Jason Matthys <jmatthys@co.pierce.wi.us>

RE: Breeze Dairy financing

1 message

Templen, Lynda <Lynda.Templen@huschblackwell.com> Mon, Aug 5, 2024 at 1:39 PM

To: Jason Matthys <jmatthys@co.pierce.wi.us>
Cc: Jon Aubart <jon.aubart@co.pierce.wi.us>, Brad Lawrence <brad.lawrence@co.pierce.wi.us>, Jason Grubbs <Jason@fralan.com>, Rod Webb <rodney.webb@co.pierce.wi.us>, "Albrecht, Kate" <Kate.Albrecht@huschblackwell.com>, "Brittingham, Sam" <Sam.Brittingham@huschblackwell.com>

Good afternoon,

It was a pleasure talking with you Friday afternoon. I have tried to hit the high points with respect to the desire of Breeze Dairy to utilize tax-exempt bond financing for a portion of the Dairy's proposed expansion and clarify what we are asking of the County and the Town.

The Proposed Project

Breeze Dairy is requesting that either the Town of Salem, or Pierce County, or the Public Finance Authority consider an Initial Resolution to benefit the Dairy through the conduit issuance of tax-exempt solid waste disposal revenue bonds to finance a project consisting of the (i) design, development, construction and operation of certain waste disposal components of the project in the amount of approximately \$10 -\$12 million. The total project costs are about \$30 million. These tax-exempt bonds (the "Bonds") must be issued through a municipality in a "conduit" Bond structure. In a conduit Bond transaction, a state or local governmental entity issues bonds and loans the proceeds from the sale of the bonds to a private entity for an authorized project. In Wisconsin, counties, cities, villages, and towns, as well as duly constituted redevelopment authorities and community development authorities may issue such Bonds. The Public Finance Authority (PFA) is also a qualified conduit issuer.

Option 1

As we discussed, most often when there is a local project, we will approach the local municipality to request they serve as the conduit issuer of tax-exempt bonds. In the case of the proposed project, that would be the Town of Salem. However, as we have discussed, Salem has a population of approximately 475 people. If the Town Board approved an Initial Resolution expressing its intent to be the conduit issuer, state law requires that we immediately publish a public notice which allows electors 30 days (from the publication date) in which to petition for a referendum. A petition signed by not less than five percent (5%) of the registered electors of the Town, properly filed with the Town Clerk requesting a referendum on the question of the issuance of the Bonds would require the Town to submit the proposition for the electors' approval. Even if the majority of the electors of the Town had no objections, given the low population, as few as 10-20 signatures could compel a referendum and the Borrower would not incur those costs and would likely withdraw the request.

Option 2

Resolution expressing its intent to be the conduit issuer, state law requires that we immediately publish a public notice which allows electors 30 days (from the publication date) in which to petition for a referendum. A petition signed by not less than five percent (5%) of the registered electors of the County, properly filed with the County Clerk requesting a referendum on the question of the issuance of the Bonds would require the Town to submit the proposition for the electors' approval. Although this would generally mean that the referendum threshold would be less likely to be met, you have indicated that recent GO borrowing at the County and School District levels have caused a great deal of angst in the County. Even though these conduit bonds are not a liability of the county, it is a difficult distinction to make for concerned electors.

Option 3

If the hurdles at the Town and County present concerns that preclude using either as the local conduit issuer, the Public Finance Authority (the "PFA") could be a conduit issuer of the Bonds, **however, the PFA could only be the conduit issuer if both the County and the Town consent to the PFA being the conduit issuer** (copy of Section 66.0304 is attached). This consent can be given by a Certificate of the County Board Chair or County Executive and the Town Chair or can be done by Resolution of the respective governing bodies. (see highlighted language in Statute attached) If this route is taken, the Town of Salem, under federal law, would need to hold a single public hearing – referred to as the TEFRA hearing and give 147(f) comfort –assertion that hearing was held, and all interested electors were given an opportunity to be heard. Even a large group attending and objecting would not derail a PFA transaction if the Town had consented to using PFA and because the 147 (f) finding is a statement of fact that there was a hearing. Under this scenario the PFA also holds a TEFRA hearing at the WCA offices in Madison. No other actions would be required of the County or the Town.

Forms of Consent – either by Consent of Highest Executive or by Resolution

As discussed on Friday, attached are samples of consents to use PFA as conduit issuer – either by Certificate of County Board Chair or County Executive and by Town Chair and Form of Board Resolution of the County providing the consent and form of Board Resolution providing Consent and the 147(f) approval (this 147 (f) approval could also be done by simple Certificate of Town Chair). Please note that these are drafts and the amounts and project descriptions will be revised prior to sending to each municipality.

No Liability to Conduit Issuer

Regardless of whether the Town, the County or the PFA issue the conduit tax-exempt Bonds, these Bonds are municipal bonds; however, they are not general obligations of the Town or County. If the Town, the County or the PFA agrees to issue bonds to benefit the proposed Project:

1. Neither the Town, the County nor the PFA will be liable for payment of the principal and interest on the bonds;

2. Neither the Town, the County nor the PFA will have ongoing responsibilities of monitoring or reporting regarding the bonds or the Project.

3. The bonds do not count against the Town or the County's borrowing capacity. Neither the Town nor the County will levy a tax for payment of the bonds.

4. The ultimate conduit issuer (and the Town and the County to the extent of cost incurred to provide consents/hold TEFRA) will be reimbursed for all fees and costs incurred because of the Bonds.

The ultimate conduit Issuer acts strictly as a conduit, which enables the Dairy to borrow at a lower rate of interest for the portion of the project financed with tax-exempt Bonds.

Because the Bonds are issued by a governmental entity, the holder of the Bond may exclude the interest on the Bonds from gross income for federal tax purposes

Thank you so much for your time and consideration. Don't hesitate to reach out if you have further questions. I will plan to circle back with you in a few days to see how we might proceed. I will also contact the Town Chair and discuss with him. I need to obtain his email address so that I can send him this material as well.

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From: Jason Matthys <jmatthys@co.pierce.wi.us>
Sent: Thursday, August 1, 2024 9:29 AM
To: Templen, Lynda <Lynda.Templen@huschblackwell.com>