

Town of Chilmark, Massachusetts
Post-Issuance Tax Compliance Procedures
For Tax-Exempt Obligations and Other Tax-Benefited Obligations

I. Introduction

These post-issuance compliance procedures of the Town of Chilmark, Massachusetts (the “Town”) are designed to provide for the effective management of the Town’s post bond issuance compliance program for tax-exempt and other tax-benefited bonds in a manner consistent with state and federal laws applicable to such obligations.

II. Post-Issuance Tax Compliance

The Treasurer of the Town shall be the primary bond compliance officer responsible for each issuance by the Town of tax-exempt (or otherwise tax-benefited) bonds, notes, financing leases, or other obligations (herein, collectively referred to as “bonds”). All information related to each bond issue and the facilities, equipment and other assets financed by such issue shall be maintained by or on behalf of the Treasurer and the actions taken under subsections A through C of this Section II shall be taken by or on behalf of the Treasurer by the Treasurer or such other officers or employees of the Town as appropriate, including but not limited to, the Treasurer and the Town Auditor.

A. Tax Certificate and Continuing Education

- 1. Tax Certificate* - A Tax Certificate is prepared for each issuance of Bonds. Immediately upon issuing any bonds, the Treasurer, in conjunction with the Town’s bond counsel and financial advisor, shall review the Tax Certificate and make notes regarding specific compliance issues for such bond issue on the Post-Issuance Compliance Notes form at Exhibit A. The Tax Certificate and Notes shall clearly define the roles and responsibilities relating to the ongoing compliance activities for each bond issue and will identify specific compliance requirements.
- 2. Continuing Education* - The Treasurer will actively seek out advice of bond counsel on any matters that appear to raise ongoing compliance concerns and may attend or participate in seminars, teleconferences, etc. sponsored by organizations such as the Massachusetts Collector-Treasurer Association and the Massachusetts Government Finance Officers Association that address compliance issues and developments in the public finance bond arena. In addition, national organizations such as the Securities Industry and Financial Markets Association (SIFMA) and the National Association of Bond Lawyers (NABL) offer numerous training opportunities and materials which may be useful to the Treasurer.

B. Tax-Exempt Bonds Compliance Monitoring

- 1. Restrictions against Private Use* – The Treasurer will continuously monitor the expenditure of bond proceeds and the use of facilities or equipment financed or refinanced with bonds to ensure compliance with Section 141 of the Internal Revenue Code (the “Code”) which generally establishes limitations on the use of bond-financed facilities by non-state or local governmental entities, such as individuals using bond-financed assets on a basis other than as a member of the general public, corporations and the federal government and its agencies and instrumentalities.

a. **Use of Bond Proceeds** – the Treasurer will monitor and maintain records with respect to expenditures to ensure that bond proceeds are being used on capital expenditures for governmental purposes in accordance with the bond documents and document the allocation of all bond proceeds. Such monitoring is required not only for tax-exempt bonds, but also for tax credit bonds.

b. **Use of the Bond-Financed Facility or Equipment**

i. **Equipment assets financed with bonds** will be listed in a schedule for each bond issue, which schedule may be included in the Tax Certificate. Equipment assets generally are not to be disposed of prior to the earlier of (a) the date the bonds and all subsequent refundings of such bonds are fully paid, or (b) the end of the useful life of such equipment. The Treasurer will maintain the list of all bond-financed equipment for each bond issue, together with the equipment's expected useful life.

ii. **Constructed or acquired assets financed with bonds** – in order to ensure that assets constructed or acquired using bond proceeds, such as infrastructure assets, are not leased, sold or disposed of prior to the end of the term of the bonds and of all subsequent refundings of such bonds:

- Any asset constructed or acquired with bond proceeds shall be flagged in the Town's records, and
- These projects will be monitored by the Treasurer.

iii. If there is any proposal to change the use of a bond-financed facility from a governmental purpose to a use in which a private entity may have the use or benefit of such a facility on a basis that is different from the rest of the general public, the Treasurer will consult with bond counsel prior to the occurrence of the proposed change in use.

2. **Qualification for Initial Temporary Periods and Compliance with Restrictions against Hedge Bonds**

a. **Expectations as to Expenditure of "New Money" Bond Proceeds**

i. In order to qualify under the arbitrage rules for an initial temporary period of 3 years for "new money" issues during which bond proceeds can be invested without regard to yield (but potentially subject to rebate), the Town must reasonably expect to spend at least 85% of "spendable proceeds" by the end of the temporary period. In general under Code Section 149, in order to avoid classification of an issue of bonds as "hedge bonds," the Town must both (x) reasonably expect to spend 85% of the "spendable proceeds" of the bond issue within the 3 year period beginning on the date the bonds are issued and (y) invest not more than 50% of the proceeds of the issue in investments having a substantially guaranteed yield for 4 years or more. These expectations have been documented for the Town's outstanding bond issues in the tax certificates executed in connection with each bond issue.

ii. If, for any reason, the Town's expectations concerning the period over which the bond proceeds are to be expended change from what was documented in the applicable tax certificate, the Treasurer will consult with bond counsel.

- b. *Project Draw Schedule Compliance Monitoring*** – While there are unspent proceeds of a bond issue, the Treasurer will compare and analyze the original anticipated project draw schedule and the actual expenditure payouts and reimbursements on each bond-financed project on an annual or more frequent basis. The purpose of this analysis is to determine the variances from the original expected draw schedule for each project and to document the reasons for these variances to provide a continual record on the spending progress of each bond-financed project. Factors relevant to the analysis include unexpected delays in the project timelines, extreme weather, contract time extensions due to unexpected events, supplemental agreements and any other factor with a potential to impact the progress or completion of the projects. Generally, there should be no effect on the tax-exempt status of the bonds under either the temporary period rules or the hedge bond rules if the actual disbursements do not meet the original project draw schedule, unless circumstances surrounding the actual events cast doubt on the reasonableness of the stated expectations on the issuance date. Therefore, it is important for the Treasurer to update the progress of each project at least annually, and consult with bond counsel as to any variance from the original schedule.
- c. *Bond Proceeds Expenditure Schedule Compliance Monitoring*** – While there are unspent proceeds of bonds, the Treasurer will compare and analyze the bond proceeds expenditure schedule and the actual investment earnings on each project on an annual or more frequent basis. The purpose of this analysis is to determine any variances from the expected expenditure schedule and to document the reasons for these variances.

3. *Arbitrage Rebate Compliance*

- a.** Bonds may lose their tax-favored status, retroactive to the date of issuance, if they do not comply with the arbitrage restrictions of section 148 of the Code. Two general sets of requirements under the Code must be applied in order to determine whether governmental bonds are arbitrage bonds: the yield restriction requirements of section 148(a) and the rebate requirements of section 148(f).
- b. *Yield Restriction Requirements.*** The yield restriction requirements provide, in general terms, that gross proceeds of a bond issue may not be invested in investments earning a yield higher than the yield of the bond issue, except for investments (i) during one of the temporary periods permitted under the regulations (including the initial three year temporary period described above), (ii) in a reasonably required reserve or replacement fund or (iii) in an amount not in excess of the lesser of 5% of the sale proceeds of the issue or \$100,000 (the “minor portion”). Under limited circumstances, the yield on investments subject to yield restriction can be reduced through payments to the IRS known as “yield reduction payments.” The Tax Certificate will identify those funds and accounts associated with a particular issue of bonds known, as of the date of issuance, to be subject to yield restriction.
- c. *Rebate Requirements***

 - i. If, consistent with the yield restriction requirements, amounts treated as bond proceeds are permitted to be invested at a yield in excess of the yield on the bonds (pursuant to one of the exceptions to yield restriction referred to above), rebate payments may be required to be made to the U. S. Treasury. Under the applicable regulations, the aggregate rebate amount is the excess of the future value of all the receipts from bond funded investments over the future value of

all the payments to acquire such investments. The future value is computed as of the computation date using the bond yield as the interest factor. At least 90% of the rebate amount calculated for the first computation period must be paid no later than 60 days after the end of the first computation period. The amount of rebate payments required for subsequent computation periods (other than the final period) is that amount which, when added to the future value of prior rebate payments, equals at least 90% of the rebate amount. For the final computation period, 100% of the calculated amount must be paid. Rebate exceptions and expectations are documented for each bond issue in the tax certificate executed at the time of such bond issue.

- ii. **While there are unspent proceeds of bonds, the Town will engage an experienced independent rebate analyst to annually calculate any rebate that may result for that year and annually provide a rebate report to the Treasurer. Bond counsel can assist with referrals to qualified rebate analysts.**

d. Timing of Rebate Payments

The Treasurer will work with the rebate analyst to ensure the proper calculation and payment of any rebate payment and/or yield-reduction payment at the required time:

- i. First installment due no later than 60 days after the end of the fifth anniversary of each bond issuance;
- ii. Succeeding installments at least every five years;
- iii. Final installment no later than 60 days after retirement of last bond in the issue.¹

4. Refunding Requirements

a. Refunded Projects. The Treasurer will maintain records of all bond financed assets for each bond issue, including assets originally financed with a refunded bond issue.

b. Yield Restriction. The Treasurer will work with its financial advisor and bond counsel to maintain records of allocation of bond proceeds for current and advance refundings of prior bond issues to ensure that such bond proceeds are expended as set forth in the applicable tax certificate executed at the time the refunding bonds are issued. Any yield restricted escrows will be monitored for ongoing compliance.

C. Record Retention

- I.** Section 6001 of the Code provides the general rule for the proper retention of records for federal tax purposes. The IRS regularly advises taxpayers to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of a tax-exempt bond transaction, the primary taxpayers are the bondholders. In the case of other tax benefited bonds, such as “build America bonds” or “recovery zone economic development bonds”, the Town will be treated as the taxpayer. In order to ensure the continued exclusion of interest to such bondholders, it is important that the Town retain sufficient records to support such exclusion.

¹ Generally, rebate payments must be paid not later than 60 days after retirement of the last bond in the issue.

2. *In General*

- a. All records associated with any bond issue shall be stored electronically or in hard copy form at the Town's offices or at another location conveniently accessible to the Town.
- b. The Treasurer will ensure that the Town provides for appropriate storage of these records.
- c. If storing documents electronically, the Town shall conform with Rev. Proc. 97-22, 1997-1 C.B. 652 (as the same may be amended, supplemented or superseded), which provides guidance on maintaining books and records by using an electronic storage system. Bond counsel can furnish a copy of this Revenue Procedure if needed.

3. **Bonds** - The Town shall maintain the bond record as defined in this section for the longer of the life of the bonds plus 6 years or the life of refunding bonds (or series of refunding bonds) which refunded the bonds plus 6 years. The bond record shall include the following documents:

a. *Pre-Issuance Documents*

- i. ***Guaranteed Investment Contracts ("GICs") and Investments (other than Treasury's State and Local Government Series Securities, "SLGs")*** – if applicable, the Treasurer shall retain all documentation regarding the procurement of each GIC or other investment acquired on or before the date of bond issuance, including as applicable the request for bids, bid sheets, documentation of procurement method (i.e., competitive vs. negotiated), etc. If investments other than SLGs are used for a defeasance escrow, the documentation should include an explanation of the reason for the purchase of open market securities and documentation establishing the fair value of the securities and compliance with safe harbor bidding rules. If SLGs are purchased, a copy of the final subscription shall be maintained.
- ii. ***Project Draw Schedule*** – the Treasurer shall retain all documentation and calculations relating to the draw schedule used to meet the "reasonable expectations" test and use of proceeds tests (including copies of contracts with general and sub-contractors or summaries thereof).
- iii. ***Issue Sizing*** – the Treasurer shall maintain a copy of all financial advisor's or underwriter's structuring information.
- iv. ***Bond Insurance*** – if procured by the Town, the Treasurer shall maintain a copy of insurance quotes and calculations supporting the cost benefit of bond insurance, if any.
- v. ***Costs of Issuance documentation*** – the Treasurer shall retain all invoices, payments and certificates related to costs of issuance of the bonds.

b. *Issuance Documents*

- i. The Treasurer shall retain the bound bond transcript delivered from bond counsel.

c. *Post-Issuance Documents*

- i. ***Post-Issuance Guaranteed Investment Contracts and Investments (Other than SLGs)*** – the Treasurer shall retain all documentation regarding the procurement of any GIC or other investment acquired after bond issuance, including as applicable

the request for bids, bid sheets, documentation of procurement method (i.e., competitive vs. negotiated), etc. If investments other than SLGs are used for a defeasance escrow, the documentation should include an explanation of the reason for the purchase of open market securities and documentation establishing the fair value of the securities and compliance with safe harbor bidding rules.

- ii. **Records of Investments**- shall be retained by the Treasurer.
- iii. **Investment Activity Statements**-shall be retained by the Treasurer.
- iv. **Records of Expenditures**– the Treasurer shall maintain or shall cause to be maintained all invoices, etc. relating to equipment purchases and constructed or acquired projects, either electronically or in hard copy.
- v. **Records of Compliance**
 - **Qualification for Initial Temporary Periods and Compliance with Restrictions Against Hedge Bond Documentation** – the Treasurer shall prepare the annual analysis described in Section II(B)(2) above and maintain these records.
 - **Arbitrage Rebate Reports** – may be prepared by the Treasurer or a third party as described in section II (B)(3) of this document and retained by the Treasurer.
 - **Returns and Payment** – shall be prepared at the direction of the Treasurer and filed as described in Section II(B)(3) of this document.
 - **Contracts under which any bond proceeds are spent (consulting engineering, acquisition, construction, etc.)** - the Treasurer shall obtain copies of these contracts and retain them for the bond record.

d. General

- i. **Audited Financial Statements** – the Treasurer will maintain copies of the Town’s annual audited Financial Statements.
- ii. **Reports of any prior IRS Examinations** – the Treasurer will maintain copies of any written materials pertaining to any IRS examination of the Town’s bonds.

III. Voluntarily Correcting Failures to Comply with Post-Issuance Compliance Activities

If, in the effort to exercise due diligence in complying with applicable federal tax laws, a potential violation is discovered, the Town may address the violation through the applicable method listed below. The Town should work with its bond counsel to determine the appropriate way to proceed.

A. Taking remedial actions as described in Section 141 of the Internal Revenue Code

B. Utilizing the Voluntary Closing Agreement Program (VCAP) - Section 7.2.3 of the Internal Revenue Manual establishes the voluntary closing agreement program for tax-exempt bonds (TEB VCAP) whereby issuers of tax-exempt bonds can resolve violations of the Internal Revenue Code through closing agreements with the Internal Revenue Service.

IV. Post Issuance Tax Compliance Procedures Review

The Treasurer shall review these procedures at least annually, and implement revisions or updates as deemed appropriate, in consultation with bond counsel.

Exhibit A

POST ISSUANCE COMPLIANCE NOTES

[Name of Bonds]

Transaction Parties

Overall Responsible Party for Debt Management Activities _____

Bond Counsel _____

Paying Agent _____

Rebate Specialist _____

Other _____