

INTERNAL REVENUE CODE POST-ISSUANCE TAX COMPLIANCE

Overview of Objectives

This Administrative Regulation is developed to address the on-going requirements and limitations that must be satisfied to maintain the exclusion from federal income taxes of interest on each Issue, to avoid circumstances that cause noncompliance, and to facilitate the prompt discovery of any noncompliance should it occur. These Procedures are not a comprehensive guide to the Issuer's post-issuance compliance requirements imposed by the Internal Revenue Code (the "Code") and the Treasury Regulations (the "Regulations"). The Issuer is advised consult bond counsel when dealing with situations not addressed herein.

Each tax certificate or agreement (each, a "Tax Certificate" and collectively, the "Tax Certificates") executed by the Issuer in conjunction with an Issue will provide specific information regarding the expected facts regarding such Issue and a more specific analysis of the limits imposed on the Issuer regarding the way it can invest proceeds of such Issue and use the facilities financed or refinanced by such Issue (such facilities financed by an Issue is referred to as a "Project," and any portion or component thereof, a "Project Component"). Accordingly, the Issuer will treat each Tax Certificate as supplementing these Procedures in fulfilling its obligations hereunder.

The Issuer will conduct a periodic review of these Procedures and make updates or changes as necessary to accomplish the purpose of these Procedures, until the final maturity date of each Issue of Bonds.

The post-issuance obligations imposed by the Code and the Regulations are to ensure compliance with the following two general principles:

- 1. LIMITS ON THE ABILITY TO EARN AND RETAIN ARBITRAGE:** An issuer generally may not take advantage of the reduced borrowing costs associated with tax-exempt bonds by investing tax-exempt bond proceeds in investments with a higher yield and retaining the difference ("arbitrage"); and
- 2. LIMITS ON NONGOVERNMENTAL OR PRIVATE USE OF THE FINANCED PROJECT:** While any Issue of Bonds are outstanding, no more than 10 percent of such Issue's proceeds, or the Project financed by such each Issue, may be used in any trade or business activity carried on by any person or entity, including the United States Government and all of its agencies and instrumentalities, other than the Issuer or a state or political subdivision of a state. In addition, no more than 5% of an Issue's proceeds (or the Project) may be used in any trade or business activity carried on any person or entity, including the United States Government and all of its agencies and instrumentalities, other than the Issuer or a state or political subdivision of a state where such use is: (i) disproportionate to a related governmental use or; is (ii) unrelated to the governmental use of the proceeds of the Bonds.

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As outlined below, the Issuer should keep accurate and adequate records to facilitate compliance with the above rules and should conduct periodic, at least annually, checks to affirm compliance. To the extent that the Issuer violates one of the above rules, bond counsel should be consulted to assist with the analysis.

Timely identification of violations are critically important as there are provisions in the Code which allow the Issuer to "remediate" the violations without jeopardizing the continued exclusion of interest on each Issue of Bonds for federal tax purposes, so long as the identification of the violation and the remediation thereof is timely made.

There are other rules that must be complied with and which are described in the Tax Certificates, however, these principles generate the most significant compliance obligations with respect to the Bonds.

Delegation of Responsibility

1. The Planning Director or his/her designee, (the "Responsible Officer"), will have primary responsibility for ensuring compliance with these Procedures and ensuring that these Procedures are responsive to future legislative changes at both the federal and state level;
2. On an annual basis, (the "Annual Compliance Check"), the Responsible Officer shall take the steps described herein and affirmatively declare that the Issuer is in compliance with all of the requirements contained herein;
3. The Responsible Officer will be assisted by other persons with responsibility to ensure compliance with these Procedures as provided herein or as determined by the Responsible Officer.
4. In the event that Responsible Officer is unsure whether the Issuer is in compliance, the Responsible Officer shall consult with bond counsel for advice and, if necessary, assistance in taking steps necessary to remedy any failure to comply with these Procedures.

Investment of Proceeds (arbitrage and rebate)

1. Arbitrage Limitations and Requirements. The ability to issue tax-exempt debt presents the Issuer with the opportunity to invest the proceeds of an Issue in debt or other investments that are subject to tax and that bear a higher investment return. In other words, "arbitrage" in the context of tax-exempt debt relates to the ability to issue tax-exempt debt and use the proceeds from the debt to purchase securities or

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other investments that are not tax-exempt and realize a positive difference between the interest income return on the investments and the interest costs of the tax-exempt debt. The arbitrage requirements and limitations must be satisfied for the life of each Issue lest the debt could be determined to fail to qualify for tax exemption, retroactive to the date of issuance.

The federal tax law requirements and limitations generally are structured as follows:

- a. Rule 1 - Arbitrage earnings are not permitted, meaning that the proceeds of an Issue may not be invested at more than the yield of the Issue.
- b. Rule 2 - Exceptions to Rule 1 permit arbitrage earnings for short "temporary periods" pending the expenditure of the proceeds or for certain specific and/or limited amounts such as a reasonably required reserve fund. Generally, proceeds of an Issue to be used for acquisition and construction in capital financings qualify for a "temporary period" if the issuer reasonably expects to: (1) spend at least 85% of the net sale proceeds of the bonds within 3 years of issuance; (2) enter into a substantial binding obligation to spend at least 5% of the net sale proceeds of the Issue within 6 months of the date of issuance and to; (3) proceed with due diligence to acquire or construct the project and allocate the net sale proceeds of the Issue to expenditures.

Generally, a reserve fund is eligible for an exception to Rule 1 and may be invested without yield limits if it is reasonably required and is not larger than the least of: (1) maximum annual debt service of the Issue; (2) 125 percent of average debt service of the Issue; and (3) 10 percent of the proceeds of the Issue. For reserve funds that secures multiple Issues (e.g., a parity reserve fund), the size limitation in the preceding sentence may be measured on an aggregate basis.

- c. Rule 3 - Arbitrage permitted to be earned pursuant to Rule 2 generally may not be retained by the state or local government but instead must be paid, or "rebated," to the federal government.
- d. Rule 4 - Limited exceptions to Rule 3 allow arbitrage earnings to be retained, all in circumstances where the potential for arbitrage earnings is expected to be minimal (such as the 2-Year, 18 Month or 6 Month exceptions to rebate).

Generally, arbitrage remains relevant for post-issuance compliance for each Issue only for such time for which there are unspent bond proceeds. However, the concept of proceeds is quite broad and there may be unspent bond proceeds in many different situations. Proceeds include the amounts derived from the sale of an Issue of Bonds

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("Sale Proceeds"), earnings on Sale Proceeds ("Investment Proceeds") and amounts that have a direct nexus to the Issue or to the governmental purpose of the Issue ("Replacement Proceeds"). Replacement Proceeds could include amounts, if any, set aside in a sinking fund or pledged fund for an Issue. For example, if, after all the proceeds of an Issue have been spent on Project costs or to redeem a prior Issue, the Issuer establishing a sinking fund to repay such Issue, the amounts in the sinking fund would likely be treated as proceeds of the Issue and subject to the arbitrage rules. Refunding Issues may have an additional category of proceeds referred to as "Transferred Proceeds" which generally are proceeds of a prior Issue that remain unspent on the date or dates that such prior Issue is redeemed with proceeds of a refunding Issue which are treated as "transferring" to the refunding Issue. In this regard, if and to the extent the proceeds of an issue are to be used to retire a prior Issue, the Issuer will determine whether there are any unspent proceeds of such prior Issue, including reviewing the tax certificate for the Issue and any discussion therein regarding transferred proceeds.

2. Procedures Relating to Arbitrage. The Issuer will perform or caused to be performed, the following procedures:
 - a. For each outstanding Issue and upon the issuance of each new Issue, review the Tax Certificate for such Issue and:
 - (1) Identify the Sale Proceeds and expected Investment Proceeds for such Issue and the dates by which such proceeds are expected to be expended;
 - (2) For refunding Issues, determine whether there are or may be Transferred Proceeds;
 - (3) Note whether any proceeds are deposited to a Reserve Fund and expected to be invested for the entire life of the Issue;
 - (4) Note the temporary period end date for proceeds deposited to a construction fund established for an Issue (typically three years following the issue date);
 - (5) Note the Computation Dates (each date that rebate is to be computed, generally, within 45 days of each Bond Year and within 45 days of the date that the Issue is fully paid or redeemed) and Rebate Payment Dates (the fifth Computation Date, generally each fifth successive Computation Date thereafter and the date that the Issue is fully paid or redeemed) for the Issue.

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- b. Monitor and track the amounts of unspent proceeds, the expenditures of proceeds and work with a rebate service provider or with bond counsel as required to determine if any exceptions from arbitrage rebate are applicable.
- c. Engage a rebate service provider as necessary to assist in calculating the amount of arbitrage rebate due to the federal government.
- d. Each Bond Year (up to and including the Bond Year in which all of the proceeds of an Issue have been fully expended), confirm that the Issuer's rebate analyst has received trustee reports or other data that reflects investment and expenditure activity of proceeds of the Issue within 30 days of each Computation Date in such year.
- e. Arrange the payment of rebate, if any is owed, within 45 days of each Rebate Payment Date.
- f. If proceeds remain unexpended following the end of an applicable "temporary period," confirm that such proceeds are not thereafter invested at a yield in excess of the yield of the Issue or that yield reduction payments are timely made, as directed by the applicable Tax Certificate.
- g. If there is uncertainty whether there are unspent proceeds for an Issue, consult with bond counsel and, if necessary, a rebate service provider for the identification and proper treatment of such proceeds.
- h. Additional procedures may be appropriate for any particular Issue. If the Issuer is unsure whether additional Procedures are necessary for an Issue, the Issuer will consult the Tax Certificate for the Issue and with bond counsel as necessary.

Until three (3) years following the final maturity date of an Issue (or any tax-exempt bonds issued to refund an Issue), the Issuer shall maintain copies of all arbitrage reports, trustee statements, disposition records, and other documentation relating to arbitrage rebate in accordance with Section E of these Procedures.

Use of the Project

1. Limitations on Private Business Use. To preserve the tax exemption of each Issue of Bonds, private business use of the Project financed by the Issue is limited. If a facility is financed by funds in addition to the proceeds of an Issue, only those specific portions of the facility that were financed with proceeds from the Issue comprise the Project for purposes of these Procedures and are subject to private business use limitations.

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2. What is "private business use"? The Code requires the application of complex rules regarding "private business use," the application of which is required: (1) prior to issuance based on the Issuer's reasonable expectations; and (2) on an ongoing basis based on actual facts until the bonds are fully paid. Private use generally means the use of a financed Project in the trade or business of any person other than a state or local government, other than use that is on the same basis of the use of the project by the general public. Loans of proceeds of an Issue to nongovernmental persons ("private loans") also will generally prevent such Issue from qualifying for tax exemption. De minimis amounts of "private use" or "private loans" is permitted but the application of complex rules is required to measure the amount of private use or private loans. Private business use generally may not exceed ten percent or, in certain circumstances, five percent of the Project financed by each Issue of Bonds. Private loans may not exceed the lesser of five percent of the proceeds of an Issue or \$5,000,000. Both direct and indirect use by an entity or person other than the Issuer or other state or political subdivision must be taken into account. For example, a Project or Project Component that is leased to a government and subleased to an entity or person that is not a government is taken into account.

For purposes of these Procedures, "private business use" may include use pursuant to any of the following types of arrangements with respect to a Project or Project Component:

- a. Ownership of a Project or Project Component by an entity or person that is not a state or local government.
 - b. A management or service contract that does not meet the guidelines set forth in Rev. Proc. 97-13 and Notice 2014-67 (i.e., coffee shop, dining facility, etc.);
 - c. A lease or license;
 - d. An installment sale or other form of transfer of ownership;
 - e. Research agreements that does not meet the guidelines set forth in Rev. Proc. 2007-47; and
 - f. Any other arrangements conveying special legal entitlements with regard to the Project including, for example, naming rights contracts or contracts that convey priority or reserved rights.
3. What is not "private business use"? For purposes of these Procedures, "private business use" does not include the following:

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- a. Use of a Project or Project Component in the same manner as the Project or Project Component is used by the general public; and
- b. Activities conducted in any portion of a facility that was not constructed, renovated, or improved using proceeds of an Issue.

In addition, the Code and related Regulations include certain de minimis exceptions where use that would otherwise constitute private business use is permitted. The two most important de minimis exceptions are as follows:

- a. Any single contract for use with a term of less than 50 days (measured both annually and in the aggregate for multiple years) including all renewals, with a fee negotiated on an arms-length basis; and
 - b. "Incidental Uses" (e.g., vending machine, pay phone, kiosks) if the same do not aggregate more than 2.5% of the bond-financed facilities and are not functionally related to other use of the facility by the same private user.
4. Procedures relating to Private Business Use. The Issuer will perform or caused to be performed, the following procedures:
- a. For each outstanding Issue and upon the issuance of each new Issue, review the Tax Certificate for such Issue and prepare a schedule that details all of the Project Components for each Issue (including buildings, equipment, tangible property, etc.), and to update such schedule from time to time as necessary.
 - b. For each Project Component or group of Project Components, the Responsible Officer shall have primary responsibility for ensuring compliance with these Procedures with respect each Project Component.
 - c. The Responsible Officer shall on an ongoing basis monitor the use of the Project Components to ensure the use of such Project Components is consistent with the applicable Tax Certificate.
 - d. The Responsible Officer shall consult with bond counsel and other professional advisors as necessary with regard to any planned disposition of a Project Component and in connection with review of any material contracts (including management contracts, leases, licenses, research contracts) that may result in private business use of a Project or Project Component;
 - e. All private business uses of a Project or Project Component for each Issue shall be identified no less frequently than on an annual basis;

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Additional procedures may be appropriate for any particular Issue. If the Issuer is unsure whether additional Procedures are necessary for an Issue, the Issuer will consult the Tax Certificate for the Issue and with bond counsel as necessary.

For the duration of the Retention Period, maintain records in accordance with Section V of these Procedures.

Record Keeping Requirements

The Issuer shall continue to keep records and retain documents for either: (1) three years past the final maturity date of each Issue of Bonds; or (2) if there is a refunding of the Issue, three years following the final maturity date of the refunding issue (the "Retention Period").

The Issuer shall retain all records related to expenditures of proceeds of an Issue and all records related to the use and disposition of the Project acquired or constructed with proceeds of an Issue. The following are some examples of records that should be kept, along with any other relevant documents, over the course of the Retention Period:

1. Basic records and documents relating to the Issue (i.e., the transcript);
2. Documentation evidencing the investment activity and expenditure of proceeds of an Issue, including the dates and amounts of expenditures for the Issue;
3. Documentation evidencing the use of all, any portion or any components of the Project by public and private sources (i.e., copies of management contracts, research agreements, leases, sales or other dispositions of all, portions or components of the Project, etc.);
4. Documentation evidencing all sources of payment or security for the Issue;
5. Documentation regarding the timing and allocation to expenditures of proceeds of the Issue;
6. Documentation pertaining to any investment of proceeds of the Issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations, actual investment income received from the investment of proceeds, guaranteed investment contracts, and rebate calculations);
7. Records of all amounts paid to the United States as rebate or yield reduction payments.

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Procedures for Correcting Non-Compliance

Procedures exist for self-reporting and correcting any post-issuance compliance violations. If any non-compliance of applicable federal tax requirements is identified, the Responsible Officer shall immediately evaluate, with the assistance of bond counsel, the availability of the remedies provided under the Code, including Treasury Regulation 1.141-12 and other IRS guidance as to remediation of violations of Sections 103 and 141-150 of the Code, as well as the IRS Voluntary Closing Agreement Program.

The Issuer will comply with such procedures to the extent necessary to ensure that the interest on the Bonds remains excludable from gross income for federal income tax purposes.

Training

On an annual basis, the Responsible Officer and other Issuer staff as determined by the Responsible Officer, shall receive training relevant and appropriate to the responsibility undertaken and assigned hereunder.