

AGRI BUSINESS BOND – Summary

PURPOSE: The purpose of the Agri Business Bonding Program is to assist in the development and expansion of agricultural and business enterprises with the State of South Dakota. The Value Added Finance Authority (the "Authority:" issues tax-exempt bonds and/or notes which the borrower may sell and use the proceeds to finance qualified projects that meet state and federal requirements. The borrower pays the interest and principal directly back to the purchaser or Trustee.

STATE REQUIREMENTS: The Agri Business Bonding program will be established pursuant to Administrative Rules of South Dakota. The Value Added Finance Authority has the ability to issue its bonds or notes for the purpose of financing the cost of acquiring, constructing, furnishing and equipping "agricultural enterprises" and "business enterprises." Agricultural enterprises are defined to include land, buildings and improvements suitable for use in farming, ranching, or the production of agricultural commodities or necessary or suitable for treating, processing, storing or transporting raw agricultural commodities. Business enterprises are defined to include land, building, improvements and facilities for manufacturing, industrial, processing, warehousing, commercial, recreational, hotel, office, research, business or other related purposes.

FEDERAL ELIGIBILITY: While SDCL 1-16E authorizes an extensive list of activities for which bonds may be issued by the Authority, the provisions of the Internal Revenue Code of 1986 limits the list of projects that can be financed with tax-exempt bonds to manufacturing (including processing) projects, certain housing projects, projects for Tax-Exempt Organizations (501(c)(3), and projects for first-time farmers. The Internal Revenue Code of 1986 indicates the types of projects which may be financed include:

- A. 1. "Small Issue" Bond of either:
 - a) \$1,000,000.00; or
 - b) up to \$10,000,000 if the bond issue plus all capital expenditures for three years before and three after the date the bonds are issued do not exceed \$20,000,000 on all bond issues after January 1, 2007; and
 - 2. To be used to acquire new or certain property to be rehabilitated to be used in a trade or business (but not food, automobile sales or service, recreation and certain other facilities).
 - B. To acquire property for a 501(c)(3) organization.
 - C. To refund certain qualified bonds.
 - D. For certain other exempt facilities (certain qualified residential rental projects, certain utility services, etc.).
- The provisions regarding the issuance of small issue industrial development bonds and the requirements for allocations cap do not apply for projects to be completed by not-for-profit corporations or to refund certain qualified bonds.

APPLICATION PROCESS: An Agri Business Bonding program application must be completed and submitted to the Authority for review by the Board along with a non-refundable application fee of \$200. All applications must be reviewed and approved by the Authority's Board of Directors who meets monthly. Following initial review by the Authority, specific bond documents and other matters including the receipt of state tax-exempt allocation cap and other formal matters must be approved prior to closing of the bond issue. Bond Closing fees are to be paid by the borrower or bond purchaser at closing. Please contact the SDDA for details on the bond closing fees.

BENEFITS: Typically, the tax-exempt bond allows borrowers to receive interest rates that are 1 to 3 percent below that of conventional loans; which can provide thousands of dollars saved for the borrowers. Bond purchasers save money on taxes because of the tax-exempt status of the bonds.

ADDITIONAL INFORMATION: If you have any questions about this program, please contact the Value Added Finance Authority, 523 East Capitol Ave., Pierre SD 57501, 605-773-5436 or e-mail Terri LaBrie, Executive Director at terri.labrie@state.sd.us .

TAX-EXEMPT PRIVATE ACTIVITY BONDS

1. **AUTHORIZATION** - The Value Added Finance Authority is authorized by Chapter 1-16E of the South Dakota Statutes to issue bonds for the purpose of financing the cost of acquiring, construction, furnishing and equipping "agricultural enterprises" and "business enterprises."
2. **INTERNAL REVENUE CODE RESTRICTIONS** - The IRS Code of 1986 limits the list of projects that can be financed with Tax-exempt bonds to manufacturing (including processing) projects, certain housing projects, projects for Tax-Exempt Organizations 501(c)(3), and projects for first-time farmers.
3. **FINANCING** -
 1. Authority acts only as a surrogate in the transaction.
 2. Credit of the Borrower must support the Bond Issue.
 3. Payments must come from Borrower's general revenue or from revenues generated by the project.
 4. Under South Dakota law, the bonds and interest thereon may not be deemed to constitute a debt, liability or obligation of the state or of any other political subdivision thereof, nor a pledge of the full faith and credit of the State or any other political subdivision.
 5. Deduction for Interest Incurred to Carry Tax-Exempt Bonds - The Authority bonds are not "qualified tax-exempt obligations" within the meaning of Section 265(c)(3) of the Internal Revenue Code of 1986. Accordingly, financial institutions will not be allowed any deduction for that portion of the financial institution's interest expense which is allocable by law to the purchasing or carrying of the Authority's bond.
4. **PARTIES INVOLVED** -
 1. Authority, Borrower and Bond Purchaser.
 2. Bond Purchaser, may be single individual or financial institution or a group of each.
 3. Simultaneous Transactions Occur -
 - a. Authority issues Bonds to Bond Purchaser.
 - b. Bond Purchaser purchases Bonds from Authority.
 - c. Authority makes a loan to Borrower from proceeds of Bond sale.
 - d. Authority assigns to the Bond Purchaser the Authority's right to receive repayment of the loan from the Borrower.
5. **REIMBURSEMENT RESOLUTION** -
 1. Federal law requirement that Borrower declare official intent to issue bonds for project.
 2. Public Hearing must be held.
6. **BOND PROCEEDS** -
 1. May be used for cost of project, incidental cost of financing, limited amounts placed in reserve fund for debt service, capitalized interest for a limited period, and other limited purposes.
 2. INELIGIBLE USES include working capital, inventory, and refinancing existing taxable debt.
7. **TAX CODE RESTRICTIONS** -
 1. \$10 Million limit to any one Borrower or related entity.
 2. No Borrower may have or benefit from more than \$40 Million in tax-exempt bonds.
 3. No more than 25% of proceeds may be used to acquire land.
 4. No bonds may be used to acquire an existing building or equipment unless 15% of the cost of acquisition is spent for rehabilitation of the building.
 5. 95% of net proceeds must be for acquisition, construction or construction of land or depreciable property.
 6. No more than 2% of proceeds may be used to pay costs of issuance, including underwriters' fees.
 7. Modified Accelerated Cost Recovery System (MACRS) is limited.
 8. Weighted average maturity of bonds cannot exceed 120% of the average reasonably expected economic life of the facilities being financed.