Debra J Allen

From: Kelley, Edwin J [KelleyE@bsk.com]
Sent: Tuesday, October 04, 2016 11:11 AM
To: Supervisor@newhavenny.com
Cc: Debra J Allen
Subject: Tax-Exempt Bond Post-Issuance Compliance
Attachments: SYRNY1-#2740291-v1-Resolution_Approving_Post-Issuance_Compliance_Policies.DOCX; p4079.pdf

Tim:

The Internal Revenue Service ("IRS") has recommended that all issuers of tax-exempt bonds adopt policies and procedures for compliance with the various provisions of the Internal Revenue Code of 1986, as amended (the "Code") that apply to tax-exempt bonds. Recently, IRS Form 8038-G, which is required to be filed by the Town for each note or bond issue was changed to add a question asking if the Town has established procedures to monitor the requirements of the Code that apply to the tax-exempt bonds being reported on the Form 8038-G. Also, in IRS Publication 4079 – Tax-Exempt Governmental Bonds, the IRS strongly encourages issuers to adopt post-issuance compliance policies. A copy of IRS Publication 4079 is attached.

Attached is a proposed resolution to be adopted by the Town Board that would adopt post-issuance compliance policies and procedures for tax-exempt bond obligations issued by the Town. We would encourage the adoption of these policies and procedures. We are available to go over the policies and procedures in more detail if you would like.

If the Town Board does approve the policies and procedures, please return to us a copy of the resolution for our files. Ed

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October ____, 2016

RESOLUTION OF THE TOWN OF NEW HAVEN, NEW YORK, AUTHORIZING AND ADOPTING POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES RELATING TO THE TOWN'S TAX-EXEMPT OBLIGATIONS

WHEREAS, the Town of New Haven, New York (the "Town") desires to ensure that the Town complies with applicable provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereto applicable to tax-exempt bond and note issues issued by the Town from time to time;

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of New Haven, New York as follows:

Section 1. The Post-Issuance Compliance Policies and Procedures attached hereto as Exhibit A (the "Post-Issuance Compliance Policies and Procedures") are hereby approved and adopted.

Section 2. The Town Supervisor is hereby authorized to take such actions, after appropriate consultation with the Town's bond counsel, as he or she deems necessary, appropriate or desirable to effect the implementation of the Post-Issuance Compliance Policies and Procedures and hereby further authorizes the Supervisor to delegate to such other Town officials, staff or employees as the Supervisor shall determine is necessary or appropriate, the responsibility to take certain specific actions called for by the Post-Issuance Compliance Policies and Procedures.

Section 3. This resolution shall take effect immediately upon its adoption.

STATE OF NEW YORK)
)SS.:
COUNTY OF OSWEGO)

I, Debra J. Allen, Clerk of the Town of New Haven, Oswego County, New York (the "Town"), DO HEREBY CERTIFY:

That I have compared the annexed abstract of the minutes of the meeting of the Town Board of the Town, held on the _____ day of October, 2016, including the resolution contained therein, with the original thereof on file in my office, and the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that the full Board of the Town consists of five (5) members; that _____(__) members of the Board were present at such meeting; and that _____ (__) of such members voted in favor of the above resolution.

I FURTHER CERTIFY that (i) all members of the Board had due notice of the meeting, (ii) pursuant to Article 7 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public, and due notice of the time and place of such meeting was duly given in accordance with Article 7 of the Public Officers Law, and (iii) the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this ____ day of October, 2016.

_____
Debra J. Allen, Clerk, Town of New Haven,
Oswego County, New York

(SEAL)

EXHIBIT A

TOWN OF NEW HAVEN
POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES
FOR TAX-EXEMPT BOND OBLIGATIONS

PURPOSE OF THIS POLICY

This Post-Issuance Compliance Policies and Procedures (this "Policy and Procedures") sets forth specific policies and procedures of the Town of New Haven, New York (the "Town") designed to ensure the Town complies with applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder (the "Treasury Regulations") applicable to tax-exempt bonds (the "Bonds") issued to finance Town facilities.

It is the Town's policy to fulfill all requirements that must be satisfied subsequent to the issuance of Bonds in order that interest on such obligations be, or continue to be, or would be but for certain provisions of the Code, excludable from gross income for federal income tax purposes. The Town recognizes that compliance with the applicable provisions of the Code and the Treasury Regulations is an on-going process, necessary during the entire term of the Bonds and is an integral component of the Town's debt management. Accordingly, the implementation of this Policy and Procedures will require on-going monitoring and, more than likely, ongoing consultation with legal counsel.

WHO NEEDS TO KNOW THE POLICIES AND PROCEDURES

This Policy and Procedures shall be communicated to all Town officers and staff with responsibility or control over any aspect of the Bond issuance, the investment or expenditure of Bond proceeds and the use of Bond-financed assets, including but not limited to those who manage, direct or influence the following:

1. The pre-issuance process and decision-making, including identification of eligible projects;

2. The expenditure of Bond proceeds and other Town funds for project costs;

3. The investment of Bond proceeds and other Town funds;

4. The use of all facilities and other assets financed or refinanced by Bonds, including use by the Town or by third parties pursuant to leases, management agreements, service agreements, fee-for-use or other arrangements;

5. The sale or other disposition of any facilities or other assets financed or refinanced by Bonds;

6. The creation and retention of documentation relating to expenditure of Bond proceeds, the use and disposition of Bond-financed assets, Arbitrage and tax return filings; and

7. The recording and reporting of financial transactions related to Bonds.

DEFINITIONS

"**Applicable Federal Law**" – Includes the Code and the Treasury Regulations, including Sections 141 through 150 of the Code and the related Treasury Regulations (Note: IRS Publication 4079: Tax-Exempt Governmental Bonds Compliance Guide provides guidance and explanation for most areas of tax-exempt financing relevant to the Town. The report of the Advisory Committee on Tax Exempt and Government Entities, entitled: After the Bonds are Issued: Then What?, is also a useful resource for explanation of Applicable Federal Law).

"**Arbitrage**" – Earnings from investment of Bond proceeds in excess of the amount that would have been earned had the funds been invested at the Bond yield, adjusted for certain expenses (i.e., investment yield higher than the Bond yield).

"**Private Business Use**" – Examples of Private Business Use include the use of Bond-financed assets by parties other than the Town including use by third parties pursuant to leases, management or service contracts that do not meet Internal Revenue Service ("IRS") requirements, and any other arrangements that provide third parties with special legal entitlements to use or occupy (or otherwise benefit from) Bond-financed property. Generally, no more than ten percent (10%) of Bond proceeds may be used for Private Business Use. The use of Bond proceeds is generally determined based on the use of the Bond-financed property.

"**Tax Certificate**" – The arbitrage and tax compliance certificate signed by the Town at the closing of a Bond issuance in which the Town makes certain representations, warranties and covenants relating to the expected use of the Bond proceeds, the tax eligibility of the projects and the Town's operations.

POLICY AND PROCEDURES

General Policy

It is the Town's policy to comply with all applicable laws, regulations and contracts applicable to Bonds, including all Applicable Federal Law, to ensure that interest on the Bonds remains exempt from federal income tax. Unless otherwise approved by the Town's legal counsel, the Town shall comply with the guidelines with respect to management contracts set forth in Revenue Procedure 97-13 (for contracts entered into prior to August 18, 2017) or Revenue Procedure 2016-44 otherwise, as the same may be amended and supplemented from time to time.

Responsibility for Monitoring Post-Issuance Tax Compliance

The Town's Supervisor (the "Supervisor") shall have primary responsibility for monitoring the Town's compliance with post-issuance federal tax requirements for Bonds, and for implementing/overseeing procedures necessary to ensure such compliance. The Supervisor shall communicate this Policy and Procedures to all appropriate Town personnel. The Supervisor may modify the detailed policies and procedures described herein as necessary to promote compliance with Applicable Federal Law.

Detailed Policies and Procedures

The Town shall abide by the following policies, and shall implement the following procedures, to ensure that interest on Bonds remains tax-exempt:

1. Expenditures of Bond Proceeds.

   a. Bond proceeds, including investment earnings thereon, shall be disbursed only for project costs, capitalized interest (i.e., interest payments during project construction), Bond issuance costs and other purposes expressly allowed under the Bond documents and authorizing bond ordinances. All Bond-financed property must be owned by the Town.

   b. If the Town intends to reimburse itself from Bond proceeds for project costs paid prior to issuance of the Bonds, the Town shall adopt a declaration of official intent to reimburse project costs. The Town shall consult with nationally recognized bond counsel to ensure the declaration of intent meets the requirements of Applicable Federal Law.

2. Final Allocation of Bond Proceeds. Promptly after the final expenditure of Bond proceeds, the Supervisor shall prepare a written report documenting the allocation of Bond proceeds (including interest earnings thereon) and other Town funds to project expenditures (the "Final Allocation"). In all cases, the Final Allocation shall be completed within 18 months after the later of the date Bond proceeds are expended or the date the project is placed in service, but not later than 5 years after the Bonds were issued. It is recommended that the Town consult with nationally recognized bond counsel in connection with the Final Allocation of Bond proceeds. Reminders should be placed in appropriate calendars to ensure Final Allocation of Bond proceeds are made timely.

3. Private Business Use of Bond-Financed Property.

   a. General. No more than ten percent (10%) of Bond proceeds may be used for Private Business Use, and such use may occur only in accordance with the Tax Certificate and Applicable Federal Law. The use of Bond proceeds is generally evaluated, for Private Business Use purposes, based on the use of Bond-financed assets. The following uses of Bond-financed property shall require the Supervisor's prior approval:

      (i) use by third parties (i.e., other than the Town), including but not limited to leases, licenses, fee-for-use or other arrangements;

      (ii) management or service contracts under which the manager or service provider's compensation is based, in whole or in part, on income from operation from the facility; and

(iii) any other use that could potentially be considered Private Business Use under Applicable Federal Law.

b. Annual Measurement of Private Business Use. The Supervisor shall maintain a record of all Bond financed property, including the amount of Bond proceeds allocated to each asset, which shall be based on the Final Allocation of Bond proceeds described above. The Supervisor shall annually review all uses of Bond financed property and determine the percentage of Private Business Use of Bond-financed property. The Supervisor shall maintain records of all Private Business Use, if any, of Bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that any Private Business Use is within permissible limits under Applicable Federal Law.

4. Change of Use. Any significant change in the use of Bond-financed property must be reported to the Supervisor prior to implementation. The Supervisor shall determine whether the proposed new use may constitute Private Business Use. If the use may be Private Business Use, the Supervisor shall consult with counsel for tax advice on whether that use or arrangement, if put into effect, will be consistent with the restrictions on Private Business Use and, if not, whether any "remedial action" permitted under the Code may be taken by the Town as a means of enabling that use.

5. Sale or Disposition. Any sale or other disposition of Bond-financed property must be reported to the Supervisor prior execution of any agreement of sale or other agreement of disposition. The Supervisor shall determine whether the Bond-financed property has any remaining useful life in accordance with the Tax Certificate and Applicable Federal Law, and if so, consult with nationally recognized bond counsel as to the requirements of Applicable Federal Law applicable to the sale or other disposition and the appropriate "remedial action" permitted by the Code that must be undertaken by the Town as a result of the potential sale or other disposition of the Bond-financed property.

6. Investment of Bond Proceeds; Arbitrage and Rebate.

a. Prior to expenditure for project costs, Bond proceeds shall be invested solely in compliance with the Local Finance Law, Applicable Federal Law and the Tax Certificate. The Town may invest Bond proceeds at a yield in excess of the Bond yield only during the applicable "temporary period" (as defined in the Code and the Treasury Regulations), and shall provide for yield restriction on the investment of such proceeds after the applicable temporary period. The Town shall ensure that investments acquired with proceeds of an issue are purchased at "fair market value," as defined in Treasury Regulations.

b. The Supervisor shall determine whether the Bonds are eligible for an Arbitrage rebate exception. If the Bonds are not exempt from Arbitrage rebate, the Supervisor shall compute the amount of Arbitrage earnings, and make all required rebate payments to the IRS, on each computation date required by Applicable

Federal Law. The Supervisor shall consider retaining an arbitrage rebate service provider to prepare arbitrage rebate calculations.

7. Reissuance. Before modifying any Bond terms, the Town shall consult with nationally recognized bond counsel to determine whether the proposed modification could potentially be treated as a "reissuance" of those Bonds for federal income tax purposes.

8. Filing of Returns. The Town will work with nationally recognized bond counsel to prepare and file any returns with the IRS relating to Arbitrage rebate in a timely manner. The Town will confirm with bond counsel that the information report required to be filed upon issuance of Bonds (e.g., Form 8038) was filed with the IRS on a timely basis.

9. Record Retention. Unless otherwise permitted by future Treasury Regulations or IRS guidance, written records (which may be in electronic form) will be maintained with respect to each Bond issue for as long as those Bonds (and any Bonds issued to refinance those Bonds) remain outstanding, plus three years. The records to be maintained shall include:

a. basic records relating to the Bond issuance including the official transcript of proceedings;

b. documentation evidencing expenditure of Bond proceeds including, but not limited to, purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of Bond issuance costs, and records of "allocations" of Bond proceeds to reimburse the Town for project expenditures made before the Bonds were actually issued;

c. records showing the specific assets financed with Bond proceeds (including assets to which Bond proceeds are allocated pursuant to the Final Allocation described above);

d. information, records and calculations showing that, with respect to each Bond issue, the Town was eligible for one of the Arbitrage rebate spending exceptions or, if not, that the Arbitrage rebate amount, if any, was calculated and timely paid to the IRS;

e. documentation evidencing use of Bond-financed property by public and private entities (including copies of leases and management contracts);

f. records showing that special use arrangements, if any, affecting Bond-financed property made by the Town with third parties, if any, are consistent with applicable restrictions on Private Business Use of property financed with proceeds of tax-exempt Bonds;

g. records of any sale or disposition of Bond-financed property, including terms of sale, and documentation of any "remedial action" undertaken as a result of the sale or other disposition; and

h. documentation pertaining to any investment of proceeds of the issue, including the purchase and sale of securities, calculations for each class of investments and actual investment income received and Arbitrage rebate calculations.

The purpose of the foregoing record retention policy is to enable the Town to readily demonstrate to the IRS, upon an audit of any Bond issue, that the Town has fully complied with all Applicable Federal Law requirements that must be satisfied after the issue date of the Bonds so that interest on those Bonds continues to be tax-exempt under the Code.

10. Consultation with Nationally Recognized Bond Counsel. The Supervisor shall consult with qualified legal counsel as appropriate to resolve questions relating to potential Private Business Use of Bond-financed assets, Final Allocation of Bond proceeds, Arbitrage rebate and other matters relating to compliance with Applicable Federal Law.

11. Corrective Actions. Upon discovering any violation of Applicable Federal Law including, but not limited to, excess Private Business Use, violation of Arbitrage restrictions or sale of Bond-financed assets, the Supervisor shall promptly consult with legal counsel to determine appropriate remedial action to correct such violation. If remedial action is not available, the Town will undertake to remedy the violation through the IRS Voluntary Closing Agreement Program (VCAP).

Adopted: _____, 2016