

Construction Financing

Bonds: Post-Issuance Compliance Procedures for Tax-Exempt Bonds

1. Purpose. The purpose of these post-issuance compliance procedures (“Compliance Procedures”) for tax-exempt bonds issued by Tonasket School District No. 404, Okanogan County, Washington (the “District”), for which federal tax exemption is provided by the Internal Revenue Code of 1986, as amended (the “Code”), is to ensure that the District will be in compliance with requirements of the Code that must be satisfied with respect to such bonds or other obligations (sometimes collectively referred to herein as “bonds” or “tax-exempt bonds”) after the bonds are issued.

2. Responsibility for Monitoring Post-Issuance Tax Compliance. The Board of Directors of the District (the “Board”) has the overall, final responsibility for monitoring whether the District is in compliance with post-issuance federal tax requirements for the District’s tax-exempt bonds. However, the District’s Business Manager, or such other officer of the District who may in the future perform the duties of that office, if any (the “Business Manager”), shall have the primary operating responsibility to monitor the District’s compliance with post-issuance federal tax requirements for the District’s bonds.

3. Arbitrage Yield Restriction and Rebate Requirements. The Business Manager shall maintain or cause to be maintained records of:

- (a) purchases and sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code) and receipts of earnings on those investments;
- (b) expenditures made with bond proceeds (including investment earnings on bond proceeds) in a timely and diligent manner for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;
- (c) information showing, where applicable for a particular calendar year, that the District was eligible to be treated as a “small issuer” in respect of bonds issued in that calendar year because the District did not reasonably expect to issue more than (i) \$5,000,000 of tax-exempt bonds in that calendar year or (ii) \$15,000,000, of which any amount in excess of \$5,000,000 will be attributable to the financing of capital expenditures made after December 31, 2001, for the construction of public school facilities;
- (d) calculations that will be sufficient to demonstrate to the Internal Revenue Service (“IRS”) upon an audit of a bond issue that, where applicable, the District has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;
- (e) calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement was applicable, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and
- (f) information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

4. Restrictions on Private Business Use and Private Loans. The Business Manager shall adopt other procedures that are calculated to educate and inform the principal operating officials of those departments, including capital projects and facility departments, if any, of the District (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of tax-exempt bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-exempt bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the Business Manager shall provide to the users of the property a copy of these Compliance Procedures and other appropriate written guidance advising that:

- (a) “private business use” means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and *the United States of America and any federal agency*, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;
- (b) under section 141 of the Code, no more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use—that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than *the lesser* of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;
- (c) before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the user must consult with the Business Manager, provide the Business Manager with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;
- (d) in connection with the evaluation of any proposed nongovernmental use arrangement, the Business Manager should consult with nationally recognized bond counsel to the District as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under Section 141 of the Code may be taken by the District as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds that financed the property; and
- (e) the Business Manager and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.

5. Records to be Maintained for Tax-Exempt Bonds. It is the procedure of the District that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three

years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records to be maintained are to include:

- (a) the official Transcript of Proceedings for the original issuance of the bonds;
- (b) records showing how the bond proceeds were invested, as described in 3(a) above;
- (c) records showing how the bond proceeds were spent, as described in 3(b) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;
- (d) information, records and calculations showing that, with respect to each bond issue, the District was eligible for the “small issuer” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3(c), (d) and (e) above; and
- (e) records showing that special use arrangements, if any, affecting bond-financed property made by the District with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-exempt bonds and restrictions on the use of proceeds of tax-exempt bonds to make or finance loans to any person other than a state or local government unit, as described in 4 above.

The basic purpose of the foregoing record retention procedure for the District’s tax-exempt bonds is to enable the District to readily demonstrate to the IRS upon an audit of any tax-exempt bond issue that the District has fully complied with all federal tax requirements that must be satisfied after the issue date of the bonds so that those bonds continue to be eligible for tax exemption under the Code.

6. Identification and Remediation of Potential Violations of Federal Tax Requirements for Tax-Exempt Bonds.

- (a) So long as any of the District’s tax-exempt bond issues remain outstanding, the Business Manager should periodically consult with the users of the District’s bond-financed property to review and determine whether current use arrangements involving that property continue to comply with applicable federal tax requirements as described in these Compliance Procedures. This may be accomplished, for example, by periodically meeting with users, providing questionnaires to users about current use arrangements, or adopting other protocols reasonably calculated to ensure compliance with applicable federal tax requirements on a continuing basis. This periodic review may be scheduled, for example, at or before the times that the District is required to file with the Municipal Securities Rulemaking Board the annual financial information and operating data pursuant to the District’s undertaking to provide continuing disclosure with respect to outstanding bonds.
- (b) If at any time during the life of an issue of tax-exempt bonds, the District discovers that a violation of federal tax requirements applicable to that issue may have occurred, the Business Manager will consult with bond counsel to determine whether any such violation actually has occurred and, if so, take prompt action to accomplish an available remedial action under applicable IRS regulations or to enter into a closing agreement with the IRS under the Voluntary Closing Agreement Program described under Notice 2008-31 or other future published guidance.

7. Education Procedure With Respect to Federal Tax Requirements for Tax-Exempt Bonds. It is the procedure of the District that the Business Manager and his or her staff, as well as the principal operating officials of those departments of the District for which property is financed with proceeds of tax-exempt bonds should be provided with education and training on federal tax requirements applicable to tax-exempt bonds. The District recognizes that such education and training is vital as a means of helping to ensure that the District remains in compliance with those federal tax requirements in respect of its bonds. The District therefore will enable and encourage, to the extent the District can afford to do so, those personnel to attend and participate in educational and training programs offered by, among others, the Washington Association of School Administrators, Washington State School Directors Association, and the Washington Association of School Business Officials with regard to the federal tax requirements applicable to tax-exempt bonds.

Legal reference: Resolutions of the Board, adopted and to be adopted, authorizing the issuance of tax-exempt bonds; Sections 103, 141, 148, 149, 150 and 265 of the Internal Revenue Code of 1986; and Chapters 28A.335, 28A.530, 39.36, 39.46, 39.50 and 39.53 RCW.

Approved this 18th day of June, 2019.

TONASKET SCHOOL DISTRICT NO. 404
OKANOGAN COUNTY, WASHINGTON



STEVE MCCULLOUGH

Superintendent and Secretary to the Board of Directors

Date: 6.18.19
Tonasket School District