

Heber Public Utility District Board of Directors

MEETING DATE: June 18, 2015

FROM: Laura Fischer, General Manager

SUBJECT: Adopt Resolution 2015-11 to Establish Tax-Advantaged Bonds
Post-Issuance Compliance Procedures

ISSUE:

Shall the Heber Public Utility Board of Directors adopt Resolution 2015-11 establishing tax-advantaged bonds post-issuance compliance procedures?

GENERAL MANAGER RECOMMENDATION:

Adopt Resolution 2015-11 establishing tax-advantaged bonds post-issuance compliance procedures.

FISCAL IMPACT:

None

BACKGROUND:

Bonds or other obligations (collectively, "bonds") that are issued by municipalities to finance or refinance public capital improvements or, under certain prescribed circumstances, to provide short term operating cash flow, are generally provided preferential treatment under federal tax laws. Such bonds include tax-exempt bonds and tax credit bonds and are commonly referred to by the Internal Revenue Service as "tax-advantaged bonds." These bonds are subject to federal tax requirements both at the time the bonds are issued and for as long as they remain outstanding. Failure by a municipality to comply with any applicable federal tax requirement with respect to tax-advantaged bonds jeopardizes their preferential treatment and could subject the issuer of non-compliant bonds to IRS penalties or civil liability.

Recently, the IRS has placed new focus on the importance for issuers to establish and adopt written procedures to monitor post-issuance compliance of tax-advantaged bonds, which focus is reflected in the recently amended IRS form to be filed upon the closing of a tax-exempt bond issue.

The proposed financing agreement between the District and the State Water Resources Control Board under the State Drinking Water State Revolving Fund (DWSRF), authorized by the Board on March 19, 2015, are an example of tax-exempt bonds. In addition, the District and the Heber Public Utility District Community Facilities District No. 2005-1 (Heber Meadows) (the "Heber Meadows CFD") have previously issued other bonds on a tax-exempt basis that are currently outstanding. In the future, the District, the Heber Meadows CFD, or another related entity of the District may issue other tax-advantaged bonds to finance or refinance public capital improvements within the District.

Related entities of the District, such as the Heber Meadows CFD, are considered subordinate entities of the District for federal tax purposes.

District staff currently monitors post-issuance compliance with federal tax requirements of outstanding bonds and refers questions on an as-needed basis to the District's financial advisor and bond counsel. Approval of this item would formalize and aid the District's monitoring process with written procedures that can be used as a checklist.

CONCLUSION:

Adopting Resolution 2015-11 and the attached post-issuance compliance procedures will help the District monitor compliance with applicable federal tax requirements as long as any tax-advantaged bonds to be issued in the future by the District, the Heber Meadows CFD, or any other related entity of the District are outstanding. These procedures advance recent IRS objectives and serve as a measure of added internal controls to assist the District in preventing violations from occurring, or timely correcting identified violations, to ensure the continued tax-advantaged status of the bonds.

ALTERNATIVES:

- 1) Do not adopt Resolution 2015-11, which will result HPUD being out of compliance with the IRS tax laws, and HPUD would not be able to complete the Finance Agreement with the State Water Board for our Water Plant Improvement Project.
- 2) Direct staff to modify the Resolution prior to adopting.
- 3) Provide alternate direction to staff.

Respectfully Submitted,

Laura Fischer, General Manager

Attachments:

Resolution 2015-11 with Exhibit A

RESOLUTION NO. 2015-11

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE HEBER PUBLIC UTILITY DISTRICT ADOPTING TAX-ADVANTAGED BONDS POST-ISSUANCE COMPLIANCE PROCEDURES

RECITALS:

WHEREAS, the Heber Public Utility District (the "District"), a public utility district duly formed and existing under the laws of the State of California, has issued bonds or otherwise incurred bonded indebtedness ("Tax-Exempt Bonds"), the interest on which is excluded from gross income for owners thereof for federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the District intends to issue additional Tax-Exempt Bonds from time to time; and

WHEREAS, the District may also, in the future, issue bonds or incur bonded indebtedness ("Tax Credit Bonds," and together with Tax-Exempt Bonds, "Tax-Advantaged Bonds") that entitle the District, the owners of the Tax Credit Bonds or another party to either a credit against federal income tax liability or a refundable credit from the United States Treasury; and

WHEREAS, issuers of Tax-Advantaged Bonds are required to comply with certain post issuance requirements in accordance with the Code; and

WHEREAS, as a matter of internal controls, the District desires to adopt the Tax-Advantaged Bonds Post-Issuance Compliance Procedures (the "Procedures"), as set forth in Exhibit A hereto;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE HEBER PUBLIC UTILITY DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The above recitals, and each of them, are true and correct.

Section 2. The Procedures, as set forth in Exhibit A, are hereby approved and adopted and shall be made applicable to all Tax-Advantaged Bonds issued by or on behalf of the District and its related entities (such as the Heber Public Utility District Community Facilities District No. 2005-1 (Heber Meadows)).

Section 3. The General Manager, in consultation with bond counsel, is hereby authorized to amend the Procedures from time to time as necessary or appropriate.

Section 4. The General Manager, the Finance Manager, and all other officers of the District are hereby authorized and directed, jointly and severally, to do any and all things, to effectuate the purposes of this Resolution and to implement the Procedures any such actions previously taken by such officers are hereby ratified and confirmed.

Section 5. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the Board of Directors of the Heber Public Utility District at a meeting duly held on June 18, 2015, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Eduardo Valdez-Belmonte, President

ATTEST:

Elizabeth German, Acting Secretary

EXHIBIT A

Heber Public Utility District
Tax-Advantaged Bonds Post-Issuance Compliance Procedures

(attached)

EXHIBIT A

TAX-ADVANTAGED BONDS POST-ISSUANCE COMPLIANCE PROCEDURES

1. BACKGROUND AND TRAINING

Bonds that receive preferential treatment under federal law are commonly referred to by the Internal Revenue Service as “tax-advantaged bonds”. These bonds are issued by or on behalf of state and local governments, such as the Heber Public Utility District and its related public entities such as the Heber Public Utility District Community Facilities District No. 2005-1 (Heber Meadows). These bonds are subject to federal tax requirements both at the time the bonds are issued and for as long as they remain outstanding. An issuer’s (or other party’s) failure to comply with any applicable federal tax requirement with respect to these bonds jeopardizes their preferential treatment.

While compliance with applicable federal tax requirements normally occurs at closing, other federal tax requirements require on-going monitoring after the issuance of the bonds. These requirements include filing a Form 8038 information return (8038-G for fully tax-exempt bonds, 8038-GC for fully tax-exempt bonds with an issue price of less than \$100,000, 8038 for tax-exempt (“qualified”) private activity bonds, 8038-B for Build America Bonds, or 8038-TC for tax credit bonds, such as qualified school construction bonds) and the issuer having reasonable expectations of on-going, post-issuance compliance.

Post-issuance federal tax requirements generally fall into two categories: (1) the use of proceeds and the use of bond-financed property; and (2) arbitrage yield restriction on investments and rebate. Use requirements require monitoring of the various direct and indirect uses of bond-financed property over the life of the bonds and calculations of the percentage of nonqualified uses. Arbitrage requirements also require monitoring over the life of the bonds to determine whether both the yield on investments acquired with bond proceeds are properly restricted and whether the District must file a Form 8038-T to pay a rebate or a yield reduction payment.

Post-issuance compliance procedures will help the District monitor compliance as long as the bonds remain outstanding and improve the District’s ability to identify noncompliance and prevent violations from occurring, or timely correct identified violations, to ensure the continued tax-advantaged status of the bonds.

The designated officer or employee (described in Section 2.A, below) and anyone assigned particular responsibilities in connection with the procedures described below must read the certificate regarding compliance with certain tax matters and/or tax covenants contained in the financing document (commonly referred to as the “tax certificate”) that are executed by the District in connection with each bond issue for a more complete explanation of the matters described in these Procedures. In addition, the designated officer or employee and anyone assigned particular responsibilities, should discuss these matters with bond counsel and meet with bond counsel for training related to these Procedures.

2. GENERAL ADMINISTRATION

A. Responsible Officers or Employees. The General Manager will designate the officer (e.g., the Finance Manager) or employee who will be responsible for compliance with each of the procedures set forth below. The General Manager will notify the current holder of that office, or the employee, of the responsibilities and provide that person a copy of these Procedures. The holder of the office, or the employee, may in turn designate other officers or employees and assign to them particular responsibilities for certain of these Procedures. Qualified consultants may assist in conducting the compliance procedures. The General Manager will be notified in writing of all such designations and assignments.

B. Reassignment of Responsibilities. Upon the transition of a designated officer or employee, the General Manager will advise the new officer or employee of the responsibilities under these procedures. If officer or employee positions are restructured or eliminated, the General Manager, or his or her designee will reassign responsibilities as necessary to ensure that all of the procedures listed below have been appropriately assigned.

C. Periodic Reviews. The designated officer or employee will conduct periodic reviews of compliance with these procedures and with the terms of any existing tax certificate relating to outstanding tax-advantaged bonds, such as fully tax-exempt bonds or Build America Bonds, to determine whether any violations have occurred. Such periodic reviews will occur at least once every six months. In the event that violations have occurred, bond counsel will be contacted immediately so that violations can be remedied through the remedial actions set forth in Section 1.141-12 of the Treasury Regulations, the Voluntary Closing Agreement Program described in IRS Notice 2008-31, or further guidance as may be provided by the IRS. Where necessary, violations will be reported to the IRS by submitting a VCAP request within 90 days after identification of the violation.

D. Changes or Modifications to Bond Terms. If any change or modification to the terms of tax-advantaged bonds is contemplated, the designated officer or employee will immediately contact bond counsel (a change or modification could result in a reissuance, which in the case of BABs, for example, would constitute a refunding of the BABs and thereby jeopardize their status).

E. Recordkeeping. For each issue of tax-advantaged bonds, the designated officer or employee will:

- (1) maintain a copy of the transcript of the documents relating to the bonds.
- (2) maintain records of all facilities and other costs (e.g., issuance costs, credit enhancement fees and capitalized interest) and uses (e.g., deposits to project funds and reserve funds) for which bond proceeds were spent or used (in the case of a qualified private activity bond, the conduit borrower will be responsible for providing the District with this information);
- (3) maintain records of investments and expenditures of bond proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and yield reduction payments, and any other records relevant to compliance with arbitrage restrictions (in the case of a qualified private activity bond, the borrower will be responsible for providing the District with this information in the event it is not otherwise available to the District);

(4) maintain all records described in these Procedures while any bonds of the issue are outstanding and during the three-year period following the final maturity or redemption of the bond issue or, if later, while any bonds that refund bonds of that original issue are outstanding and for the three year period following the final maturity or redemption date of the latest refunding bond issue; and

(5) maintain copies of all of the following contracts or arrangements with non-governmental persons or organizations or with the federal government: (a) the sale of any bond-financed facility; (b) the lease of any bond-financed facility (other than individual tenant leases in the case of qualified private activity multifamily rental housing bonds); (c) management or service contracts relating to a bond-financed facility (other than those entered into in connection with qualified private activity bonds); (d) research contracts involving research undertaken in a bond-financed facility (other than those entered into in connection with qualified private activity bonds); and (e) any other contracts involving “special legal entitlements” (such as naming rights or exclusive provider arrangements) with respect to a bond-financed facility (other than those entered into in connection with qualified private activity bonds).

3. IRS INFORMATION RETURN FILING

In cooperation with bond counsel, the designated officer or employee will ensure that the Form 8038-G (or other applicable Form 8038) is timely filed (on or before the 15th day of the second calendar month after the end of the quarter in which the bonds were issued) with respect to each tax-advantaged bond issue, including any required schedules and attachments.

4. INVESTMENT AND EXPENDITURE OF BOND PROCEEDS AND REBATE

A. Track Investments and Expenditures. The designated officer or employee will ensure the existence of an established accounting procedure for tracking the investment and the timely expenditures of bond proceeds, including investment earnings.

B. Reimbursement. Upon issuance of the bonds, the designated officer or employee will allocate bond proceeds to reimbursement of prior expenditures (assuming, if required, an appropriate declaration of intent to reimburse has been adopted). In the case of qualified private activity bonds, the designated officer or employee shall rely on information provided by the conduit borrower.

C. Final Allocations. The designated officer or employee will ensure that a final allocation of bond proceeds (including investment earnings) to qualifying expenditures is made if bond proceeds are to be allocated to project expenditures on a basis other than “direct tracing” (direct tracing means treating the bond proceeds as spent as shown in the accounting records for bond draws and project expenditures). This allocation must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years and 60 days after the issuance date of the bonds or 60 days after the bond issue is retired. In the case of qualified private activity bonds, the designated officer or employee shall rely on information provided by the conduit borrower, which shall be required to provide such information within the timeframe described in the preceding section.

D. Timely Expenditure of Bond Proceeds. Mindful of the expectations regarding the timing of the expenditures of bond proceeds set forth in the tax certificate, the designated officer or employee will monitor expenditures of bond proceeds, including investment earnings, against issuance date expectations for satisfaction of three-year (or five-year) temporary period from yield restriction on investment of bond proceeds. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

E. Yield. The designated officer or employee will make note of the “yield” of the bond issue, as shown on the Form 8038-G, 8038-B or other applicable Form 8038.

F. Temporary Periods and Yield Restriction. The designated officer or employee will review the tax certificate to determine the “temporary periods” for the bond issue, during which periods various categories of gross proceeds of the bond issue may be invested without restriction as to yield. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

G. Investment of Proceeds and Yield Restriction. The designated officer or employee will ensure that bond proceeds are not invested in investments with a yield above the bond yield following the end of the applicable temporary period unless yield reduction payments are to be made. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

H. Bidding Requirements. If purchasing investments other than publicly traded securities for immediate delivery (for example, a guaranteed investment contract or certificates of deposit), the designated officer or employee will consult with bond counsel to ensure that investments of bond proceeds satisfy IRS regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintain records to demonstrate satisfaction of such safe harbors. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

I. Credit Enhancement and Hedging Transactions. The designated officer or employee will consult with bond counsel before engaging in credit enhancement or hedging transactions with respect to a bond issue. The designated officer or employee will maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions.

J. Debt Service Fund. After all proceeds of a bond issue have been spent, the designated officer or employee will ensure that the debt service fund meets the requirements of a “bona fide debt service fund,” i.e., one used primarily to achieve a proper matching of revenues with debt service that is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of (i) the investment earnings on the fund for the immediately preceding bond year; or (ii) one-twelfth of the debt service on the bond issue for the immediately preceding bond year. To the extent that a debt service fund qualifies as a bona fide debt service fund for a given bond year, the investment of amounts held in that fund is not subject to yield restriction for that year. The designated officer or employee will consult with bond counsel before creating separate additional funds that are expected to be used to pay debt service on the bonds. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

K. Reserve Fund. The designated officer or employee will ensure that amounts of bond proceeds invested in any reasonably required reserve fund do not exceed the least of (each determined at the time of issuance of the bonds): (i) ten percent of the stated principal amount of the bonds (or the sale proceeds of the bond issue if the bond issue has original issue discount or original issue premium that exceeds two percent of the stated principal of the bond issue plus, in the case of premium, reasonable underwriter's compensation); (ii) maximum annual debt service on the bond issue; or (iii) 125 percent of average annual debt service on the bond issue. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

L. Escrow Fund. For an advance refunding escrow (where the escrow is established 90 or more days before the refunded bonds are to be redeemed) funded with taxable open market securities earning yields higher than the yield of the advance refunding bonds, assure that all or part of the escrow is invested in zero interest rate SLGS issued by the U.S. Treasury Department if needed to blend down the yield.

M. Gifts for Bond-Financed Projects. Before beginning a campaign that may result in gifts that will be restricted for use relating to a bond-financed facility (or, in the absence of such a campaign, upon the receipt of such restricted gifts), the designated officer or employee will consult with bond counsel to determine whether replacement proceeds may result.

N. Performance of Rebate Calculations. Subject to the small issuer exception and the exceptions described in the tax certificate, investment earnings on bond proceeds at a yield in excess of the bond yield generally must be rebated to the United States. The designated officer or employee will ensure that rebate calculations will be timely performed and payment of rebate amounts, if any, will be timely made. Rebate payments are generally due 60 days after the fifth anniversary of the issuance date of the bond issue, then in succeeding installments every five years. The final rebate payment is due 60 days after retirement (or early redemption) of the last bond of the issue. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

O. Rebate Consultant. The designated officer or employee will engage the services of an experienced rebate consultant to undertake rebate calculations described above for each bond issue. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

P. Spending Exceptions. If the six-month, 18-month, or 24-month spending exceptions from the rebate requirement (as described in the tax certificate) apply to the bond issue, the designated officer or employee will ensure that the spending of bond proceeds is monitored prior to semi-annual spending dates for the applicable exception.

Q. Follow-up on Rebate. After all bond proceeds have been spent, the designated officer or employee will ensure compliance with rebate requirements for any reserve fund and any debt service fund that is not exempt from the rebate requirement. In the case of qualified private activity bonds, the conduit borrower shall be required to comply with this section.

R. Filing of 8038-T. The designated officer or employee will make rebate and yield reduction payments timely and file Form 8038-T.

5. PRIVATE BUSINESS USE

A. Private Business Use. Use of bond proceeds or bond-financed property by a nongovernmental person (including the federal government) in furtherance of a trade or business activity is considered private business use. Any activity carried on by other than a natural person (individual acting as a member of the general public) is treated as a trade or business. Indirect uses of bond proceeds must also be considered in determining whether more than ten percent of the proceeds of a bond issue will be for a private business use. For example, a facility is treated as being used for a private business use if it is sold or leased to a nongovernmental person and the nongovernmental person's use is in a trade or business. The designated officer or employee will analyze any private business use of bond-financed facilities and, for each issue of bonds, determine whether the ten percent limit on private business use (five percent in the case of "unrelated or disproportionate" private business use) is exceeded and immediately contact bond counsel if either of these limits is exceeded. This section shall not apply to qualified private activity bonds.

B. Management and Service Agreements. Management contracts between governmental entities and certain private parties under which private parties receive compensation for services provided with respect to a bond-financed facility may result in private business use. Before entering into any new management agreement or service agreement relating to bond-financed facilities, the designated officer or employee will immediately contact bond counsel to review any such agreement to determine whether it may result in private business use. This section shall not apply to qualified private activity bonds.

C. Special Legal Entitlements. Before entering into any agreement providing special legal entitlements relating to a bond-financing facility, the designated officer or employee will immediately contact bond counsel to review such agreement. This section shall not apply to qualified private activity bonds.

6. PROCEDURES RELATING ONLY TO BUILD AMERICA BONDS AND TAX CREDIT BONDS

A. Limit on Premium. The designated officer or employee will consult with the financial advisor to ensure that the premium on each maturity (stated as a percentage of principal amount) does not exceed one-quarter of one-percent multiplied by the number of complete years to the earlier of the final maturity or, generally, the earliest optional redemption date for the bonds.

B. Two Percent Costs of Issuance Limitation. The designated officer or employee will consult with the financial advisor to ensure that the excess of the issue price (*i.e.*, the stated principal amount of the bonds plus the original issue premium or less the original issue discount) over the price at which the bond issue is sold to the investors at the initial bond offering, when combined with other issuance costs paid from bond proceeds, does not exceed two percent of the sale proceeds.

C. Review of Market Availability. The designated officer or employee will ensure that the financial advisor reviews the market trading activity after their sale date but before their issuance date to determine whether the market pricing is consistent with the issue price reported by the underwriter or original purchaser as of their sale date. Market trading information is generally available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (EMMA) (<http://www.emma.msrb.org>). A record of such determination, including copies of the market trading information, will be maintained.

D. Monitor Interest For Refundable Credit. In the case of BABs or tax credit bonds, the designated officer or employee will monitor the amount of interest payable on each interest payment date to ensure that the proper amount of direct payment (refundable credit) is requested on each Form 8038-CP.

E. Filing of 8038-CP. In the case of BABs or tax credit bonds, the designated officer or employee will ensure that IRS Form 8038-CP is timely filed with respect to each interest payment date (or each quarter in the case of certain variable rate bond issues).

F. Refundable Credit Payments to Proper Person. In the case of BABs or tax credit bonds, if the direct payments (refundable credits) to be made by the federal government with respect to the bonds will be paid to a person other than the issuer (*e.g.*, the bond trustee or the state or local government entity on whose behalf an authority issued the bonds, such as the California Statewide Communities Development Authority), the designated officer or employee will obtain and record the contact information of that person, and ensure that it is properly shown on Form 8038-CP so that the direct payment (refundable credit) will be made to the proper person.

G. Follow-up on Two Percent Costs of Issuance Limitation. In the case of BABs or tax credit bonds, in cooperation with the financial advisor, the designated officer or employee will ensure that no more than two percent of the sale proceeds are used to pay issuance costs.

H. Available Project Proceeds. In the case of BABs or tax credit bonds, the designated officer or employee will ensure that all of the sale proceeds and investment earnings, other than (i) sale proceeds used to pay issuance costs (up to the two percent limit described above) or (ii) deposited in a reasonably required reserve fund, are allocated to capital expenditures.