in a primary offering document. The Group has established procedures and practices to enable issuers and other obligated persons comply with the ongoing obligation and exposure to liability associated with Rule 15c2-12 and other applicable securities law rules and regulations.

GOVERNMENTAL BONDS

The lawyers in the Group have served as bond counsel, bank counsel, or underwriter's counsel in connection with every form of traditional municipal debt, including: certificates of participation in lease-purchase and installment purchase obligations; general obligation bonds for municipalities and school districts; revenue bonds secured by a pledge of revenues, including water and sewer bonds, housing bonds, toll roads and bridge bonds, tax and revenue anticipation notes, and refundings; sales tax revenue bonds; special assessment and tax increment bonds.

As bond counsel, we have rendered opinions in connection with bonds issued by states, counties, cities, municipalities, school districts, public authorities, and bi-state authorities throughout the United States. These transactions have financed diverse projects such as highways and bridges, water and sewer facilities, mass transit systems, public universities, convention centers and professional sports venues, charter schools, fire and police protection, courthouses, municipal office buildings, correctional facilities, and publicly-owned hospitals and nursing facilities. In addition to serving as bond counsel and underwriter's counsel, we represent private and public occupants and users of these projects; and financial institutions in connection with the issuance of letters of credit and other forms of credit support for these bond transactions.

UTILITY FINANCING

Eckert Seamans has a long history of advising states, local governments, developers, water and sewer districts, and public and private water authorities. Our attorneys have served as bond counsel, underwriters' counsel, borrower's counsel, and special tax counsel in hundreds of such bond issues. These financings have supported the construction and improvement of water purification plants, wastewater treatment facilities, and the crucial infrastructure that brings drinking water to our homes and communities as well as the formation and entitlement of private water companies. They have included representation of states and local governments, authority-owned projects, special districts, investor-owned projects, and revolving loan programs.

In addition to the Group's work assisting municipal water providers, private water companies, domestic water improvement districts, and developers with financing for their water-related projects, attorneys in the Group have significant experience with the planning, financing, and developing of water and wastewater infrastructure facilities.

Our attorneys also serve as bond and regulatory counsel for a large municipally owned gas utility and have represented public power utilities as bond and underwriters' counsel.

MUNICIPAL RECOVERY

Many municipal entities struggle to reconcile the need to provide public services with the fiscal pressures brought by declining revenues, reduced state support, a restrictive regulatory environment, rising labor and pension costs and other operating expenses, and limited access to capital. Eckert Seamans' public finance practice assists such municipalities with assessing and addressing these challenges. Our attorneys represent these municipal entities in their efforts to access the capital markets through restructuring debt and derivative portfolios, redeveloping brownfields, promoting economic redevelopment, and monetizing assets. Our attorneys have drafted legislation to assist distressed municipalities and school districts.

P3S – PUBLIC/PRIVATE PARTNERSHIPS AND PUBLIC/PUBLIC PARTNERSHIPS

The Group's experience in both public and private project financings — the core of many P3 ventures — has enabled us to structure innovative P3 structures and financings. We have participated in P3 transactions as concessionaire's counsel, bond counsel, underwriter's counsel, and counsel to financial advisors. As a result, we can anticipate and preempt potential roadblocks and drive projects forward. A firm-wide team of public finance, transactional, real estate, environmental, governmental relations, and labor attorneys work together on procurements, project contract negotiations, financing, land acquisition, permitting, construction contracts, environmental compliance, and many other aspects of these vital projects.

Projects have included transportation, utilities and parking projects, as well as college and professional sports venues.

POST-ISSUANCE TAX COMPLIANCE

The IRS has made post-issuance tax compliance relating to the issuance of tax exempt bonds one of its highest priorities. Such efforts include: (i) the distribution of tax questionnaires to 501(c)(3) borrowers and governmental issuers of tax-exempt bonds inquiring as to the scope and extent of post-issuance compliance practices and the date of adoption of written post-issuance tax policies; (ii) annual reporting requirements for 501(c)(3) borrowers of tax-exempt bonds in the form of IRS Schedule K (IRS Form 990), which requires detailed information regarding outstanding tax-exempt bonds and private business use calculations; (iii) audits of tax-exempt bonds and tax credit bonds (including physical examination of the bond financed facilities); and (iv) enhanced information gathering through the IRS Form 8038.

The attorneys in the Group regularly provide guidance to issuers and borrowers of tax-exempt debt to implement a comprehensive post-issuance tax compliance program, advice on change in use of bond financed property and regularly represent parties in interest in audit matters before the IRS.

SWAPS AND OTHER DERIVATIVE PRODUCTS

Eckert Seamans has extensive experience in negotiating and documenting interest rate swaps and other derivative instruments. We have and extensive experience with the IRS, the SEC, and other government agencies that regulate this area and with the major providers of derivative products and their counsel.

TAX AND ARBITRAGE

The Group has a dedicated public finance tax partner with deep knowledge of the tax-exempt bond provisions of the Internal Revenue Code who, with the assistance of other attorneys in the Group, analyzes the tax issues relating to each public finance bond issue in which the Group participates, including complex matters relating to advance refundings, yield analysis, and swap terminations.

Our Group also provides advice on tax law applicable to tax-exempt financing, including tax rules pertaining to 501(c)(3) entities that finance their facilities with tax-exempt obligations. We provide our issuer and borrower clients with legal advice regarding continuing compliance with tax covenants and reporting obligations, including the consideration and adoption of policies and procedures to enhance compliance as well as the post-issuance analysis of reporting requirements on Schedule K of IRS Form 990.

TRANSPORTATION

In addition airport and port financing described above, the Group provides bond counsel, underwriter's counsel, and issuer counsel services for road, highway and mass transit entities at the state, regional, and municipal level. Obligations include GARVEES, toll and revenue and special tax revenue bonds, as well as, general obligation bonds. Mass transit projects include both rail and bus projects and multi-modal transportation programs. Attorneys in the Group have represented the concessionaires and the governmental partner in P3 transportation projects.

UNDERWRITER'S COUNSEL

The firm has acted as underwriter's counsel in many bond financings for states, cities, housing authorities, counties, public utility districts, conduit financings, and a variety of state agencies and authorities. We take pride in preparing clearly written, careful disclosure documents that are mindful of the federal securities laws applicable to municipal/public offerings. We counsel clients on various aspects of the federal securities laws and their applicability to primary disclosure documents as well as annual filings, material event notices, and other disclosures. We also advise investment banking clients on federal tax matters and MSRB Rules compliance, as well as Rule 15c2-12 undertakings and compliance.

BANK COUNSEL

The group has acted as bank counsel in many public finance transactions for governmental issuers and complex conduit financings. These engagements include transactions in which the bank is purchasing the debt or providing liquidity or credit enhancement of the debt. We represent national banks as well as regional banks with closing documents that are clearly and precisely written.