



City of Philadelphia

TAX COMPLIANCE PROCEDURES TAX-EXEMPT BONDS

EXECUTIVE SUMMARY

In order to maintain compliance with IRS and Treasury Department regulations regarding tax-exempt bonds, the City of Philadelphia is adopting these policies and procedures. It will take a concerted effort by personnel in various City Departments and outside professionals as coordinated by the City Treasurer to ensure that the City remains in compliance with these rules and regulations. This document is the framework of that compliance. The purpose of this document is make City personnel aware of the compliance issues, the efforts needed to remain in compliance, as well as the ability to demonstrate that compliance.

The policies and procedures can be broken down into eight categories as follows:

1. Review of documents at time of bond issuance for private activity/use issues
2. Review of expenditures of bond proceeds
3. Review of existing projects for change in use/private use
4. Record keeping
5. Arbitrage/rebate compliance
6. Investment of bond proceeds
7. Tax and revenue notes issuance
8. Other items

TAX COMPLIANCE PROCEDURES TAX-EXEMPT BONDS

The Treasurer of the City of Philadelphia (the “Treasurer”) will be responsible for overall administration and coordination of these procedures and policies. The Treasurer will work with other members of the City Administration as described below as well as outside professionals to ensure that the City remains in compliance with the IRS rules and regulations regarding the tax-exempt status of bonds issued by the various entities of the City. Each Treasurer will be responsible for advising the next City Treasurer of their responsibilities pursuant to these procedures. This document will be part of the Treasurer’s Continuity Plan and will reside in the shared drive in the folder labeled “Post-Issuance Compliance.”

Scope: The procedures set forth herein apply to the following entities: The City of Philadelphia General Obligation (“GO”) bonds and Tax and Revenue Anticipation Notes (“TRANs”) as well as other tax-supported debt issued by the Philadelphia Authority for Industrial Development (PAID), the Philadelphia Municipal Authority (PMA), the Parking Authority and the Redevelopment Authority (“RDA”). This document applies to tax-exempt revenue bonds issued by the Philadelphia Water Department, the Philadelphia Airport, and the Philadelphia Gas Works. Certain sections of these procedures also apply to Private Activity Bonds (“PABs”).

A. Purpose

Issuers of tax-exempt “governmental bonds” and “qualified private activity bonds” (“PABs”) must comply with federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond-financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. The intent of following procedures and policies are intended to establish compliance by the City of Philadelphia (the “Issuer” or “the City”) with these rules in connection with the issuance of tax-exempt bonds. These Tax Compliance Procedures will also be used by the Issuer to ensure compliance with federal tax rules for its currently outstanding tax-exempt bonds.

B. Delegation of Responsibility

To the extent that any of the responsibilities set forth in these Tax Compliance Procedures are delegated to any other party, the Issuer will keep a record of such delegations with respect to each bond issue.

C. Schedule of Reviews

The Issuer 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:

1. Private (Non-Exempt) Use: All contracts, leases or other arrangements providing special legal entitlement to the use of bond-financed facilities will be reviewed prior

to execution to ensure that they will not cause the bonds to be considered (a) private activity bonds (in the case of tax-exempt governmental bonds) or exceed the private use limits as defined in Treasury Regulation §§ 1.141-2 and 1.141-3, or (b) in the case of PABs, such bonds will be considered nonqualified PABs. As defined in the Internal Revenue Code of 1986, as amended (the “Code”) Section 142(a) and Treasury Regulations §§ 1.142-1 and 1.103-8 (relating to PABs generally as well as Airport PABs).

For further definition of these private issues, refer to the websites:

http://www.taxalmanac.org/index.php/Treasury_Regulations,_Subchapter_A,_Sec._1.141-2

http://www.taxalmanac.org/index.php/Treasury_Regulations,_Subchapter_A,_Sec._1.141-3.

http://www.taxalmanac.org/index.php/Treasury_Regulations,_Subchapter_A,_Sec._1.142-1

http://www.taxalmanac.org/index.php/Treasury_Regulations,_Subchapter_A,_Sec._1.103-8

2. Arbitrage Compliance: With respect to each bond issue, the Issuer 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.
3. Rebate Compliance: While rebate calculations may be performed more often, the Issuer will ensure upon the fifth anniversary date of the issuance date of the bonds, every five years thereafter, and upon final retirement of the bonds, that either no rebate is owed or provision has been made for the payment of any rebate owed within 60 days.
4. 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 Issuer will (i) confirm that such change will not require a remedial action to be taken with respect to any bond issue, (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.

D. Tax Requirements Associated with Sale and Issuance of Bonds

Review and retention of tax documents related to the sale and issuance of bonds will be supervised by the Treasurer.

1. Issue Price. The “issue price” of the bonds will be documented at the time of issuance. Certifications of an underwriter, placement agent or purchaser and a final numbers package (if applicable) will establish “issue price” and will be reviewed and included in the bond transcript or other records maintained for the bond issue.
2. Weighted Average Maturity. 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.
3. Economic Life of Financed Assets. The estimated average economic life of the expected bond-financed assets will be documented at the time of issuance.

4. Information Reporting. The applicable Form 8038 will be reviewed and filed not later than the 15th day of the 2nd calendar month following the quarter in which the bonds were issued. Filing of the Form 8038 will be confirmed with bond counsel. In the case of commercial paper, the applicable Form 8038 will be filed in accordance with Treasury Regulation § 1.149(e)-1(e)(2)(ii).
5. Costs of Issuance. With respect to PABs, the issuance costs financed by an issue will not exceed two (2%) percent of the proceeds of the issue as described in Section 147(g) of the Code.
6. Bank Eligibility. The Issuer will follow the relevant provisions of Section 265 of the Code in the event that any issue of bonds is characterized as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code (relating to the disallowance of the interest deduction for indebtedness incurred by banks, thrift institutions and other financial institutions to purchase or carry tax-exempt obligations).
7. Volume Cap. For certain PABs, the Issuer will comply with the volume cap requirements in Section 146 of the Code.
8. Land. In connection with any PABs, not more than twenty-five (25%) percent of the "net proceeds" of an issue will be used for the acquisition of land; however in connection with any airport PAB, land acquired for noise abatement, wetland preservations or for future use of an airport will not be taken into account for purposes of this limitation provided that there is not other significant use of such land.
9. Acquisition of Existing Property. Any PABs issued to acquire existing property must identify the property in the relevant Tax Certificate and Agreement executed by the Issuer at closing and must comply with Section 147(d) of the Code.
10. Prohibited Facilities. No portion of the proceeds of PABs can be used to finance facilities described in Code Section 147(e).

E. Expenditure of Proceeds for Qualified Costs

1. Expenditures. Capital Budget and Treasurers will establish procedures for review of expenditures of bond proceeds, and maintain records of the date, amount and purpose of the disbursement. Requisitions must identify the financed property in conformity with the Tax Certificate and Agreement executed by the Issuer at closing, including any certifications as to the location and character of the bond-financed property. The Issuer will verify that all costs for which it requisitions bond proceeds are capital expenditures, except as otherwise permitted by the Tax Certificate and Agreement executed by the Issuer at closing.
2. Investment Earnings. Investment earnings on sale proceeds of the bonds will be tracked and will be requisitioned only for appropriate expenditures.

3. Debt Service Reserve Funds. Bond-funded reserve funds cannot exceed the least of (i) 10% of the par amount of the bonds (or the issue price of the bonds, 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.
4. Reimbursement. Requisitions for costs that were paid prior to the issuance of the bonds are, in general, limited to 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 the Issuer. If proceeds are used for reimbursement, a copy of the declaration will be obtained and included in the records for the bonds, if not already part of the bond transcript.
5. Final Allocation. 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 bonds).
6. Timing of Expenditures. Expenditure of proceeds will be measured against the Issuer’s expectations, as set forth in the Tax Certificate and Agreement executed in connection with the particular bond issue, 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. Expected expenditure schedules, project timelines, and plans and specifications will be maintained to support expectations. Reasons for failure to meet the expected schedule will be documented and retained in the records for the bonds.
7. Rebate Spending Exceptions. Expenditure of proceeds will be monitored for compliance with spending exceptions to the rebate requirement, as follows:
 - a. If the six-month spending exception applies, expenditure of gross proceeds will be monitored against the following schedule.

100% within 6 months
 - b. 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
 - c. If the two-year spending exception applies (not applicable for certain PABs), expenditure of “available construction proceeds” will be measured against the following schedule.

10% within 6 months
45% within 12 months

75% within 18 months
100% within 24 months

F. Use of Bond-Financed Property

Use of bond-financed property when completed and placed in service will be reviewed by the Treasurer. Use of bond-financed property must be measured separately for each bond issue.

1. Limit on Private (Non-Exempt) Use.
 - a. Governmental Bonds. Average annual private use of bond-financed property over the life of the issue cannot exceed 10% of the proceeds (or 5% if the use is unrelated to the governmental use or disproportionate to the governmental use). Private use will be determined annually as a percentage of total use of proceeds of the bond issue.
 - b. PABs. In connection with PABs, the following: inquiry will be made determine if the facilities are qualified facilities financed with PABs; determine whether 95% of the "net proceeds" of the issue were used for qualifying purposes.
2. Review of Contracts and Agreements. Contracts and agreements with private business users for the lease, management, sponsored research, or any other potential private/non-exempt use of bond-financed property will be reviewed prior to execution for compliance with the private use limits. 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). This paragraph 2 generally does not apply to PABs; instead, the statutory and regulatory requirements for PABs apply. The Issuer will consult the Tax Certificate and Agreement.
3. Tracking Private (Non-Exempt) Use. Agreements with private business users or non-profit organizations for lease or management or services contracts or other private business use involving bond-financed property will be tracked and aggregated with other private business uses for compliance with the 10% (or 5%) limit, as set forth in the Tax Certificate and Agreement for the applicable bonds. The Issuer will consult the Tax Certificate and Agreement in order to ensure ongoing compliance in the case of PABs regarding the proper use of the proceeds test.
4. Change in Use. 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* Treasury Regulations §§ 1.141-12 and 1.142-2.).

5. Limitation on Private Payment for Certain Bonds. With respect to PABs and certain governmental bonds, the Issuer will track payments of debt service on an issue that are directly or indirectly to be derived from payments used or to be used for a private business use. The Issuer will consult the Tax Certificate and Agreement in order to ensure on-going compliance with the private payment rules in Code Section 141 and Treasury Regulation § 1.141-4.

G. Investments and IRS Filings

Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the Treasurer.

1. Guaranteed Investment Contracts. Guaranteed investment contracts (“GIC”) will be purchased only using the three-bid “safe harbor” (*see* Treasury Regulations § 1.148-5(d)(6)(iii)), in compliance with fee limitations on GIC brokers (*see* Treasury Regulations § 1.148-5(e)(2)(iii)); provided, however, that to the extent that the safe harbor provisions cannot be met, the Issuer will consult with bond counsel.
2. Fair Market Value of Investments. Other investments will be purchased only in market transactions.
3. Yield-Restriction. Prior to the purchase of any investment, the Issuer will confirm that such purchase will not violate any rules relating to proceeds which must be invested a yield not in excess of the yield on the applicable issue of bonds.
4. Rebate Calculations. Calculations of rebate liability will be performed by outside consultants at the end of construction and at least every fifth bond year.
5. Rebate Payments. Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance of the applicable bonds and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee, if applicable. *See also* Treasury Regulation § 1.148-3(e)(2) for certain special rules regarding the timing of the payment of the rebate.
6. Note First Rebate Due Date. 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.

H. Refunding Issues

When tax-exempt bonds are used to refund other bonds (“*Refunded Bonds*”), the new bonds (“*Refunding Bonds*”) may 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 will be tracked until the last bonds (whether Refunded Bonds or Refunding Bonds) attributable to that property are retired, all in accordance with the Tax Certificate for the particular issue. The Treasurer 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.

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 governmental bonds (PABs) are not permitted to be advance refunded). In order to comply with these additional requirements, the Treasurer will:

1. Limit on Advance Refundings. 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 governmental bonds;
2. Proper Call Date. 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;
3. Mixed Escrows. 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 Treasury Regulations § 1.148-9(c)(2));
4. Non-SLGs Investments. 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* Treasury Regulations § 1.148-5(d)(6)(iii)). To the extent that SLGs are unavailable and the Issuer cannot obtain at least three bids to provide other investments, the Issuer will consult with bond counsel and a financial advisor on how to proceed;
5. Monitoring 0% SLGs. 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 Issuer will 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 Issuer 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
6. Private Use Measurement Period. 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 Issuer may not use separate measurement 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.

I. Short-Term Working Capital Financings

To the extent that the Issuer is issuing short-term obligations to finance restricted working capital expenditures (meaning non-capital expenditures of the Issuer for which no exception to Treasury Regulations § 1.148-6(d)(3)(i) applies)(“Working Capital Financing”), the Issuer will follow the following rules:

1. Expenditure of Proceeds. The Issuer will be responsible for reviewing when proceeds of TRANs are spent. TRAN proceeds shall be deemed allocated to working capital expenditures and, therefore spent, as of any date to the extent that the amount of the City’s working capital expenditures exceeds “available amounts” (as defined below) on such date.
2. The term “available amount” includes cash, investments, and other amounts held in accounts or otherwise by the City or any member of the same controlled group (as defined in Treas. Reg. § 1.150-1(e)) as the City if those amounts may be used by the City for current operating expenses without legislative or judicial action and without a legislative, judicial or contractual requirement that those amounts be reimbursed. In determining whether an amount is available, a reasonable working capital reserve is treated as *not* available. Based on all the facts and circumstances regarding the City’s operations and operating expenditure needs, the City may exclude a reasonable working capital reserve (“Working Capital Reserve”) for the purpose of computing its available amount. Such amount must be the lesser of (i) 5% of the City’s actual operating expenditures (whether capital or working capital) that were paid out of current revenues in the prior fiscal year (the “5% Amount”) or (ii) the Monthly Average Reserve (as defined below).
 - a. If the Issuer has not historically maintained a working capital reserve, then the Issuer will consult with bond counsel regarding whether it can treat a reasonable working capital reserve as unavailable. An example of how to determine whether the Issuer historically maintained a working capital reserve would be to average the beginning or ending monthly balances available for working capital expenditures (not including the proceeds of any bond issues) during the one year period preceding the Working Capital Financing. (See Treasury Regulation § 1.148-1(c)(4)(ii).)
 - b. The Monthly Average Reserve is computed using the average of the ending monthly balances in the General Fund (excluding unexpended TRAN proceeds) for any 12-month period ending within one year of the issue date of the TRAN. If the Monthly Average Reserve is less than the 5% amount described above the Monthly Average Reserve will be used as the Working Capital Reserve pursuant to Treas. Reg. § 1.148-1-(4)(ii).
3. Restricted Funds. To the extent that the Issuer has funds which are available, but restricted (as discussed in 1.b. above), the Issuer will document why it treated such funds as unavailable by keeping a list of such funds and the restrictions that are applicable to them. The Issuer will re-evaluate such funds prior to the issuance of a

Working Capital Financing and prior to a final allocation of proceeds of a Working Capital Financing to ensure that such funds should still be treated as unavailable.

4. Investment of Proceeds. If any proceeds of a Working Capital Financing remain unexpended 13 months after the issuance of the Working Capital Financing, such proceeds will be invested at yield not exceeding the yield on the Working Capital Financing; unless the Tax Certificate provides otherwise, or upon the advice of bond counsel. The City normally repays the TRAN within 12 months of issuance, no later than the end of the fiscal year in which the TRAN was issued.
5. Rebate. The Issuer will calculate and pay any rebate owed (as provided in Section G above) to the extent that the issuer has not spent 100% of the proceeds of the Working Capital Financing within six months of the issuance of the Working Capital Financing; provided, however, for this purpose, the proceeds of the Working Capital Financing will be considered spent if the Issuer achieves a cumulative cash flow deficit greater than 90% of the proceeds of the Working Capital Financing within the period beginning on the issue date of the Working Capital Financing and ending on the earlier of the date the deficit is achieved and six months after the issue date of the Working Capital Financing. “Cumulative cash flow deficit” means the excess of (i) expenses paid during the period which would ordinarily be paid out of or financed by anticipated tax or other revenues, over (ii) the aggregate amount available (other than from proceeds of the Working Capital Financing) during such period for the payment of such expenses. (See Section 148(f)(4)(b)(iii).) *For purposes of achieving the 90% cumulative cash flow deficit test, working capital reserves are treated as available.*
6. Records. The Issuer will make a final allocation of proceeds on its books showing that it spent the proceeds of the Working Capital Bonds using the proceeds spent last method. If the Issuer did not spend 100% of the proceeds of the Working Capital Financing within six months of issuance, the Issuer should also maintain records showing either (i) that it met the 90% cumulative cash flow deficit test within the applicable period, or (ii) maintain records showing the calculation and payment (if any) of rebate.

J. Post-Issuance Corrective Actions

The City expects that its compliance with the procedures outlined above will prevent any violations of federal tax rules pertaining to the Issuer’s outstanding tax-exempt governmental bonds (including any Refunded Bonds). However, if the Issuer discovers a potential violation through its ongoing monitoring or otherwise, it will determine in conjunction with its bond counsel whether a violation actually exists. If it is found that a violation actually exists, the issuer will determine whether (i) any remedial actions are available, or (ii) a voluntary closing agreement with the Internal Revenue Service is appropriate. Common examples of violations are as follows:

- a. Failure to purchase 0% SLGs at the appropriate time.
- b. Subsequent sale or other change in use of bond-financed property.

- c. Private (non-exempt) use of bond-financed property resulting in overall private use not expected at closing and in excess of the 10% (or 5%) de minimis limit for the particular bond issue.
- d. Post-issuance change in the terms of the bonds without proper reissuance analysis and actions, if necessary.
- e. Post-issuance purchase of the bonds by the Issuer, a borrower of bond proceeds or a related party to either, resulting in an extinguishment of the bonds without proper analysis and actions, if necessary.
- f. Failure to pay rebate in a timely manner.
- g. Improper reimbursement of expenditures (too old or not capital).
- h. Use of bond financed property in a manner other than prescribed for the particular PAB.

K. Records

Management and retention of records related to tax-exempt bond issues will be supervised by the Treasurer.

1. Records will be retained for the life of the bonds plus any Refunding Bonds plus three (3) years. This means that the Issuer will maintain records regarding Refunded Bonds until three years after the final Refunding Bonds (including through a series of refundings) is retired. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.
2. Retainable records generally include:
 - a. The transcript documents executed in connection with the issuance of the bonds (including the authorizing documents, offering materials, applicable Form 8038, and the Tax Certificate and Agreement, and any elections made with respect to the bonds, if applicable) and any amendments to such documents.
 - b. Records of expenditures of bond proceeds include requisitions, account statements and the final allocation of proceeds.
 - c. Records of the use of bond-financed property.
 - d. All agreements reviewed for private use.
 - e. Records pertaining to investments including GIC documents under the Treasury Regulations, records of purchase and sale of other investments,

SLGS subscriptions, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

- f. Records pertaining to rebate calculations and all rebated amounts paid to the United States Treasury.
- g. Documentation evidencing sources of payment or security for the bond issue.

L. Training

The Issuer 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 will include:

- 1. Ensuring access to the necessary records.
- 2. Ensuring that such persons have reviewed a copy of these procedures and the tax certificates and applicable Form 8038 related to the relevant bond issues.
- 3. Permitting attendance on free educational conference calls or webinars sponsored by the Internal Revenue Service, bond-related professional associations or law firms.
- 4. Permitting access to free educational websites, such as:
<http://www.irs.gov/taxexemptbond/index.html>

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

ADOPTED by City of Philadelphia

Signed: _____

Nancy E. Winkler

City Treasurer

Date: _____

Feb 3, 2012