
515: Post-Issuance Procedures for Tax Exempt Bonds

1.0 Purpose.

- 1.1. The purpose of these procedures for tax-exempt bonds and other tax-exempt obligations ("Bonds") issued by Tukwila Pool Metropolitan Park District (District) is to facilitate compliance by the District with applicable requirements of the Internal Revenue Code of 1986, as amended (the "Code") that must be satisfied after the issue date of the Bonds to maintain tax-exempt status.

1.0 Responsibility for Monitoring Post-Issuance Tax Compliance.

- 1.1. The District Board (Board) has the overall, final responsibility for monitoring whether the District is in compliance with post-issuance federal tax requirements for the Bonds. The Board has delegated the primary operating responsibility to monitor the District's compliance with post-issuance federal tax requirements for the Bonds to the Executive Director of the District or to another Board designee.

2.0 Arbitrage Yield Restriction and Rebate Requirements.

- 2.1. The Executive Director, or Board designee should maintain or cause to be maintained records of:
 - 2.1.1. 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;
 - 2.1.2. 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;
 - 2.1.3. 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 \$5,000,000 of Bonds in that calendar year;
 - 2.1.4. Calculations that should 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;
 - 2.1.5. Calculations that should 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

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2.1.6. 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.

3.0 Restrictions on Private Business Use and Private Loans.

3.1. The Executive Director or Board designee should adopt procedures that are calculated to educate and inform the principal operating officials of those departments and affiliates of the District ("Users") for which land, buildings, facilities and equipment ("Property") are financed with proceeds of Bonds about the restrictions on private business use that apply to the Property after the Bonds have been issued, and of the restriction on the use of Bond proceeds to make or finance any loan to any person other than a state or local government unit. In particular, following the issuance of Bonds to finance Property, the Executive Director or Board Designee should provide to the Users of the Property a copy of these Compliance Procedures and other appropriate written guidance advising that:

3.1.1. "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 Property;

3.1.2. Under Section 141 of the Code, no more than 10% of the proceeds of any Bond issue (including the Property) may be used for private business use, of which no more than 5% of the proceeds of the Bond issue (including the Property) 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 Bond issue may be used to make or finance a loan to any person other than a state or local government unit;

3.1.3. Before entering into any special use arrangement with a nongovernmental person that involves the use of Property, the User must consult with the Executive Director or Board Designee, provide the Executive Director or Board Designee with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, should be consistent with the restrictions on private business use of the Property;

3.1.4. In connection with the evaluation of any proposed nongovernmental use arrangement, the Executive Director or Board Designee should consult with nationally recognized bond counsel to the District as may be necessary to obtain federal tax advice on whether that use

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arrangement, if put into effect, should be consistent with the restrictions on private business use of the 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,

- 3.1.5. The Executive Director or Board Designee and the User should maintain records of such nongovernmental uses, if any, of the 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.

4.0 Records to be Maintained for Bonds.

- 4.1. It is the policy of the District that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) should 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:
 - 4.2. The official Transcript of Proceedings for the original issuance of the Bonds;
 - 4.3. Records showing how the Bond proceeds were invested, as described in paragraph 3(A) above;
 - 4.4. Records showing how the Bond proceeds were spent, as described in paragraphs 3(B) and 4(C) 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;
 - 4.5. 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 paragraphs 3(C), (D) and (E) above; and
 - 4.6. Records showing that special use arrangements, if any, affecting Property made by the District with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of Property financed with Bond proceeds and restrictions on the use of Bond proceeds to make or finance loans to any person other than a state or local government unit, as described in paragraph 4 above. The basic purpose of the foregoing record retention policy for the Bonds is to enable the District to readily demonstrate to the IRS upon an audit of any 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 tax -exempt under the Code.

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5.0 Identification and Remediation of Potential Violations of Federal Tax Requirements for Bonds.

- 5.1. So long as any of the District's Bond issues remain outstanding, the Executive Director or Board Designee should consult with the Users of Property at least once a year 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 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 Bond issues, or when the District is undergoing the annual audit of its financial statements.
- 5.2. If at any time during the life of a Bond issue, the District discovers that a violation of federal tax requirements applicable to that issue may have occurred, the Executive Director or Board Designee should 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.

6.0 Education Procedures With Respect to Federal Tax Requirements for Bonds.

- 6.1. The Executive Director or Board Designee and his or her staff, as well as the principal operating officials of those departments and affiliates of the District for which Property is financed with Bond proceeds, should be provided with education and training on federal tax requirements applicable to 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 Bonds. The District should enable and encourage those personnel to attend and participate in educational and training programs offered by, among others, the Washington Finance Officers Association with regard to the federal tax requirements applicable to Bonds.