



Financial Services/Controller Guideline Manual

#04-002 **Title:** Issuance and Post-Issuance Compliance Procedures for Tax-Exempt Financing

Effective Date: May 30, 2012

Revised Date

Purpose: MCCCCD has issued tax-exempt bonds and is able to issue other tax-exempt financings. Federal tax law encourages the District to develop issuance and post-issuance compliance procedures related to the financings. These written guidelines ensure the District's compliance with the conditions, restrictions, and requirements to preserve the tax-exempt status of the financings.

Source: Federal Tax Laws, Securities Exchange Commission (enforcement)

Policy Owner: Controller, Tax

Applicability: All tax exempt financing

Exceptions (if applicable): Not applicable

Policy:

Many conditions, restrictions and requirements must be complied with to permit and preserve the tax-exempt treatment of general obligation bonds, revenue bonds, lease-purchase agreements and other tax-exempt financings by the Maricopa County Community College District of Maricopa County, Arizona (the "District"). Prior to issuance, the District and its bond counsel will review the facts and the reasonable expectations to determine if the issue will comply with these conditions, restrictions and requirements at the time of issuance. There are certain actions the District must do after issuance to preserve the favorable tax treatment and certain actions of the District after issuance can adversely affect the tax treatment. In addition, the District must maintain proper records to demonstrate compliance. Because tax benefits may be critical to the investors' decision to purchase the bonds or other obligations, the District covenants to the bond purchasers to comply with all of the conditions, restrictions and requirements throughout the life of the bonds.

Failure to comply may cause the District to be (a) liable to the bondholders, (b) subject to enforcement action by the IRS and (c) subject to enforcement action by the Securities Exchange Commission. Therefore, it is important that the District take the necessary action to ensure compliance with the conditions, restrictions and requirements applicable to each bond or other financing. To ensure compliance, the District must identify a single person with overall compliance responsibility.

Procedures:

The Vice Chancellor of Business Services, or his or her designee, will be the responsible person and is referred to in these procedures as the "Bond Compliance Official." Anyone with any questions about the bonds, the proceeds of the bonds, the facilities financed with the bonds or compliance with the conditions, restrictions and requirements should discuss them with the Bond Compliance Official who shall, as necessary, discuss them with bond counsel. The Bond Compliance Official shall meet with bond counsel to discuss these requirements and from time to time any changes in these requirements. In the event the District fails to comply with these procedures, the Bond Compliance Official shall meet with bond counsel as soon as practicable after the discovery of the failure to comply in order to discuss the steps required to correct the noncompliance.

Investment of Proceeds Until Expended

Detailed records of investments and earnings will be made and kept by the District with respect to all bond proceeds.

Generally, proceeds of bonds cannot be invested at a yield higher than the bond yield unless during certain specific temporary periods. Therefore, prior to closing, the Bond Compliance Official will determine with bond counsel which funds do or do not qualify for a temporary period. Qualifying information will be set out in a tax certificate. No proceeds will be invested at a yield higher than the bond yield unless they qualify. If the actual facts regarding the use of proceeds changes from what was reasonably expected at closing, the Bond Compliance Official will discuss those changes with bond counsel to see if the temporary periods are changed.

Bond proceeds include the amount received from the sale of the bonds, amounts held in a payment or reserve fund for the bonds ***and investment earnings on those amounts***.

The proceeds will not be invested in any investment where a yield cannot be determined.

Any investment in a guaranteed investment contract or similar investment agreement will only be made in compliance with the bidding requirements as reviewed by bond counsel.

Bond proceeds will be invested so that they can be tracked separately from any other funds of the District. The District will work with the registrar, trustee or other applicable person or entity to be sure that invested earnings are properly allocated between bond proceeds and other funds.

Use of Proceeds

Detailed records will be made and kept by the District with regard to the use of bond proceeds. For each expenditure, the amount, date of and purpose will be recorded. If the project is also funded with non-bond proceeds, the records will reflect an allocation of expenditures between bond proceeds and other funds. No proceeds will be used to reimburse an expenditure made prior to the issue date of the bonds unless the reimbursement requirement, including the prior declaration of intent to reimburse, has been fully complied with and evidence of such compliance is maintained. The District's Governing Board by taking action, or the Vice Chancellor of Business Services, or his or her designee, is authorized to complete the declaration of intent to reimburse.

The District is expected to exercise diligence to expend the proceeds, to enter into within six months of the issue date a binding contract to expend at least 10% of the proceeds and to have expended most of the proceeds within three years. After the third anniversary of the issue, any remaining proceeds in the construction account must be yield restricted.

The Bond Compliance Official shall periodically review the progress of the projects and the expenditure of proceeds to ensure timely expenditure of proceeds.

Use of Bond Financed Facilities

Detailed records of the use of proceeds will identify those facilities that are financed in whole or in part with bond proceeds and must reflect the allocation of bond proceeds and other funds used. Any sale or lease to, or other agreement for use by, a private party in a trade or business can adversely affect the tax status of the bonds. The District will not sell or lease any bond financed property or enter into any agreement with non-governmental entities for use or management of any bond financed property without a thorough review by the Bond Compliance Official and bond counsel. While not a comprehensive list, the Bond Compliance Official will review the following types of transactions with bond counsel prior to entering into any agreement with non-governmental entities or persons: (a) the sale or lease of any bond financed property, (b) any management contracts with a food service provider or book store, (c) any research agreement and (d) public-private partnerships. The Bond Compliance Official shall periodically review the use of all bond financed facilities to ensure compliance with the private use restrictions. In the event the District takes action that causes the bonds to meet the private business tests or private loan financing test, the Bond Compliance Official shall meet with bond counsel as soon practicable after the issue is discovered to discuss the steps required to correct the noncompliance, including, if necessary, redeeming or defeasing all of the bonds that meet the private business tests or private loan financing test.

Arbitrage Rebate

Any time that bond proceeds are permitted to be invested at a yield higher than the bond yield, the amount earned over the bond yield is arbitrage. With certain exceptions, the District is obligated to pay over (rebate) to the United States any arbitrage earned. The District will keep complete and accurate records of all investments of bond proceeds and all information supporting any applicable exceptions to the rebate requirement and will retain or ensure that the registrar or trustee has retained a professional rebate consultant to review the records and prepare a report so that the District or the registrar or trustee can make any necessary rebate payments. Unless exempt, the District must, at a minimum, make payments at every fifth anniversary of the issue and upon final payment. The Bond Compliance Official will review any exemption prior to each fifth anniversary and upon final payment to determine if any facts have changed which might eliminate the exemption.

Record Retention

All records concerning the bond issue, including

- a) the transcript of the original proceedings,
- b) investment of proceeds,
- c) use and allocation of proceeds, including the declaration of intent to reimburse,
- d) non-governmental use of bond financed property,
- e) payment of principal and interest on the bonds,
- f) the interest rate or rates on the bonds from time to time, if variable,
- g) compliance with reimbursement requirements,
- h) refunding of all or part of the bonds, and
- i) payment of arbitrage rebate or information supporting any exemption to rebate

shall be kept for the life of the bonds plus three years (and in compliance with any State of Arizona records retention policies) and, if the bonds are refunded, for the life of all of the refunding bonds plus three years (and in compliance with any State of Arizona records retention policies).

Cross Reference: IRC §141; Chancellor Limitations 2.4.6 and 2.5.9.D; Gust Rosenfeld