

Public Finance

Our Public Finance lawyers understand the challenges of planning and implementing publicly funded capital projects and have handled virtually every type of public financing transaction.

Government entities building or renovating public facilities need advice on tax-exempt and taxable bond financing. Private companies building factories and retail establishments need to analyze financial incentives and methods for efficiently obtaining them. Banks, underwriters, and business owners need counsel on the impact of tax-exempt and taxable debt, and businesses need to consider the impact of changing tax laws on proposed new financings.

Our public finance lawyers are well versed in representing borrowers, letter of credit banks, trustees, and guarantors, and we frequently counsel nonprofit institutions on financing capital improvements. Our team helped develop financing structures used by leading New Jersey health providers and served as bond counsel for nearly every congregate care community financed in New Jersey.

We have detailed knowledge of aviation, housing, healthcare, utilities, and solid waste remediation financing. We also have extensive experience in matters of fiduciary responsibility for disclosure and default, land use, and lender liability, including ISRA and CERCLA. We also regularly assist clients with underwriting requirements, including MSRB rules, municipal swaps, and letter of credit law.

Tax 103

McCarter has distinguished itself in the most challenging area of the law essential to public finance: The Firm is in the national forefront on matters relating to federal income taxation. Our tax lawyers bring decades of experience advising nonprofits, school districts, healthcare institutions and governmental entities regarding all aspects of tax-exempt financings and regulations. Each lawyer in our Tax 103 team devotes their practice exclusively to public finance work, and brings more than 30 years of experience to all aspects of our 103 practice.

Healthcare Capital & Project Financing

Our extensive healthcare capital finance experience and our recognized level of technical public finance and tax depth sets us apart from other public finance practices. For more than 30 years, we have delivered legal services to the healthcare capital markets as bond, underwriter's, bank, and borrower's counsel for billions of dollars in acute and subacute debt as well as financing and refinancing assets relating to thousands of beds and units along many different service lines. Our lawyers have contributed to the development of some of the most innovative financing structures used by healthcare providers nationally.

In representing healthcare providers, we have effectively built upon our public finance representations to include a broad range of legal services provided by the Firm. Most significantly, we have effectively leveraged our healthcare capital finance expertise to include a large and highly visible health system M&A practice, representing primarily acute and subacute acquirers with the negotiation of the transaction documents, due diligence, capital debt issues, as well as a range of associated matters including antitrust, regulatory compliance, corporate governance, employee benefits, real property and environmental issues.

Educational Facility Capital Project Financing

We have served as bond counsel to numerous public school districts throughout New Jersey, assisting in financing capital improvements through the issuance of bonds, notes and

certificates of participation. We are experienced in financings in accordance with the New Jersey local bond law and the New Jersey school financing law, including the New Jersey Educational Facilities Construction and Financing Act. We have assisted school districts in seeking approval by the New Jersey Department of Education for the state share of their project costs and the approval by the New Jersey Local Finance Board of special and non-conforming bond maturities and redemption provisions.

In addition to serving as bond counsel for financings of the New Jersey Economic Development Authority (NJEDA) for charter schools, private schools and other nonprofit educational institutions, we have served as bond counsel, bank counsel, agency counsel and underwriter's counsel on numerous financings benefiting private schools and charter schools in Massachusetts, New Hampshire, Maine, Connecticut, Delaware and New York.

We have extensive experience relating to higher education facility financings, having served as bond counsel to the New Jersey Educational Facilities Authority (NJEFA) for nearly four decades. We have served as bond counsel to the University of Massachusetts Building Authority (UMBA) to finance facilities on university campuses, such as student dormitories, dining facilities, parking garages, academic buildings, athletic facilities and laboratories. In addition, the Firm has drafted legislation on behalf of UMBA, including legislation related to working capital financings. The Firm has served as both underwriter's counsel and bond counsel on bond issuances through the Massachusetts Development Finance Agency (Mass Development) and as bond counsel on bond issuances through the NJEFA, each related to financing the construction of residence halls and dining facilities on university campuses using a public-private partnership development model. Currently, we served as bond counsel to Rutgers – The State University of New Jersey.

A significant portion of our underwriter's counsel practice relates to secondary education financings and higher education financings.

Housing Capital Project Financings

We have served as bond, underwriter's and borrower's counsel in a broad range of multi- and single-family housing issues for billions of dollars of outstanding tax-exempt debt. Our clients have included nonprofit and for-profit developers of low- and moderate-income housing. We have assembled teams comprising our property tax abatements and tax credits lawyers that serve the financing aspects of multifamily housing. We also assist developers in navigating the FNMA financing process and the debt restructuring process with financing authorities.

We have served as bond counsel to Mass Development on financings related to affordable housing projects and group homes throughout Massachusetts. We additionally have served as underwriter's counsel on single-family housing bond financings by the Massachusetts Housing Finance Agency.

We have provided bond counsel services to the Boston Housing Authority (and two of its "instrumentality public housing authorities") and have served as bond counsel for the affordable housing program (known as the Massachusetts Tax Exempt Credit for Housing, or "MATCH," Program) jointly sponsored by Mass Development and the Massachusetts Housing Partnership Fund (MHP). Under the MATCH Program, Mass Development issues bonds and loans the proceeds to MHP by acquiring the obligations of MHP. MHP in turn loans the proceeds to a for-profit or non-profit entity to be used to provide or refinance affordable multi-family or single-room occupancy housing.

We have enjoyed a long-standing relationship with the New Hampshire Housing Finance Authority (NHHFA) as its bond counsel for financings related to single-family and multi-family housing projects. We have drafted single-family and multi-family general resolutions for

NHHFA. The Firm also has drafted legislation for NHHFA, and has provided advice to NHHFA, regarding the impact of pending and enacted legislation, including, for example, proposed state disaster relief for homeowners and reverse mortgage proposals. McCarter also has provided advice on programs utilizing FHA/HFA risk-sharing insurance.

Environmental Infrastructure & Solid Waste Remediation Financings

Our lawyers have represented the New Jersey Infrastructure Bank (formerly known as the New Jersey Environmental Infrastructure Trust and, before that, the New Jersey Wastewater Treatment Trust) as its sole bond counsel for more than three decades with respect to the I-Bank's State Revolving Fund pooled financing program for wastewater treatment projects and drinking water supply projects undertaken by counties and municipalities, regional, county and municipal sewer, utilities and improvement authorities, State authorities, nonprofit entities, and investor-owned private water utilities located throughout New Jersey. We have served as bond counsel in connection with the issuance by the I-Bank of over 100 series of bonds totaling more than \$2.5 billion, as well as the I-Bank's outstanding extendable commercial paper. As a result, we possess extensive expertise with the legal and structural complexities of such pooled financing programs (including their highly unique and complex collateral features), the full range of financing issues presented by participation in such State Revolving Fund financing programs, the logistical challenges of large and complex borrower pools, as well as the complexities associated with federal funding through State Revolving Fund grants from the United States Environmental Protection Agency.

In addition to our representation of the I-Bank, we have served as bond counsel to the largest borrower participant in the Massachusetts State Revolving Fund Program, and in such capacity have represented such issuer with respect to: (i) its annual issuances of general revenue bonds, its general revenue refundings and multi-modal subordinated revenue refundings (both current and advance refundings), and its annual bond defeasances; (ii) its borrowings from the Massachusetts State Revolving Fund Program (through the Massachusetts Clean Water Trust); (iii) its tax-exempt revolving credit facility for purposes of funding its short-term capital financing needs; (iv) issues relating to federal tax compliance; (v) the termination and replacement of swaps; (vi) the substitution and the extension of credit and liquidity facilities; and (vii) various issues arising pursuant to its General Resolution. The Firm also has served as disclosure counsel for State Revolving Fund financings.

We possess expertise with respect to the Green Bond Principles and are at the national forefront of the growing market for Environmental Impact Bonds, having served as underwriters' counsel with respect to two such transactions, including only the second issuance done nationally that consisted of publicly offered Environmental Impact Bonds – a transaction that was recognized as The Bond Buyer's Small Issuer Deal of the Year. We have represented the I-Bank with respect to the borrowing of approximately \$750 million dollars from the United States Environmental Protection Agency pursuant to the federal Water Infrastructure Finance and Innovation Act (WIFIA), the first of which loans represented only the second WIFIA loan made by USEPA to an SRF Program.

We also bring extensive experience relating to solid waste remediation financings on behalf of I-Bank and other issuers. We served as bond counsel to a state issuing authority in connection with the issuance of 3 series of bonds, totaling almost \$300 million in aggregate principal amount. The proceeds of the bonds were loaned to a for-profit entity to finance the remediation of approximately 785 acres of real property.

Airport & Port Facility Financings

We have extensive experience with exempt facility financings for airport and port facility projects, having served as bond counsel to the New Jersey Economic Development Authority (NJEDA) for more than two decades in connection with hangar and terminal project

financings for United Airlines, Inc., at Newark Liberty International Airport, which has totaled more than \$1 billion. In addition, we assisted NJEDA with the issuance of \$125 million of special facility revenue bonds to finance a terminal facility. We are well versed in negotiating the bond documents in such transactions with The Port Authority of New York and New Jersey and the other operators of the airports and ports where the new project facilities are to be sited.

For almost two decades we served as underwriter's counsel for each of the general obligation financings undertaken by The Port Authority of New York and New Jersey with respect to its airport and other transportation infrastructure. We also served as bond counsel for a special facility revenue bond financing for an airport project in Arizona.

Transportation Project Financings

The Public Finance group has developed a diverse range of experience in transportation project financings through our representation of a variety of clients, serving as bond counsel, underwriter's counsel and trustee's counsel. We have represented or currently represent the New Jersey Transportation Trust Fund Authority as bond counsel, the New Jersey Highway Authority as bond counsel, the Massachusetts Turnpike Authority as bond counsel, the Delaware River Port Authority as co-bond counsel, and the New Jersey Transit Corporation as bond counsel. For several years, we served as bond counsel to the New Jersey Expressway Authority. We have served as underwriter's counsel in connection with transactions of the South Jersey Transportation Authority, the New Jersey Transportation Trust Fund Authority, the Massachusetts Bay Transportation Authority, the Commonwealth of Massachusetts, the Delaware River Joint Toll Bridge Commission, and The Port Authority of New York and New Jersey. We also have served as trustee's counsel on several financings by the New Jersey Turnpike Authority, the South Jersey Port Corporation and the Delaware River Port Authority.

Electric Power Financings

During an over 15-year period, we served alternatively as bond counsel to the Salt River Project Agricultural Improvement and Power District and as underwriter's counsel to its underwriting syndicate in connection with its bond financings as well as the financing of its acquisition of a power plant through the issuance of \$282.7 million certificates of participation. Additionally, the Firm served as counsel to a public joint action agency that financed and constructed a 42-mile high-pressure intrastate natural gas pipeline. We have served as bond counsel for a number of co-generation facility financings, including two current co-gen projects that are being financed through the New Jersey Infrastructure Bank.

Representative Matters

New Jersey Health Care Facilities Financing Authority—Debt restructuring

Led working groups through the largest tax-exempt bond offerings of the New Jersey Health Care Facilities Financing Authority, which proceeds were used to facilitate complex debt restructurings for large New Jersey health systems following numerous merger transactions. These transactions involved the development of modern-style master trust indentures and the synchronization of complex financial reporting obligations, including issuer-required early warning tests, among 26 series of publicly-offered and privately-placed taxable and tax-exempt debt.

New York City Community Hospital—Debt restructuring

Guided a New York City community hospital with the restructuring of an existing credit facility, which involved the resolution of complex intercreditor rights of HUD, the disposition of assets, including developments rights, and the leasing of replacement office space.

Acute-care hospital—Healthcare systems transaction

Represented an acute-care hospital and its affiliates in its affiliation with New Jersey's largest academic health system. The transaction involved filings required by Hart-Scott-Rodino with the Federal Trade Commission, CHAPA approval by the New Jersey Attorney General's Office and the Superior Court, and approval of The Holy See.

Faith-based university—Debt restructuring

Represented a faith-based university in the restructuring of its debt in forbearance, as well as other debt, creating a new master trust and covenant structure, reducing lenders from five to two, with tax-exempt and taxable pieces, converting a construction loan to permanent financing, while creating a debt structure more conducive to the long-term operating needs and plans of the university.

NJ health system—Separation from legacy parent

Represented a New Jersey health system in connection with its separation from an out-of-state health system, including related legacy financing matters and approval of the proposed settlement and transfer of ownership by the New Jersey Attorney General and the New Jersey Department of Health. Promptly pivoted to reentering the public debt market as a stand-alone system with an operating history that was co-mingled with the legacy parent.

Health systems collaboration—Debt restructuring

Represented two collaborating health systems in connection with restructuring seven separate bond/direct loan facilities, along with the development of an innovative security structure tailored to the unique co-membership recently created between these health systems. The "Aa"-rated system borrowed from a major money-center bank and deployed proceeds plus equity to the "Baa"-rated affiliate at a rate derived from the preferred credit, with a 15-year moratorium on principal amortization. This structure created a window to allow the affiliate to utilize cash flow savings for capital and operating flexibility with the affiliate having only one related creditor.

Specialty hospital—Healthcare financing

Guided a specialty hospital with an interim loan and long-term financing commitment from the United States Department of Agriculture, Rural Development, to finance renovations to and expansion of the hospital facilities.

National financing authority—Bond counsel

Represented a national financing authority as bond counsel in connection with the complex refinancing of existing bonds, the termination of the related swaps, and the implementation of a new master trust indenture for another of New Jersey's largest nonprofit providers of senior living facilities, thereby drawing heavily upon our vast sub-acute care financing expertise.

New Jersey senior living facilities—Debt restructuring

Led the working group through a complex debt restructuring, including the implementation of a new master trust indenture and use of forward delivery bonds, for one of New Jersey's largest nonprofit providers of senior living facilities.

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Massachusetts Infrastructure Investment Incentive Program—Bond counsel

Represented a public agency as bond counsel in connection with the refinancing of three series of Infrastructure Investment Incentive Program ("I-Cubed") bonds related to three separate Massachusetts public infrastructure projects. The transaction involved the sale of

one series of bonds and allocating the proceeds and the savings among the three separate projects. Each project financed public infrastructure improvements necessary to support major private development through an agreement, which was amended for the refinancing, among the Commonwealth of Massachusetts, the municipality and a private developer.

Higher Education Authority—Bond counsel

Represented an authority as bond counsel in connection with the complex refinancing of existing bonds and the termination of the related swaps and standby bond purchase agreements. The transaction required the navigation of the timing of the terminations with the pricing of the bonds in a challenging market.

Arizona city—Light rail project legislation and agreement

Authored new legislation for an Arizona city to accelerate various transportation projects, and assisted such Arizona city in defending its new legislation as well as the financing of its light rail project at both the trial level and the appellate level. The Arizona Supreme Court denied the appellant's petition for review, which enabled the Arizona city to move forward with the light rail project. We drafted the first-of-its-kind transportation project advance agreement to accelerate such light rail project.

Independent school—Underwriter's counsel

Represented an underwriter in a bond financing for an independent school, the proceeds of which financed renovations to a leased school facility, which involved the resolution of the real property agreements between the landlord and the school, as tenant, complex tax issues with respect to the project and the financing, and the drafting of comprehensive deal-specific bondholders' risk factors.

Housing authority—Bond resolutions

Developed several general bond resolutions for a housing finance issuer, including novel structures for (i) the issuance of a bond under the United States Treasury Department's New Issue Bond Program, (ii) expanding the issuer's power to issue tax-exempt bonds under a mortgage-backed-securities structure, under a pass through framework, and associated with swaps, and (iii) providing the issuer with additional flexibility to issue parity bonds, siloed bonds, general obligation bonds and revenue bonds under the same resolution.

Educational facility—IRS audit

Guided an educational facility financing agency in an IRS audit of tax-exempt bonds, a portion of the proceeds of which were applied to advance refund prior bonds, resulting in no change in tax-exempt status determination and a seven figure refund with respect to rebate payments previously made to the IRS.

Economic development legislation

Authored a portion of recent economic development legislation that effected a merger of one major bond financing agency into another, and ensured that no bond issuing powers were lost as a result of the merger.

Alerts

Disclosure Industry Working Group Encourages Timely Covid-19 Disclosures, Public Finance Alert, 9.17.2020

Voluntary Disclosures and the SEC's Public Statement Regarding the Importance of Disclosure for Our Municipal Markets, Public Finance Alert, 5.29.2020

Implications of COVID-19 Pandemic for Municipal Bond Transactions, Public Finance Alert, 4.9.2020

Latest Resources available to NJ Acute and Sub-Acute Care Providers to mitigate the effects of the COVID-19 pandemic, 4.2.2020

Amendments to Continuing Disclosure Requirements Effective February 27, 2019, Public Finance Alert, 2.15.2019

Increased Transparency to Continuing Disclosure Requirements, Public Finance Alert, 9.18.2018

Articles

Charter School Bond Financing, National Association of Bond Lawyers, 9.24.2020

Speaking Engagements

Securities Law Considerations Concerning Limited Offerings and Private Placements, National Association of Bond Lawyers, 3.9.2023

Roles and Responsibilities of Disclosure Counsel, National Association of Bond Lawyers, 3.4.2022

To Lien or Not to Lien – Discussion of the Lien in the Context of Municipal Bonds, NABL U Presents The Institute, 3.20.2020

Financings of Charter Schools: Issues and Opportunities, National Association of Bond Lawyers Conference, 9.11.2019

Financings of Charter Schools: Issues and Opportunities, National Association of Bond Lawyers Conference, 9.27.2018

Redevelopment in New Jersey: Strategies for Success, 4.3.2014

Webinars

Investor Security-Liens and Municipal Bonds, National Association of Bond Lawyers, 3.5.2021

Quoted

Government Bond Market Proves 'Robust' in First Half of 2020, But COVID-19 Fallout Looms, New Jersey Law Journal, August 11.2020

Eds & Meds' Are in a Race to Finish Line for Financing, ROI-NJ, 11.22.2017

McCarter #2 in New Jersey Law Journal bond counsel rankings; Scott Kobler quoted, New Jersey Law Journal, August 21.2015