Post Bond Issuance Federal Tax Compliance

Original Implementation: April 14, 2015
Last Revision: July 24, 2018

Purpose

This policy identifies the compliance areas related to tax-exempt bond financing and affirms the university's intent to fulfill all requirements in these areas during the post-issuance period. It also identifies the Post-Issuance Bond Compliance Procedures as the authoritative resource for compliance activities.

Definitions

Bond proceeds are paid to the university by the purchaser or underwriter of a new issue of tax-exempt obligations to finance a project for which the securities were issued.

Arbitrage is the investment gain made by investing the proceeds of tax-exempt bonds in taxable investments.

Private business use includes any trade or business activity, directly or indirectly, using bond-financed property which is carried on by any person or entity other than a governmental unit.

General

The Board of Regents (the "board") has issued and will issue from time to time bonds, notes or other tax-exempt obligations (collectively, the "bonds") on behalf of Stephen F. Austin State University (the "university"). The board is required by the terms of Section 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended ("code"), and the U.S. Treasury Regulations promulgated thereunder ("regulations"), to preserve the tax-exempt status of its bonds subsequent to their issuance.

Expenditure and Allocation of Bond Proceeds

Bond proceeds may only be used for eligible project costs in accordance with applicable federal and state laws and restrictions of the bond documents. The spending of bond proceeds and related investment earnings must be monitored to help ensure they are used for eligible project costs and qualified purposes.

Spending Requirements and Arbitrage Rebate

Restrictions exist as to the timing of the expenditure of bond proceeds. Generally, proceeds must be spent within three years of bond issuance, although there are several rebate exceptions if bond proceeds are spent promptly. If it appears that all proceeds will not be spent within a three-year period, bond counsel should be consulted.

Tax rules generally require borrowers of tax-exempt debt to calculate and pay, or "rebate", to the IRS any "arbitrage profit" earned on the investment of bond proceeds prior to their expenditure. The appropriate university staff, consultants(s), or other appropriate persons will maintain procedures to ensure the required arbitrage calculations are performed and the necessary (if any) IRS tax forms are filed.

Private Business Use

IRS tax rules limit private business use of a building financed with tax-exempt financing. To help ensure compliance with the limitation of private business use, the appropriate university staff will implement and monitor university procedures to comply with IRS rules regarding private business use of facilities financed with tax exempt bonds.

Records Retention

The university will retain all records relating to the investment and expenditure of the proceeds of the bonds and the use of any facilities financed or refinanced thereby for the period of time required by federal and state laws. If any portion of the bonds is refunded with the proceeds of another series of tax-exempt bonds, the university will also maintain such records for the period required by federal and state laws. Such records may be maintained in paper or electronic format and must be indexed. This policy supersedes any other documented retention policies in regards to records pertaining to tax-exempt bond issues. Guidelines and responsibility for records retention is detailed in the Post Issuance Bond Compliance Procedures.

Continuing Disclosure

The university will remain in compliance with the Security and Exchange Commission rule 15c2-12 which requires the filing of certain financial and operating information with the Electronic Municipal Market Access System (EMMA) which is maintained by the Municipal Securities Rulemaking Board (MSRB). This information is for the benefit of bondholders, and must be filed within 180 days of the close of the fiscal year. In addition to annual financial information, the university is required to file a Material Event Notice within ten business days of any of the following occurrences:

- Principal and interest payment delinquencies;
- Non-payment related defaults;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions, IRS notices, or material events affecting the tax status of the security;
- Modifications to rights of security holders;
- Release, substitution, or sale of property securing repayment of the securities, if material;
- Bond calls, if material, and tender offers;
- Defeasances;
- Rating changes;
- Bankruptcy, insolvency, receivership, or similar event;

- Merger, consolidation, or acquisition of the issuer, if material; and/or
- Appointment of a successor or additional trustee or name change of a trustee, if material.

The vice president for finance and administration is responsible for responding to inquiries by investors, rating agencies, and other outside parties relating to the status of projects, the financial condition of the university, and any other events that may affect investors.

Responsible Person

The vice president for finance and administration and/or designated staff will develop, maintain, and enforce procedures to ensure continuing compliance.

Cross Reference: I.R.C. §§ 103, 141-150; 17 C.F.R. § 240.15c2-12

Responsible for Implementation: Vice President for Finance and Administration

Contact for Revision: Vice President for Finance and Administration

Forms: None

Board Committee Assignment: Finance and Audit