

ORIGINAL

RESOLUTION NO. 2019-017

A RESOLUTION ADOPTING UPDATED TAX COMPLIANCE PROCEDURES FOR NEWLY-ISSUED CAPITAL OBLIGATIONS OF DELAWARE COUNTY, INDIANA

WHEREAS, Delaware County occasionally incurs capital obligations such as bonds, capital leases, and the like, all of which are generally necessary to facilitate various projects throughout the County; and

WHEREAS, many of the County's capital obligations are purchased and/or serviced by private entities, such as federal and state banks, securities corporations, private placement organizations, and the like; and

WHEREAS, these private entities often provide the County with favorable rates of interest due to the County's tax-exempt status as a municipality, which, in turn, provides these private with a source of interest income which is excludable from gross income under Section 103(a) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Board of Commissioners of Delaware County has determined that it is necessary to adopt a set of tax compliance procedures to ensure that capital obligations issued by, or for the benefit of the County, satisfy and will continue to satisfy all requirements of the Internal Revenue Code and the regulations thereunder, thereby allowing any interest paid by the County continues to be excluded from the gross income of its lenders.

IT IS THEREFORE RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, INDIANA THAT:

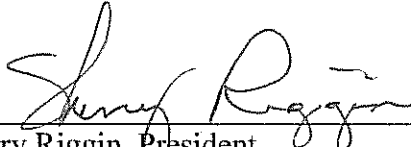
SECTION 1. The Tax Compliance Procedures, attached hereto as Exhibit A, and incorporated herein by reference, are hereby adopted by Board of Commissioners and shall be followed for any new capital obligations incurred by the County after the date of adoption of this Resolution.

SECTION 2. The Tax Compliance Procedures, attached hereto as Exhibit A, shall supplement, but do not replace, any other procedures of the County existing as of the date of adoption of this Resolution.

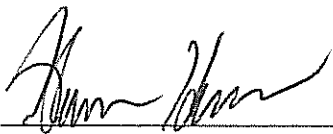
SECTION 3. This Resolution shall be effective upon adoption.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, INDIANA ON THIS, THE 6 DAY OF May, 2019.

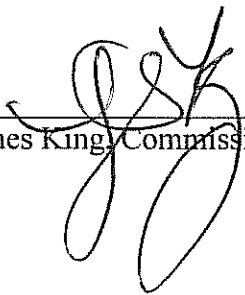
BOARD OF COMMISSIONERS OF DELAWARE COUNTY, INDIANA



Sherry Riggan, President




Shannon Henry, Vice President



James King, Commissioner

ATTEST:



Steven Craycraft, Auditor
Delaware County, Indiana

Tax Compliance Procedures

DRAFT

May 9, 2019

The following procedures (the “Procedures”) are adopted by the County to ensure that any obligations, including capital lease obligations, issued by or for the benefit of the County, the interest on which is excludable from gross income under Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”), (any such obligations, “Bonds,” which term includes the capital obligations of the County in the Lease referenced in this Tax and Arbitrage Certificate), satisfy and will continue to satisfy all requirements of the Code and the regulations thereunder (the “Regulations”).

The Procedures supplement, but do not replace, any other procedures of the County. The Procedures may be supplemented or amended at any time and from time to time by the County, with the advice of nationally recognized bond counsel, but without any notice to or consent from any trustee, any bondholder or any other person. Noncompliance with the Procedures is permitted, with the advice of nationally recognized bond counsel, but without any notice to or consent from any trustee, any bondholder or any other person, if (i) compliance would impose unreasonable burdens on the County and (ii) noncompliance would not cause any Bonds to fail to satisfy all requirements of the Code and the Regulations.

Compliance with the Procedures, with respect to the Bonds, may be effected by compliance by the County with the Procedures.

General

1. The County Auditor, on behalf of the County (the “Compliance Officer”), shall be primarily responsible for monitoring compliance with the Code and the Regulations.
2. The Compliance Officer may delegate any such responsibility to any officer, employee, attorney or agent of the County, if such officer’s employee’s, attorney’s or agent’s discharge of such responsibility is under the supervision of the Compliance Officer.
3. The Compliance Officer and any such officers, employees, attorneys or agents shall be provided training and educational resources necessary to ensure compliance with the Code and the Regulations.

Issuance

4. Upon the issuance of any Bonds, the Compliance Officer shall obtain, review and retain a copy of any tax or arbitrage certificate of the County with respect to the Bonds (the “Tax Certificate”).
5. The Compliance Officer shall cause an Internal Revenue Service Information Return (e.g., Form 8038, 8038-G, 8038-B, 8038-TC) for any Bonds (an “Information Return”) to be filed with the Internal Revenue Service not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued.

Post-Issuance

6. The Compliance Officer shall monitor the yield on the investment of Bond proceeds (including compliance with any yield restrictions or temporary periods).

7. The Compliance Officer shall monitor the timely expenditure of Bond proceeds.

8. The Compliance Officer shall monitor the proper use of Bond proceeds and any facilities financed thereby.

9. The Compliance Officer shall, on or before each anniversary of the date of issuance of any Bonds, determine whether the County has paid all amounts required to be rebated to the United States under Section 148(f) of the Code and Section 1.148-3 of the Regulations.

10. The Compliance Officer shall, on or before each anniversary of the date of issuance of any Bonds, determine whether the County has made all yield reduction payments required to be made to the United States under Section 1.148-5(c) of the Regulations.

11. The Compliance Officer shall monitor the investment, expenditure and use of Bond proceeds, to ensure timely identification of any violations of federal tax requirements and timely correction of any identified violations through remedial actions described in Section 1.141-12 of the Regulations or through the Tax Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31.

Governmental Bonds

12. The Compliance Officer shall monitor use of Governmental Bond proceeds, and any facilities financed thereby, to ensure that not more than the 5% of Governmental Bond proceeds, or any facilities financed thereby, are:

(a) owned by any nongovernmental person;

(b) leased to any nongovernmental person;

(c) subjected to any management, service or incentive payment contract with any nongovernmental person, under which such nongovernmental person provides services involving all, any portion or any function of such facilities, unless such contract satisfies the conditions under which it would not result in private business use set forth in Revenue Procedure 97-13 (1997-1 C.B. 623), as amended from time to time; or

(d) subjected to any other arrangement that conveys special legal entitlements for beneficial use thereof that are comparable to special legal entitlements described in subparagraph (a), (b), or (c) above.

Record Retention

22. The following documents shall be maintained, on paper or by electronic means (e.g., CD, disks, tapes), for the life of any Bonds, plus 3 years:

- Tax Certificate
- Information Return
- Audited Financial statements of the County
- Bond transcripts, official statements and other offering documents
- Minutes and resolutions authorizing the issuance of the Bonds
- Certifications of the issue price of the Bonds
- Any formal elections for the Bonds (*e.g.*, election to employ an accounting methodology other than specific tracing)
- Appraisals, demand surveys or feasibility studies for Bond-financed property
- Documents related to government grants associated with construction, renovation or purchase of Bond-financed facilities
- Publications, brochures and newspaper articles related to the Bonds
- Trustee statements for the Bonds
- Correspondence (letters, e-mails, faxes, etc.) for the Bonds
- Reports of any IRS examinations of the County or the Bonds
- Documentation of allocations of investments and investment earnings to the Bonds
- Documentation for investments of the Bond proceeds related to:
 - Investment contracts (*e.g.*, guaranteed investment contracts)
 - Credit enhancement transactions (*e.g.*, bond insurance contracts)
 - Financial derivatives (swaps, caps, *etc.*)
 - Bidding of financial products
- The following arbitrage-related documents for the Bonds:
 - Computations of Bond yield
 - Computation of rebate and yield reduction payments
 - Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate
 - Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions

- Documentation of allocations of Bond proceeds to expenditures (*e.g.*, allocation of Bond proceeds to expenditures for the construction, renovation or purchase of facilities)
- Documentation of allocations of Bond proceeds to issuance costs
- Copies of requisitions, draw schedules, draw requests, invoices, bills and cancelled checks related to Bond proceeds spent during the construction period
- Copies of all contracts entered into for the construction, renovation or purchase of Bond-financed facilities
- Records of expenditure reimbursements incurred prior to issuing the Bonds for facilities financed with Bond proceeds
- A list or schedule of all Bond-financed facilities or equipment
- Depreciation schedules for Bond-financed depreciable property
- Documentation that tracks the purchase and sale of Bond-financed assets
- Records of all unrelated trade or business activities allocated to Bond-financed facilities
- Records of trade or business activities by third parties allocated to Bond-financed facilities
- Copies of the following agreements when entered into with respect to Bond-financed property:
 - Management and other service agreements
 - Research contracts
 - Naming rights contracts
 - Ownership documentation (*e.g.*, deeds, mortgages)
 - Leases
 - Subleases
 - Leasehold improvement contracts
 - Joint venture arrangements
 - Limited liability corporation arrangements
 - Partnership arrangements
 - Take contracts, take or pay contracts, or requirements contracts