LYSANDER TOWN BOARD MEETING
8220 LOOP ROAD
BALDWINSVILLE, NEW YORK
October 17, 2016
Work Session 5:30 pm - Auditorium
Regular Meeting 7:00 pm - Auditorium

AGENDA
******Subject to Change******

Work Session:

1. Highway Equipment Reserve Fund
2. Parks Facilities Reserve Fund
3. Local law to override the tax levy limit established in GML §3-c
4. Willett Parkway granite curbing replacement
5. Department Budget

6. **Regular Meeting:**

I. **CALL TO ORDER**

II. **PLEDGE OF ALLEGIANCE**

III. **CITIZENS' COMMENTS**

IV. **TOWN BOARD COMMENTS**

V. **SUPERVISOR COMMENTS**

VI. **ADOPTION OF MINUTES** - September 26, 2016 and October 3, 2016

VII. **DEPARTMENT HEAD REPORTS**

VIII. **REGULAR AGENDA ITEMS**

A. **Motion made by Councilor ___________ seconded by Councilor ___________,** to establish a capital reserve fund to be known as the "Highway Equipment Reserve Fund" (hereinafter "Reserve Fund"). The purpose of this Reserve Fund is to accumulate moneys to finance the cost of a type of equipment. The type of equipment to be financed from the Reserve Fund is the acquisition of Highway equipment.

B. **Motion made by Councilor ___________ seconded by Councilor ___________,** to establish a capital reserve fund to be known as the "Parks Facilities Reserve Fund" (hereinafter "Reserve Fund"). The purpose of this Reserve Fund is to accumulate moneys to finance the cost of a type of capital improvement. The type of capital improvement to be financed from the Reserve Fund is the reconstruction or repair of Parks building facilities.

C. **Motion made by Councilor ___________ seconded by Councilor ___________,** to authorize the Town Clerk to advertise for a Public Hearing with respect to the adoption of a local law to override the tax levy limit established in GML §3-c. The Public Hearing regarding the local law will be held at 7:00 pm on Thursday, November 3, 2016, in the Auditorium at Town Hall, 8220 Loop Road, Baldwinsville, New York.

D. **Motion made by Councilor ___________ seconded by Councilor ___________,** to authorize a Public Hearing to be held with respect to the adoption of a local law to override the tax levy limit established in GML §3-c. The Public Hearing regarding the local law will be held at 7:00 pm on Thursday, November 3, 2016, in the Auditorium at Town Hall, 8220 Loop Road, Baldwinsville, New York.

E. **Motion made by Councilor ___________ seconded by Councilor ___________,** to approve the closing of the street, at the end of Mercer Street, as requested by resident Katie Kruger of 2133 Mercer Street, Baldwinsville, for a block party to be held on October 29, 2016 from the hours of 4:00 pm to 12:00 am.

F. **Motion made by Councilor ___________ seconded by Councilor ___________,** to authorize the Town Clerk to advertise for a Public Hearing to be held on November 10, 2016, at 7:00 pm at the Lysander Town Hall to hear such persons for or against any items relative to the Town of Lysander 2017 Preliminary Budget.

G. **Motion made by Councilor ___________ seconded by Councilor ___________,** to authorize a Public Hearing to be held on November 10, 2016, at 7:00 pm at the Lysander Town Hall to hear such persons for or against any items relative to the Town of Lysander 2017 Preliminary Budget.

H. **Motion made by Councilor ___________ seconded by Councilor ___________,** to authorize the Town of Lysander to levy unpaid 2016 water bills onto the 2017 Town/County tax bill.

I. **Motion made by Councilor ___________ seconded by Councilor ___________,** authorizing and adopting post-issuance compliance and procedures relating to the Town's tax-exempt obligations. Post-Issuance Compliance Policies and Procedures sets forth specific policies and procedures of the Town of Lysander, designed to ensure the Town complies with applicable provisions of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder applicable to tax-exempt bonds (the "Bonds") issued to finance Town facilities.

J. **Motion made by Councilor ___________ seconded by Councilor ___________,** to hire Debbie Wisinski in the Parks and Recreation Department at a rate of pay of $10 per hour plus the cost of supplies for jewelry making.

K. **Motion made by Councilor ___________ seconded by Councilor ___________,** to hire Kevin Paul in the Parks and Recreation Department at the rate of pay of $10 per hour to coach the Baldwinsville Youth Wrestling Program.

IX. ANNOUNCEMENTS

1. **Town Board Meeting:** Thursday, November 3, 2016, Work Session begins at 5:45 pm in the Auditorium.

2. **Public Hearing regarding 2017 Preliminary Budget:** November 10, 2016 at 7:00 pm (either in the Auditorium or Large Group Conference Room).

3. **Town Board Meeting:** Thursday, November 17, 2016, Work Session begins at 5:45 pm in the Auditorium.

4. Budget Work Sessions:

   October 19, 5:45 pm
   October 20, 5:45 pm (Tentative depending on progress)
   October 26, 5:45 pm

The Board may meet one additional time to discuss the budget if needed, on Tuesday, November 15, 2016, in the conference room at 5:45 pm. By Monday, November 21st 2016, the budget will be adopted in the auditorium.

5. Planning Board Meeting, Thursday, November 10, 2016 (either in the Auditorium or Large Group Conference Room).

6. Halloween Candy Hunt for kids, Monday October 31, 2016 9:00 am to 4:15 pm in Lysander Town Hall.

IX. ANNOUNCEMENTS

X. EXECUTIVE SESSION (if needed)

XI. ADJOURNMENT

Motion "A"

RESOLVED, that pursuant to Section 6-c of the General Municipal Law, as amended, there is hereby established a capital reserve fund to be known as the "Highway Equipment Reserve Fund" (hereinafter "Reserve Fund"). The purpose of this Reserve Fund is to accumulate moneys to finance the cost of a type of equipment. The type of equipment to be financed from the Reserve Fund is the acquisition of Highway equipment.

The chief fiscal officer is hereby directed to deposit and secure the moneys of this Reserve Fund in the manner provided by Section 10 of the General Municipal Law. The chief fiscal officer may invest the moneys in the Reserve Fund in the manner provided by Section 11 of the General Municipal Law, and consistent with the investment policy of the Town. Any interest earned or capital gains realized on the moneys so deposited or invested shall accrue to and become part of the Reserve Fund. The chief fiscal officer shall account for the Reserve Fund in a manner which maintains the separate identity of the Reserve Fund and shows the date and amount of each sum paid into the fund, interest earned by the fund, capital gains or losses resulting from the sale of investments of the fund, the amount and date of each withdrawal from the fund and the total assets of the fund, showing cash balance and a schedule of investments, and shall, at the end of each fiscal year, render to the Board a detailed report of the operation and condition of the Reserve Fund.

Except as otherwise provided by law, expenditures from this Reserve Fund shall be made only for the purpose for which the Reserve Fund is established. No expenditure shall be made from this Reserve Fund without the approval of this governing board and such additional actions or proceedings as may be required by Section 6-c of the General Municipal Law or any other law, including a permissive referendum if required by subdivision 4 of Section 6-c.

Motion "B"

RESOLVED, that pursuant to Section 6-c of the General Municipal Law, as amended, there is hereby established a capital reserve fund to be known as the "Parks Facilities Reserve Fund" (hereinafter "Reserve Fund"). The purpose of this Reserve Fund is to accumulate moneys to finance the cost of a type of capital improvement. The type of capital improvement to be financed from the Reserve Fund is the reconstruction or repair of Parks building facilities.

The chief fiscal officer is hereby directed to deposit and secure the moneys of this Reserve Fund in the manner provided by Section 10 of the General Municipal Law. The chief fiscal officer may invest the moneys in the Reserve Fund in the manner provided by Section 11 of the General Municipal Law, and consistent with the investment policy of the Town. Any interest earned or capital gains realized on the moneys so deposited or invested shall accrue to and become part of the Reserve Fund. The chief fiscal officer shall account for the Reserve Fund in a manner which maintains the separate identity of the Reserve Fund and shows the date and amount of each sum paid into the fund, interest earned by the fund, capital gains or losses resulting from the sale of investments of the fund, the amount and date of each withdrawal from the fund and the total assets of the fund, showing cash balance and a schedule of investments, and shall, at the end of each fiscal year, render to the Board a detailed report of the operation and condition of the Reserve Fund.

Except as otherwise provided by law, expenditures from this Reserve Fund shall be made only for the purpose for which the Reserve Fund is established. No expenditure shall be made from this Reserve Fund without the approval of this governing board and such additional actions or proceedings as may be required by Section 6-c of the General Municipal Law or any other law, including a permissive referendum if required by subdivision 4 of Section 6-c.

Work Session Item #3 and Motion Items "C" and "D"

Local Law Filing – Town of Lysander

Local Law No. 3 of the year 2016.

A local law to override the tax levy limit established in General Municipal Law 3-c.

Be it enacted by the Town Board of the Town of Lysander as follows:

§ 1. Purpose

It is the purpose of this local law to permit the Town Board for the Town of Lysander to override the limit on the amount of real property taxes that may be levied pursuant to General Municipal Law § 3-c, and to allow the Town Board to adopt a town budget for (a) town purposes (b) fire protection districts and (c) any other special or improvement district governed by the town board for the fiscal year 2016, which requires a real property tax levy in excess of the "tax levy limit" as defined by General Municipal Law § 3-c. Such override is necessary and in the best interests of the Town.

§ 2. Authority

This local law is adopted pursuant to subdivision 5 of General Municipal Law § 3-c, which expressly authorizes the Town Board to override the real property tax levy limit for the coming fiscal year by the adoption of a local law approved by vote of sixty percent (60%) of the Town Board.

§ 3. Tax Levy Limit Override

The Town Board of the Town of Lysander, County of Onondaga is hereby authorized to adopt a budget for the fiscal year 2016 that requires a real property tax levy in excess of the limit specified in General Municipal Law § 3-c.

§ 4. Severability.

If any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

§ 5. Effective date.

This local law shall take effect immediately upon filing with the Secretary of State.

RESOLUTION SCHEDULING PUBLIC HEARING
ON PROPOSED LOCAL LAW

WHEREAS a local law, being proposed Local Law No. 3 of 2016, a copy of which is attached hereto, was introduced at this meeting by a member of the Governing Body of the Town of Lysander, and

WHEREAS this Governing Body desires to hold a public hearing with respect to the adoption of said Local Law,

NOW, THEREFORE, BE IT RESOLVED that a public hearing be held by this Governing Body with respect to the adoption of the aforesaid Local Law, at 7:00 pm on October 17, 2016, at Town Hall, 8220 Loop Road, Baldwinsville, New York, and it is further

RESOLVED that the Town Clerk is hereby authorized and directed to cause public notice of said hearing to be given as provided by law.

RESOLUTION AUTHORIZING ADOPTION BY THE TOWN BOARD OF THE TOWN OF LYSANDER OF LOCAL LAW NO. 3, 2016

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Lysander for a public hearing to be held by said Governing Body on October 17, 2016 at 7:00 pm at Town Hall, 8220 Loop Road, Baldwinsville, New York, to hear all interested parties on a proposed Local Law entitled Override of Tax Levy Limit of the Town of Lysander, and

WHEREAS, notice of said public hearing was duly advertised in Baldwinsville Messenger, the official newspaper of said Town, on ________________, 2016, and

WHEREAS, said public hearing was duly held on ______________, 2016, at 7:00 pm at Town Hall, 8220 Loop Road, Baldwinsville, New York, and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said Proposed Local Law, or any part thereof, and

WHEREAS, pursuant to part 617 of the implementing regulations pertaining to article 8 State Environmental Quality Review Act (SEQRA) it has been determined by the Town Board of the Town of Lysander that adoption of said proposed Local Law would not have a significant effect upon the environment and could be processed by other applicable governmental agencies without further regard to SEQRA, and

WHEREAS, the Town Board of the Town of Lysander, after due deliberation, finds it in the best interest of said Town to adopt said Local Law.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Lysander hereby adopts said Local Law No. 3, entitled *Override of Tax Levy Limit of the Town of Lysander*, a copy of which is attached hereto and made a part of this resolution, and be it further

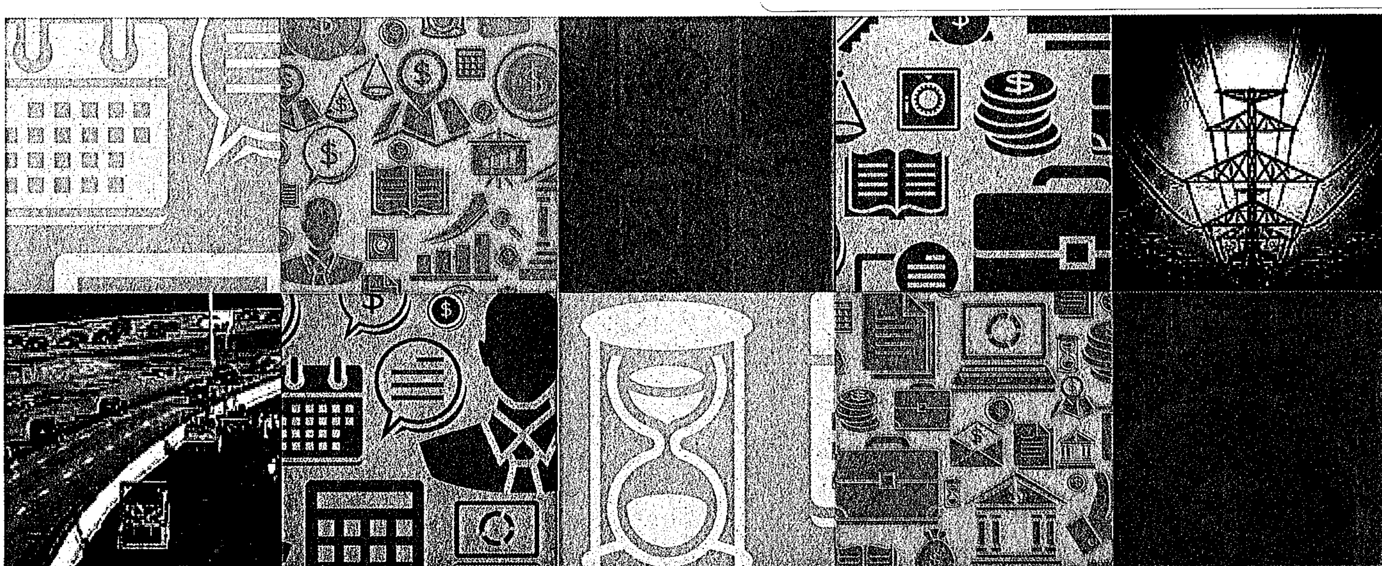
RESOLVED, that the Town Clerk be and she hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of Lysander, and to give due notice of the adoption of said Local Law to the Secretary of State of New York.

Tax Exempt & Government Entities

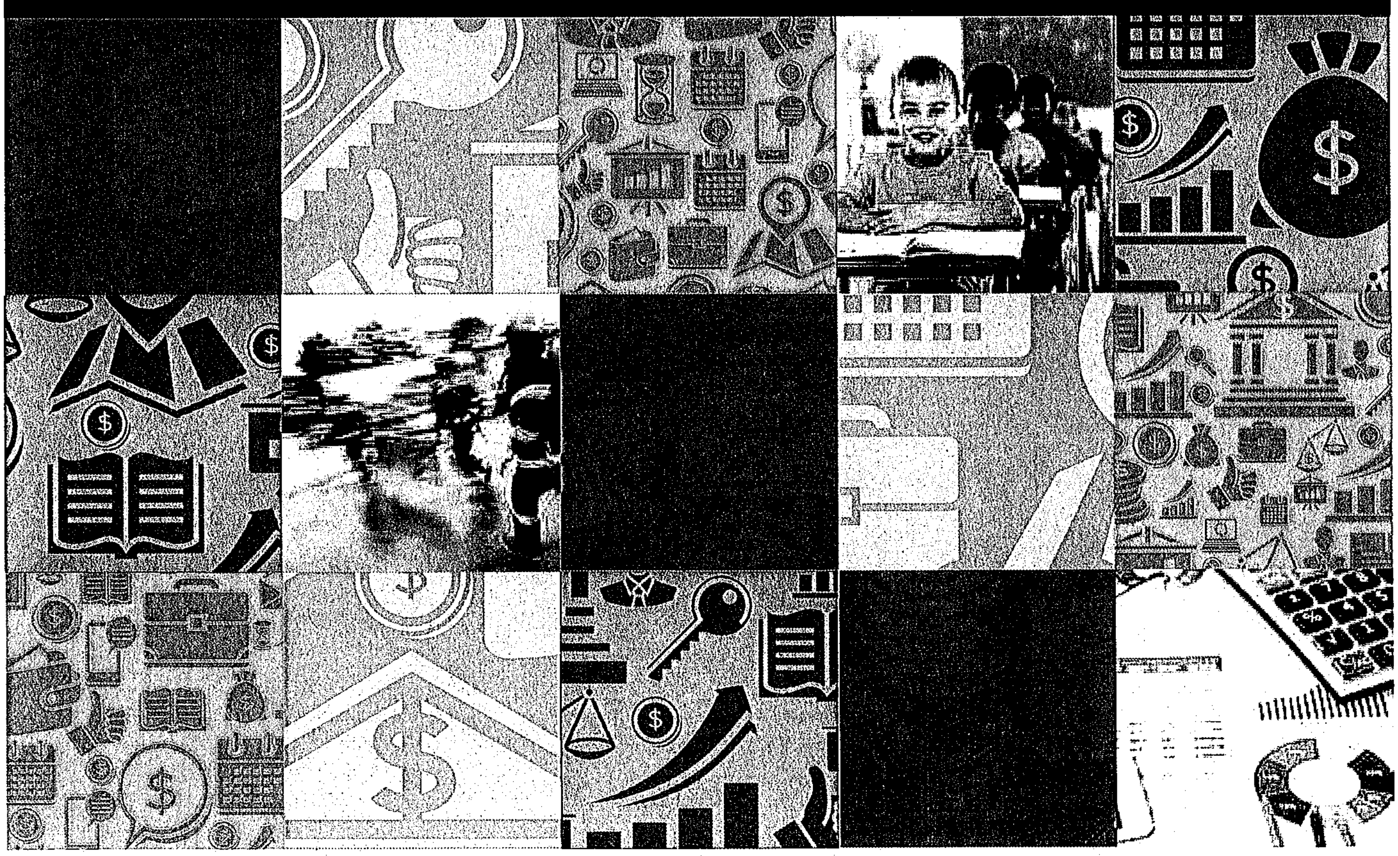
OFFICE OF
TAX EXEMPT BONDS

IRS

Motion "H"



Publication 4079
Tax-Exempt Governmental Bonds



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INTRODUCTION

The Office of Tax Exempt Bonds ("TEB"), of the Internal Revenue Service ("IRS"), Tax Exempt and Government Entities division, offers specialized information and services, including educational materials, to the municipal finance community.

This IRS Publication 4079, *Tax-Exempt Governmental Bonds* (the "Publication"), provides to state and local governments that issue tax-exempt bonds an overview of the federal tax law rules that apply to municipal financing arrangements commonly known as "governmental bonds." Certain exceptions or additional requirements to these rules, which are beyond the scope of this Publication, may apply to particular financing arrangements. This Publication is intended to help issuers meet applicable federal tax law requirements to ensure that interest earned by bondholders is exempt from taxation under Section 103 of the Internal Revenue Code (the "Code").

This Publication is an overview of the rules; it is not official guidance that taxpayers may rely upon for planning purposes. This Publication refers to various Code sections, income tax regulations (the "Regulations"), revenue procedures and other official guidance relating to the topics discussed. Please refer to the official guidance for the rules that apply to governmental bonds. Unless otherwise indicated, references in this Publication to section numbers are references to sections of the Code.

This Publication is only one of TEB's many outreach efforts. For publications regarding the general rules applicable to qualified 501(c)(3) bonds or other qualified private activity bonds, see IRS Publication 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations* and IRS Publication 4078, *Tax-Exempt Private Activity Bonds*, respectively. For an overview of an issuer's responsibilities in a conduit financing arrangement, see IRS Publication 5005, *Your Responsibilities as a Conduit Issuer of Tax-Exempt Bonds*. TEB also provides detailed information on specific provisions of the tax law through other IRS publications and through outreach efforts as noted on the TEB website at www.irs.gov/Tax-Exempt-Bonds. See also TEB INFORMATION AND SERVICES, at the end of this Publication.

BACKGROUND

State and local governments receive direct and indirect tax benefits under the Code that lower borrowing costs on their valid debt obligations. Because interest paid to bondholders on these obligations is not includable in their gross income for federal income tax purposes, bondholders are willing to accept a lower interest rate than they would accept if the interest was taxable. These benefits apply to many different types of municipal debt financing arrangements including bonds, notes, loans, lease purchase contracts, lines of credit and commercial paper (collectively referred to as "bonds" in this Publication).

To receive these benefits, issuers must ensure that the requirements under the Code are met, generally for as long as the bonds remain outstanding. These requirements include, but are not limited to, information filing and other requirements related to issuance, the proper and timely use of bond-financed property, and limitations on how bond proceeds (funds derived from the sale of bonds) may be invested. This Publication describes these rules as they relate to governmental bonds.

This Publication also addresses practices and steps the issuer can take to protect the tax-exempt status of the bonds. For example, because the requirements and limitations generally apply at the time the bonds are issued and throughout the term of the bonds, this Publication encourages issuers and beneficiaries of tax-exempt bonds to create procedures for monitoring compliance throughout the life of the bonds. For more information, see the discussion below in the section titled POST-ISSUANCE COMPLIANCE MONITORING.

TAX-EXEMPT GOVERNMENTAL BONDS

Governmental bonds are bonds that **do not** meet the private activity bond tests described in this section. Proceeds of these bonds may be used to finance activities of, or facilities owned, operated or used by, the issuer for its purpose or another state or local government for its own purposes. This can include financing the construction, maintenance or repair of various types of public infrastructure such as highways, schools, fire stations, libraries or other types of municipal facilities. To be tax-exempt, governmental bonds must comply with the requirements that define governmental bonds and requirements that apply to tax-exempt bonds generally.

In this section, we discuss the tests for determining whether a bond is a governmental bond or a private activity bond. These tests apply at issuance and after the bonds are issued. This discussion includes remedial action provisions that apply when a deliberate action causes governmental bonds to become private activity bonds. If a deliberate action that results in a violation of any of the federal tax requirements cannot be corrected under the remedial action provisions, issuers may be able to enter into a closing agreement under the TEB Voluntary Closing Agreement Program ("TEB VCAP") described in Notice 2008-31, 2008-11 I.R.B. 592 (see WHAT TO DO UPON DISCOVERING A VIOLATION – TEB VOLUNTARY CLOSING AGREEMENT PROGRAM at the end of this Publication).

Testing for Governmental Bonds: The Private Activity Bond Tests

Section 141 of the Code sets forth tests to determine if a bond is private activity bond. These tests identify arrangements that actually, or are reasonably expected to, transfer benefits of tax-exempt financing to a nongovernmental person. A "nongovernmental person" is a person other than a governmental person. A governmental person means a state or local government as defined in section 1.103-1 of the Regulations or any instrumentality of such entity. Governmental persons do not include the United States or any agency or instrumentality of the United States.

A state or local bond will be a private activity bond if, as of the issue date of the bonds or at any time while the bonds are outstanding, the bond issue exceeds the limits set forth in either:

- the private business tests of Section 141(b), which consist of the private use test and the private security and payment test, and certain special private business rules (see Special Private Business Test Rules and Special Rules for Certain Utility Financings, below), or
- the private loan financing test of Section 141(c).

The bond issue exceeds the limits set forth in the private activity bond tests as of the issue date if the issuer or a conduit borrower of the bond proceeds reasonably expects that the issue will exceed the limits while the bonds are outstanding. A bond issue also exceeds the limits set forth in the private activity bond tests after the issue date if a deliberate action is taken that causes those limits to be exceeded.

If a bond is a private activity bond, interest on the bond may still be excludable from federal income tax if the bond issue meets the additional requirements that apply to qualified private activity bonds. For a discussion of these additional requirements, see IRS Publication 4078, *Tax-Exempt Private Activity Bonds*.

Private Business Tests

Under Section 141(b) of the Code, a bond issue exceeds the limits of the private business tests, and therefore does not qualify as a governmental bond issue, if the issue exceeds the limit of the private business use test **and** also exceeds the limit of the private security or payment test.

Private Business Use Test. A state or local bond issue exceeds the limit of the private business use test if more than 10 percent of the proceeds of an issue are to be used for any private business use. Use of bond proceeds or bond-financed property by a nongovernmental person (individual or entity) in furtherance of a trade or business activity is considered private business use for tax-exempt bond purposes. For this purpose, any trade or business activity of a natural person is treated as a trade or business, and any activity carried on by a person (including a governmental entity or corporation) other than a natural person is treated as a trade or business.

Indirect uses of proceeds must also be considered in determining whether more than 10 percent of the proceeds of an issue will be used in a private business use. For example, property is treated as being used for a private business use if it is leased to a nongovernmental person and then sub-leased to a governmental person if the nongovernmental person's use is in a trade or business.

Many types of arrangements can result in private business use under Section 141 of the Code at issuance or later, including management and service contracts and research agreements.

Management and Service Contracts. Contracts for a private entity to manage a bond-financed facility may cause the private business use test to be met. For example, a management contract between a governmental entity and a nongovernmental person under which the nongovernmental person receives compensation for services provided with respect to bond-financed property may result in the bonds meeting the private business use test.

The IRS has provided safe harbors protecting against private business use for management and service contracts between a private entity and a governmental entity when such service is provided in connection with bond-financed property. For more information, see Revenue Procedure 97-13, 1997-5 I.R.B. 18, as modified by Revenue Procedure 2001-39, 2001-28 I.R.B. 38, and as amplified by Notice 2014-67, 2014-46 I.R.B. 822. Contracts that fail the safe harbor do not automatically meet the private business use test; all facts and circumstances are considered to determine whether the contract meets the test.

Research Agreements. Research agreements may also cause the private business use test to be met. For example, when private entities or the federal government sponsor research at a facility financed with tax-exempt bonds, such research agreements may result in the bonds meeting the private business use test. However, the IRS has provided safe harbors for research agreements. For more information, see Revenue Procedure 2007-47, 2007-29 I.R.B. 108. As with management contracts, failure to meet the safe harbors does not automatically cause the private business use test to be met.

NOTE: If an issuer determines that its bonds meet the private business use test, the bonds have not met the private business tests unless the bonds also meet the private payment or security test.

Private Security or Payment Test. A state or local bond exceeds the limit of the private security or payment test if more than 10 percent of the proceeds of the bond issue is (under the terms of the issue or any underlying arrangement) directly or indirectly (1) secured by any interest in property used or to be used for a private business use or payments in respect of such property, or (2) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use. For example, lease payments made by private businesses to a city for the lease of property in a blighted area that was rehabilitated with proceeds of the city's bonds would be treated as private payments.

NOTE: If an issuer determines that its bonds meet the private security or payment test, the bonds have not met the private business tests unless the bonds also meet the private business use test.

Special Private Business Test Rules. Additional limits on private business activity apply when private business use is unrelated to the governmental use, when private business use is disproportionate to the governmental use, and when the "nonqualified amount" exceeds $15 million.

Unrelated and Disproportionate Use. Section 141(b)(3) of the Code provides an additional limit for unrelated and disproportionate business use, which is lower than the limits in Sections 141(b)(1) and 141(b)(2). In particular, it limits unrelated or disproportionate private use of assets financed with governmental bonds to 5 percent of the proceeds of the bonds. The rule also reduces the private security or payment test limit to 5 percent. For this purpose, only payments, property and borrowed money with respect to the unrelated or disproportionate use are taken into account.

Unrelated use is private use that is not related to the governmental use of the issue. Whether a private business use is related to a government use financed with the proceeds of an issue is determined on a case-by-case basis, emphasizing the operational relationship between the government use and the private business use. In general, a facility that is used for a related private business use must be located within, or adjacent to, the governmentally-used facility.

Example: A county issues bonds with proceeds of $20 million and uses $18.1 million of the proceeds for construction of a new school building and $1.9 million of the proceeds for construction of a privately operated cafeteria in its administrative office building, which is located at a remote site. The bonds are secured, in part, by the cafeteria. The $1.9 million of proceeds is unrelated to the governmental use (that is, school construction) financed with the bonds and exceeds 5 percent of $20 million. Thus, the issue exceeds the limit under the private business tests.

A private business use is disproportionate to a related government use only to the extent that the amount of proceeds used for that private business exceeds the amount of proceeds of the issue used for the related government use. For example, a private use of $100 million of proceeds that is related to a government use of $70 million of proceeds results in $30 million of disproportionate use.

When unrelated use and disproportionate use occur in the same bond issue, the two uses are aggregated to test against the 5 percent limit. Additional examples of application of the unrelated or disproportionate private use limits may be found in section 1.141-9(e) of the Regulations.

Remedial Actions for Unrelated or Disproportionate Use. A deliberate action that occurs after the issue date does not result in unrelated or disproportionate use if the issue meets the remedial action provisions in Regulation section 1.141-12(a), discussed below in Remedial Actions for Nonqualified Use.

The $15 Million Limit on the Nonqualified Amount. An additional limit may apply even though the “nonqualified amount” of proceeds does not exceed 10 percent of the proceeds of the bonds (or a lesser amount of unrelated or disproportionate use of proceeds), and therefore the private activity limits discussed above have not been exceeded. The nonqualified amount is the lesser of the amount of proceeds used in private business use or the amount of proceeds with respect to which there are private payments or security. Section 141(b)(5) provides that an issue of bonds will be private activity bonds if the nonqualified amount exceeds $15 million, unless the issuer applies state volume cap under Section 146 to the excess of the nonqualified amount over $15 million. For additional information on the state volume cap limit under Section 146, see IRS Publication 4078, *Tax-Exempt Private Activity Bonds*.

Special Rules for Certain Utility Financings. There are two additional limits that issuers of bonds for utility projects should consider. The first limit, under Section 141(b)(4), applies if 5 percent or more of the proceeds of the issue are to be used to finance any “output facility,” as defined in the Regulations (other than a facility for the furnishing of water). Section 141(b)(4) limits the nonqualified amount of proceeds of a governmental bond issued to finance such output facilities to $15 million. This rule applies in addition to the tests under Section 141(b)(1) and (2). In applying this limit, issuers must include the nonqualified amounts with respect to any prior outstanding tax-exempt bond issues for which 5 percent or more of the proceeds of the prior issue are or will be used with respect to either the same output facility or another output facility that is part of the same project. If the nonqualified amount exceeds $15 million, the bonds are private activity bonds.

Under the second limit, bonds will be private activity bonds if the amount of the proceeds of the issue that are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of 5 percent of such proceeds or $5 million. “Nongovernmental output property” means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (other than a facility for the furnishing of water). The rule has several exceptions, which are beyond the scope of this Publication.

Private Loan Financing Test

A state or local bond exceeds the limit of the private loan financing test if the amount of proceeds of the issue which is to be used (directly or indirectly) to make or finance loans to persons other than governmental entities exceeds the lesser of 5 percent of such proceeds or $5 million. A bond that exceeds the private loan financing test limit is a private activity bond, even if it does not also meet the private business tests.

Exceeding the Private Activity Bond Tests Limits after Issuance

Even if the bonds comply with the limits of the private activity bond tests at issuance, a governmental bond issue can lose its tax-exempt status (from the time of issuance) if the issuer or a conduit borrower of the bond proceeds takes a “deliberate action” subsequent to the issue date that causes the issue to exceed those limits. A deliberate action is any action taken by the issuer or conduit borrower that is within its control; intent to exceed the limits is not necessary for an action to be deliberate. A deliberate action occurs on the date the issuer or conduit borrower enters into a binding contract (that is not subject to any material contingencies) with a nongovernmental person for use of the bond-financed property in a manner that causes the limits of the private activity tests to be exceeded.

Remedial Actions for Nonqualified Use. The Regulations provide that an issuer and, in conduit financings, a conduit borrower that engages in a deliberate action causing the limits of the private activity bond tests to be exceeded may, in certain cases, cure that deliberate action. Section 1.141-12 of the Regulations provides that an issuer may take remedial actions to cure a deliberate action that would otherwise cause the bonds to lose their tax-exempt status. Such remedial actions include redemption or defeasance of nonqualified bonds, alternative use of disposition proceeds and alternative use of bond-financed property.

Example: A city enters into an agreement through which it sells a building financed with governmental bond proceeds to a corporation and leases the same building back from that corporation, with the result that the corporation owns the building for federal income tax purposes. This change in ownership of the property results in private business use and is a deliberate action. However, the city may remediate the deliberate action by redeeming the nonqualified bonds within 90 days of the action.

OTHER REQUIREMENTS APPLICABLE TO GOVERNMENTAL BONDS

This section describes other rules an issuer must also meet for a governmental bond to be tax-exempt. These include:

- rules a governmental bond must meet for interest to be excluded from federal income tax, including rules that relate to issuance of the bonds (including elections that need to be made when the bonds are issued) and rules that apply at issuance and throughout the life of the bonds;
- rules that apply when modifications are made to bond terms; and
- recordkeeping requirements.

Requirements Related to Issuance

The following is an overview of several general rules related to the issuance of governmental bonds.

Issuers Must File an Information Return. Issuers of governmental bonds must comply with certain information filing requirements under Section 149(e) of the Code. The size of the issuance dictates which information return an issuer is required to file. The chart below describes what form is required and when it must be filed. The IRS Forms listed below are available on the TEB website.

Information Reporting Under Section 149(e)		
Information Return	**Due Dates**	**Where to File**
Form 8038-G, *Information Return for Tax-Exempt Governmental Obligations*, for a governmental bond issue with an issue price of $100,000 or greater.	Generally, both returns are due on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bonds were issued. Example: The due date of the return for bonds issued on February 1 is May 15.	File Form 8038-G and Form 8038-GC information returns with the IRS at the following address: **Department of the Treasury Internal Revenue Service Center Ogden, UT 84201**
Form 8038-GC, *Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales*, for a governmental bond issue with an issue price of less than $100,000. May be filed for a single issue or on a consolidated basis for all "small" issues in a calendar year.	Alternatively, Form 8038-GC may be filed annually on a consolidated basis for all bond issues of less than $100,000 that are not reported on a separate Form 8038-GC and that are not construction issues electing to pay a penalty in lieu of rebate. Consolidated returns are due on or before February 15 following the calendar year in which the bonds were issued. Example: An issuer issues three governmental bond issues with issue prices and dates as follows: $50,000 Issue A - March 1, 2012; $75,000 Issue B - June 15, 2012; and $30,000 Issue C - October 5, 2012. This issuer can file one consolidated Form 8038-GC by February 15, 2013 for all three bond issues.	

An issuer may request an extension of time to file Forms 8038-G or 8038-GC if the failure to file the return on time was not due to willful neglect. To request an extension, the issuer must follow the procedures outlined in Revenue Procedure 2002-48, 2002-37 I.R.B. 531. These procedures generally require that the issuer: (1) attach a letter to the Form 8038-G or Form 8038-GC briefly explaining when the return was required to be filed, why the return was not timely submitted, and whether or not the bond issue is under examination; (2) enter on top of the letter "Request for Relief under section 3 of Rev. Proc. 2002-48;" and (3) file this letter and the return at the Internal Revenue Service Center, Ogden, UT 84201.

Bonds Must Be in Registered Form. Section 149(a) of the Code generally provides that any tax-exempt bond, including governmental bonds, must be issued "in registered form" unless the bond (1) is not of a type offered to the public or (2) has, at the date of issue, a maturity of not more than one year. The Regulations describe what it means to be "in registered form." Section 5f.103-1(c)(1) of the Regulations provides that an obligation issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987, is in registered form if:

- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and that the transfer of the obligation to a new holder may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder; or
- the right to the principal of, and stated interest on, the obligation may be transferred only through a book-entry system maintained by the issuer (or its agent); or
- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred through both of the methods described above.

Issuers Must Make Certain Elections at Issuance. When an issuer considers actions it must take when it issues bonds, it should consider whether it wants to make any elections. Various provisions of the Code and Regulations require that the issuer make certain elections in writing and retain elections as part of the bond documents. Many elections have to be made on or before the issue date of the bonds. Some elections may be made by either the issuer or a conduit borrower. Others must be made by the actual issuer of the bonds. The IRS frequently observes that issuers make the written elections in the arbitrage certificate prepared pursuant to section 1.148-2 of the Regulations. Once made, elections cannot be revoked without the IRS's permission.

Examples of elections include:

- waiving the right to treat a purpose investment as a program investment
- waiving the right to invest in higher yielding investments during any temporary period
- the issuer of a pooled financing issue electing to apply rebate spending exceptions separately to each conduit loan
- applying actual facts rather than reasonable expectations for certain provisions under the two-year spending exception from rebate
- excluding the earnings on a reasonably required reserve fund from available construction proceeds under the two-year spending exception from rebate
- treating a portion of an issue as a separate construction issue under the two-year spending exception from rebate
- electing to pay one and one-half percent penalty in lieu of arbitrage rebate
- electing to treat portions of a bond issue as separate issues

Requirements that Apply at Issuance and Throughout the Life of the Bonds

Proceeds Must Be Timely Allocated to Expenditures. Issuers and conduit borrowers are required to follow the rules for allocating bond proceeds. The issuer or other entity controlling expenditure of the proceeds of a governmental bond issue must allocate those proceeds among the various expenditures or other purposes of the issue in a manner demonstrating that the private activity bond tests are not met. These allocations must generally be consistent with the allocations made for determining compliance with the arbitrage yield restriction and rebate requirements, as well as other federal tax filings. See Proceeds are Subject to Investment Restrictions: the Arbitrage Yield Restriction and Arbitrage Rebate Requirements, below, for an overview of those rules.

An issuer must allocate proceeds to expenditures not later than 18 months after the later of the date each expenditure is paid or the date the project, if any, that is financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier.

Proceeds Are Subject to Investment Restrictions: the Arbitrage Yield Restriction and Arbitrage Rebate Requirements. Issuers of tax-exempt bonds, including governmental bonds, are generally subject to investment or arbitrage limitations under Section 148 of the Code. Failure to comply with those arbitrage limitations will result in the bonds being arbitrage bonds and interest on the bonds being taxable.

In general, arbitrage is earned when the gross proceeds of an issue are used to acquire investments that earn a yield that is materially higher than the yield on the bonds of the issue. Earning arbitrage is permitted in certain circumstances. In some circumstances arbitrage may be earned but must be paid, or rebated to the U.S. Department of the Treasury. In some cases, an issuer may be able to reduce the yield on an investment for arbitrage purposes and thereby avoid an arbitrage violation by making a yield reduction payment to the U.S. Department of the Treasury. See Where and When To File Arbitrage Rebate and Yield Reduction Payments, below, for information on how to make yield reduction payments.

An issuer must comply with two general sets of arbitrage rules: (1) the yield restriction requirements of Section 148(a) and (2) the rebate requirements of Section 148(f). An issuer may meet the rules of one of these regimes but still have arbitrage bonds because it failed to meet the other. Even though interconnected, both sets of rules have their own distinct requirements. The following is an overview of the basic requirements of these two general rules. Additional requirements or exceptions, beyond the scope of this Publication, may apply in certain instances.

An issuer's reasonable expectations on the issue date regarding the amount and use of gross proceeds of the issue are used to determine whether an issue consists of arbitrage bonds. In addition, if an issuer or any person acting on behalf of the issuer takes a deliberate, intentional action to earn arbitrage after the issue date, that action will cause the bonds of an issue to be arbitrage bonds if that action, had it been reasonably expected on the issue date, would have caused the bonds to be arbitrage bonds. Intent to violate the requirements of Section 148 is not necessary for an action to be intentional.

Yield Restriction Requirements. The yield restriction rules of Section 148(a) of the Code generally provide that the direct or indirect investment of the gross proceeds of bonds in investments earning a yield materially higher than the yield of the bond issue causes the bonds to be arbitrage bonds. The chart below describes when the yield on particular investments will be "materially higher" (the chart shows the permitted yield spread between the yield on the bond issue and the yield on the particular investment; any spread beyond that stated is materially higher):

Applicable "Materially Higher" Limits	
Type of Investments	**Materially Higher**
general rule (when other rules below don't apply)	1/8 of one percentage point
investments in a refunding escrow	1/1000 of one percentage point
investments allocable to replacement proceeds	1/1000 of one percentage point
program investments	1.5 percentage points
investments in tax-exempt bonds that are not subject to the alternative minimum income tax	no yield limitation

Certain exceptions are available under the yield restriction rules. The investment of proceeds in materially higher yielding investments does not cause the bonds of an issue to be arbitrage bonds in the following three instances: (1) during a temporary period (*e.g.*, three-year temporary period for capital projects and 13 months for restricted working capital expenditures); (2) as part of a reasonably required reserve or replacement fund; and (3) as part of a minor portion (an amount not exceeding the lesser of 5 percent of the sale proceeds of the issue or $100,000). Whether or not the arbitrage yield restrictions rules apply, issuers should consider whether the rebate requirements apply.

Rebate Requirements. The rebate requirements of Section 148(f) of the Code generally provide that, unless certain earnings on "nonpurpose investments" allocable to the gross proceeds of an issue are rebated to the U.S. Department of the Treasury, the bonds in the issue will be arbitrage bonds. Generally, nonpurpose investments are investment securities such as Treasury bonds, bank deposits or guaranteed investment contracts, etc., and do not include "purpose investments." A purpose investment is an investment that the issuer acquires to carry out the governmental purpose of an issue. An example of a purpose investment is the loan obligation created when an issuer loans bond proceeds to another governmental unit, such as in a pooled or "bond bank" financing.

The arbitrage that must be rebated is based on the excess (if any) of the amount actually earned on nonpurpose investments over the amount that would have been earned if those investments had a yield equal to the yield on the issue, plus any income attributable to such excess. Under section 1.148-3(b) of the Regulations, the future values (as of the computation date) of all earnings received and payments actually or constructively made with respect to nonpurpose investments are included in determining the amount of rebate due.

See Where and When To File Arbitrage Rebate and Yield Reduction Payments, below, for information on how to make rebate payments.

There are, however, two types of exceptions to the general rebate requirements applicable to governmental bonds: the small issuer exception and the spending exceptions.

Small Issuer Exception — This exception provides that governmental bonds issued by small governmental issuers with general taxing powers are treated as meeting the arbitrage rebate requirement. A governmental entity has general taxing powers if it has the power to impose taxes of general applicability which, when collected, may be used for its general purposes.

An issue (other than a refunding issue, for which other rules apply) qualifies for the small issuer exception only if the issuer reasonably expects as of the issue date to issue, or in fact issues, $5 million or less in tax-exempt governmental bonds during the calendar year. The aggregation rules of Section 148(f)(4)(D) should be considered when determining whether this exception applies. The $5 million limit is increased by the aggregate face amount of bonds attributable to financing the construction of public school facilities, up to an additional $10 million. For example, the small issuer exception could apply if the qualifying issuer issued $5 million in tax-exempt governmental bonds for street improvements and $5 million in tax-exempt bonds to finance construction of public school facilities in the same calendar year.

An issue meeting the small issuer requirements is exempt from rebate for all gross proceeds. However, the small issuer exception is an exception from rebate and not from the arbitrage rules altogether. The yield restriction rules still apply. Therefore, an issuer qualifying for this exception needs to establish a temporary period for project fund investments and needs to establish that any reserve fund is reasonably required.

Spending Exceptions — There are three spending exceptions to the rebate requirements. Whether these exceptions apply depends on the timing of expenditures of required amounts of proceeds, as follows:

Spending Exceptions

Spending Period	Spending Exception
Six months	Section 1.148-7(c) of the Regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes that are incurred within six months after the date of issuance.
18 months	Section 1.148-7(d) of the Regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes which are incurred within the following schedule: (1) at least 15 percent within six months after the date of issuance; (2) at least 60 percent within 12 months after the date of issuance; and (3) 100 percent within 18 months after the date of issuance.
Two years	Section 1.148-7(e) of the Regulations provides an exception to rebate for construction issues financing property to be owned by a governmental entity or 501(c)(3) organization when certain available construction proceeds are allocated to expenditures within the following schedule: (1) at least 10 percent within six months after the date of issuance; (2) at least 45 percent within 12 months after the date of issuance; (3) at least 75 percent within 18 months after the date of issuance; and (4) 100 percent within 24 months after the date of issuance.

Note: Issuers may still owe rebate on amounts earned on nonpurpose investments allocable to proceeds not covered by one of the spending exceptions, which may include earnings in a reasonably required reserve or replacement fund.

Where and When To File Arbitrage Rebate and Yield Reduction Payments. Issuers of tax-exempt bonds file IRS Form 8038-T, *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate*, to make the following types of payments:

- yield reduction payments
- arbitrage rebate payments
- payments of a penalty in lieu of rebate
- payment in connection with the termination of the election to pay a penalty in lieu of arbitrage rebate
- payment of the penalty for failure to pay arbitrage rebate on time

A yield reduction payment and/or arbitrage rebate installment payment is required to be paid no later than 60 days after the "computation date" to which the payment relates. An issuer of a fixed yield issue may treat any date as a computation date. An issuer of a variable yield issue may treat the last day of any bond year ending on or before the latest date for making the first rebate payment (generally not later than five years after the issue date) as a computation date. Thereafter, the issuer must consistently treat either the end of each bond year of the end of each fifth bond year as a computation date. Generally, a "bond year" is a one-year period that ends on the date that the issuer selects. If the issuer does not make a timely selection, the bond years for the issue end on each anniversary of the issue date and on the final maturity date.

Recovering an Overpayment of Rebate. If an issuer pays more than the required rebate, it may ask to recover the overpayment. In general, an issuer may request an overpayment of arbitrage rebate when it can establish that an overpayment occurred. An overpayment is the excess of the amount paid to the U.S. Department of the Treasury for an issue under Section 148 of the Code over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under Section 148 as of the date the recovery is requested. The request can be made with the IRS by completing and filing IRS Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*. An issuer must file a Form 8038-R no later than the date that is two years after the final computation date for the issue. For more information, see Revenue Procedure 2008-37, 2008-29 I.R.B. 137.

Special Remedial Action for Failure To Timely Pay Arbitrage Rebate. An issuer that fails to timely pay arbitrage rebate will be excused from having its bonds be arbitrage bonds if the failure is not due to willful neglect and the issuer submits a Form 8038-T with a payment of the rebate amount owed, plus penalty and interest. The penalty may be waived under certain circumstances. For more information, see section 1.148-3(i)(3) of the Regulations and Revenue Procedure 2005-40, 2005-28 I.R.B. 83.

Bonds May Not Be Federally Guaranteed. Section 149(b) of the Code provides that any tax-exempt bond, including a governmental bond, will not be treated as tax-exempt if the payment of principal or interest is directly or indirectly guaranteed by the federal government or any agency or instrumentality of the federal government. Exceptions to this general rule include guarantees by certain quasi-governmental entities administering federal insurance programs, and federal guarantees for qualified residential rental projects, home mortgages and student loans. Additional exceptions apply for the investment of bond proceeds that are invested in U.S. Treasury securities or held in a bona fide debt service fund, a reasonably required reserve or replacement fund or a refunding escrow, and investments during a permitted initial temporary period.

A Bond May Not Be a Hedge Bond. Section 149(g) of the Code states that hedge bonds will not be tax-exempt unless certain requirements, described below, are satisfied. A "hedge bond" is any bond that is part of a bond issue that fails **either** of the following requirements:

- The issuer must reasonably expect that 85 percent of the spendable proceeds of the issue will be used to carry out the qualified purpose within the three-year period beginning on the date the bonds are issued ("spendable proceeds" means proceeds from the sale of the issue, less the portion invested in a reasonably required reserve or replacement fund or as part of a permitted "minor portion").
- Not more than 50 percent of the proceeds of the issue are invested in nonpurpose investments having a substantially guaranteed yield for four or more years.

Section 149(g)(3)(B) provides an exception to the general definition of a hedge bond if at least 95 percent of the net proceeds of the issue are invested in tax-exempt bonds that are not subject to the alternative minimum tax. For this purpose, amounts held either: (1) in a bona fide debt service fund, or (2) for 30 days or less pending either reinvestment of the proceeds or bond redemption, are treated as invested in tax-exempt bonds not subject to the alternative minimum tax. Additionally, a refunding bond issue does not generally consist of hedge bonds if the prior issue met the requirements for tax-exempt status and issuance of the refunding bonds furthers a significant governmental purpose (*e.g.*, realize debt service savings, but not to otherwise hedge against future increases in interest rates).

Even if an issue otherwise meets the definition of a hedge bond, it will generally still be tax-exempt if two requirements are satisfied. First, at least 95 percent of the reasonably expected legal and underwriting costs associated with issuing the bonds must be paid within 180 days after the issue date *and* the payment of such costs must not be contingent upon the disbursement of the bond proceeds. Second, on the date of issuance the issuer must reasonably expect that the spendable proceeds of the issue will be allocated to expenditures for governmental or qualified purposes within the following schedule:

- 10 percent within one year after the date of issuance;
- 30 percent within two years after the date of issuance;
- 60 percent within three years after the date of issuance; and
- 85 percent within five years after the date of issuance.

Limitations on Refunding Governmental Bonds. Governmental bonds may be currently refunded and advance refunded. However, governmental bonds issued after 1985 can be advance refunded only one time. Under section 1.150-1(d)(1) of the Regulations, a refunding bond issue is an issue the proceeds of which are used to pay principal, interest, or redemption price on another issue (a prior issue), as well as the issuance cost, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or any similar cost properly allocable to that refunding issue. Current and advance refunding issues are distinguished as follows:

Types of Refundings	
Current Refunding Issue	A refunding issue that is issued not more than 90 days before the final payment of principal (*e.g.*, the redemption date) or interest on the prior issue.
Advance Refunding Issue	A refunding issue that is issued more than 90 days before the final payment of principal (*e.g.*, the redemption date) or interest on the prior issue.

Refunding issues generally derive their tax-exempt status from the prior issue they refund; if the prior issue was not tax-exempt, the refunding bonds generally cannot be tax exempt.

Bonds May Not Be Used for Abusive Tax Transactions

The IRS, including TEB, is engaged in extensive efforts to curb abusive tax shelter schemes and transactions. Information about abusive tax-exempt bond transactions is available on the TEB website.

What Happens When the Terms of a Bond Are Modified?

If the terms of a governmental bond are sufficiently modified, the bond will be treated as reissued. When bonds are reissued, either actually or in a deemed reissuance, the new bonds must be re-tested as of the date of the reissuance to determine if all the various federal tax requirements are met for the "new" issue. These include the requirements that apply when bonds are issued, such as timely filing Form of the 8038-G or 8038-GC, as applicable. See Requirements Related to Issuance – Issuers Must File an Information Return, above.

A deemed reissuance may arise if sufficient changes are made to the terms of the bond, such as when a bondholder and issuer agree, directly or indirectly, to a significant modification of the terms of any bonds. See Reissuance of Tax-Exempt Obligations: Some Basic Concepts for examples of significant modifications. If deemed reissued, the modified bonds are deemed exchanged for the original bonds. In general, the date the issuer and bondholder enter into the agreement to modify the terms of the bonds is treated as the date of issuance of the new bonds, even if the modification is not immediately effective. At reissuance, the modified bond must meet any tax law requirements that apply upon its early retirement in connection with the reissuance, including the acceleration of any arbitrage rebate or yield reduction payment that is due. See Proceeds Are Subject to Investment Restrictions: the Arbitrage Yield Restriction and Arbitrage Rebate Requirements – Where and When To Make Arbitrage Rebate and Yield Reduction Payments, above. For more information on the reissuance rules, see Reissuance of Tax-Exempt Obligations: Some Basic Concepts.

Issuers Must Retain Records to Show That Requirements Are Satisfied

Section 6001 of the Code and section 1.6001-1(a) of the Regulations generally provide that any person subject to income tax, or any person required to file a return of information with respect to income (*e.g.*, the issuer filing information returns relating to its bond issues), must keep such books and records as are sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by that person in any return. Answers to Frequently Asked Questions regarding record retention requirements applicable to tax-exempt bonds are available on the TEB website.

POST-ISSUANCE COMPLIANCE MONITORING

In this section, we discuss the importance of issuers monitoring compliance with the Code requirements and suggest steps an issuer may take to monitor its bond issues.

Protecting Against Post-Issuance Violations

Issuers may be concerned with how they can further protect the tax-exempt status of their bonds. Reliance solely on bond documents and tax certificates provided when the bonds are issued will not likely provide the assurance an issuer desires. To gain greater confidence that bonds are in compliance with federal tax laws, an issuer may adopt post-issuance monitoring procedures. TEB believes that issuers that establish and follow comprehensive written monitoring procedures to promote post-issuance compliance generally are less likely to violate the federal tax requirements related to its bonds, and are more likely to find any violations earlier, than those without procedures. Early discovery of a violation is a factor TEB considers in determining the appropriate resolution under its Voluntary Closing Agreement Program.

Steps to Better Monitoring

In formulating its procedures, an issuer may consider:

- Designating one or more officials to assist in post-issuance compliance;
- Designating one or more officials to assist with and respond to examinations of the bond issue;
- Providing training or other technical support to designated official(s);
- Designating time intervals within which compliance monitoring activities will be completed; and
- Timely completing remedial actions (including requests under TEB VCAP) to correct or otherwise resolve identified noncompliance.

The chart below identifies particular areas for compliance monitoring procedures.

Compliance Procedures		
Type of Procedures	**Description of Procedures for Post-Closing Matters**	**Where Responsibility Is Discussed in this Publication**
Information Return Filing	Procedures to ensure timely filing of information returns, including procedures concerning amended and late filed returns	OTHER REQUIREMENTS APPLICABLE TO GOVERNMENTAL BONDS – Requirements Related to Issuance – Issuers Must File an Information Return
Private Use of Proceeds or Bond-Financed Property	Procedures to timely identify and remediate deliberate actions	TAX-EXEMPT GOVERNMENTAL BONDS – Meeting the Private Activity Bond Tests after Issuance
Reissuance	Procedures to satisfy applicable tax requirements when a significant modification in terms results in a reissuance for federal income tax purposes	OTHER REQUIREMENTS APPLICABLE TO GOVERNMENTAL BONDS – What Happens When the Terms of a Bond Are Modified?
Elections	Procedures for timely federal income tax elections	OTHER REQUIREMENTS APPLICABLE TO GOVERNMENTAL BONDS – Requirements Related to Issuance – Issuers Must Make Certain Elections at Issuance
Allocation of Proceeds	Procedures for the timely expenditure and accounting for use and investment of bond proceeds	OTHER REQUIREMENTS APPLICABLE TO GOVERNMENTAL BONDS – Requirements That Apply at Issuance and Throughout the Life of the Bonds – Proceeds Must be Timely Allocated to Expenditures
Arbitrage Compliance	Procedures for the timely computation and payment of arbitrage rebate and yield reduction payments	OTHER REQUIREMENTS APPLICABLE TO GOVERNMENTAL BONDS – Requirements That Apply at Issuance and Throughout the Life of the Bonds – Proceeds are Subject to Investment Restrictions: the Arbitrage Yield Restriction and Arbitrage Rebate Requirements
Record Retention	Procedures for the maintenance of records	OTHER REQUIREMENTS APPLICABLE TO GOVERNMENTAL BONDS – Issuers Must Retain Records To Show That Requirements Are Satisfied
IRS Contacts	Procedures concerning contacts from the IRS	POST-ISSUANCE COMPLIANCE MONITORING – Steps to Better Monitoring

Additional information on Post-Issuance Compliance is available on the TEB website.

WHAT TO DO UPON DISCOVERING A VIOLATION — TEB VOLUNTARY CLOSING AGREEMENT PROGRAM

TEB is committed to resolving federal tax violations with the issuer. To that end, TEB created the TEB Voluntary Closing Agreement Program. This program, which the Compliance and Program Management ("CPM") function of TEB administers, provides remedies for issuers of tax-exempt bonds, tax credit bonds, and direct pay bonds that voluntarily come forward to resolve a violation of the Code that cannot be corrected under self-correction programs described in the Regulations or other published guidance. Notice 2008-31, 2008-11 I.R.B 592, provides information and general guidance about TEB VCAP. IRM section 4.81.6 provides general procedures under which TEB will enter into closing agreements. Closing agreement terms and amounts may vary according to the degree of the violation as well as the facts and circumstances surrounding it.

Issuers must use IRS Form 14429, *Tax Exempt Bonds Voluntary Closing Agreement Program Request*, to submit a request and provide the required information. See I.R.M. section 7.2.3.2.1 with respect to completing the March 2013 version of the form. To encourage issuers and other parties to voluntarily come forward to resolve problems, TEB VCAP also permits an issuer or its representative to initiate preliminary discussions of a closing agreement anonymously.

For more information about this program, including request submission requirements, case processing procedures, and resolutions standards, see IRM section 7.2.3. Additional educational resources on Voluntary Compliance (including TEB VCAP administrative procedures and resolution standards) are available on the TEB website.

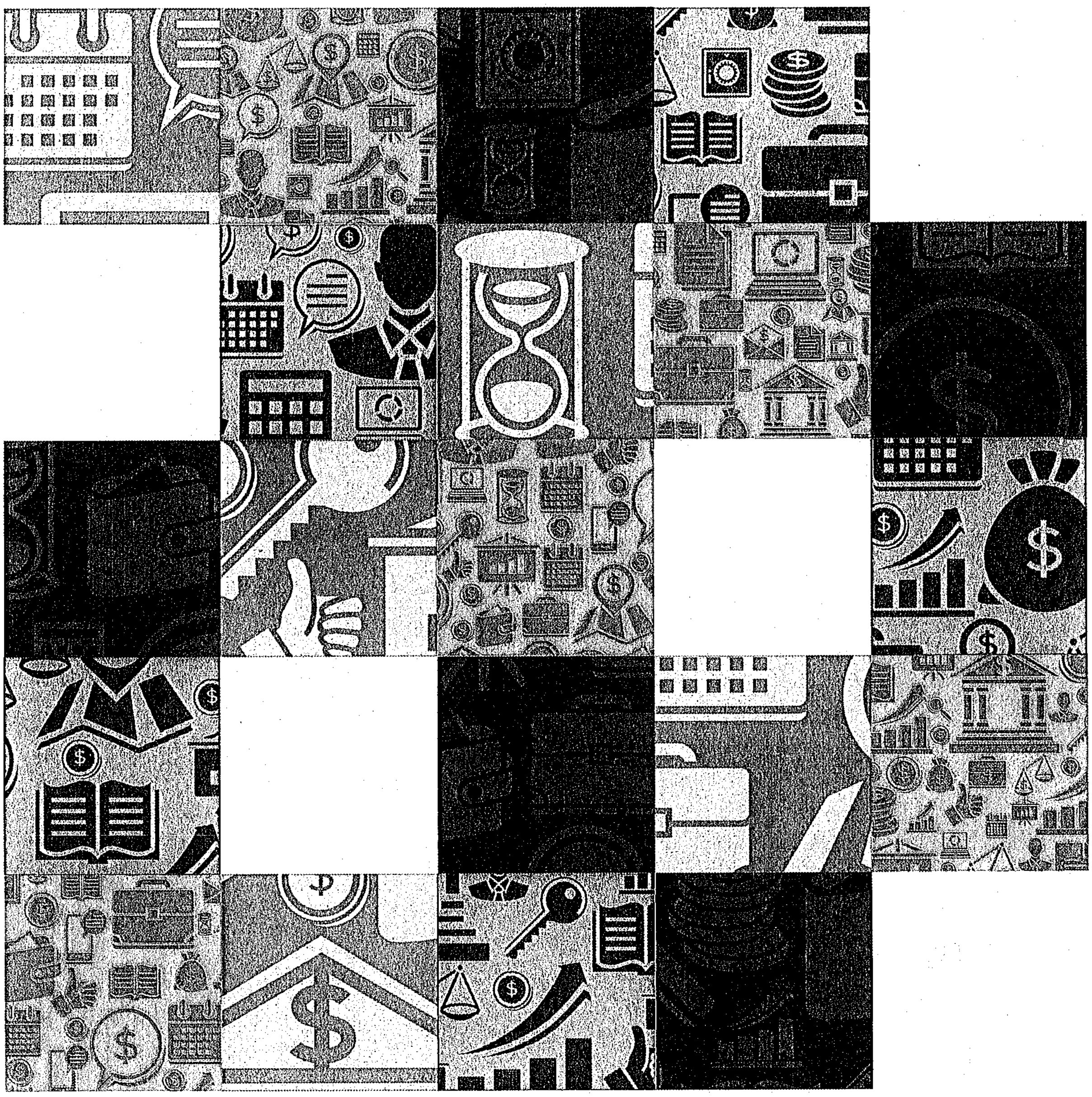
TEB INFORMATION AND SERVICES

TEB offers information and services through its education and outreach programs. You can learn about these programs through the TEB website.

TEB has reading materials about the tax laws applicable to municipal financing arrangements, including revenue rulings, revenue procedures, notices and announcements, available on the TEB website under Published Guidance.

Tax forms, instructions, and publications are also available at the TEB website under Tax-Exempt Bonds Forms and Publications.

For personal assistance, you can call our Customer Account Services toll-free at (877) 829-5500, Monday through Friday, 8:00 a.m. – 5:00 p.m. your local time.



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Motion "H" Proposed Resolution

October ____, 2016

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

WHEREAS, the Town of Lysander, 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 Lysander, 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's 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.

EXHIBIT A

TOWN OF LYSANDER
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 Lysander, 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