

CARLISLE AREA SCHOOL DISTRICT

SECTION: FINANCE

TITLE: TAX-EXEMPT BONDS

ADOPTED: November 17, 2011

REVISED: February 17, 2022

630. TAX-EXEMPT BONDS

Purpose

The Carlisle Area School District, Cumberland County, Pennsylvania (the **Issuer**) has issued and, from time to time, may in the future issue debt instruments the interest on which is intended to be excluded from gross income for federal income purposes under the Internal Revenue Code of 1986, as amended (the **Code**) (defined herein as the **Tax-Exempt Bonds**). In order to ensure compliance with the Code, the Issuer has adopted the following policies and procedures.

Issue Price Treas. Reg.

The issue price of Tax-Exempt Bonds is used to compute the arbitrage yield on the issue of Tax-Exempt Bonds. Issue price means, except as otherwise provided, issue price as defined in Sections 1273 and 1274 of the Code. Generally, the issue price of Tax-Exempt Bonds that are publicly offered is the first price at which a substantial amount of the Tax-Exempt Bonds is sold to the public. Ten percent (10%) is a substantial amount. The public does not include bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. The issue price does not change if part of the issue is later sold at a different price. The issue price of bonds that are not substantially identical is determined separately. The issue price of Tax-Exempt Bonds for which a bona fide public offering is made is determined as of the sale date based on reasonable expectations regarding the initial public offering price. If a bond is issued for property, the applicable federal tax-exempt rate is used in lieu of the federal rate in determining the issue price under Section 1274. The issue price of bonds may not exceed their fair market value as of the sale date. [1]

Any Underwriter will be required to offer all of the Tax-Exempt Bonds in a bona fide public offering, to disclose whether any Tax-Exempt Bonds in the initial offering to the public were sold to an affiliate or affiliated accounts of the Underwriter, and to certify to the issue price. Such certificate will be retained in the records of the Issuer for each issue of Tax-Exempt Bonds.

Reasonable Expectations

Timely Expenditure Of Tax-Exempt Bonds Proceeds

Prior to the issuance of Tax-Exempt Bonds, the Issuer will determine that all the statements in the

federal tax and Non-Arbitrage Certificate (the **Certificate**) prepared by the Issuer's Bond Counsel are true and correct, and all the Issuer's promises set forth in the Certificate are expected to be fulfilled. [2]

Prior to the issuance of Tax-Exempt Bonds, the Business Manager will confirm that (1) there are no funds that would have been used for the purposes for which the proceeds of the Tax-Exempt Bonds will be used if proceeds of the Tax-Exempt Bonds were not to be used for those purposes, (2) the Tax-Exempt Bonds are not being issued earlier than necessary and will not remain outstanding longer than necessary and (3) the amount of the Tax-Exempt Bonds do not exceed the amount necessary to accomplish its governmental purpose.

In the event the Tax-Exempt Bonds are being issued to finance capital projects, then prior to the issuance of Tax-Exempt Bonds, the Business Manager will confirm that (1) the Issuer will be able to expend an amount in excess of five percent (5%) of the net sale proceeds of the Tax-Exempt Bonds on capital projects that constitute a governmental purpose of the Tax-Exempt Bonds within six (6) months of the date of issuance of the Tax-Exempt Bonds; (2) completion of the capital projects and allocation of net sale proceeds of the Tax-Exempt Bonds to expenditures will proceed with due diligence; and (3) at least eighty five percent (85%) of the net sale proceeds of the Tax-Exempt Bonds will be expended on capital projects within three (3) years after the date of issuance of the Tax-Exempt Bonds.

The Business Manager or designee will monitor expenditures on the projects, in a separate fund, on a monthly basis, to confirm the expenditure rate. At the end of the project, if there are any unspent bond proceeds, the Issuer will proceed with diligence to apply such unspent proceeds to other capital expenditures of the Issuer, as permitted by state law and Issuer protocols. [3]

Arbitrage Yield Restriction

On or before the issuance of a series of Tax-Exempt Bonds, the Issuer working with its Bond Counsel shall prepare a tax compliance agreement that will set forth the applicable arbitrage yield restrictions and rebate compliance procedures with respect to the particular series of Tax-Exempt Bonds. [4a]

With respect to Tax-Exempt Bonds, the Issuer shall covenant that it will not make any use of the proceeds of the Tax-Exempt Bonds which may cause the Tax-Exempt Bonds to be "arbitrage bonds" as such term is defined in Section 148 of the Code and the regulations applicable thereto.

For the purposes of calculating the yield on any Nonpurpose Investment, the purchase price of the Nonpurpose Investment must be the fair market value of the obligation on an established market. The Issuer will not pay or cause to be paid a premium to adjust the yield, accept a lower interest rate than is usually paid or otherwise enter into a transaction that reduces the amount of earnings on Nonpurpose Investments by producing a smaller profit or larger loss than would have resulted if the transaction had been at arm's length and artificially reducing the yield on the Nonpurpose Investments had not been relevant to the Issuer. The tax compliance agreement executed with respect to Tax-Exempt Bonds shall set forth procedures for the Issuer to follow to ensure that the purchase price for each Nonpurpose Investment will be the fair market value of the obligation on an established market. As used herein the term **Nonpurpose Investment** shall mean any investment in which gross proceeds of the Tax-Exempt

Bonds are invested and which is not acquired to carry out the governmental purpose of the Tax-Exempt Bonds.

Rebate

Earnings on the gross proceeds of the Tax-Exempt Bonds will be subject to rebate unless otherwise exempted as permitted in the Code. The tax compliance agreement executed with respect to the Tax-Exempt Bonds shall set forth the rebate exceptions, if any, that may be applicable for the Tax-Exempt Bonds. [4b]

The Issuer, in consultation with Bond Counsel, will determine whether it is necessary or useful to engage the services of an arbitrage rebate calculation firm to assist the Issuer in complying with the requirements of the arbitrage yield restrictions and rebate rules for each series of Tax-Exempt Bonds, and if necessary or useful, will engage such a firm. The Business Manager and outside auditors will review all rebate reports prepared by any arbitrage consultant.

Timely Identification and Correction of Violations

The Issuer will monitor all procedures set forth herein and will consult with nationally recognized bond counsel in the event the Issuer fails to adhere to any of its enumerated policies or the tax compliance agreement delivered at settlement for the Tax-Exempt Bonds.

No less frequently than annually, and more often if appropriate or required in order to comply with Treasury Regulations, the Issuer shall review the amount of private business use of the facilities financed with the proceeds of the Tax-Exempt Bonds, and any private security or payments allocable to the Tax-Exempt Bonds, in accordance with Section 141 of the Code, and Treasury Regulations thereunder. [5]

Under the private business test, the Issuer shall not use any portion of the proceeds of the Tax-Exempt Bonds in such a manner that (1) an amount exceeding ten percent (10%) of the proceeds of the Tax-Exempt Bonds is to be used in a trade or business of a person or persons other than a governmental unit as defined in Section 141(b)(6) of the Code, and (2) direct or indirect payments exceeding ten percent (10%) of the debt service on the Tax-Exempt Bonds is to be made with respect to such trade or business. The percentages in clause (1) and clause (2) in this Section are reduced to five percent (5%) in regards to any use by a person other than a governmental unit is unrelated or disproportionate to the governmental use financed by the Tax-Exempt Bonds.

In the event that private business use (and private security or payments) are at levels high enough to result in private activity bond status, under the Code and applicable Treasury Regulations, the Issuer will consider the options recommended by nationally recognized bond counsel to correct any identified violations through remedial actions described in the Section 1.141-12 of the Treasury Regulations or through the Tax-Exempt Bond Voluntary Closing Agreement Program described under Notice 2008-31. [6]

Maintenance of Records

For each Nonpurpose Investment acquired with or allocated to gross proceeds of a series of Tax-Exempt Bonds, the Issuer shall record or cause to be recorded its purchase date or allocation date, its purchase price (reduced by broker's or dealer's commissions or other administrative expenses, unless such commissions or expenses constitute qualified administrative expenses, as defined in Regulation Sections 1.148-5(e)(2)(i), which shall also be separately stated), or, if not acquired directly with gross proceeds, its fair market value on the allocation date, accrued interest due on its purchase date or allocation date, its face amount, its coupon or interest rate, its yield-to-maturity, the frequency of its interest payments, its disposition price (not reduced by any broker's or dealer's commission or discount, unless such commissions or expenses constitute qualified administrative expenses, as defined in Regulation Section 1.148-5(e)(2)(i), accrued interest due on its disposition date and its disposition date.

The Issuer shall record or cause to be recorded the date and amount of all expenditures made with the gross proceeds of the Tax-Exempt Bonds.

Records Retention

All material records relating to the Tax-Exempt Bonds shall be retained by the Issuer for the life of the Tax-Exempt Bonds, plus six (6) years after the final redemption date of the Tax-Exempt Bonds. For purposes of determining the life of the Tax-Exempt Bonds, any bonds issued to refund the Tax-Exempt Bonds shall be considered to be an extension of the original Tax-Exempt Bonds and all material records relating to the Tax-Exempt Bonds shall be maintained until six (6) years after the final redemption of both bond issues. Material records relating to the Tax-Exempt Bonds shall include, but is not limited to, the following:

- (a) Basic records relating to the Tax-Exempt Bond transaction (including the debt resolution and bond counsel opinion);
- (b) Documentation evidencing expenditure of bond proceeds;
- (c) Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);
- (d) Documentation evidencing all sources of payment or security for the ax-Exempt Bonds; and
- (e) Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).

Records of the Issuer shall be kept in either paper form, electronic media or a combination of both. In the event records are kept using an electronic storage system, comply with the requirements of Rev. Proc. 97-22, 1997-1 C.B. 652, or such successor guidance, which provides the general requirements for an electronic storage system of records. A summary of these requirements is as follows: [7]

- (1) The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information.
- (2) The system must include reasonable controls and quality assurance programs that (a) ensure the integrity, accuracy, and reliability of the system; (b) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records; (c) institute regular inspections and evaluations; and (d) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.
- (3) The information maintained in the system must be cross-referenced with the taxpayer's books and records in a manner that provides an audit trail to the source document(s).
- (4) The taxpayer must maintain, and provide to the Service upon request, a complete description of the electronic storage system including all procedures relating to its use and the indexing system.
- (5) During an examination, the taxpayer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Service and provide the Service with the resources necessary to locate, retrieve, read and reproduce electronically stored books and records.
- (6) The system must not be subject, in whole or in part, to any agreement that would limit the Service's access to and use of the system.
- (7) The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.

Legal References:

1. Issue Price Treas. Reg. § 1.148-1
2. Treas. Reg. § 1.148-2(b)
3. Capital Projects Treas. Reg. § 1.148-2(e)(2)
- 4a. Arbitrage Yield Restriction IRC § 148
- 4b. Rebate IRC § 148
5. Private Business Use & Private Security or Payments IRC § 141
6. Remedial Action Treas. Reg. § 1.141-12 and Notice 2008-31
7. Rev. Proc. 97-22, 1997-1 C.B. 652