Post Bond Issuance Federal Tax Compliance

Original Implementation: April 14, 2015
Last Revision: None

The Board of Regents, Stephen F. Austin State University (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. Further, the code and the regulations impose record retention requirements on the board with respect to its bonds.

The purpose of this policy is to describe action to be taken in order to comply with bond covenants including applicable code provisions and regulations and also to specify who is responsible for such action.

ARBITRAGE

With respect to the investment and expenditure of the proceeds of bonds, the vice president for finance and administration will instruct the appropriate staff, consultant(s) or other appropriate person(s) to:

(a) require that the construction, renovation or acquisition of any facilities to be financed with the proceeds of bonds proceed with due diligence and that binding contracts for the expenditure of at least five per cent (5%) of the proceeds of the bonds be entered into within six (6) months of the date of delivery of the bonds ("issue date");

(b) monitor to ensure that at least eighty-five percent (85%) of the proceeds of the bonds to be used for the construction, renovation or acquisition of any facilities are expended within three (3) years of the issue date;

(c) ensure that the yield on the investments of any proceeds of the bonds be restricted to the yield on the bonds for any period beyond three (3) years of the issue date;

(d) monitor all amounts deposited into a sinking fund or fund (e.g., a debt service fund or interest and sinking fund) to assure that the maximum amount invested at a yield higher than the yield on the bonds does not exceed an amount equal to the debt service on the bonds in the succeeding twelve (12) month period plus a carryover amount equal to one-twelfth (1/12) of the principal and interest payable on the bonds for the immediately preceding twelve (12) month period;

(e) ensure that no more than fifty percent (50%) of the proceeds of the bonds are invested in an investment with a guaranteed yield for four (4) years or more;

(f) assure that the maximum amount of any reserve fund for the bonds invested at a yield higher than the yield on the bonds will not exceed the lesser of (i) ten percent (10%) of the principal amount of the bonds, (ii) one hundred twenty-five percent (125%) of the average annual debt service on the bonds measured as of the issue date, or (iii) one hundred percent (100%) of the maximum annual debt service on the bonds as of the issue date;

(g) monitor the actions of the escrow agent holding any escrow funded with bond proceeds to ensure compliance with the applicable provisions of the escrow agreement, including with respect to reinvestment of cash balances;

(h) document by official action of the board, such as a reimbursement resolution, any intent of the board to reimburse with the proceeds of the bonds any amount expended prior to the issue date for the acquisition, renovation or construction of the facilities;

(i) ensure that the applicable information return (e.g., IRS Form 8038-G, or any successor form) is timely filed with the Internal Revenue Service ("IRS"); and

(j) assure that, unless excepted from rebate and yield restriction under Section 148(f) of the Internal Revenue Code of 1986, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (i) at least every five (5) years after the issue date and (ii) within thirty (30) days after the date the bonds are retired.

PRIVATE BUSINESS USE

With respect to the use of any facilities financed or refinanced with the proceeds of the bonds, the vice president for finance and administration will instruct the appropriate university staff, consultant(s) or other appropriate person(s) to:

(a) monitor the date on which the facilities are substantially complete and available to be used for their intended purpose;

(b) monitor whether, at any time during which the bonds are outstanding, any person, other than the university, its employees and agents or members of the general public, has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the facilities;

(c) monitor whether, at any time the bonds are outstanding, any person, other than the university, its employees and agents or members of the general public, has a right to use the output of the facilities (e.g., water, gas or electricity);

(d) monitor whether, at any time the bonds are outstanding, any person, other than the university, its employees and agents or members of the general public, has a right to use the facilities to conduct or to direct the conduct of research;

(e) determine whether, at any time the bonds are outstanding, any person, other than the university, has a naming right for the facilities or any other contractual right granting an intangible benefit;

(f) determine whether, at any time the bonds are outstanding, the facilities are sold or otherwise disposed of; and

(g) take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the resolutions authorizing issuance of the bonds related to the public use of the facilities.

RECORDS RETENTION

The vice president for finance and administration and designated university staff will maintain or cause to be maintained 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 a period ending three (3) years after the complete extinguishment of the bonds. If any portion of the bonds is refunded with the proceeds of another series of tax-exempt bonds, the responsible person will maintain or cause to be maintained all of such records until three (3) years after the refunding bonds are completely extinguished. Such records may be maintained in paper or electronic format.

CONTINUING DISCLOSURE

The vice president for finance and administration or designated university staff will remain in compliance with the Security and Exchange Commission rule 15c2-12 by filing its annual financial statements and other financial and operating data for the benefit of bondholders within 180 days of the close of the fiscal year.

RESPONSIBLE PERSON

The vice president for finance and administration and/or designated staff will receive appropriate training on federal tax requirements for post-issuance compliance applicable to bonds.

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