

COUNTY OF SHASTA		Number
ADMINISTRATIVE MANUAL		2-502
SECTION:	Finance and Budget	Post-Issuance Compliance Policy for Bond Issues
INITIAL ISSUE DATE:	February 28, 2012	
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PURPOSE

The purpose of this policy is to ensure that the County of Shasta (the “County”) complies with applicable requirements of bond documents and applicable federal tax law necessary to preserve the tax-exempt status of interest on tax-exempt obligations issued by the County. This policy is designed to set forth compliance procedures so that the County utilizes the proceeds of all issues of bonds, certificates of participation, bond anticipation notes, and tax and revenue anticipation notes (collectively referred to as “Bonds”) in accordance with applicable federal tax requirements, and complies with all other applicable federal requirements with respect to Bond issues.

To comply with applicable federal tax requirements, the County must confirm that the requirements are met at the time Bonds are issued and throughout the term thereof. Generally, compliance should include retention of records sufficient to establish compliance with applicable federal tax requirements, including records related to periods before the Bonds are issued (e.g., in the case of reimbursement of prior expenditures) until six (6) years (or, if longer, such other time period provided in the tax certificate related to an issue of Bonds) after the final maturity or redemption date of any issue of the Bonds.

The County may at times undertake capital projects which are funded by the State of California via a lease-revenue bond structure, whereby the State sells Bonds. The State may at times award the County federal “pass-through” funding for capital projects. The County will include record-retention for all such capital projects under this policy.

POLICY/PROCEDURE

A. Responsible Official. The Administrative Fiscal Chief of the County will identify the officer or other employee(s) who will be responsible for each of the procedures listed below, notify the current holder of that office of the responsibilities, and provide that person a copy of these procedures. Upon employee transitions, the Administrative Fiscal Chief of the County will advise the new personnel of their responsibilities under these procedures and will ensure they understand the importance of these procedures. If employee positions are restructured or eliminated, the Administrative Fiscal Chief of the County will reassign responsibilities as necessary.

B. Issuance of Bonds.

Bond Counsel. The County will retain a firm of nationally-recognized bond counsel (“Bond Counsel”) to deliver a legal opinion upon issuance of Bonds. The County will consult with Bond

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Counsel and other legal counsel and advisors, as needed, following issuance of Bonds to ensure that applicable post-issuance requirements in fact are met, so that interest on all Bond issues will be excluded from gross income for federal income tax purposes so long as any Bonds remain outstanding.

Documentation of Tax Requirements. The federal tax requirements relating to each issue of Bonds will be set forth in the Tax Certificate or other similar document (“Tax Certificate”) executed in connection with each issue, which will be included in the closing transcript for each issue. The certifications, representations, expectations, covenants, and factual statements set forth in the Tax Certificate relate primarily to the restriction on use of the Bond-financed facilities by persons or entities other than the County, changes in use of assets financed or refinanced with Bond proceeds, restrictions applicable to the investment of Bond proceeds and other moneys relating to the Bonds, arbitrage rebate requirements, and economic life of the Bond-financed assets.

Information Reporting. The County will confirm that the IRS Form 8038-G or other similar IRS form (“Form 8038-G”) is timely filed with respect to all Bond issues, including any required schedules and attachments. The Form 8038-G filed with the IRS, together with an acknowledgement copy (if available) or IRS Notice CP152, will be included as part of the closing transcript for each Bond issue, or kept in the records related to the appropriate issue of Bonds.

C. Application of Bond Proceeds.

Timely Expenditure of Bond Proceeds. At the time of issuance of Bonds (or any portion thereof) issued to fund original expenditures, the County must reasonably expect to spend at least 85% of all proceeds expected to be used to finance such expenditures (which proceeds would exclude proceeds in a reasonably required reserve fund) within three (3) years of issuance.¹ In addition, for such Bonds, the County must have incurred or expect to incur within six months after issuance original expenditures of not less than 5% of such amount of proceeds, and must expect to complete the Bond-financed project (the “Project”) and allocate Bond proceeds to costs with due diligence.² Satisfaction of these requirements allows project-related Bond proceeds to be invested at an unrestricted yield for three (3) years. Bonds issued to refinance outstanding obligations are subject to separate expenditure requirements, which shall be outlined in the Tax Certificate relating to such bonds. The County’s

¹ In the case of short-term working capital financings, such as tax and revenue anticipation notes, the County’s actual maximum cumulative cash flow deficit as of the close of the six-month period commencing on the issue date must be at least equal to 100% of the issue price of the notes (under the six-month rebate exception, excluding the reasonable working capital reserve) or 90% of the issue price of the notes (under the statutory safe harbor exception) in order for the notes to be exempt from the rebate requirements.

² These requirements do not apply to refinancings or short-term working capital financings, such as tax and revenue anticipation notes.

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finance staff will monitor the appropriate capital project accounts (and, to the extent applicable, working capital expenditures and/or refunding escrow accounts) and ensure that Bond proceeds are spent within the time period(s) required under federal tax law.

Capital Expenditures. In general, proceeds (including earnings on original sale proceeds) of Bonds issued to fund original expenditures, other than proceeds deposited in a reasonably required reserve fund or used to pay costs of issuance, should be spent on capital expenditures.³ For this purpose, capital expenditures generally mean costs to acquire, construct, or improve property (land, buildings, and equipment), or to adapt the property to a new or different use. The property financed or refinanced must have a useful life longer than one (1) year. Capital Expenditures include design and planning costs related to the Project, and include architectural, engineering, surveying, soil testing, environmental, and other similar costs incurred in the process of acquiring, constructing, improving, or adapting the property. Capital Expenditures do not include operating expenses of the Project or incidental or routine repair or maintenance of the Project, even if the repair or maintenance will have a useful life longer than one (1) year.

D. Use of Bond-Financed Assets.

Ownership and Use of Project. For the life of the Bond issue (including any refinancing thereof), the Project must be owned and operated by the County (or another state or local governmental entity). At all times while the Bond issue is outstanding, no more than 10% (or \$15,000,000, if less) of the Bond proceeds or the Project may be used, directly or indirectly, in a trade or business carried on by a person other than a state or local governmental unit (“Private Use”). Generally, Private Use consists of any contract or other arrangement, including leases, management contracts, operating agreements, guarantee contracts, take or pay contracts, output contracts, or research contracts, which provides for use by a person who is not a state or local government on a basis different than the general public. The Project may be used by any person or entity, including any person or entity carrying on any trade or business, if such use constitutes “General Public Use.” General Public Use is any arrangement providing for use that is available to the general public at either no charge or on the basis of rates that are generally applicable and uniformly applied.

Management or Operating Agreements. Any management, operation, or service contracts whereby a non-exempt entity is using assets financed or refinanced with Bond proceeds must relate to portions of the Project that fit within the above-mentioned 10% allowable Private Use or the contracts must meet the IRS safe harbor for management contracts. Any replacements of or changes to such

³ Proceeds of working capital financings, such as tax and revenue anticipation notes, need not be spent for capital expenditures.

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contracts should be reviewed by Bond Counsel. The County shall contact Bond Counsel if there may be a lease, sale, disposition, or other change in use of assets financed or refinanced with Bond proceeds.

Useful Life Limitation. The weighted average maturity of the Bond issue cannot exceed 120% of the weighted average economic life of the assets financed or refinanced with Bond proceeds. In other words, the weighted average economic life of the Project must be at least 80% of the weighted average maturity of the Bond issue (including any refinancing thereof).

E. Investment Restrictions; Arbitrage Yield Calculation; Rebate.

Investment Restrictions. Investment restrictions relating to Bond proceeds and other moneys relating to the Bonds are set forth in the Tax Certificate. The County's finance staff will monitor the investment of Bond proceeds to ensure compliance with yield restriction rules.

Arbitrage Yield Calculation. Investment earnings on Bond proceeds should be tracked and monitored to comply with applicable yield restrictions and/or rebate requirements. The County is responsible for calculating (or causing the calculation of) rebate liability for each Bond issue, and for making any required rebate payments. Any funds of the County set aside or otherwise pledged or earmarked to pay debt service on Bonds should be analyzed to assure compliance with the tax law rules on arbitrage, invested sinking funds and pledged funds (including gifts or donations linked to the Bond-financed assets).

Rebate. The County will retain an arbitrage rebate consultant to perform rebate calculations that may be required to be made from time to time with respect to any Bond issue. The County is responsible for providing the arbitrage rebate consultant with requested documents and information on a prompt basis, reviewing applicable rebate reports and other calculations, and generally interacting with the arbitrage rebate consultant to ensure the timely preparation of rebate reports and payment of any rebate.

The reports and calculations provided by the arbitrage rebate consultant will assure compliance with rebate requirements, which require the County to make rebate payments, if any, no later than the fifth (5th) anniversary date and each fifth (5th) anniversary date thereafter through the final maturity or redemption date of a Bond issue. A final rebate payment must be made within sixty (60) days of the final maturity or redemption date of a Bond issue.

The County will confer and consult with the arbitrage rebate consultant to determine whether any rebate spending exception may be met. Rebate spending exceptions are available for periods of

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6 months, 18 months, and 2 years. The County will review the Tax Certificate and/or consult with the arbitrage rebate consultant or Bond Counsel for more details regarding the rebate spending exceptions.

In the case of short-term working capital financings, such as tax and revenue anticipation notes, if there is concern as to whether or not the County has met its requisite maximum cumulative cash flow deficit with respect to its short-term working capital notes, the services of a rebate analyst should be engaged to determine whether either the six-month spending exception or the statutory safe harbor exception to the rebate rules is met (in which case no rebate would be owed) or whether the proceeds of the notes are subject, in whole or in part, to rebate.

Copies of all arbitrage rebate reports, related return filings with the IRS (i.e., IRS Form 8038-T), copies of cancelled checks with respect to any rebate payments, and information statements must be retained as described below. The Responsible Official of the County described in Subsection A of this Policy will follow the procedures set forth in the Tax Certificate entered into with respect to any Bond issue that relate to compliance with the rebate requirements.

F. Record Retention.

Allocation of Bond Proceeds to Expenditures. The County shall allocate (spend) Bond proceeds to expenditures for assets, and shall trace and keep track of the use of Bond proceeds and property financed or refinanced therewith.

Copies of all relevant documents and records sufficient to support that the tax requirements relating to a Bond issue have been satisfied will be maintained by the County for the term of a Bond issue plus six (6) years (or, if longer, such other time period provided in the tax certificate related to an issue of Bonds), including the following documents and records:

- Bond closing transcript;
- All records of investments, arbitrage reports, returns filed with the IRS and underlying documents;
- Construction contracts, purchase orders, invoices, and payment records;
- Documents relating to costs reimbursed with Bond proceeds;
- All contracts and arrangements involving Private Use of the Bond-financed property;

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- All reports relating to the allocation of Bond proceeds and Private Use of Bond-financed property;
- Itemization of property financed with Bond proceeds; and
- In the case of short-term working capital financings, such as tax and revenue anticipation notes, information regarding the County’s revenue, expenditures, and available balances sufficient to support the County’s maximum cumulative cash flow deficit.
- Such records may be kept in any combination of paper or electronic form.

POST-ISSUANCE COMPLIANCE

A. In General. The County will conduct periodic reviews of compliance with these procedures to determine whether any violations have occurred so that such violations can be remedied through the “remedial action” regulations (Treas. Reg. Section 1.141-12) or the Voluntary Closing Agreement Program (VCAP) described in IRS Notice 2008-31 (or successor guidance). If any changes to the terms or provisions of a Bond issue are contemplated, the County will consult Bond Counsel. The County recognizes and acknowledges that such modifications could result in a “reissuance” for federal tax purposes (i.e., a deemed refunding) of the Bond issue and thereby jeopardize the tax-exempt status of interest on the Bonds after the modifications.

B. Private Use. The County will maintain records identifying the assets or portion of assets that are financed or refinanced with proceeds of a Bond issue, including the uses and the users (including terms of use and type of use) thereof. Such records may be kept in any combination of paper or electronic form. In the event the use of Bond proceeds or assets financed or refinanced with Bond proceeds is different from the covenants, representations, or factual statements in the Tax Certificate, the County will promptly contact and consult with Bond Counsel to ensure that there is no adverse effect on the tax-exempt status of the Bond issue and, where appropriate, will remedy any violations through the “remedial action” regulations (Treas. Reg. Section 1.141-12), the Voluntary Closing Agreement Program (VCAP) described in IRS Notice 2008-31 (or successor guidance), or as otherwise prescribed by Bond Counsel.

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COMPLIANCE WITH LAWS

The Administrative Fiscal Chief of the County is delegated the authority to modify this policy if the modification is required to comply with changes in law including, but not limited to applicable IRS regulations or guidance.

RESPONSIBLE DEPARTMENTS

County Executive Officer
County Counsel
Auditor-Controller
Department of Public Works
Treasurer-Tax Collector

REFERENCES

BOS Policy Resolution No. 2014-06--10/14/14 (Renumbered from 2-302 to 2-502)
Administrative Update--7/13/2012
BOS Policy Resolution No. 2012-04--2/28/12
Internal Revenue Code §§141 through 150