



Virginia Government Finance Officers' Association
Your ongoing partner to advance professional growth

August 2023

President's Message



Aaron McCoy

Greetings to all my VGFOA colleagues! Summer is winding down, kids are preparing to go back to school, and life might find some normalcy again! I hope you've all found time to relax this summer, although I know I haven't sat down much.

Your Executive Board was busy this spring updating our bylaws and policies/procedures, putting on a wonderful Spring Conference with good weather, and planning some other program updates for you. I was able to head to Portland for GFOA in late May and see how the other side of the country lives. The landscape changes so much across the country, similar to how our own state's topography experiences the beaches and the valleys, but also the mountains and lakes. We are blessed to live in such a great state, aside from the dreaded humidity!

Our Fall Conference moves back to Charlottesville this year in early November, and we look forward to seeing all of your familiar faces again soon. We've seen good numbers of new

faces in the spring the last few years, and we hope that you will consider serving our organization in some way. We all volunteer to serve each other, so please consider our committees as a great way to get started in VGFOA. It has been my pleasure to serve on the Board for the last 8 years, and I look forward to seeing the tradition carry on! God Bless you all, and enjoy those last few days of summer until we meet again.

Submit Board Nominations by August 30!

Nominations are being accepted for positions of:

President-Elect (October 2023-October 2024)

Two Board Members with 3-year term (October 2023 to October 2026)

Anyone wishing to submit a name for the Nominating Committee's consideration is asked to complete the nominating form linked [here](#) and send it to Andrea Trent at andrea.trent@roanokeva.gov by the **deadline of August 30, 2023**.

VGFOA 2023 Fall Conference

***Tue, Nov 7th to Thu, Nov 9th at the Omni
Charlottesville**

**Please note the date change due to the Veterans Day Holiday*

Join us at the Fall Conference to celebrate VGFOA's 55th Anniversary.

Registration with payment will be available in early September, but you can reserve your spot today at <https://www.vgfoa.org/page/current/>.

Classes Available 2023

The Education Committee understands that our membership has differing educational needs. Some of our members are relatively new to your local government career and want to gain additional skill sets, and would benefit greatly from participation in the VGFOA certification program. Others are mid-career and would benefit from our Weldon Cooper classes on leadership, public speaking, and other soft skills necessary to advance to leadership roles. And yes, we realize that some of you are just "in it for the CPE", and any

of the VGFOA offerings will provide CPE at a very affordable price (and you may just have some fun and meet some new peers while you're at it!)

Regardless of your reason for attending VGFOA classes, we encourage you to sign up early and get these classes on your calendar before they fill up! If not for you, encourage your staff to attend. VGFOA classes not only provide the obvious benefits of new skill or knowledge, but in-person classes also provide the opportunity to meet and network with peers from across the Commonwealth. The course catalog and links to register are available at <https://www.vgfoa.org/page/course-catalog/>. Register online by noon on Friday, August 25 or beginning on September 5, after our software transition or email vgfoa@valocalfinance.org in the interim.

Scholarship Committee News, Scholarship and Award Application Opportunities

BOLO: CPFO Exam Prep Scholarship

The VGFOA is committed to "Developing Governmental and Financial Leaders" and recognizes the significance of the CPFO designation. At their last meeting, the VGFOA Board approved a grant to fund a year of CPFO Exam Prep through GFOA for one VGFOA member. Be on the lookout for more information on the criteria and application process.

Volunteers Needed: Budget Information Sharing

Are you one of the localities that are hunting through proposed and adopted budget books online trying to determine what the tax rates are of comparative localities? How about raises? At the last VGFOA Board meeting, the Board approved moving forward with a standard template of budget information. This is a place we can all go to put in what was in our budget (of course after it is presented or adopted) and can use this as benchmarking data to our comparative localities.

If you are interested in helping design the structure and the information, please contact Andrea Light alight@staffordcountyva.gov by September 30, 2023 to participate.

GFOA Leadership Academy Scholarship – Application due August 31, 2023

The [GFOA's Leadership Academy](#) is held every year with the next program set for fall of 2023 at the College of Charleston in Charleston, SC.

The Scholarship is for \$2,100, which covers the program fee. All other costs, including airfare, must be covered by the attendee or their employer. (The program fee includes tuition, housing, meals, classroom materials and sponsored activities.) Selection will be based on professional experience. Examples of types of professionals that attend include Finance Directors, Assistant Finance Directors, Department Heads and Senior Managers.

To apply for the scholarship, please provide a current resume and a copy of your [GFOA Leadership Academy application](#) to Andrea Light at Alight@staffordcountyva.gov by August 31, 2023.

VGFOA Innovations in Government Finance Awards – Application due August 31, 2023

Have you or someone from your jurisdiction recently implemented a project or program to better the world of government finance? If so, apply for the 2023 VGFOA Innovations Award!

It's easy to apply. Simply [complete the application](#). One award per population group, for a maximum of four, may be presented. Award categories include:

- Accounting, Auditing, and Financial Reporting
- Budgeting and Financial Planning
- Cash Management and Investing
- Capital Financing and Debt Administration
- Pensions and Benefits
- ERP and Financial Systems
- e-Government and Technology
- Policies and Procedures
- Management and Policy Studies
- Training and Technical Guides

Please send [award submissions](#) to Andrea Light at alight@staffordcountyva.gov by August 31, 2023.

Software Upgrade 8/25-9/5

VGFOA's event and membership software is undergoing an essential transition to a new software, beginning Friday, 8/25. Please be aware that **online registrations for classes and memberships will be unavailable from Friday, August 25th at noon through Labor Day, September 4th**. During this time if you want to register and be invoiced later you can email (krothman@vgfoa.org) with the name and email of those wanting to register.

During the week of September 5, you will receive an email with your new username. You will be able to register for classes and the 2023 Fall Conference at this time.

FREE Sources of Finance Information

Information is power, however it is always updating and changing! How do you get the information you need to succeed? How do you find the latest trends and current information to make better decisions?

Below are just some "free" websites that provide current topical information for Accounting and Budget Professionals. These websites provide subscriptions to newsletters, so all you need to do is sign up and the information will come to you! VGFOA does not endorse or sponsor these sites but provides to you as a potential source of information.

- Internal Revenue Service – www.irs.gov – From new tax laws to hot topics regarding payroll professionals, the IRS website and e-News subscriptions provides a variety of information on key tax activities.
- Municipal Securities and Register Board – www.msrb.org – Keep up to date with rules and regulations in municipal securities market. MSRB also provides quarterly e-newsletters regarding compliance obligations of securities dealers and advisors, as well as recent MSRB strategic activities.
- National Development Council – www.ndconline.org – See how the NDC works with local and state governments to invest in homes, jobs and social infrastructure for low-income communities.
- Center for State Local Government Excellence – www.slge.org – Provides knowledge surrounding retirement, health and welfare, and workforce needs to states and local governments to help attract new employees as well as retain current talent.

- Route Fifty – www.routeifty.com – Provides news and stories on how technology and innovation improves state, county and municipal governments.
- Governing The States and Localities – www.governing.com – Focuses on covering politics, policy and management for state and local government leaders, but also headlines current events in the Finance realm.
- American City & County – www.americacityandcounty.com – Supplies officials with useful news, latest trends, solutions and alternatives to assist in development and implementation of policies, programs and projects.
- Virginia Public Access Project – www.vpap.org – Providing the people of Virginia political information in a nonpartisan approach.
- Virginia Mercury – www.virginiamercury.com – Covering Virginia government and policy news, focusing on the state’s biggest issues.
- Virginia Government Finance Officers’ Association – www.vgfoa.org – Helping members by providing training and professional development opportunities to achieve excellence in government finance. Be sure to subscribe to VGFOA’s [Listserv!](#) It provides an open forum to discuss ideas, experiences and other information to all of Virginia’s governmental finance professionals.
- Governor’s List Update <https://www.governor.virginia.gov/newsroom/> - Sign up for emails from the Office of Virginia’s Governor
- Government Finance Officers’ Association - Helping members by providing training and professional development opportunities to achieve excellence in government finance. <https://www.gfoa.org/>

If websites and newsletters are not a preferred method of keeping up to date, be sure to go follow these organizations on their social media outlets as many have Twitter, Facebook and LinkedIn accounts.

Top (Bottom?) Ten of Tax Headaches (Challenges) for Municipal Bond Issuers

*Sent by **Mark Vacha** of **Cozen O’Connor***

Sometimes the first step to solving (or mitigating or avoiding) problems is to identify what the problem may be to, among other things, put time on one’s side.

For issuers of tax-exempt municipal bonds, there tend to be certain types of situations that are more prone to creating tax-issues. The purpose of this article is to identify certain types

of situations that are more likely to create tax headaches (or at least are better navigated with some advance planning) for purposes of the tax-exempt bond rules. We hope this may be useful context for issuer officials as they plan and manage their debt issuance in consultation with their bond advisors, solicitors, and staff. This article is not intended to dissect these issues in a detailed way that often requires a thoughtful analysis of many facts and circumstances. While life does not always nicely imitate art or a favorite colloquialism, we will attempt to frame a number of these tax situations to try to make them easier to remember.

NUMBER 10: “Hurry up and wait” – Annual limits for bank qualification. Bank qualification under many market conditions might provide debt service savings because of the favorable tax treatment for banks for their own interest. (Section 265(b)(3) of the IRC provides an exception to the general rule disallowing a deduction for interest expense related to tax-exempt obligations.) Among other things, one of the significant limits on bank-qualified issues is an annual limit of \$10 million (subject to certain nuances). Consequently, sometimes the financing of a larger project needs to be undertaken in phases where different bonds are issued in different calendar years to be able to utilize the bank qualification exception.

NUMBER 9: “Too much of a good thing” – Arbitrage earnings. After many years in a relatively lower interest rate environment, issuers did not see much in the way of opportunities to earn a positive yield on bond-related funds above the related arbitrage yield (roughly the cost of funds). Some of the key things for an issuer to examine with its advisors involve whether a 6-month, 18-month or 24- (construction) month exception to the rebate requirement can be met by spending bond proceeds in required percentages by required times. Also, for certain revenue bond issues, the blending of certain funds may present opportunities to manage arbitrage (e.g., the purposes for which a debt service reserve fund’s earnings may be directed).

NUMBER 8: “They’re beginning to get on my nerves. Who are those guys?” (from Butch Cassidy and the Sundance Kid); and [Don’t] “Don’t look down.” – Aggregating issuers for bank qualification. Another bank qualification challenge is that Section 265(b)(3) of the IRC requires an issuer to be within the limitation on the amount of obligations that may be issued, the issuer in question, and all entities that issue obligations on behalf of such issuer, shall be treated as one issuer. Consequently, a related entity (possibly an authority

for a general governmental issuer) of an issuer may issue bonds itself in a particular year and eliminate bank qualification as a possibility for another issuer.

NUMBER 7: “It seemed like a good idea at the time.” – Financing swap termination payments. When well-deployed, interest rate management agreements (swaps and similar derivatives) can help manage interest rate volatility particularly for an issuer with a larger portfolio of debt where a mix of fixed and variable rate debt could be advantageous. Nevertheless, depending on market conditions and the remaining term of a swap contract, the size of a swap settlements payment (i.e., usually from the bond issuer to the swap provider counterparty) can be significant and unrealistic to be paid from generally available revenues. While some tax counsel have relied on other theories to support the tax-exempt financing of a swap termination payment (in rough terms focusing on the transaction in question involving a capital expenditure), the most prevalent basis supporting tax-exempt financing of the termination payment focuses on the swap and the related bonds being treated as integrated for tax rules. This entails, among other things, certain documentation and certifications substantially contemporaneously with the entry into the swap (or possibly with certain subsequent transactions related to the swap or the bonds.)

NUMBER 6: “Can we take a Mulligan?” – Pledged Funds. The creation of “replacement proceeds” may result in certain adverse consequences including bonds being treated as arbitrage bonds. Amounts are replacement proceeds of an issue if they have a sufficient direct nexus to: the bond issue or the governmental purpose of the issue to conclude that the amounts would have been used for the governmental purpose if the bonds were not used for such purpose. Consequently, issuers should be mindful of situations where there is some expectation that a project will be funded from sources other than tax-exempt bond proceeds and the issuer then wishes to bond finance a project. The tax regulations fortunately provide that the mere preliminary earmarking of funds for a governmental purpose, however, does not establish a nexus to cause the amounts to be replacement proceeds. (There are other situations involving pledged funds, negative pledges and considerations related to the duration of a bond issue that may also raise replacement proceeds issues that are beyond this discussion.)

NUMBER 5: “It’s Too Late” (Carol King’s Grammy Album “Tapestry”) – Reimbursement rules for “back-bonding”. Timing is a key issue for meeting certain requirements related to the ability to use tax-exempt bond proceeds to reimburse an issuer for project expenditures it has previously made from its other funds. Among other things, prominent is the need to

timely have an official declaration of intent to seek reimbursement for a described project put in place (often contained in an issuer board resolution). Subject to certain exceptions, there is a 60-day look-back period for the time of the expenditure in relation to the declaration. Also, there are certain timing requirements for a proper allocation of bond proceeds to an expenditure involving reimbursement. In general, the reimbursement allocation needs to be made not later than 18 months after the later of – (A) The date the original expenditure is paid; or (B) the date the project is placed in service or abandoned, but in no event more than 3 years after the original expenditure is paid.

NUMBER 4: “Moderation in all things, especially moderation.” (Ralph Waldo Emerson)

–Private uses of bond-financed property. Bonds will fail to be tax-exempt, among other things, if they are private activity bonds. Private activity bonds involve private business use and private payments or security with respect to the bonds. While both prongs of the test are required to run into the pitfall of a private activity bond, once private business exists, it is likely the case that the second prong will be met. Issuers should be aware that there are certain safe harbors to private business use for certain short-term private uses of bond-financed property. Examples of these types of situations may entail arrangements where the property is used for private events (e.g., at a public museum or historical property) or privately run sports and other camps on bond-financed school property. These safe harbors, which are beyond the scope of our article, tend to be very measurement oriented and should be considered with an issuer’s bond and tax counsel. In shorthand these exceptions include an 100 days limited general public use arrangements exception, a 50-days arm’s length fair market value arrangements exception, and an exception for incidental use arrangements (including certain narrow possessory uses such as for kiosks and vending machines.)

NUMBER 3: “Management is, above all, a practice where art, science, and craft meet.”

(Henry Mintzberg). – Management of bond-financed property. Unfortunately for our purposes (and probably for the best from a broader viewpoint), the best insights and quotes about management (including for managing projects, which sometimes involve bond-financed property) do not seem to focus on tax rules. In the bond world, however, a bond-financed facility that makes sense to be managed by a private expert can raise private business use pitfalls if the management arrangements give the private entity actual or beneficial use of bond-financed property whether directly or indirectly. Compensation provisions (as well as the contract’s duration provisions) are key to this analysis and must be

reasonable and avoid net profits arrangements. A number of safe harbors are detailed in Rev. Proc. 2017–13 which is extensive and probably deserving of an article to itself.

NUMBER 2: *“If you don’t know where you are going, you might end up somewhere else.” (Yogi Berra); “The best-laid plans of mice and men oft’ go awry.” (Poet Robert Burns).* – Remaining proceeds. There are a host of concerns and issues that can arise when a tax-exempt bond-financed project runs into stumbling blocks of whatever type that prevent bond proceeds from being timely spent (or spent at all) for originally authorized purposes. Some of these concerns involve the possibility of needing to restrict the yield at which bond proceeds can be invested, concerns of an early issuance or an over-issuance and violation of hedge bond rules. Where there is some uncertainty about a project at the outset, but there are practical or other pressures to get a financing in place, an issuer might wish to evaluate the possibility of using a taxable shorter-term financing where the speed of expenditures is less pressing. While subject to certain costs and inefficiencies, as a general matter, taxable borrowings that finance good tax-exempt governmental purposes will be strong candidates to be permanently financed later on a tax-exempt basis. There are certain situations where remaining proceeds may be able to be simply applied on the next upcoming debt service payment date consistent with exceptions to working capital rules.

However, there are some other situations where originally laid plans do not come to fruition and certain remedial action may be needed as discussed below in Number 1.

NUMBER 1: *“I’m here to help...” (the character The Wolf from the movie Pulp Fiction (1994))* – sales or other disposition of bond-financed property. In circumstances where property financed on a tax-exempt basis at some point after issuance during the life of the bonds is to be sold, leased, or otherwise conveyed to a party that is not a state or local governmental entity, the issuer is possibly facing a situation where certain remedial action, if eligible, must be taken to preserve the tax-exempt status of the bonds. There are also certain time pressures associated with these actions so that they are taken in a timely manner. While this topic is deserving of its own article, we note, at a high level, that the types of remedial action that are provided for under Treasury Regulations §1.141-12 include: (i) redemption or defeasance of non-qualified bonds, (ii) alternative use of disposition proceeds, and (iii) the alternative use of a facility (this third category is less likely to be applicable for traditional governmental bonds).

Conclusion

Bond tax issues will tend very much to be fact and circumstance dependent. Nonetheless, a number of general types of situations and concerns are more prevalent over time and provide a basis for bond counsel and other advisors to provide guidance to issuers. We hope the foregoing helps to broadly inform your discussions and debt management planning and practices with your internal and external debt teams.

This article is not a substitute for advice of counsel on specific legal issues.

Virginia Government Finance Officers' Association's mission is "...to foster financial excellence in government by creating opportunities for professional development."