



State of Utah

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Manufacturing Facility Private Activity Bonds General Rules and Limitations Private Activity Bond Authority Manufacturing Program Information

The Private Activity Bond (PAB) is Utah's tax-exempt bonding authority creating a lower cost, long-term source of capital under the Federal Tax Act of 1986. The federal government allocates \$32 billion per year to states on a per capita basis, with Utah receiving \$277,820,000 in 2011. Each state establishes its usage priorities by statute. The Utah Legislature has established its priorities in the following four accounts:

Small Issue Account – Percent of Total Volume Cap: 24%

Users: **Multi-family Affordable Housing** (apartments) and **Manufacturing Facilities** (credit worthy with higher paying jobs; to build or buy a new building, equipment, and/or land)

Single Family Account – Percent of Total Volume Cap: 42%

Users: **Utah Housing Corporation** for first-time single family homeowners

Student Loan Account – Percent of Total Volume Cap: 33%

Users: **Board of Regents** for university and college students

Exempt Facility Account – Percent of Total Volume Cap: 1%

Users: **Pollution and Waste Control Projects**

Why Use Tax-Exempt Bonds? The owner of a tax-exempt bond does not need to pay federal income taxes on the interest received on such bonds; consequently, tax-exempt bonds bear interest at lower rates than bank loans or taxable bonds. This lower borrowing cost is passed on directly to the borrowing entity under the bonding program.

Volume Cap allocations require qualified bond counsel and an underwriter that result in tax-exempt bonds. Volume Cap is allocated by the Private Activity Bond Review Board in 90-day certificates at the regularly scheduled meetings. Applications are submitted at least five weeks prior to the board meetings. (See *Meeting Schedule* on website.)

To receive more information about the Private Activity Bond Authority Program, please visit the PAB website at <http://housing.utah.gov/pab/index.html>. Individual program information and applications can also be found there.

For additional questions, please contact:

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Qualified Small Issue Bonds

Definition of a “Manufacturing Facility:”

Code Section 144(a)(12)(C) defines a “manufacturing facility” as any facility, which, is used in the manufacture or production of tangible personal property, including the processing resulting in a change in the condition of such property. Under The American Recovery and Reinvestment Act of 2009 (HR1) the definition of “manufacturing facility” has been modified and expands the authorization for small issue IDB’s to include facilities for manufacturing intangible property, including patents, copyrights, formulas, process design, know how, format or similar items. A manufacturing facility can also include facilities so long as the facilities are (i) “functionally related and subordinate” to a manufacturing facility, and (ii) located at the same site as the manufacturing facility.¹ Section 142(b)(2) states that office space cannot be financed unless the office is located on the premises of the facility and not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations of the facility.

General Rules:

Private activity bonds are not tax-exempt unless they are “qualified bonds.” Code Section 144(a)(1) defines “qualified small issue bond” as meaning any bond issued as part of an issue the aggregate authorized face amount of which is \$10,000,000 or less and 95% or more of the net proceeds of which are to be used for the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation or to redeem part or all of a prior issue which was so used. There is a cap of \$10,000,000 as mandated by the Federal Government for each allocation request. **Bond proceeds cannot be used to refinance debt, inventory or operating capital.**

95% Test:

95% of the net proceeds must be spent on depreciable property to redeem bonds. Net proceeds means the sale proceeds less any amount deposited in a reserve fund and does not appear to include investment proceeds.

Prior Issues:

In addition to the principal amount of bonds that are being issued, the issuer must include all prior qualified small issue bonds that financed facilities in the same incorporated municipality or in the same county (but not in any incorporated municipality). A principal user is the same person as a principal user of the facility being financed. The principal user is defined as any person who owns or leases 10% or more of or purchases more that 10% of the output of a facility.

¹ Changes made under The American Recovery and Reinvestment Act of 2009 (HR1).

Capital Expenditures:

With a \$20,000,000 limit, capital expenditures paid or incurred during the six-year period surrounding the bond issue (three years forward and three years back) with respect to any facility located in the same incorporated municipality or in the same county (but not in any incorporated municipality) which has the same principal as the financed facility must also be counted against the \$20,000,000 limit. Capital expenditures can include expenditures made by local government to assist with the facility. Capital expenditures do not include the following types of expenditures:

- Public utility improvements for the facility.
- Leased personal property provided it is leased by a person in a trade or business of leasing property or by the manufacture of that property.
- Expenditures required by a change in law or due to a casualty.
- Expenditures up to \$1,000,000 that could not be reasonably foreseen when the bonds were issued.

If the \$20,000,000 limit is exceeded due to a capital expenditure, the bonds become taxable on the date the expenditure is made and not retroactive to the date of issue. This will result in the disallowance of a deduction for interest for the period such bond ceases to be a qualified small issue bond. Code Section 144(a)(4)(A)(ii)

IRS Bond Audit Program:

Small issue bonds continue to be reviewed under the IRS's bond audit program. The most common problems identified, include violations of the \$10,000,000 limit and improper depreciation of bond-financed equipment.

Other Requirements and Considerations Applicable to Qualified Small Issue Bonds

State Volume Cap:

Code Section 146 requires that most private activity bonds obtain an allocation of the appropriate state volume cap. Section 146(d)(2) provides that the volume cap for any particular state shall be the greater of \$273,270,000 or an amount determined by multiplying the state population by \$90.

CarryForward:

Code Section 146(f) permits an elective CarryForward of unused limitation for a specific purpose for a period of three calendar years. A CarryForward purpose is defined to include issuing exempt facility bonds, issuing qualified mortgage bonds, issuing student loan bonds and issuing qualified redevelopment bonds, but **does not include** qualified small issue bonds. **Manufacturing tax-exempt bond allocations face a one-year period to close; January 1 to the third Saturday in December of the same year.** It is essential to have the necessary financing steps completed at the time of submission.

Public Approval:

Code Section 147(f) provides that a private activity bond shall not be a qualified bond unless public approval has been obtained with respect to the issuance of such bond.

**Private Activity Bond Authority Review Board
Policies and Procedures
for
Manufacturing Facility Applications**

The Private Activity Authority Bond Review Board for the State of Utah (PAB) is the designated allocating and administrating authority for tax-exempt bonds commonly referred to as “Volume Cap.” Each year the state of Utah is granted authority by federal regulations to allocate tax-exempt bonds (Volume Cap) for qualified developments. The percent allocation of the annual Volume Cap has been defined by legislation by the State Legislature. Multi-family affordable housing and manufacturing receive equal percentages from the Small Issues Account in January of each year. In July, the unused Volume Cap for multi-family housing, manufacturing facilities and exempt facilities is combined into a Pool Account with 50% redistributed to manufacturing applications. In October, the unused Volume Cap from the Pool Account is distributed by PAB according to the governing rules.

In response to the intense competition for Volume Cap and recognizing it is a scarce and important financial resource, PAB has approved the Application for Manufacturing Facilities and has also adopted guidelines to evaluate the applications for manufacturing facilities. Applications will be evaluated by certain criteria established by PAB as outlined and written in the enabling legislation. PAB reserves the right to change or amend the criteria when or if PAB deems necessary and giving sufficient notice to the public.

The criteria used to evaluate the applications are guidelines used by the applicants, staff and the Private Activity Bond Authority Review Board. PAB reserve the right to accept or reject the conclusions of the staff’s evaluations and recommendations. The board will exercise its prerogative in a prudent manner. Furthermore, PAB reserves the right not to allocate tax-exempt bonds at any meeting(s) held for that purpose.

PAB will determine the place and time of the public meeting for the allocation of Volume Cap.

The allocation of tax-exempt bonds for a manufacturing facility must meet the goals of PAB, which, are outlined as follows:

Application - Creation of New Jobs

A primary goal of bonds provided by the PAB is to generate new jobs. In evaluating this, only the jobs created in first three years of the facility’s operations are considered in the evaluation, although new jobs in the future are important. Further, only the direct jobs or those at the facility are considered. Companies building and operating a new facility or renovating an older building in areas of high unemployment receive special consideration.

Above Average Wages

Manufacturing facilities that generate new jobs or retain existing jobs at higher than average wages meet an important goal of the program. Additionally, the distribution of wages for new and existing jobs is an important and related consideration. If possible, the facility's wages will be compared to the community in which the facility is located; if data is not available, they will be compared to the countywide wages.

Retention of Jobs

In this fluid economic environment, retaining existing jobs is as important as creating new jobs. Recognizing it is difficult to quantify retention, applicants should present as much information and data regarding job retention as possible and its impact on the community.

Training and Education of Employees

Companies offering job training, education and assistance to an employee's education will be favorably considered by PAB. For this consideration, applicants are required to detail the job and education programs offered by the company and if possible, data summarizing employee participation.

Bonds/Job Ratio

The efficient use of Volume Cap is a singularly important objective. One measure used to gauge the efficiency is a bond per job ratio or the amount of bonds requested per new job created. Using less Volume Cap allocation per new job is positive. To achieve this, applicants are encouraged to combine bonds with other financing.

Community Support

PAB considers community support important. Community support includes an approved TEFRA Hearing, financial support, zoning approval, the reaction of special improvement districts, tax increment financing and/or waiver or deferral of fees. As evidenced by these examples, community support must be a tangible contribution to the proposed project.

Building and Equipment

Tax-exempt bonds can finance the construction or renovation of manufacturing facilities and the acquisition of new and used equipment. It is the responsibility of the applicant to demonstrate that these costs and expenses are competitive.

Need

Too often applicants express the need for Volume Cap as simply wanting a lower interest rate. The application requires a realistic cash flow for the first three (3) years of operation, which demonstrates the need for tax-exempt financing. As part of the cash flow analysis, the applicant should also compare variable and fixed rates and explain

the reasons for the selection. Further, if the applicant is making an equity contribution, this should be explained in detail.

Ready-To-Go Status

Property for the manufacturing facility must be zoned for use. This is a threshold requirement. The applicant should also address:

- Proximity of infrastructure to site.
- Need for special infrastructure (i.e. spur line).
- Environmental study, if required by the lender.
- Current title report and site plan of project.
- If available, building description (this should also be included in construction costs).
- Applicant should be aware that staff may contact appropriate city and county departments.

Financing

PAB allocations for manufacturing projects face a one-year period to close the bonds. It is vital the applicant detail the status of the project's financing at the time of application. The applicant should be aware that staff of PAB might contact the lender. Other related steps are:

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

Applicants are encouraged to have the necessary financing steps completed at time of submission.

Applications will be evaluated using these factors. Applicants are responsible to provide complete, accurate and verifiable information. The Private Activity Bond Authority Review Board reserves the right to use other criteria, if appropriate.

Application Process

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 the disqualification of the application. PAB Staff is willing to assist applicants and answer questions regarding the application process and evaluation. Applicants are encouraged to use this resource; however, staff is not allowed to make suggestions, recommendations or otherwise assist an applicant regarding the proposed project.

An application for tax-exempt bonds is available through a link on the web site for the State of Utah, Department of Community and Culture, Private Activity Bond Authority Review Board. <http://housing.utah.gov/pab/index.html>

Applicants can also obtain an application at the offices of the Department of Community and Culture, 324 South State Street, Suite #500, Salt Lake City, 84111. It should be noted that prior to submitting the application, staff is available to answer the applicant's questions. A preapplication meeting can be arranged with staff.

Submit three (3) sets of the application: two (2) paper copies of the completed and signed PAB Application, and one (1) electronic copy on CD. Include all application exhibits: 3-year pro-forma, building and equipment costs. The applications, CD and **application fees** must be delivered to the Department of Community and Culture, 324 South State, Suite #500, Salt Lake City, 84111, no later than 5:00 p.m., on the final date of submission. Late applications will not be accepted for that cycle.

The exhibits of the application include, but are not limited to:

- Complete application with signature and all necessary exhibits.
- Non-refundable fee. (The schedule of fees is available on the website.)
- Brief narrative description of the development.
- Evidence of site control.
- 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 applicant or sponsor.
- Evidence the property is zoned and the development schedule of activities, including start of construction, completion of construction, and closing of bonds.
- Resumes of development team: architect, general contractor, and project manager.

Once the application is submitted no further information can be submitted unless requested by staff.

Staff will review the application as to its completeness. In the event staff requests additional information or clarification, the applicant has 10 working days to respond. Failure to respond can result in the rejection of the application for the current round.

Staff will rate the project using the goals and objectives established by the PAB Board. Developments, however, must meet PAB threshold qualifications, which are, appropriate zoning for the facility and evidence of site control.

PAB has established priorities as guidelines for the allocation of Volume Cap. PAB may consider such additional criteria it deems necessary in its discretion to achieve maximum benefit of the available resources.

If after review by staff, there is disagreement or inconsistency with any information submitted, applicant shall be notified by e-mail outlining the difference(s). Applicant will have ten (10) working days to respond to staff's findings. PAB reserves the right to disqualify any application for incompleteness or other failings. If disqualified, an e-mail or letter will be sent notifying the applicant. The applicant may request a meeting with PAB Staff for clarification.

Applicants will have the opportunity to present the details of their project to the PAB Board. The applicant can only make such presentations. 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 only have a specified amount of time to make the presentation unless the board extends the time.

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

Complying with federal regulations, the PAB Board has established the following guidelines for manufacturing projects: a maximum allocation of \$10 million for any one manufacturing facility requesting Volume Cap. Each project received will be assessed on its own merit and determine what the state gains from funding it, e.g., jobs, salaries and wages, new technology, new processes, potential of helping the multiplier factor, long-range benefits, etc.

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.

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.

Process for Extensions

Recognizing the complexity of tax-exempt financing, extensions may be requested by those who have been awarded Volume Cap. Approval of the board is required for all extensions. Extensions are for 90 days.

The PAB Board, without requiring a fee or imposing any special conditions, will approve the first extension after the date of allocation.

Extensions after the first extension must meet the following:

- A fee for the extension will be required (schedule of fees is available on the web site).
- Acting on behalf of the board, additional information can be requested and such information **must** be submitted two (2) weeks before the board meeting. Failure to comply with the request can result in disqualification.
- If there are any changes, whatsoever, to the project, the applicant is required to notify staff as soon as possible, prior to the next PAB Meeting. If changes significantly alter the project, the applicant may be required to submit a new application. PAB reserves the right to withdraw the original allocation and evaluate the newer application.

- A revised schedule of activities.
- A summary detailing the reason(s) for the extension.

Manufacturing projects have different rules governing the extensions than those for multi-family projects. Applicants are encouraged to review the specific rules for manufacturing or to seek bond counsel.

Manufacturing projects approved for Volume Cap must close within the calendar year of the awarded allocation. Further, closing (selling or placement of the bonds) must occur no later than the third Saturday in December of the year of allocation.

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 applicant can compete for Volume Cap by resubmitting a new application at anytime for the extension. The applicant must pay the full application fee. The application shall be reviewed without prejudice.

Compliance

Any conditions or restrictions required by PAB must be adhered to. The applicant agrees to provide documentation demonstrating compliance.

The applicant understands that representations made in the application are binding and subject to verification by PAB or its agent(s). PAB also understands the uncertainty of meeting some representations (sales and cash flow projections, construction costs, financing costs) and acknowledges the applicant is not strictly held to these representations.

If for any reason, the applicant is unable to meet conditions or restrictions required by PAB, the applicant will notify PAB in writing as to the circumstances preventing or modifying compliance. PAB reserves the right to accept or reject explanation.

Summary

The Private Activity Bond Authority Review Board implements an evaluation process to objectively compare competing applications to ensure an optimum use of Volume Cap. Every attempt is made to achieve this.