MODULE 3

WHAT BONDS DEVELOPMENT AUTHORITIES CAN AND CAN'T ISSUE

and why

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ALSO KNOWN AS-
“FUN WITH BONDS”

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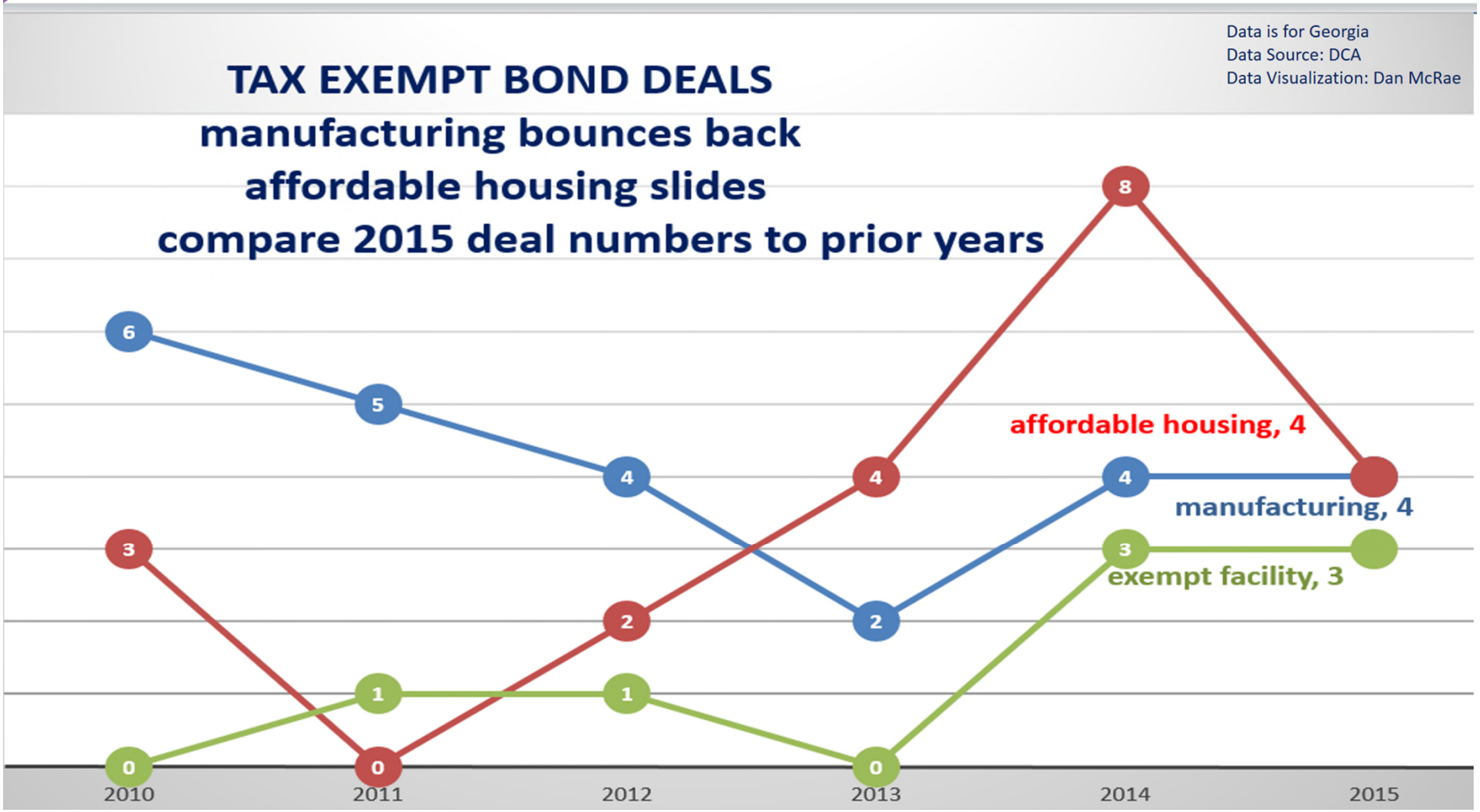
BONDS- HERE'S WHAT DEVELOPMENT AUTHORITIES ARE REALLY DOING



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BONDS HIDDEN FROM THE DATA

- THE BONDS CHARTED ABOVE ARE THOSE FOR WHICH AN ALLOCATION OF STATE “VOLUME CAP” IS NEEDED FROM DCA
- THERE IS A LOT OF ACTIVITY WITH BOND TYPES THAT DON’T REQUIRE ALLOCATION, INCLUDING-
  - TAX-EXEMPT 501(C)(3) BONDS FOR NONPROFITS
  - TAX-EXEMPT GOVERNMENTAL PURPOSE BONDS
  - TAXABLE BONDS

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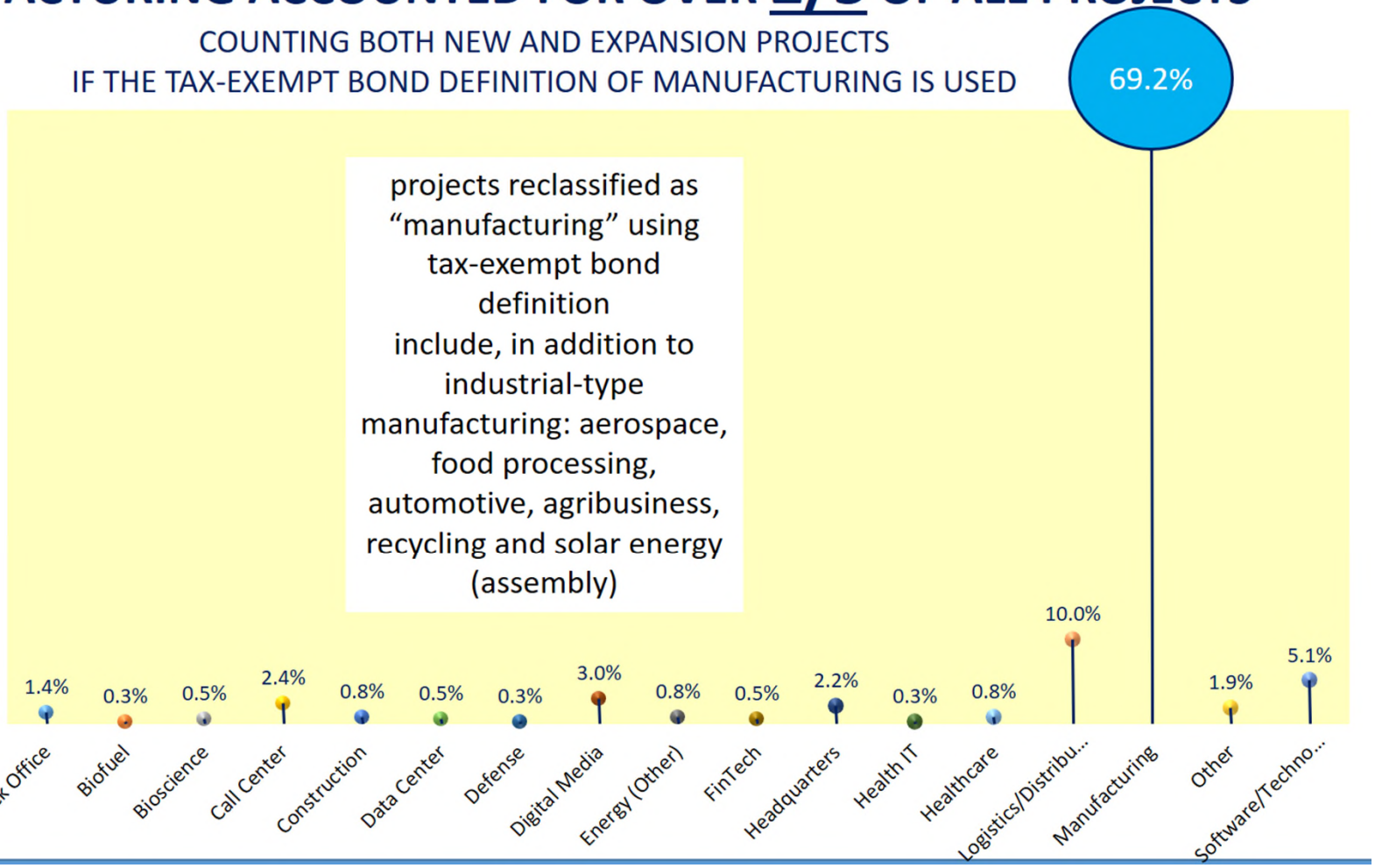
MANUFACTURING IS PRETTY ACTIVE

SO WHY AREN'T WE SEEING MORE TAX-EXEMPT MANUFACTURING BONDS?

MANUFACTURING ACCOUNTED FOR OVER 2/3 OF ALL PROJECTS

COUNTING BOTH NEW AND EXPANSION PROJECTS
IF THE TAX-EXEMPT BOND DEFINITION OF MANUFACTURING IS USED



Data Source:
GDEcD, for YE 6/30/16, reclassified as noted
Data Visualization:
Dan McRae

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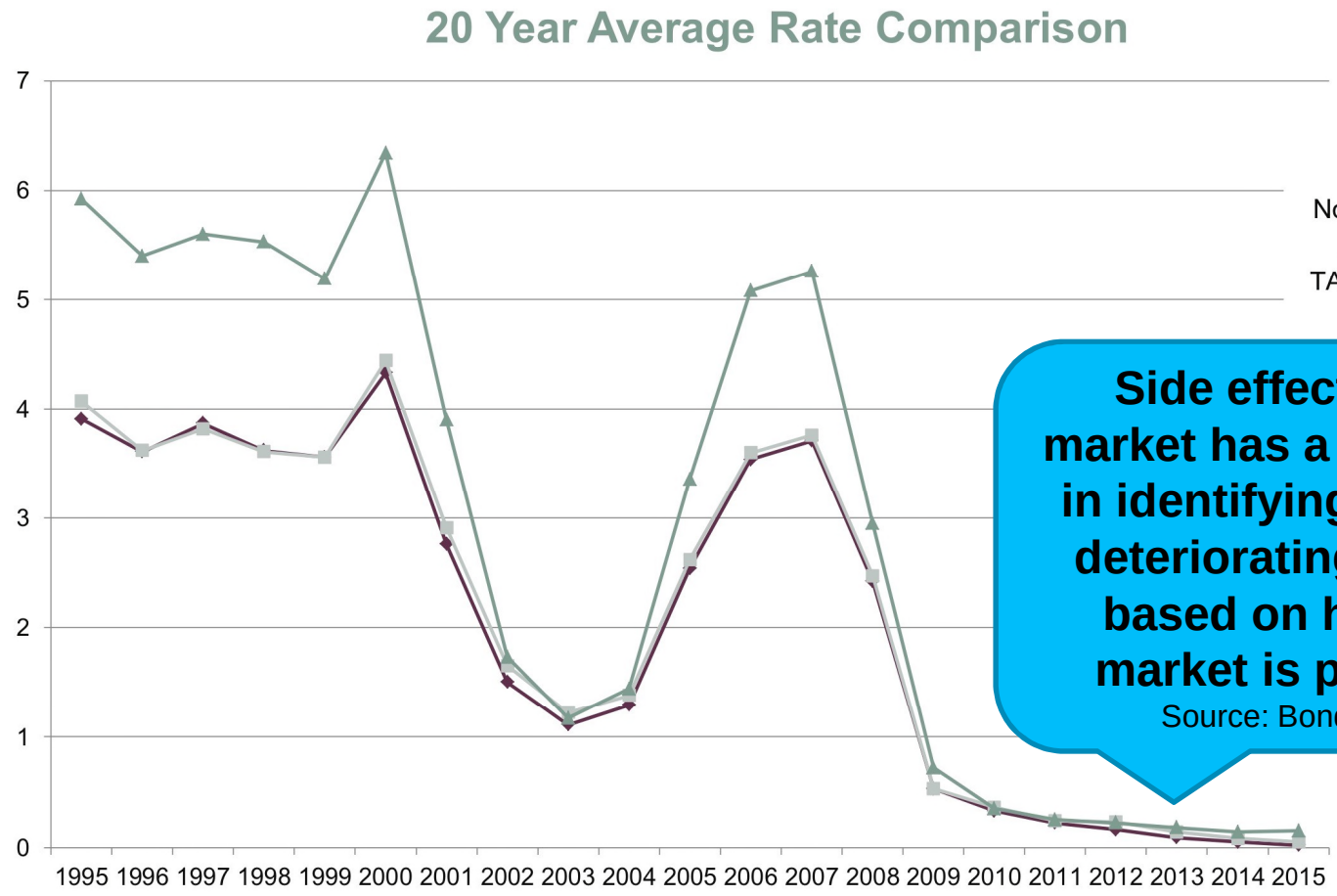
THIS IS ONE REASON
TAX-EXEMPT AND TAXABLE RATES ARE BOTH LOW AND CLOSE

Historical Rates

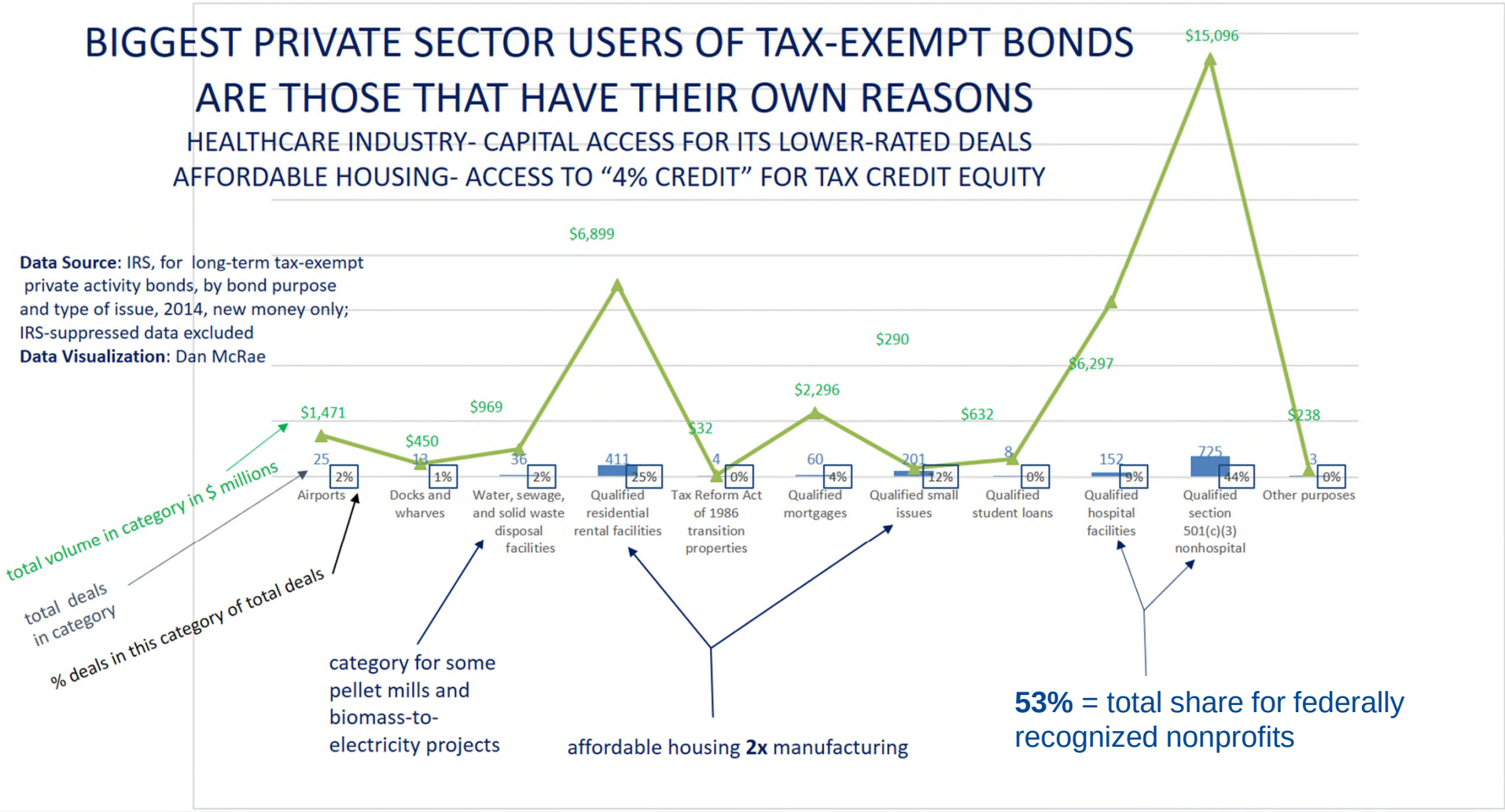


Averages
Non-AMT - 2.16%
AMT - 2.22%
TAXABLE - 3.04%

Side effect: "The market has a challenge in identifying weak or deteriorating credits based on how the market is pricing."
Source: Bond Buyer

Source: FHLB Atlanta

THE TRUTH ABOUT (TAX-EXEMPT) BONDS



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WHO DECIDES WHAT BONDS A DEVELOPMENT AUTHORITY CAN ISSUE?

FUNDAMENTAL RULE- A DEVELOPMENT AUTHORITY CAN ONLY ISSUE BONDS THAT STATE LAW *ALLOWS* IT TO ISSUE. THESE LAWS APPLY AS FOLLOWS-

- CONSTITUTION- TO ALL AUTHORITIES
- IN ADDITION, EACH TYPE OF AUTHORITY HAS ITS OWN GOVERNING LAW
  - SEE “THE DEVELOPMENT OF DEVELOPMENT AUTHORITIES IN GEORGIA”, ABOVE

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WHAT BONDS- WHO DECIDES?

- REVENUE BOND LAW- TO ALL AUTHORITIES
- PILOT RESTRICTION ACT- TO ALL AUTHORITIES
- O.C.G.A. Sec. 36-75-11 RESTRICTIONS ON CONTRACT REVENUE BONDS- IN PRACTICE, JUST TO DEVELOPMENT AUTHORITY OF DEKALB COUNTY

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WHAT BONDS- TAX-EXEMPT?

- THERE IS NO GEORGIA INCOME TAX ON INTEREST PAID BY A GEORGIA DEVELOPMENT AUTHORITY TO A GEORGIA TAXPAYER
- BUT “TAX-EXEMPT” USUALLY IS TAKEN TO MEAN FREE OF FEDERAL INCOME TAX
  - THAT’S WHAT IT MEANS IN THIS PRESENTATION

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WHAT BONDS- TAX-EXEMPT?

- "TAX-EXEMPT" HAS NOTHING TO DO WITH GEORGIA LAW
  - EXCEPT IT IS A FEDERAL REQUIREMENT THAT THE BONDS BE LEGALLY ISSUED UNDER STATE LAW
  - JUST BECAUSE A GEORGIA DEVELOPMENT AUTHORITY ISSUES A BOND, DOES NOT AUTOMATICALLY MEAN IT IS TAX-EXEMPT UNDER FEDERAL LAW
    - THERE HAS TO BE AN EXEMPTION
    - AND MANY REQUIREMENTS HAVE TO BE MET

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BASIC RULE

- A PUBLIC BODY'S BONDS WILL BE TAX-EXEMPT, GOVERNMENTAL PURPOSE BONDS UNLESS THERE IS-
- TOO MUCH PRIVATE USE, AND
- TOO MUCH PRIVATE PAYMENT OR PRIVATE SECURITY

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PRIVATE ACTIVITY BONDS

- THE OPPOSITE OF "GOVERNMENTAL PURPOSE" IS "PRIVATE ACTIVITY"
  - MEANS THERE IS
    - TOO MUCH PRIVATE USE, AND
    - TOO MUCH PRIVATE PAYMENT/PRIVATE SECURITY
  - "PRIVATE LOAN" TEST MIGHT APPLY

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PRIVATE ACTIVITY BONDS

- INTEREST ON PRIVATE ACTIVITY BONDS NOT FEDERALLY TAX-EXEMPT UNLESS THERE IS AN "EXEMPTION"
- EXEMPTIONS ARE HARD TO FIND
  - COMPLIANCE WITH OTHER TAX RULES REQUIRED
- HERE ARE A FEW

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BOND CASE STUDIES

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Source (recommended): “Latin Phrases”

“SMALL ISSUE” MANUFACTURING BONDS CASE STUDY: 1888 MILLS

GRIFFIN-SPALDING DEVELOPMENT AUTHORITY

FOR IMMEDIATE RELEASE FEBRUARY 6, 2014

1888 MILLS PURCHASES NACOM FACILITY FOR EXPANSION

GRIFFIN, GEORGIA…1888 Mills announced today that it has purchased the 500,000 square foot former NACOM facility on Airport Road in Griffin, Georgia. This is part of an expansion that will produce a sizeable investment in land, buildings and equipment and also create approximately 100 new jobs.

Douglas R. Tingle, Board of Managers for 1888 Mills, stated, “This is part of an expansion and modernization initiative we have for our USA platform. We continue to believe that USA manufacturing is important in supporting our local community. Each manufacturing job we create has a trickledown effect to the local economy. That is what we mean by our Brand Purpose – Weaving a Better World.”

PROJECT WAS FINANCED WITH A $10 MILLION TAX-EXEMPT MANUFACTURING BOND PRIVATELY PLACED WITH A BANK

THERE WAS ALSO A $5.75 MILLION ISSUE OF TAXABLE BONDS FOR TITLE SO THAT ALL OF THE ASSETS WOULD RECEIVE PROPERTY TAX SAVINGS

1888 Mills growing in Griffin

Wednesday May 18 | Read more: Griffin Daily News

RAY LIGHTNER/DAILY NEWS1888 Mills Vice President Doug Tingle gave a tour of the new facility on Airport Road as of the Griffin-Spalding Chamber of Commerce Governmental Affairs Committee breakfast, which 1888 Mills hosted Thursday morning.

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DEVELOPMENT AUTHORITY BONDS: "SMALL ISSUE" MANUFACTURING BONDS

- Capital expenditure limit ($10 million tax-exempt bond proceeds + $10 million other) /$40 million national limit on tax-exempt bonds for the "Company"
- This low capex limit is another reason not many manufacturing projects are being financed today with tax-exempt bonds.
- Spending requirements –
  - 95% or more of the proceeds must be used for a "manufacturing" facility (only 5% may be "bad money")
  - less than 25% on land costs
  - at least 15% on rehabilitation expenditures, if acquiring an existing building (and the equipment therein)
    - calculated based on acquisition costs, not 15% of total bond proceeds
    - could use non-bond funds to pay for rehab
  - at least 70% on "core manufacturing" facilities (e.g., manufacturing part of the building and new manufacturing equipment)
  - no more than 25% on "directly related and ancillary" facilities
  - up to 2% can be spent for issuance costs (this 2% is a part of the 5% allowable "bad money")

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“AFFORDABLE HOUSING” BONDS CASE STUDY: SENIOR LIVING FACILITY FOR PROVIDENT VILLAGE AT CREEKSIDE

mdjonline.com

Senior living facility to open in Smyrna

Meris Lutz Apr 4, 2016 (0)

A 108-unit assisted senior living facility in Smyrna financed with tax-exempt bonds is slated to open April 9, a spokesperson for the developer told the MDJ.

The three-story Provident Village at Creekside is located at 4838 South Cobb Drive between the East-West Connector and Interstate 285. It includes 85 assisted living units and 23 memory care units dedicated to residents struggling with dementia, according to a spokesperson for the Baton Rouge-based Provident Group, the parent company of developer Creekside Properties LLC. Eventually, the facility will also offer independent living options.

THE BONDS WERE TAX-EXEMPT QUALIFIED IRC SEC. 142(d) BONDS

The proposed “refunding revenue bonds” amount to a refinancing of $14.5 million in bonds the authority issued in 2014, as well as an additional $4.5 million in new funding, according to Nelson Geter, the authority’s executive director. He said the developer ran into construction obstacles that required extra funding.

He emphasized that the developer, not the authority or the county, is responsible for repaying the bonds plus interest.

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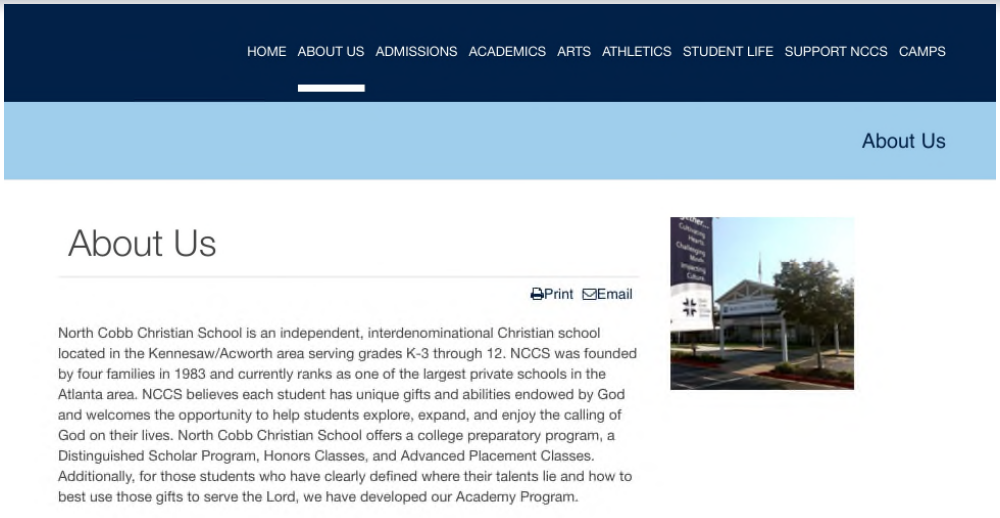
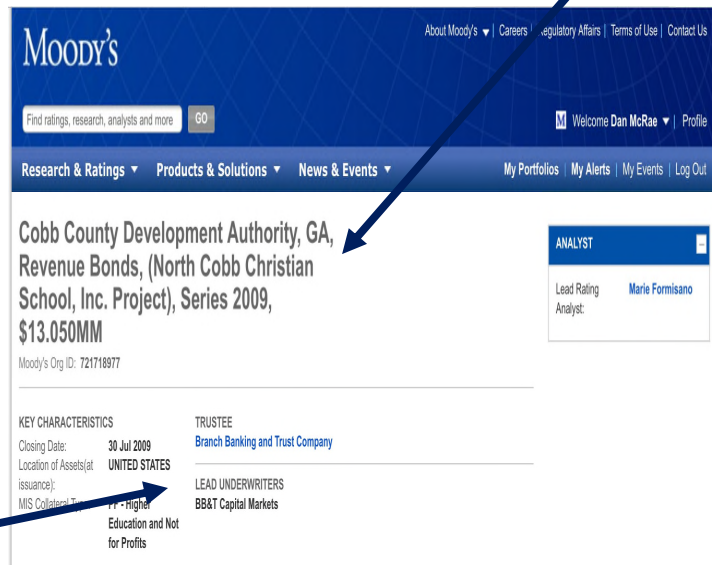
“QUALIFIED 501(C)(3)” BONDS CASE STUDY: SCHOOL FOR NORTH COBB CHRISTIAN SCHOOL



$12.75 MILLION IN TAX-EXEMPT BONDS WERE ISSUED TO SAVE THE SCHOOL MONEY BY REFINANCING THESE OLD BONDS



THE NEW BONDS DID NOT REQUIRE A LETTER OF CREDIT AND WERE PRIVATELY PLACED INSTEAD OF BEING SOLD THROUGH AN UNDERWRITER.

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DEVELOPMENT AUTHORITY BONDS: "QUALIFIED 501(C)(3) BONDS"

- BONDS FOR ORGANIZATIONS THAT ARE TAX-EXEMPT 501(C)(3) ORGANIZATIONS UNDER THE INTERNAL REVENUE CODE WHICH ARE ISSUED FOR FACILITIES SUCH AS PRIVATE HIGH SCHOOLS AND COLLEGES AND MEDICAL FACILITIES.
- THESE ORGANIZATIONS ARE GENERALLY FAMILIAR WITH TAX-EXEMPT FINANCING (BECAUSE THEY TEND TO USE BOND FINANCING REPETITIVELY).
- NO "VOLUME CAP" FROM DCA NEEDED.
- CAN "SELF-INDUCE" (BUT AUTHORITY HAS TO ISSUE THE BONDS).
- TEFRA APPROVAL FROM LOCAL GOVERNMENT REQUIRED.
- ISSUED BY DEVELOPMENT AUTHORITIES AND SOME OTHER TYPES OF LOCAL AUTHORITIES; E.G., HOUSING AUTHORITIES.

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HOW LONG AND WHO

- Bonds for title
  - 4-6 weeks
  - Company, Development Authority, and their counsel
- Bonds funded in a private placement
  - 6-8 weeks
  - Company, Development Authority, Bank and their counsel
- Bonds funded in a public offering
  - 60-90 days
  - Participants 7-10 entities, including the development authority, an underwriter, its counsel, a trustee, its counsel, etc.

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HOW MUCH DOES IT COST?

- THE COST OF ISSUANCE IS NEGOTIABLE
  - EXCEPTION- SOME FEDERAL TAX RULES. SEE BELOW.
- THE PROSPECT SHOULD ASK FOR A COST OF ISSUANCE BUDGET IN ADVANCE.
- THE PROSPECT SHOULD EVALUATE COSTS RELATIVE TO AMOUNT RAISED OR PROPERTY TAXES SAVED- OR BOTH, IF BONDS ARE FUNDED AND PROPERTY TAX INCENTIVES PROVIDED

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SOME GUIDELINES FOR FUNDED BONDS

- "[T]he minimum issue size is a function of market conditions. Generally, the break-even point, below which conventional forms of financing may prove to be less expensive overall, is considered to be $1,000,000. This is primarily a result of the fact that the issuance costs associated with this type of financing do not decrease proportionately as the size of the financing decreases." Pasco Economic Development Council (FL)
- "Typically, smaller issues (less than $3 million) are privately placed directly with a single financial institution, while larger issues may be sold through private placement or at public sale with the services of an underwriter." Lee County, FL

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SOME FEDERAL TAX RULES

IF THE BONDS ARE TAX-EXEMPT

- UP TO 2% OF THE PROCEEDS CAN BE SPENT FOR ISSUANCE COSTS (THIS 2% IS A PART OF THE 5% ALLOWABLE “BAD MONEY”)
- GENERALLY SPEAKING TAX-EXEMPT BONDS CAN'T HAVE A YIELD THAT'S MORE THAN 1/8 OF 1% ABOVE THE INTEREST RATE.
  - "YIELD" INCLUDES ANY PROFIT TO THE DEVELOPMENT AUTHORITY. SO, GENERALLY SPEAKING, WITH TAX-EXEMPT BONDS, ITS FINANCING FEE COULD NOT BE MORE THAN 1/8 OF 1% OF THE PRINCIPAL AMOUNT.

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DEVELOPMENT AUTHORITY FINANCING FEE

- TODAY, A ONE-TIME PAYMENT AT CLOSING EQUAL TO 1/8 OF 1% OF THE MAXIMUM BOND AMOUNT IS NORMAL AS A DEVELOPMENT AUTHORITY FINANCING FEE.
  - WITH TAX-EXEMPT BONDS, YIELD IS CALCULATED ON A PRESENT VALUE BASIS, SO THE ACTUAL PERCENTAGES COULD BE DIFFERENT WHEN AN ANNUAL FEE IS CHARGED.

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DEVELOPMENT AUTHORITY FINANCING FEE

- THE “1/8 OF 1%” RULE DOESN'T APPLY WITH TAXABLE BONDS, LIKE BONDS FOR TITLE THAT ARE USED FOR PROPERTY TAX SAVINGS.
  - THEN THE DEVELOPMENT AUTHORITY CAN CHARGE WHATEVER FEE THE COMPANY WILL AGREE TO.
  - SOME DEVELOPMENT AUTHORITIES HAVE, OR ARE CONSIDERING CHARGING, AN ANNUAL FEE.
    - WAS COMMON MANY YEARS AGO.
    - NOT COMMON NOW, BUT TRENDING.

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