Fundamentals of Debt
Auditor of State
Local Government Officials
Conference

March, 2018

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Issuance of Debt

I. Steps to Issue Debt
II. Types of Bonds
III. Debt Limits
IV. Bond Structure
V. Ratings
VI. Tax Matters
VII. Disclosure

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I. STEPS TO ISSUE DEBT

- ❖ Constitutional and Statutory Authority
- ❖ Board of County Commissioners
- ❖ Board of Township Trustees
- ❖ City Council
- ❖ Board of Education
- ❖ Fiscal Officer

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I. STEPS TO ISSUE DEBT

- Board or Council :
  - Authorizing Legislation;
    - Resolution
    - Ordinance
  - Method of Sale:
    - Private Placement;
    - Negotiated Sale;
    - Public Bid;
  - Certification to Fiscal Officer and County Auditor

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II. TYPES OF BONDS

1. Unvoted General Obligation (GO) Bonds
2. Special Assessment Bonds
3. GO – Revenue Bonds

   Sometimes called double barreled Bonds, by virtue of revenue pledge and full faith & credit backing

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II. TYPES OF BONDS

4. Voted GO Bonds (School improvements)
5. Revenue Bonds (Usually utility systems)
6. Tax Increment Revenue Bonds
7. Sales Tax Bonds
8. Income Tax Bonds

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II. TYPES OF BONDS

9. Bond Anticipation Notes/Certificates of Indebtedness:
   - Often used for Construction Projects;
   - Usually have 6-month or 1-year maturity;
   - Lower interest rate;
   - For GO BANS, after five years must amortize principal as if bonds had been issued;
   - Special assessment BANS must be converted to bonds after 5 years.

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II. TYPES OF BONDS

10. Refunding Bonds
- Applies to all types of bonds;
   - Refund in lower interest rate environment;
   - 2 Types:
     a. Current: Bonds being refunded are outstanding $\leq$ 90 days after the date of the refunding.
     b. Advance: Bonds being refunded are outstanding > 90 days after the date of the refunding – No longer permitted for tax-exempt obligations

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II. TYPES OF BONDS

11. Conduit Bonds: Issuer serves a conduit or pass through
   A. Industrial Revenue – to create jobs;
   B. Hospital Revenue – to provide hospital facilities at lowest cost;
   C. Housing Bonds – to provide affordable housing;

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III. DEBT LIMITS

Statutory Debt Limit or Direct Debt Limit:

A. County:
- ✓ Ohio Revised Code (ORC) § 133.07
- ✓ Unvoted GO debt limit: Aggregate principal may NOT exceed 1% of assessed valuation;
- ✓ How do we calculate overall statutory debt limit?

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III. DEBT LIMITS

Overall Statutory Debt Limit =

3% of the first $100,000,000 AV +

$100,000,000 < 1.5% AV ≤ $300,000,00 +

2.5% of AV > $300,000,00

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III. DEBT LIMITS

B. Cities

✓ A municipality must not incur net indebtedness (i.e. principal amount of outstanding securities less amount in bond retirement funds) that exceeds an amount equal to 10½% of its valuation, or incur without a vote of the electors net indebtedness that exceeds an amount equal to 5½% of the tax valuation

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III. DEBT LIMITS

C. Townships

- ✓ Limited home rule townships, may issue general obligation limited tax debt (unvoted) up to five and one half percent (5½% of its tax valuation and may not incur total debt, voted and unvoted, in excess of ten and one half percent (10½%)

- ✓ Townships shall not incur indebtedness unless authorized by a vote of the electors and shall not incur indebtedness in excess of five percent (5%) of its tax valuation unless authorized by other sections of the ORC

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III. DEBT LIMITS

- ✓ Section 505.261 ORC. To acquire suitable lands and materials to establish a township park
- ✓ Section 505.262 ORC. To purchase equipment, buildings and sites, or construct buildings, for any lawful township purpose. Annual debt service charges for all bond (or notes) issued pursuant to this section may not exceed one-tenth of the township's total revenue from all sources

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III. DEBT LIMITS

- ✓ Section 505.53 ORC. To buy police equipment or building or site to house police equipment (applies to township police districts)
- ✓ Section 5709.73 et seq. ORC. Tax Increment Financings – limited obligation (Revenue Financing)
- ✓ Section 5573.14 Special Assessment Debt

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III. DEBT LIMITS

D. School Districts

- ✓ A School District shall not incur indebtedness that exceeds 1/10 of 1 % of its assessed valuation without a vote of electors
- ✓ A School is limited to voted an unvoted debt in the amount of 9% of its assessed valuation
- ✓ Permission from the state is needed to exceed 4% of the assessed valuation

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III. DEBT LIMITS

2. Exemptions from Statutory Debt Limit:

- Special Assessment Bonds;
- Revenue Bonds;
- Sales Tax Bonds;
- GO – revenue; to extent that bonds are fully self-supporting after payment of O&M;
- Conduit Debt;
- Specified Debt: i.e., Jail Bonds
  - Classroom Facilities Bonds

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III. DEBT LIMITS

3. Constitutional Debt Limit:
   - Article XII, § 2, Ohio Constitution;
   - Tax Rate Limit;

- Ten-Mill Limit;
  - Indirect Debt Limit.

- Prohibits taxation of property >1% of value (Ten Mills) without vote of the electorate;
- Applies to Overlapping Subdivisions

  Total millage of the Issuer and overlapping subdivisions pledged to debt service may not exceed ten mills in the aggregate.

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III. DEBT LIMITS

3. Constitutional Debt Limit:

- Pledge of ad valorem does not create a stream of revenues; Tax pledge is contingent.
- Only applied to bonds with a GO Pledge.

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III. DEBT LIMITS

- Ten Mill limit is not applicable to:
  - Voted Bonds
  - Revenue Bonds;
  - Tax Increment Revenue Bonds
  - Sales Tax Bonds;
  - Income Tax Bonds
  - Conduit Bonds.

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IV. BOND STRUCTURE

Principal:

- Most Common: Level Debt with $5,000 denominations;
- Level Principal repays faster; lower total interest; front loads the debt service;
- Structure where P & I in any 1 year may not be more than 3x P&I in any other single year;
- One of above required for new money General Obligation;
- Refunding or Revenue more flexibility for principal payments

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IV. BOND STRUCTURE

Interest

- Fixed rate: set on pricing date, does not change
  - Entire issue or by maturity
- Variable rate: reset periodically; Based on current market or index
- Capital Appreciation Bonds (CABs)
  - Pays no current interest

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V. RATINGS

- Credit Ratings
  - Moody's Investors Service
  - Standard & Poor's Corporation
  - Fitch IBCA
- Bond Insurance
- State Treasurer Market Access Program
- State Credit Enhancement Program

Moody's Investors Service

STANDARD & POOR'S

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V. RATINGS

- GO Bonds: backed by the full, faith and credit of the Issuer and supported by an ad valorem tax; - Rating analysts look at entire entity and surrounding economic environment.
- Revenue Bonds: backed by pledge of revenue of the utility system – Rating analysts look predominately at system providing revenues.

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VI. FEDERAL TAX MATTERS

Arbitrage in the context of municipal bonds, is the difference between the yield at which the bond proceeds are borrowed and the yield at which the proceeds are invested.

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VI. FEDERAL TAX MATTERS

- There are 2 general Arbitrage Rebate Restrictions:

1. The Proceeds of borrowed money may not be invested in "higher yielding" investments which earn a yield in excess of the yield on the money the political government has borrowed.
2. Any yield that is earned in excess of the yield on the borrowed money must be "rebated" to the US Treasury.

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VI. FEDERAL TAX MATTERS

- Exceptions:
  - Small Issuer – political subdivision, $5,000,000 or less per year for governmental purpose
- Spending:
  - 6 month – New Money or Refunding
  - 18 month – New Money
    - 15% within 6 months
    - 60% within 12 months
    - 100% within 18 months
  - 2 Year Construction
    - 10% within 6 months;
    - 45% within 1 year;
    - 75% within 18 months; and
    - 100% within 2 years.

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VI. FEDERAL TAX MATTERS

Small Issuer Exceptions:

1. "Regular:" Any political subdivision of a state that

- Has general taxing powers;
- Expects to issue no more than $5,000,000 of non-private activity new money bonds during the calendar year; and
- At least 95% of the proceeds of the borrowing will be used for local governmental activities of the issuer.

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VI. FEDERAL TAX MATTERS

Small Issuer Exceptions:

2. *"School Construction:"* Regular small issuer, but can issue up to $15,000,000 of eligible bonds if any excess over $5,000,000 is to be used to finance the construction of public school facilities.

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VI. FEDERAL TAX MATTERS

Spending Exceptions:

1. *6 Month:*

- Available to all issues; no election required.
- All gross proceeds less amounts in bona fide debt service funds.
- For governmental and qualified 501(c)(3) bonds: Lesser of $100,000 or 5% of proceeds may be unspent if expended within the next 6 months.

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VI. FEDERAL TAX MATTERS

Spending Exceptions:

1. *18 Month:*
   - Available to only new money issues.
   - Must meet each interval:
     - 15% within 6 months;
     - 60% within 12 months;
     - 100% within 18 months.
   - 5% Reasonable Retainage Exception if everything is spent within 30 months.
   - Deminimis Exception: Lesser of 3% or $250,000 may be unspent if the borrower exercises due diligence to complete project.

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VI. FEDERAL TAX MATTERS

Spending Exceptions:

1. *2 Year Construction:*
   - 75% of Available Construction Proceeds ("ACP") are to be used for Construction Expenditures.
   - Must meet each interval:
     - 10% within 6 months;
     - 45% within 1 year;
     - 75% within 18 months; and
     - 100% within 2 years.
   - 5% of ACP for Reasonable Retainage w/in 3 years of issue date.
   - Deminimis Exception: Lesser of 3% or $250,000 may be unspent if the borrower exercises due diligence to complete project.

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VI. FEDERAL TAX MATTERS

- If rebate is owed, when must it be paid?
  - Issuer must rebate to the US Treasury 90% of arbitrage earnings within 60 days after the end of the end of every 5th bond year and 100% of remaining arbitrage earnings within 60 days after the final redemption date of the debt.

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- Basic objectives of the Securities Act of 1933 and the Securities Exchange Act of 1934
  - Requires disclosure of material information
  - Prohibits misrepresentation and other fraudulent conduct

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VII. SEC DISCLOSURE

- Governmental bonds not subject to some of the federal securities laws.
- No need to register with the SEC.
- Issuer IS subject to antifraud provisions of both the Securities Act of 1933 and the Securities Exchange Act of 1934.
- SEC Rule 15c2-12 Official Statement

U.S. Securities and Exchange Commission

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VII. SEC DISCLOSURE

- Two primary forms of regulation of Municipal Issuers
  - Indirectly by SEC/MSRB regulation of brokers-dealers, banks, and municipal advisors.
  - Directly through anti-fraud provisions of the 1933 Act and the 1934 Act.

  SEC Rule 15c2-12 requires underwriters to provide adequate disclosure on all municipal debt $1 million or more.
  - Primary Disclosure – Official Statement
  - Continuing Disclosure – file annually with EMMA
  - Material Events

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V11. SEC DISCLOSURE

- Continuing Disclosure Annual Requirement:
  - Securities of $1,000,000 or more
  - Annual financial information and/or operating data must be provided to EMMA annually
  - After the issuance of the security, if the issuer has outstanding GO debt:
    - $10,000,000 or more: financial → and operating data
    - Less than $10,000,000 → only financial information
  - Material Events

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V11. SEC DISCLOSURE

- Official Information Statement:
  - "Official Statements" based on GFOA guidelines;
  - Form of government, economic and demographic data and last 2 years' audited financial statements;
  - Equivalent of a prospectus for tax-exempt bonds;
  - Sufficient Information for Investor to make an informed decision about Purchase of Securities.

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V11. SEC DISCLOSURE

- SEC Control of Underwriters:
  - SEC Rule 15c2-12 requires underwriters to provide adequate disclosure on all municipal debt > $1 million;
    - Continuing disclosure;
    - Issuers subject to Rule by contract must file annually with EMMA.

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VII. SEC DISCLOSURE

- Exemption to 15c2-12 Official Statement and Continuing Disclosure Requirement:

  $100,000 denomination or greater

  And

  Sold to NO more than 35 sophisticated investors

  Or

  Have a maturity of 9 months or less

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CONCLUSION

This was a primer on basic bond concepts. Federal Tax Matters, Ohio law and federal securities law contain technical, complex rules.

Seek additional advice from your Bond Counsel.

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Questions?

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