
Itasca County, Minnesota

**AMENDED AND RESTATED POST-ISSUANCE COMPLIANCE PROCEDURE
AND POLICY FOR TAX-EXEMPT GOVERNMENTAL BONDS**

**Adopted March 22, 2011
(Board Approval Dates: 3/23/2010; 3/22/2011)**

Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds

Itasca County, Minnesota (the “Issuer”) issues tax-exempt governmental bonds from time to time to finance various capital improvements. As an issuer of tax-exempt governmental bonds, the Issuer is required by the terms of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the “Code”), and the U.S. Treasury Regulations promulgated thereunder (the “Treasury Regulations”), to take certain actions subsequent to the issuance of such bonds to ensure the continuing tax-exempt status of such bonds. In addition, Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations impose record retention requirements on the Issuer with respect to its tax-exempt governmental bonds. This Amended and Restated Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds (the “Policy”) has been approved and adopted by the governing body of the Issuer to ensure that the Issuer complies with its post-issuance compliance obligations under applicable provisions of the Code and Treasury Regulations.

1. Effective Date and Term. The effective date of this Policy is the date of approval by the Board of Commissioners of the Issuer, and this Policy shall remain in effect until superseded or terminated by action of the Board of Commissioners of the Issuer.

2. Responsible Parties. The County Auditor/Treasurer, with assistance from the County Coordinator as necessary, shall be the party primarily responsible for ensuring that the Issuer successfully carries out its post-issuance compliance requirements under applicable provisions of the Code and Treasury Regulations with regard to all tax-exempt governmental obligations of the Issuer. The County Auditor/Treasurer is referred to as the “Compliance Officer” for purposes of this Policy. The Compliance Officer shall be assisted by other Issuer staff and officials when appropriate. The Compliance Officer will also be assisted in carrying out post-issuance compliance requirements by the following entities:

(a) Bond Counsel (as of the date of approval of this Policy, bond counsel for the Issuer is Kennedy & Graven, Chartered);

(b) Financial Advisor (as of the date of approval of this Policy, the financial advisor of the Issuer is Public Financial Management, Inc.);

(c) Paying Agent (as of the date of approval of this Policy, the paying agent of the Issuer is U.S. Bank National Association); and

(d) Rebate Analyst (the organization primarily responsible for providing rebate analyst services for the Issuer).

The Compliance Officer shall be responsible for assigning post-issuance compliance responsibilities to other Issuer staff, Bond Counsel, the Financial Advisor, the Paying Agent, and the Rebate Analyst. The Compliance Officer shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance compliance requirements of the Issuer. The Compliance Officer shall provide training and educational resources to Issuer staff responsible for ensuring compliance with any portion of the post-issuance compliance requirements of this Policy.

3. Post-Issuance Compliance Actions. The Compliance Officer shall take the following post-issuance compliance actions or shall verify that the following post-issuance compliance actions have been taken on behalf of the Issuer with respect to each issue of tax-exempt governmental bonds issued by the Issuer:

(a) The Compliance Officer shall prepare a transcript of principal documents (this action will be the responsibilities of Bond Counsel and the Financial Advisor).

(b) The Compliance Officer shall file with the Internal Revenue Service (the “IRS”), within the time limit imposed by Section 149(e) of the Code and applicable Treasury Regulations, an *Information Return for Tax-Exempt Governmental Obligations, Form 8038-G*, or an *Information Return for Build America Bonds and Recovery Zone Economic Development Bonds, Form 8038-B*, or an *Information Return for Tax Credit Bonds and Specified Tax Credit Bonds, Form 8038-TC*, as the case may be (this action will be the primary responsibility of Bond Counsel).

(c) If not otherwise provided for in a “tax certificate” given pursuant to the requirements of Treasury Regulations, Section 1.148-2(b)(2), the Compliance Officer shall prepare an “allocation memorandum” for each issue of tax-exempt governmental bonds in accordance with the provisions of Treasury Regulations, Section 1.148-6(d)(1), that accounts for the allocation of the proceeds of the tax-exempt bonds to expenditures not later than the earlier of:

(i) eighteen (18) months after the later of (A) the date the expenditure is paid, or (B) the date the project, if any, that is financed by the tax-exempt bond issue is placed in service; or

(ii) the date sixty (60) days after the earlier of (A) the fifth anniversary of the issue date of the tax-exempt bond issue, or (B) the date sixty (60) days after the retirement of the tax-exempt bond issue.

Preparation of the allocation memorandum will be the primary responsibility of the Compliance Officer, in consultation with the Financial Advisor and Bond Counsel.

(d) The Compliance Officer, in consultation with Bond Counsel and the Financial Advisor, shall identify proceeds of tax-exempt governmental bonds that must be yield-restricted and shall monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted.

(e) In consultation with Bond Counsel, the Financial Advisor, and the Rebate Analyst, the Compliance Officer shall determine whether the Issuer is subject to the rebate requirements of Section 148(f) of the Code and related Treasury Regulations with respect to each issue of tax-exempt governmental bonds. In consultation with Bond Counsel and the Financial Advisor, the Compliance Officer shall determine, with respect to each issue of tax-exempt governmental bonds of the Issuer, whether the Issuer is eligible for any of the temporary periods for unrestricted investments and is eligible for any of the spending exceptions to the rebate requirements. The Compliance Officer shall contact the Rebate Analyst (and, if appropriate, Bond Counsel) prior to the fifth anniversary of the date of issuance of each issue of tax-exempt governmental bonds of the Issuer and each fifth anniversary thereafter to arrange for calculations of the rebate requirements with respect to such tax-exempt governmental bonds. If a rebate payment is required to be paid by the Issuer, the Compliance Officer shall prepare or cause to be prepared the *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, Form 8038-T*, and submit such Form 8038-T to the IRS with the required rebate payment. If the Issuer is authorized to recover a rebate payment previously paid, the Compliance Officer shall prepare or cause to be prepared the *Request for Recovery of Overpayments Under Arbitrage*

Rebate Provisions, Form 8038-R, with respect to such rebate recovery, and submit such Form 8038-R to the IRS.

4. Procedures for Monitoring, Verification, and Inspections. The Compliance Officer shall institute such procedures as the Compliance Officer shall deem necessary and appropriate to monitor the use of the proceeds of tax-exempt governmental bonds issued by the Issuer, to verify that certain post-issuance compliance actions have been taken by the Issuer, and to provide for the inspection of the facilities financed with the proceeds of such bonds. At a minimum, the Compliance Officer shall establish the following procedures:

(a) The Compliance Officer shall monitor the use of the proceeds of tax-exempt governmental bonds to: (i) ensure compliance with the expenditure and investment requirements under the temporary period provisions set forth in Treasury Regulations, Section 1.148-2(e); (ii) ensure compliance with the safe harbor restrictions on the acquisition of investments set forth in Treasury Regulations, Section 1.148-5(d); (iii) ensure that the investments of any yield-restricted funds do not exceed the yield to which such investments are restricted; and (iv) determine whether there has been compliance with the spend-down requirements under the spending exceptions to the rebate requirements set forth in Treasury Regulations, Section 1.148-7.

(b) The Compliance Officer shall monitor the use of all bond-financed facilities in order to: (i) determine whether private business uses of bond-financed facilities have exceeded the *de minimis* limits set forth in Section 141(b) of the Code (generally 10% of bond proceeds) as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements or other arrangements that provide special legal entitlements to nongovernmental persons; and (ii) determine whether private security or payments that exceed the *de minimis* limits set forth in Section 141(b) of the Code (generally 10% of bond proceeds) have been provided by nongovernmental persons with respect to such bond-financed facilities. The Compliance Officer shall provide training and educational resources to any Issuer staff who have the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities with regard to the limitations on the private business use and on the private security or payments with respect to bond-financed facilities.

(c) The Compliance Officer shall undertake the following with respect to each outstanding issue of tax-exempt governmental bonds of the Issuer: (i) an annual review of the books and records maintained by the Issuer with respect to such bonds; and (ii) an annual physical inspection of the facilities financed with the proceeds of such bonds, conducted by the Compliance Officer with the assistance with any Issuer staff who have the primary responsibility for the operation, maintenance, or inspection of such bond-financed facilities.

5. Record Retention Requirements. The Compliance Officer shall collect and retain the following records with respect to each issue of tax-exempt governmental bonds of the Issuer and with respect to the facilities financed with the proceeds of such bonds: (i) audited financial statements of the Issuer; (ii) appraisals, demand surveys, or feasibility studies, if any, with respect to the facilities to be financed with the proceeds of such bonds; (iii) publications, brochures, and newspaper articles, if any, related to the bond financing; (iv) trustee or paying agent statements; (v) records of all investments and the gains (or losses) from such investments; (vi) paying agent or trustee statements regarding investments and investment earnings; (vii) reimbursement resolutions, if any, and expenditures reimbursed with the proceeds of such bonds; (viii) allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including any requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks with respect to such expenditures); (ix) contracts entered into for the

construction, renovation, or purchase of bond-financed facilities; (x) an asset list or schedule of all bond-financed depreciable property and any depreciation schedules with respect to such assets or property; (xi) records of the purchases and sales of bond-financed assets; (xii) private business uses of bond-financed facilities that arise subsequent to the date of issue through leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons and copies of any such agreements or instruments; (xiii) arbitrage rebate reports and records of rebate and yield reduction payments, if any; (xiv) resolutions or other actions, if any, taken by the governing body subsequent to the date of issue with respect to such bonds; (xv) formal elections authorized by the Code or Treasury Regulations that are taken with respect to such bonds; (xvi) relevant correspondence relating to such bonds; (xvii) documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into subsequent to the date of issue; (xviii) copies of any and all Form 8038-Ts and Form 8038-Rs filed with the IRS; and (xix) the transcript prepared with respect to such tax-exempt governmental bonds.

The records collected by the Issuer shall be stored in any format deemed appropriate by the Compliance Officer and shall be retained for a period equal to the life of the tax-exempt governmental bonds with respect to which the records are collected (which shall include the life of any bonds issued to refund any portion of such tax-exempt governmental bonds or to refund any refunding bonds) plus three (3) years.

6. Remedies. In consultation with Bond Counsel, the Compliance Officer shall become acquainted with the remedial actions under Treasury Regulations, Section 1.141-12, to be utilized in the event that private business use of bond-financed facilities exceeds the *de minimis* limits under Section 141(b)(1) of the Code. In consultation with Bond Counsel, the Compliance Officer shall become acquainted with the Tax Exempt Bonds Voluntary Closing Agreement Program, described in Notice 2008-31, 2008-11 I.R.B. 592, to be utilized as a means for an issuer to correct any post-issuance infractions of the Code and Treasury Regulations with respect to outstanding tax-exempt bonds.

7. Continuing Disclosure Obligations. In addition to its post-issuance compliance requirements under applicable provisions of the Code and Treasury Regulations, the Issuer has agreed to provide continuing disclosure, such as annual financial information and material event notices, pursuant to a continuing disclosure certificate or similar document (the “Continuing Disclosure Document”) prepared by Bond Counsel and made a part of the transcript with respect to each issue of bonds of the Issuer that is subject to such continuing disclosure requirements. The Continuing Disclosure Documents are executed by the Issuer to assist the underwriters of the Issuer’s bonds in meeting their obligations under Securities and Exchange Commission Regulation, 17 C.F.R. Section 240.15c2-12, as in effect and interpreted from time to time (“Rule 15c2-12”). The continuing disclosure obligations of the Issuer are governed by the Continuing Disclosure Documents and by the terms of Rule 15c2-12. The Compliance Officer is primarily responsible for undertaking such continuing disclosure obligations and to monitor compliance with such obligations.

8. Other Post-Issuance Actions. If, in consultation with Bond Counsel, the Financial Advisor, the Paying Agent, the Rebate Analyst, the Issuer’s Attorney, or the Board of Commissioners of the Issuer, the Compliance Officer determines that any additional action not identified in this Policy must be taken by the Compliance Officer to ensure the continuing tax-exempt status of any issue of governmental bonds of the Issuer, the Compliance Officer shall take such action if the Compliance Officer has the authority to do so. If, after consultation with Bond Counsel, the Financial Advisor, the Paying Agent, the Rebate Analyst, the Issuer’s Attorney, or the Board of Commissioners of the Issuer, the Compliance Officer determines that this Policy must be amended or supplemented to ensure the continuing tax-exempt status of any issue of governmental bonds of the Issuer, the Compliance Officer

shall recommend to the Board of Commissioners of the Issuer that this Policy be so amended or supplemented.

9. Taxable Governmental Bonds. Most of the provisions of this Policy, other than the provisions of Section 7 hereof, are not applicable to governmental bonds the interest on which is includable in gross income for federal income tax purposes (i.e. “taxable bonds”). If an issue of taxable governmental bonds is later refunded with the proceeds of an issue of tax-exempt governmental bonds, then the uses of the proceeds of the taxable governmental bonds and the uses of the facilities financed with the proceeds of the taxable governmental bonds will be relevant to the tax-exempt status of the refunding bonds. Therefore, if there is any reasonable possibility that an issue of taxable governmental bonds may be refunded, in whole or in part, with the proceeds of an issue of tax-exempt governmental bonds then, for purposes of this Policy, the Compliance Officer shall treat the issue of taxable governmental bonds as if such issue were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this Policy with respect to such taxable governmental bonds. The Compliance Officer shall seek the advice of Bond Counsel as to whether there is any reasonable possibility of issuing tax-exempt governmental bonds to refund an issue of taxable governmental bonds.

10. Build America Bonds; Recovery Zone Economic Development Bonds (Direct Payment). Section 54AA of the Code authorizes the issuance of taxable Build America Bonds. Under Section 54AA(d) of the Code, the term Build America Bond means any obligation (other than a private activity bond) if: (i) the interest on such obligation would (but for Section 54AA of the Code) be excludable from gross income under Section 103 of the Code; (ii) such obligation is issued before January 1, 2011; and (iii) the issuer makes an irrevocable election to have Section 54AA apply to such obligation. Section 54AA(g) of the Code authorizes the issuance of Qualified Bonds, commonly referred to as Direct Payment Build America Bonds or Build America Bonds (Direct Payment), with respect to which the issuer is allowed a credit under Section 6431 of the Code. The excess of the sale proceeds of a Qualified Bond (including any investment earnings on such proceeds), over the issuance costs financed by such Qualified Bond (to the extent that such costs do not exceed two percent (2%) of such proceeds), are referred to in this Policy as “Available Project Proceeds.” All Available Project Proceeds, less amounts in a reasonably required reserve fund, must be used for capital expenditures. Section 6431 of the Code provides that the United States Department of the Treasury is required to pay to the issuer of a Qualified Bond, on each interest payment date with respect to such Qualified Bond, an amount equal to thirty-five percent (35%) of the interest payable on such Qualified Bond.

Section 1400U-2 of the Code authorizes the issuance of taxable Recovery Zone Economic Development Bonds. Under Section 1400U-2(b) of the Code, the term Recovery Zone Economic Development Bond means any Build America Bond issued before January 1, 2011, the Available Project Proceeds of which, less amounts in a reasonably required reserve fund, are to be used for one or more “qualified economic development purposes.” The issuer also must make an irrevocable election to designate the bonds as Recovery Zone Economic Development Bonds under Section 1400U-2 of the Code. Section 1400U-2(a)(2) and Section 6431 of the Code provide that the United States Department of the Treasury is required to pay to the issuer of a Recovery Zone Economic Development Bond, on each interest date with respect to such bond, an amount equal to forty-five percent (45%) of the interest payable on such bond.

Since the interest on a Build America Bond (Direct Payment) or a Recovery Zone Economic Development Bond (Direct Payment) must be excludable from gross income under Section 103 of the Code (but for the election of the issuer to have Section 54AA of the Code or Section 1400U-2 of the Code, as the case may be, apply to such bond), the Build America Bond (Direct Payment) and the Recovery Zone Economic Development Bond (Direct Payment) must satisfy all the requirements of the Code and applicable Treasury Regulations that are conditions to the issuance and maintenance of tax-

exempt governmental bonds. Therefore, although Build America Bonds (Direct Payment) and Recovery Zone Economic Development Bonds (Direct Payment) are not tax-exempt bonds, for purposes of this Policy the Compliance Officer shall treat all Build America Bonds (Direct Payment) and Recovery Zone Economic Development Bonds (Direct Payment) as if such bonds were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this Policy with respect to such Build America Bonds (Direct Payment) or Recovery Zone Economic Development Bonds (Direct Payment).

11. Qualified Tax Credit Bonds. Section 54A of the Code authorizes the issuance of certain “Qualified Tax Credit Bonds” under certain circumstances. “Qualified Tax Credit Bonds” means a qualified forestry conservation bond, a new clean renewable energy bond, a qualified energy conservation bond, a qualified zone academy bond, or a qualified school construction bond. Section 6431(f) of the Code allows for the direct payment of a portion of the interest on Qualified Tax Credit Bonds (except for qualified forestry conservation bonds) to be made to the Issuer from the United States Department of the Treasury. All of the Available Project Proceeds of a Qualified Tax Credit Bond are to be used for the purposes required for each respective Qualified Tax Credit Bond (as further described in the Code). The issuer must make an irrevocable election to (i) designate bonds as Qualified Tax Credit Bonds under the Code, and (ii) subject a Qualified Tax Credit Bond to the direct payment subsidy option under Section 6431(f) of the Code.

Since the interest on a Qualified Tax Credit Bond must be excludable from gross income under Section 103 of the Code (but for the irrevocable election of the issuer to designate the bond as a Qualified Tax Credit Bond), the Qualified Tax Credit Bond must satisfy all the requirements of the Code and applicable Treasury Regulations that are conditions to the issuance and maintenance of tax-exempt governmental bonds. Therefore, although Qualified Tax Credit Bonds are not tax-exempt bonds, for purposes of this Policy the Compliance Officer shall treat all Qualified Tax Credit Bonds as if such bonds were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this Policy with respect to such Qualified Tax Credit Bonds.

In addition, to the extent that less than 100 percent of the Available Project Proceeds of a Qualified Tax Credit Bond are expended by the close of the three-year period beginning on the date of issuance of such Qualified Tax Credit Bond, or by the close of any extended period granted by the United States Secretary of the Treasury under Section 54A(d)(2)(B)(iii) of the Code, the Issuer must, as required by Section 54A(d)(2)(B)(i) of the Code, redeem all nonqualified bonds within 90 days after the end of the later of the initial three-year spending period or any extension of such period. The amount of nonqualified bonds to be redeemed shall be determined in the same manner as under Section 142 of the Code.

12. Qualified 501(c)(3) Bonds. If the Issuer issues bonds to finance a facility to be owned by the Issuer but which may be used, in whole or in substantial part, by a nongovernmental organization that is exempt from federal income taxation under Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code, the Issuer may elect to issue the bonds as “qualified 501(c)(3) bonds,” the interest on which is exempt from federal income taxation under Sections 103 and 145 of the Code and applicable Treasury Regulations. Although such qualified 501(c)(3) bonds are not governmental bonds, at the election of the Compliance Officer and after consultation with Bond Counsel, for purposes of this Policy, the Compliance Officer shall treat such issue of qualified 501(c)(3) bonds as if such issue were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this Policy with respect to such qualified 501(c)(3) bonds.

Adopted by the Board of Commissioners of Itasca County, Minnesota, this 22nd day of March, 2011.

ITASCA COUNTY, MINNESOTA

Board Chair

Attest:

County Coordinator

ITASCA COUNTY



REQUEST FOR BOARD ACTION

Requested Board Date: 03/22/2011	Originating Department: Auditor/Treasurer
Type of Meeting: County Board	Presenter: Jeff Walker
Item: Post-issuance compliance procedure and policy for tax-exempt governmental bonds.	Estimated Amount of Time Needed for Discussion: <input checked="" type="checkbox"/> < 5 minutes <input type="checkbox"/> 5 minutes <input type="checkbox"/> 10 minutes <input type="checkbox"/> 15 minutes <input type="checkbox"/> 30 minutes <input type="checkbox"/> > 30 minutes

Board Action Requested:

Amend the Itasca County Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds.

Background:

In 2009, Itasca County adopted a post-issuance compliance procedure and policy related to the Build America Bonds and the Recovery Zone Economic Development Bonds. The attached amended procedure and policy reflects the inclusion of the qualified energy conservation bonds issued by Itasca County in February, 2011.

Supporting Documentation: <input checked="" type="checkbox"/> Attached <input type="checkbox"/> None	
Item Classification for County Board Meeting: <input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Regular Agenda <input type="checkbox"/> Refer to <input type="checkbox"/> Table until <input type="checkbox"/> Other	Item History: 3/15/2011 Admin Division; Item #10 Date: 03/22/2011 Signature: <i>Jeffrey T. Walker</i>
Board Action: Approved as Requested: 3/22/2011 Denied _____ Tabled _____ Other: _____	Distribution / Filing Instructions: