

# 2016 NH&RA Fall Forum

November 1-2  
The Langham, Boston, MA

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# Tax Exempt Bond Update: New Structures & Navigating Volume Cap Shortages

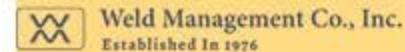
## Speakers:

- Wade Norris, Eichner Norris & Neumann LLC, Washington DC
- Chris Barnes, Dominion, Plymouth MN
- Karen Kelleher, MassHousing, Boston MA
- John Mackey, Trinity Financial, Boston MA
- Dan Rosen, Klein Hornig LLP, Boston MA

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# Outline

- I. The State of Private Activity Bond Volume Cap for Multifamily Housing
- II. Competing Uses: Policy and Advocacy
- III. Limited Cap: Consequences and Strategies
- IV. What's Next?

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# The State of Private Activity Bond Volume Cap for Multifamily Housing

## Background:

### Private Activity Bonds and 4% Credits

- The 50% Rule and Private Activity Bonds

#### **IRC Sec. 42(h)(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account.**

(A) In general. Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if —

(i) such obligation is taken into account under section 146, and

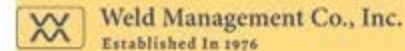
(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded as described in section 146(i)(6) .

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap. For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

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# The State of Private Activity Bond Volume Cap for Multifamily Housing

## • PAB Uses

- Multifamily, Single Family MRB, Industrial Development Bonds, Student Loans, etc.

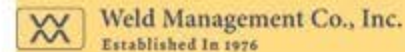
## • PAB Volume

- IRC Sec. 146: each state allocated greater of approx. \$302 Million or \$100 per resident
- Approx. \$35 billion PAB per year
- 3-year carryforward

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# The State of Private Activity Bond Volume Cap for Multifamily Housing

- **PAB Volume, Cont'd.**

- 2007 (peak) states used 58% of PAB
- 2014: 38%
- Novogradac & Company estimate: \$10.5 Billion of 2015 PAB expired unused.

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# The State of Private Activity Bond Volume Cap for Multifamily Housing

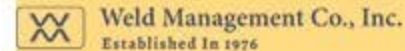
- **Wide disparity across states**

- Many have years of carry forward
- Some have used all bond cap allocated to multifamily
  - MA, MN, TN, WA, NY, NJ
  - CA is burning through carry forward at a pace greater than its annual allocation

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# Where Are We Seeing Scarcity?

- Minnesota has used all of its MF bond capacity and there were deals that went unfunded
- Tennessee has used all of its bond capacity
- California still has volume cap, but only because of carry forward; allocated \$800 million more than annual cap in 2015 and expects trend to continue
- Massachusetts used all its MF bond capacity and redirected some of its single family bonds to MF deals

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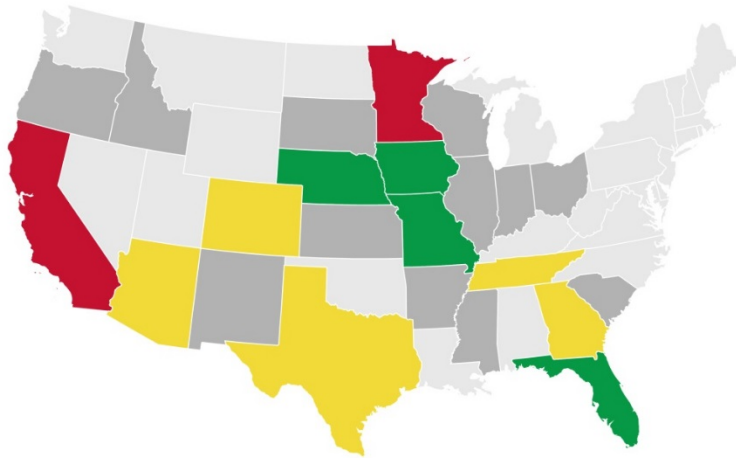
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# Multifamily Tax-Exempt Bond Availability



- Of the 23 states in which Dominion owns properties, we are and will continue to monitor bond capacity quarterly in 11 states.
  - Of these 11 states, only Minnesota and California have current scarcity issues.
- Colorado, Tennessee, Texas, Georgia, and Arizona all have the potential to have scarcity issues in the future and require additional monitoring efforts considering Dominion's desire to grow in these states.

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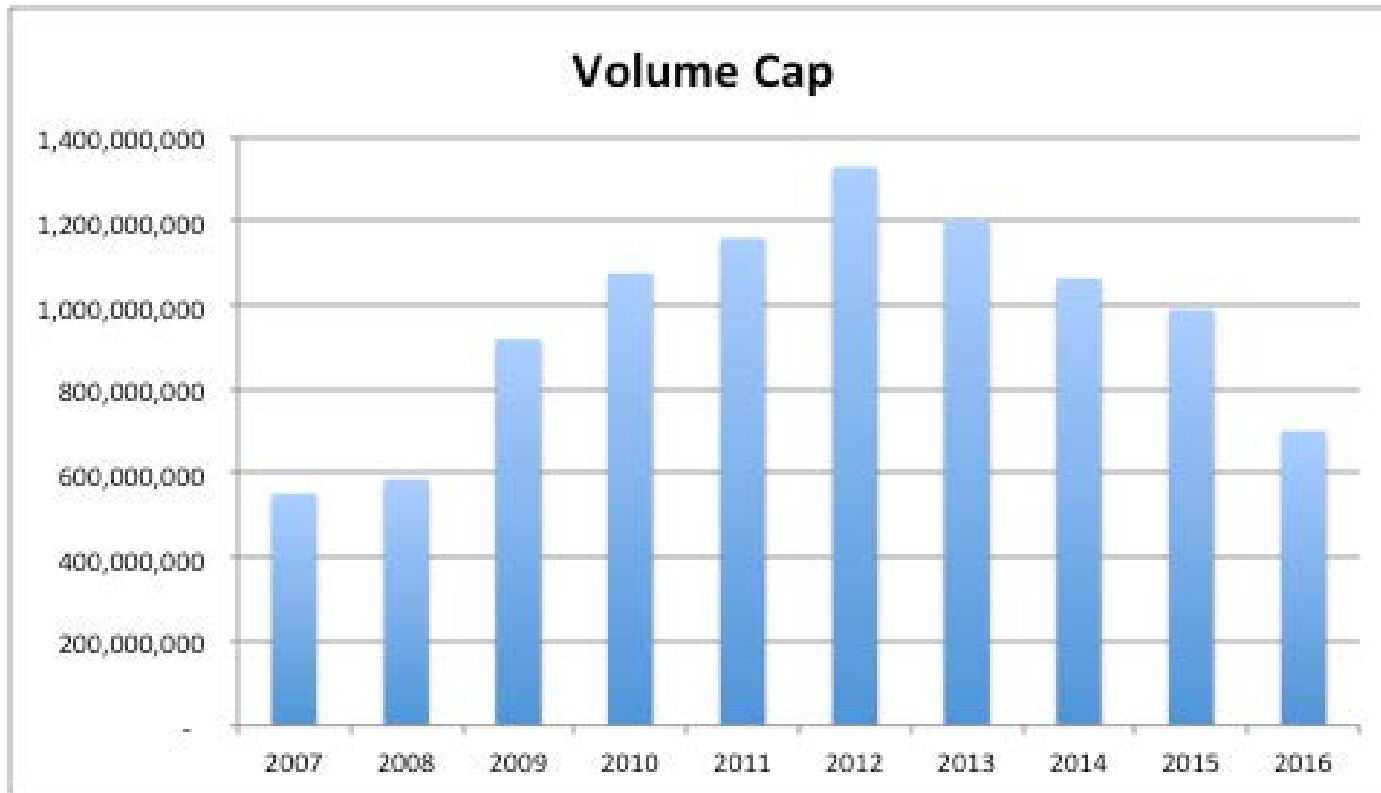
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# Massachusetts Volume Cap

- Volume Cap available in MA has shrunk from more than \$1.3 billion in 2012 to approximately \$700 million in 2016; less than \$700 million is expected to be available in 2017.



- Figures include “carry-forward” from prior years.

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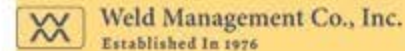
# Competing Uses: Policy and Advocacy

- Multifamily bonds bring other resources into the state
  - Tax credit equity
  - Taxable financing
  - Soft funding
  - \$1 of MF bonds generates \$1.89 of resource can be more in a QCT
- Other uses are less efficient but states rely on them for fee revenue

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# Competing Uses: Policy and Advocacy

## Simple 4% Credit Leveraging Example

|  |               |
|--|---------------|
| Volume Cap Used to meet the 50% test                 | \$52,000,000  |
| Land and Depreciable Costs                           | \$100,000,000 |
| Low Income Eligible Basis (5% land, 100% low-income) | \$95,000,000  |
| Low Income Credits and Equity (3.2%; \$1.00/Credit)  | \$30,400,000  |
| Low Income Credits and Equity (with 130% boost)      | \$39,520,000  |

\$30.4 million is over 58% of the tax-exempt bond cap used; with 130% boost it is 76%.

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# Limited Cap: Consequences and Strategies

- **Consequences**

- More stringent demands placed on bond deals
  - i.e. Recent proposed Minnesota QAP changes
- Rapid policy shifts can create unfunded mandates and disrupt development pipelines

- **Strategies**

- Allocate more bonds to MF
- Only allocate enough bonds to pass 50% test
- Recycle SF bonds to preserve new cap
- Only new bonds generate credits

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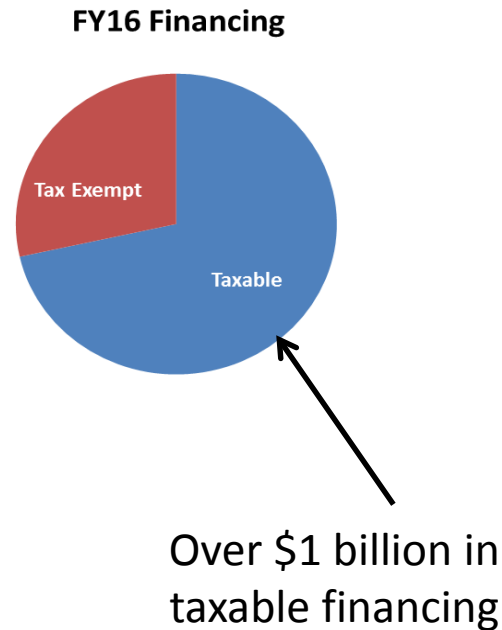


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# Stretching Volume Cap

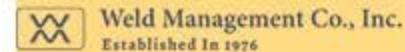
- No volume cap without 4% credits
- Tax exempt debt limited by 50 Test (52%)
- Remainder of debt taxable (blending)
- Volume cap recycling (no new credits)
- Minimizing volume cap use for single family
- Maximizing use of taxable debt



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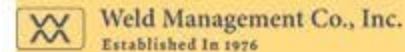


- Allocation of Scarce Volume Cap in Massachusetts
- Rolling applications - 2 issuers
- Highest funding priorities only
- Priorities managed by State (DHCD)
- Taxable financing only wherever feasible
- Scrutiny of equity takeout's and acquisition prices
- Massachusetts Funding Priorities – Guiding Volume Cap Allocation
- At-Risk Preservation (Real risk of loss, see “Preservation Matrix”) (13A Portfolio will get much of volume cap for 2-3 years)
- New Construction
- Deals that receive soft money from the State
- State-aided public housing recapitalization

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# What's Next?

- State-specific advocacy
- National awareness
- Cantwell bill benefits for bond deals
- Is this “just cyclical”?
  - Interest rates?
  - Values?
  - Program changes (preservation, year 15, RAD, etc.)?
- Is it localized?

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