

THE DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

RESOLUTION OF THE DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

May 31, 2012

WHEREAS, on May 24, 2012, The Internal Revenue Service issued Publication 5005, "Your Responsibilities As a Conduit Issuer of Tax-Exempt Bonds" ("IRS Guidance");

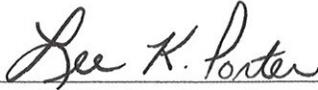
WHEREAS, the IRS Guidance outlines certain procedural consideration for conduit issuers;

WHEREAS, the Authority has consistently required post issuance compliance by Borrowers in its capacity as Conduit Issuer;

NOW, THEREFORE, the Authority, acting through its undersigned Chairperson and empowered to adopt procedures adopts the attached Post Issuance Compliance and Record Retention Policy to take effect immediately.

ATTEST:

THE DELAWARE ECONOMIC
DEVELOPMENT AUTHORITY



Lee K. Porter, Secretary, Council on
Development Finance



Alan B. Levin, Director, Delaware
Economic Development Office, as
Chairperson of The Delaware Economic
Development Authority



Post Issuance Compliance and Record Retention Policy

The Delaware Economic Development Authority (the "Authority") is a conduit issuer of tax-exempt bonds, notes and other obligations (collectively, the "Bonds"). As a conduit issuer, the Authority lends the proceeds of its Bonds to borrowers ("Borrowers") who are the ultimate users of the Bond proceeds. In order to ensure that the Internal Revenue Code of 1986, as amended (the "Code") and regulations promulgated thereunder (the "Regulations") (relating to the use and investment of proceeds) are being complied with by the Borrowers following the issuance of Bonds, the Authority will require that Borrowers adopt a Post-Issuance Compliance and Record Retention Policy (the "Policy"), a copy of which is attached hereto, prior to the issuance of Bonds.

The Policy sets forth specific guidelines designed to monitor post-issuance compliance of Bonds which have been issued for the benefit of the Borrower. The Policy documents existing practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Bonds in order that the interest on such Bonds be, or continue to be, excludable from gross income for federal income tax purposes. Pursuant to the Policy, the Borrower will monitor compliance in a timely manner with the applicable provisions of the Code and Regulations on an on-going basis during the entire term of the Bonds and request that the Authority take any remedial action, if necessary, to maintain the tax-exempt nature of the Bonds issued by the Authority for the benefit of the Borrower.

The Policy requires that the Borrower provide a certificate to the Authority on an annual basis stating that the Borrower, after such annual due inquiry and the maintenance of written records substantiating continued compliance, is in compliance with the Policy (or to the extent not in compliance stating such and providing a plan as to how such non-compliance will be addressed).

Post Issuance Compliance and Record Retention Policy

This Post-Issuance Compliance and Record Retention Policy (the "Policy") sets forth specific policies of [COMPANY] (the "Borrower") designed to monitor post-issuance compliance of tax-exempt bonds, notes and other obligations (the "Obligations") issued for the benefit of the Borrower by The Delaware Economic Development Authority (the "Authority") in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations promulgated thereunder (the "Treasury Regulations").

This Policy documents existing practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations in order that the interest on such Obligations be, or continue to be, excludable from gross income for federal income tax purposes. The Borrower recognizes that compliance with applicable provisions of the Code and Treasury Regulations is an on-going process, necessary during the entire term of the Obligations. Accordingly, the analysis of those facts and implementation of the Policy will require on-going monitoring and consultation with counsel beyond the scope of its initial engagement with respect to the issuance of particular Obligations.

As a starting point, the Borrower and its counsel will review at least annually the representations made in the tax certificate(s) (the "Tax Certificate") and the loan agreement(s) (the "Loan Agreement") executed by the Borrower at closing. In the event that any representations made in the Tax Certificate are no longer accurate, the Borrower shall contact the Authority.

This Policy is intended to supplement the requirements of the Loan Agreement and the Tax Certificate executed by the Borrower in connection with the Obligations. This Policy is not intended to supersede the covenants contained in the Loan Agreement or Tax Certificate.

Set forth below are the policies and procedures that the Borrower is adopting in order to maintain compliance with the federal tax laws relating to its Obligations.

1. Responsibility for Maintaining Compliance—Books and Records

The Borrower's compliance efforts are led by Lee Porter, or such person's designees. (Such persons are hereafter referred to as the "Compliance Coordinator").

The Compliance Coordinator shall establish a database for each issue of Obligations outstanding for the Borrower.

THE COMPLIANCE COORDINATOR SHALL MAINTAIN THE RECORDS RELATING TO EACH ISSUE OF OBLIGATIONS FOR THREE (3) YEARS AFTER THE DECEMBER 31 OF THE YEAR THAT THE LAST BOND OF A PARTICULAR ISSUE IS RETIRED. THUS IF A PARTICULAR BOND ISSUE IS RETIRED ON APRIL 7, 2012, RECORDS SHALL BE MAINTAINED FOR THE BOND ISSUE UNTIL DECEMBER 31, 2015.

2. Schedule of Reviews

The Borrower will establish routines for monitoring on-going compliance that are consistent with discovering any noncompliance in a timely manner so that it may be corrected. While specific review processes are described in detail below, timing for such reviews will be as follows:

- (a) Arbitrage Compliance: With respect to each issuance of Obligations, the Borrower will ensure that it understands at the time of bond closing which funds and accounts containing bond proceeds may become subject to yield-restriction investment rules and will keep a record of the dates upon which such rules will begin to apply.
- (b) Rebate Compliance: While rebate calculations must be performed in accordance with the requirements of the Loan Agreement and Tax Certificate, the Borrower will ensure upon the fifth anniversary date of the issuance date of the Obligations, every five years thereafter, and upon final retirement of the Obligations, that either no rebate is owed or provision has been made for the payment of any rebate owed within 60 days.
- (c) Change in Use/Ownership: Prior to executing any contract, lease or other document which would materially change the use of the bond-financed project or selling of any bond-financed property, the Borrower will (i) confirm that such change will not require a remedial action to be taken with respect to any Obligations, (ii) take a remedial action, if necessary, or (iii) discuss with bond counsel whether a voluntary closing agreement with the Internal Revenue Service is appropriate.

3. Tax Requirements Associated with Sale and Issuance of Obligations

Review and retention of tax documents related to the sale and issuance of Obligations will be supervised by the Compliance Coordinator.

- (a) The “issue price”, as defined in the Code, of the Obligations will be documented at the time of issuance. Certifications of an underwriter, placement agent or purchaser and a final numbers package will establish “issue price” and will be reviewed and included in the bond transcript or other records maintained for the bond issue.
- (b) The weighted average maturity (taking into account the various issue prices of the maturities of the bonds) will be documented at the time of issuance.
- (c) An estimated average economic life of the expected bond-financed projects will be documented at the time of issuance.
- (d) The proper IRS Form 8038 will be reviewed and filed not later than the 15th day of the 2nd calendar month following the calendar quarter in which the bonds were

issued. Filing of the IRS Form 8038 will be confirmed with the issuer and/or bond counsel.

4. **Expenditure of Proceeds**

Expenditure of proceeds of Obligations will be reviewed by the Compliance Coordinator.

- (a) Establish form and procedure for preparation and review of requisitions of bond proceeds.
- (b) Requisitions must identify the financed property in conformity with the “TEFRA” public approval for the Obligations, if applicable, and the Tax Certificate, including certifications as to the location and character of the bond-financed property.
- (c) Investment earnings on sale proceeds of the Obligations will be tracked and will be requisitioned only for appropriate expenditures.
- (d) The Borrower will verify that all costs for which it submits requisitions are capital expenditures, except as otherwise permitted under the Tax Certificate.
- (e) The Borrower will verify directly, or through its accountants, that the average economic life of the bond-financed projects, taking into account actual expenditures, complies with the requirement that the weighted average maturity of the Obligations is not more than 120% of the average economic life of the bond-financed projects.
- (f) Requisitions for costs that were paid prior to the issuance of the Obligations are, in general, limited to capital costs paid subsequent to, or not more than 60 days prior to, the date a “declaration of intent” to reimburse the costs was adopted by an authorized officer of the Borrower or by the issuer.
- (g) Costs of issuing the Obligations, including any underwriting discount or placement fee will be reviewed by the Borrower to ensure compliance with the Code. For example, in the case of "qualified private activity bonds," "small issue bonds" and "qualified 501(c)(3) bonds" no more than 2% of proceeds may be requisitioned to pay costs of issuing the Obligations.
- (h) Bond-funded reserve funds cannot exceed the least of (i) 10% of the par amount of the bonds (or the issue price of the Obligations, if there is more than a *de minimis* amount of original issue discount or premium), (ii) maximum annual debt service, and (iii) 125% of average annual debt service. The initial funding of any reserve fund will be measured against this limit.
- (i) Requisitions will be summarized in a “final allocation” of proceeds to uses not later than 18 months after the in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the Obligations).

- (j) Expenditure of proceeds should be measured against the Tax Certificate expectation to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the project and fully spend the net sale proceeds. To the extent that the Borrower is unable to comply with the above expectations, the reason for delay should be documented and retained with records regarding the issue.
- (k) Expenditure of proceeds will be monitored for compliance with spending exceptions to the rebate requirement, as follows:
 - (i) If the six-month spending exception applies, expenditure of gross proceeds will be monitored against the following schedule.
 - 100% within 6 months
 - (ii) If the 18-month spending exception applies, expenditure of gross proceeds will be monitored against the following schedule.
 - 15% within 6 months
 - 60% within 12 months
 - 100% within 18 months
 - (iii) If the two-year spending exception applies, expenditure of “available construction proceeds” will be measured against the following schedule.¹
 - 10% within 6 months
 - 45% within 12 months
 - 75% within 18 months
 - 100% within 24 months

5. **Use and Ownership of Bond-Financed Property-501(c)(3) Bonds**

Use of bond-financed property when completed and placed in service will be reviewed by the Compliance Coordinator.

- (a) Average non-exempt use of bond-financed property over the life of the issue cannot exceed 5% (3% if costs of issuance up to 2% are paid from bond proceeds) of the proceeds. For this purpose, non-exempt use includes use by business users, use by the Borrower in an unrelated trade or business subject to unrelated business income tax, and use of proceeds to pay costs of issuance. For this purpose, “proceeds” do not include amounts deposited in a reasonably required reserve fund.
- (b) Have expenditures of bond proceeds been made in accordance with the public approval requirements of Code Section 147(f)?

¹ Not available for "exempt facility bonds" or "small issue bonds".

- (c) Non-exempt use in each category will be determined annually as a percentage of total use of proceeds of the issue and will be reported on Form 990 Schedule K or recorded separately if Schedule K is not applicable.
- (d) Agreements with business users for lease, management, sponsored research, or any other potential non-exempt use of bond-financed property will be reviewed prior to execution for compliance with the 5% limit and reporting on Form 990 Schedule K, if applicable. This review will include a determination of whether any arrangement meets the safe harbors of Internal Revenue Service Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39, or, with respect to research arrangements, Rev. Proc. 2007-47. It will also include a determination of whether any arrangement meets the exception for incidental use under Treas. Reg. § 1.141-3(d)(5), the exception for general public use under Treas. Reg. § 1.141-3(c), or the exception for certain short-term arrangements under Treas. Reg. § 1.141-3(d)(3).
- (e) Unrelated trade or business use will be reviewed annually for compliance with the 5% limit and reporting on Schedule K, if applicable.
- (f) All contracts, leases or other arrangements providing special legal entitlement to use of bond-financed facilities will be reviewed prior to execution to ensure that they will not cause private use limits to be exceeded with respect to any issue of Obligations.
- (g) No item of bond-financed property will be sold or transferred to a non-exempt party without advance arrangement of a "remedial action" under the applicable Treasury regulations (see Treas. Reg. §§ 1.141-12 and 1.145-2).

6. **Use and Ownership of Bond-Financed Property-Other Non-Governmental Bonds**

Use of bond-financed property when completed and placed in service will be reviewed by the Compliance Coordinator.

- (a) Have bond proceeds been spent to acquire existing property? If yes, was the property identified at the time of closing?
- (b) Have expenditures of bond proceeds been made in accordance with the public approval requirements of Code Section 147(f)?
- (c) If your Obligations are "exempt facility bonds", have proceeds been spent for capital expenditures in accordance with the particular exempt facility rules and regulations applicable to your Obligations (e.g., water facilities)?
- (d) If your Obligations are "small issue bonds:"
 - (i) have the proceeds been spent for capital expenditures in accordance with the rules and regulations applicable to "small issue bonds?"

- (ii) are your Obligations in compliance with the \$20 million limitation?
- (iii) are your Obligations in compliance with the \$40 million limitation under Section 144(a)(10) of the Code?
- (iv) are your bond proceeds being used for "manufacturing" as described in Section 144(a) of the Code and the Regulations thereunder?
- (e) No item of bond-financed property will be sold or transferred to a non-exempt party without advance arrangement of a "remedial action" under the applicable Treasury regulations (see Treas. Reg. §§ 1.141-12 and 1.145-2).

7. **Investments**

Investment of bond proceeds in compliance with the arbitrage bond rules for arbitrage rebate will be supervised by Compliance Coordinator.

- (a) Guaranteed investment contracts ("GIC") will be purchased only using the three-bid "safe harbor" of applicable Treasury regulations (*see* Treas. Reg. § 1.148-5(d)(6)(iii)), in compliance with fee limitations on GIC brokers (*see* Treas. Reg. § 1.148-5(e)(2)(iii)); provided, however, that to the extent that the safe harbor provisions cannot be met, the Borrower will consult with bond counsel.
- (b) Other investments will be purchased only in market transactions.
- (c) In addition to the requirement contained in the Loan Agreement and the Tax Certificate, calculations of rebate liability will be performed by outside consultants at the end of construction and at least every fifth bond year.
- (d) Rebate payments will be made with IRS Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the issuer.
- (e) The date for the first rebate payment will be identified and entered in the records for the issue at time of issuance of the bonds.

8. **Refunding Issues**

When tax-exempt bonds are used to refund other bonds ("Refunded Bonds"), the new bonds ("Refunding Bonds") will be treated as having financed the property originally financed with the Refunded Bonds (or any bonds refunded by the Refunded Bonds), such that financed property must be tracked until the last bonds (whether Refunded Bonds or Refunding Bonds) attributable to that property are retired. The Compliance Coordinator will continue reviewing the use of the any bond-financed property until the last bonds attributable to that property are retired; except to the extent that tracking is no longer required due to the economic life of the property coming to an end.

9. **Additional Rules for Advance Refunding Bonds-501(c)(3) Bonds**

Refunding Bonds the proceeds of which are used to retire Refunded Bonds more than 90 days after the issue date of the Refunding Bonds are “Advance Refunding Bonds”. Advance Refunding Bonds have additional federal tax requirements in order to be tax-exempt bonds. In order to comply with these additional requirements, the Compliance Coordinator will:

- (a) Confirm directly, or in conjunction with a financial advisor and/or bond counsel, that the issuer does not issue Advance Refunding Bonds that would violate the limit on the number of advance refundings for any of its tax-exempt bonds;
- (b) Confirm directly, or in conjunction with a financial advisor and/or bond counsel, that the Refunded Bonds are being redeemed on their earliest call date or other allowable date;
- (c) Confirm directly, or in conjunction with a financial advisor and/or bond counsel, that all non-bond proceeds amounts going into any Refunded Bond escrow comply with the rules relating to mixed escrows (meaning escrows which are funded with bond proceeds and non-proceeds)(see Treas. Reg. § 1.148-9(c)(2));
- (d) To the extent that investments other than United States Treasury Securities – State and Local Government Series (“SLGs”) will be placed in an escrow, confirm directly, or in conjunction with a financial advisor and/or bond counsel, that SLGs were not a more efficient investment on the date of the bidding of any other type of investment; or, to the extent that SLGs sales have been suspended on such date, confirm that the safe harbors for determining the fair market value of yield-restricted defeasance escrows have been met (*see* Treas. Reg. 1.148-5(d)(6)(iii)). To the extent that SLGs are unavailable and the Borrower cannot obtain at least three bids to provide other investments, the Borrower will consult with bond counsel and a financial advisor on how to proceed;
- (e) To the extent that an escrow funded with Advance Refunding Bond proceeds requires future purchases of 0% SLGs in order to comply with the applicable yield restrictions, the Borrower will cause the issuer to purchase the 0% SLGs directly or, by written agreement, cause an escrow agent to purchase such SLGs. If the SLGs are to be purchased by an escrow agent, the Borrower will confirm that such SLGs have actually been purchased, or, to the extent SLGs sales are suspended, comply with alternate procedures (which currently are provided in Rev. Proc. 95-47); and
- (f) Determine whether it will measure private business use using a combined measurement period (meaning starting with the issue date of the Refunded Bonds and ending with the final retirement of the Refunding Bonds) or separate measurement periods for the Refunded Bonds and the Refunding Bonds; provided, that the Borrower may not use separate periods if the Refunded Bonds were not in compliance with the private business use limits measured from their date of issuance to the date of issuance of the Refunding Bonds.

10. Continuing Disclosure

The Compliance Coordinator is responsible for continuing disclosure obligations of the Borrower. Periodically, the Compliance Coordinator shall determine that required continuing disclosure undertakings have been prepared and filed with the MSRB in connection with the continuing disclosure agreement executed at the time of closing. For any Obligations issued on or after December 1, 2010, the Compliance Coordinator is also responsible for providing notice to the MSRB, or to any appointed disclosure agent for forwarding to the MSRB, of the following events:

- (a) Principal and interest payment delinquencies.
- (b) Non payment-related defaults, if material.
- (c) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (d) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (e) Substitution of credit or liquidity providers, or their failure to perform.
- (f) Adverse tax opinions or events affecting the tax status of the bonds.
- (g) Modifications to rights of bondholders, if material.
- (h) Bond calls (other than mandatory sinking fund redemptions), if material, and tender offers.
- (i) Defeasances of bonds.
- (j) Release, substitution, or sale of property securing repayment of any bonds, if material.
- (k) Rating changes.
- (l) Bankruptcy, insolvency, receivership or similar event of the Borrower.
- (m) The consummation of a merger, consolidation or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement, if material.
- (n) Appointment of a successor or additional trustee or the change of name of a trustee, if material.
- (o) Failure to provide annual financial information as required.

11. **Correction of Violations**

If the Borrower discovers a potential violation through its ongoing monitoring or otherwise, it will determine in conjunction with the Authority whether a violation actually exists. If it is found that a violation actually exists, the Borrower and the Authority will determine whether (i) any remedial actions are available (see Treas. Regs. §§ 1.141-12, 1.142-2, 1.144-2 and 1.145-2), or (ii) a voluntary closing agreement with the Internal Revenue Service is appropriate.

12. **Records**

Management and retention of records related to Obligations will be supervised by the Compliance Coordinator.

- (a) Retainable records pertaining to bond issuance include transcript of documents executed in connection with the issuance of the bonds and any amendments, and copies of rebate calculations and records of payments including Forms 8038-T.
- (b) Retainable records pertaining to expenditures of bond proceeds include requisitions, account statements and final allocation of proceeds.
- (c) Retainable records pertaining to use of property include all agreements reviewed for non-exempt use and any reviewed documents relating to unrelated business activity.
- (d) Retainable records pertaining to investments include GIC documents under the Treasury regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

13. **Training**

The Borrower will use its best efforts to ensure that any officers and employees responsible for carrying out these procedures are properly trained for that responsibility. Such training may include:

- (a) Ensuring access to the necessary records.
- (b) Ensuring that such persons have reviewed a copy of this Policy, the Tax Certificate and IRS Forms 8038 related to the relevant Obligations and filed IRS Forms 990 - Schedule K, if applicable.
- (c) Permitting attendance on free educational conference calls or webinars sponsored by the Internal Revenue Service, bond-related professional associations or law firms.

Cost permitting, such training may also include attendance at educational conferences and maintaining tax-exempt bond-related reference materials.

14. **Annual Certification**

On an annual basis, the Compliance Coordinator will file a certification with the Authority acknowledging that the Borrower is in compliance with the Policy and that the Obligations continue to meet the requirements of the Code and the Regulations. In the event that the Borrower discovers that the Obligations are not in compliance with the Code and the Regulations, the Borrower will provide the Authority with a plan as to how such non-compliance will be addressed.