



**SALT LAKE
COUNTY**

COUNTY COUNCIL

Joe Hatch, Chair
District #1

Randy Horiuchi
At-Large A

Jennifer Wilson
At-Large B

Jim Bradley
At-Large C

Michael H. Jensen
District #2

David A. Wilde
District #3

Jani Iwamoto
District #4

Steven L. DeBry
District #5

Max Burdick
District #6

September 21, 2010

Mr. Darrin Casper, Chief Financial Officer
Mayor's Office
Rm. N2100, Government Center
Salt Lake City, Utah

Dear Mr. Casper:

The Salt Lake County Council, at its meeting held this day, approved the Tax Compliance Policies for Tax-Exempt Governmental Bonds and Build America Bonds.

Pursuant to the above action, you are hereby authorized to distribute the same.

Respectfully yours,

SALT LAKE COUNTY COUNCIL

SHERRIE SWENSEN, COUNTY CLERK

By _____
Deputy Clerk

ks

COUNCIL ~ VOTE SLIP

Date:	SEP 21 2010	Absent	Motion	2 nd	Aye	Nay	Abstain
Council Member RANDY HORIUCHI			/		/		
Council Member JENNY WILSON				/	/		
Council Member JIM BRADLEY		/					
Council Chair JOE HATCH					/		
Council Member MICHAEL H. JENSEN		/					
Council Member DAVID WILDE		/					
Council Member JANI IWAMOTO					/		
Council Member STEVE DEBRY					/		
Council Member MAX BURDICK					/		

Other Action:

app

13.1

**Tax Compliance Policies
For Tax-Exempt Governmental Bonds
and Build America Bonds**

Purpose

The County, as an issuer of tax-exempt “governmental bonds” and taxable Build America Bonds (“BABs”), must comply with applicable federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. In connection with the issuance of these bonds, the County executes a tax compliance document that contains covenants and representations that must be complied with. The following policies are intended to further compliance by the County with these rules.

1.0 Expenditure of Proceeds for Qualified Costs

Expenditure of bond proceeds will be reviewed by the Chief Financial Officer.

- 1.1 Bond proceeds will be disbursed pursuant to an approved form of requisition stating the date, amount and purpose of the disbursement.
- 1.2 Requisitions must identify the financed property in conformity with the tax certificate executed by the issuer at closing, including any certifications as to the character and average economic life of the bond-financed property.
- 1.3 Requisitions for costs that were paid prior to the issuance of the bonds are, in general, limited to costs paid subsequent to, or not more than 60 days prior to, the date a “declaration of intent” to reimburse the costs was adopted by the bond issuer. The complete requirements for any reimbursement will be contained in the tax compliance document. If proceeds are used for reimbursement, a copy of the declaration will be obtained and included in the records for the issue if not already part of the transcript.
- 1.4 Requisitions will be summarized in a "final allocation" of proceeds to uses not later than 18 months after the in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the bonds).

2.0 Rate of Expenditure

- 2.1 Expenditure of proceeds will be monitored against the tax certificate expectation to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the project and fully spend the net sale proceeds. Reasons for failure to meet the expected schedule will be documented and retained in the records for the issue.
- 2.2 If the County intends to meet an exception from rebate provided for under U.S. Treasury regulations, the County will monitor its expenditures to assure compliance.

3.0 Additional Requirements for Expenditure of Proceeds of Direct Payment BABs

- 3.1 Direct Payment BABs, which are taxable bonds for which the IRS pays the issuer a subsidy amount equal to 35% of the issuer's interest payments, are subject to all of the above policies on expenditures for qualifying costs plus additional policies as follows:
- 3.1.1 Proceeds of Direct Payment BABs may be used only for capital expenditures, such as costs incurred to acquire, construct, or improve buildings, equipment, and land, together with limited amounts for costs of issuance and reserve funds. Interest earnings on Direct Payment BABs must also be used for capital expenditures. Proceeds of Direct Payment BABs cannot be used for operating expenses or other "working capital" costs. Requisitions for costs of a project financed with BABs will accordingly be monitored to confirm that they are for capital costs of the project.
 - 3.1.2 No more than 2% of the proceeds of Direct Payment BABs can be spent for costs of issuance ("COI"). Compliance with this rule will be established by recording COI paid from bond proceeds that will be measured against the 2% limit. Unless the IRS provides guidance to the contrary, bond insurance and other credit enhancement costs will be treated as costs of issuance for this purpose.
 - 3.1.3 Reserve funds cannot exceed the least of 10% of bond proceeds, maximum annual debt service, or 125% of average annual debt service. Lower limits may be set forth in the tax compliance document. The initial funding of any reserve fund will be measured against this limit. Reserve funds are generally not permitted for general obligation bonds.
 - 3.1.4 In addition to new money capital expenditures, proceeds of Direct Payment BABs may be used to reimburse prior capital expenditures under the general reimbursement rules (see prior section of this policy). Proceeds may be used to reimburse expenditures previously paid by another debt only if the expenditures were financed by temporary short-term obligation issued after February 17, 2009, to finance capital expenditures paid or incurred after that date.
 - 3.1.5 Direct Payment BABs may not be issued at more than a de minimis premium as defined. Compliance with this rule should be established at closing and would not normally require subsequent compliance activity.
- 3.2 Tax Credit BABs, which are taxable bonds for which the IRS allows the bondholder a federal income tax credit equal to 35% of the bond interest, are not subject to these additional requirements and therefore can be issued for any purpose or project that could be financed with tax-exempt governmental bonds.

- 3.2.1 Similarly to Direct Payment BABs, Tax Credit BABs may not be issued at more than a de minimis premium as defined.

4.0 Use of Bond-Financed Property

- 4.1 Use of bond-financed property when completed and placed in service will be reviewed by the Office of the County's Chief Financial Officer.
 - 4.1.1 Average nonexempt use of bond-financed property over the life of the issue cannot exceed 5% of the proceeds or in certain circumstances 10%. Nonexempt use is generally any use other than use solely by the County or another state or local governmental entity.
 - 4.1.2 Agreements with users other than state or local governmental entities, including leases, management agreements, research agreements, will be reviewed prior to execution for compliance with the 10% or 5 % limit, as set forth in the tax certificate for the issue.
 - 4.1.3 No item of bond-financed property will be sold or transferred without advance arrangement to ensure that the 10% or 5% limit is met.

5.0 Investments

- 5.1 Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the County's Chief Financial Officer.
 - 5.1.1 Guaranteed investment contracts ("GIC") will be purchased only using the three-bid "safe harbor" of applicable Treasury regulations, in compliance with fee limitations on GIC brokers in the regulations.
 - 5.1.2 Other investments will be purchased only in market transactions.
 - 5.1.3 Calculations of rebate liability will be performed annually by outside consultants.
 - 5.1.4 Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee, if any, and the issuer.
 - 5.1.5 Identify date for first rebate payment at time of issuance. Enter in records for the issue.

6.0 Filings with Internal Revenue Service

- 6.1 For tax-exempt bonds, Form 8038-G must be filed not later than the 15th day of the 2nd calendar month following the quarter in which the bonds were issued For BABs issued after February 2010, Form 8038-B must be filed not later than the

15th day of the 2nd calendar month following the quarter in which the bonds were issued. Filing Form 8038-B will be confirmed with bond counsel.

- 6.2 If the bond issue consists of both tax-exempt bonds and BABs, the issuer must report the tax-exempt portion on Form 8038-G and the BAB portion on Form 8038-B.

7.0 Additional Filing Requirements for Direct Payment BABs

- 7.1 Form 8038-B must include a debt service schedule as set forth in the instructions to that form. See also Notice 2009-26 for more information. Compliance will be confirmed with bond counsel.
- 7.2 Payment of the Direct Payment subsidy amount must be requested on Form 8038-CP as follows:
 - 7.2.1 For fixed rate BABs, Form 8038-CP should be filed not less than 45 days (and not more than 90 days) prior to the applicable semiannual interest payment date.
 - 7.2.2 For variable rate BABs, Form 8038-CP should be filed not more than 45 days after the last interest payment date within the quarterly period for which the subsidy payment is requested.
- 7.3 The Form 8038-B associated with a Form 8038-CP filing must be filed at least 30 days prior to the submission of the first Form 8038-CP of the bond issue, unless the 45 day deadline for the filing set forth in 7.2 occurs earlier.

8.0 Additional filing requirements for Tax Credit BABs

- 8.1 Form 8038-B must meet requirements for Tax Credit BABs under Notice 2009-26.
- 8.2 No supplemental filings on Form 8038-CP are required or permitted for Tax Credit Bonds.

9.0 Records

- 9.1 The County must maintain records that establish its compliance with all federal income tax requirements. These records include, but are not limited to, those set forth below. Management and retention of records related to tax exempt bond issues will be supervised by the County's Chief Financial Officer.
 - 9.1.1 Records will be retained for the life of the bonds plus any refunding bonds plus at least three years. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions. Electronic records may be kept only in compliance with certain IRS requirements.

- 9.1.2 Retainable records pertaining to bond issuance include transcript of documents executed in connection with the issuance of the bonds (including bond indenture or resolutions, official statement, 8038-B, and tax certificate with election to issue bonds as Direct Payment BABs or Tax Credit BABs if applicable) and any amendments, copies of Form 8038-CP if applicable, and copies of rebate calculations and records of payments including Forms 8038-T.
- 9.1.3 Retainable records pertaining to expenditures of bond proceeds include requisitions, trustee statements and final allocation of proceeds.
- 9.1.4 Retainable records pertaining to use of property include all agreements reviewed for nonexempt use and any reviewed documents relating to unrelated business activity.
- 9.1.5 Retainable records pertaining to investments include GIC documents under the Treasury regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

10. Overall Responsibility

10.1 Overall administration and coordination of this policy shall be the responsibility of the County's Chief Financial Officer. All inquiries, notices and correspondence from the IRS will be forwarded to the Chief Financial Officer, and will be responded to in a timely manner.

APPROVED and PASSED this _____ day of _____, 2010.

SALT LAKE COUNTY COUNCIL

By _____
Joe Hatch, Chair

ATTEST:

By _____
Sherrie Swensen,
County Clerk

APPROVED AS TO FORM:

By _____
Deputy District Attorney

Date: 9-21-10