

POLICIES AND PROCEDURES REGARDING POST-ISSUANCE COMPLIANCE OF FEDERAL TAX REQUIREMENTS REGARDING TAX-EXEMPT DEBT ISSUES

WHEREAS, the Internal Revenue Service is now requiring issuers of tax-exempt obligations to have adequate policies and procedures to monitor the arbitrage requirements and non-qualified issuer requirements; and,

WHEREAS the Borough of Magnolia is subject to these requirements since the Borough annually issues tax-exempt obligations; and,

WHEREAS the Borough of Magnolia, Mayor and Council wishes to fully comply with the requirements established by the Internal Revenue Service.

NOW, THEREFORE, BE IT RESOLVED that the following procedures are hereby adopted:

I. ARBITRAGE

- A. Obtain and retain a copy of IRS Form 8038G or 8038GC.
- B. Obtain and retain a copy of the Non-Arbitrage Certificate:
- C. Determine whether an exception to arbitrage has been met, based on the following criteria:
 1. Small Issuer:
 2. Six-month spending exception.
 3. Eighteen-month spending exception.
 4. Two-year construction exception.
- D. If not, then determine:
 1. Was a bond year chosen in the non-arbitrage certificate? If not, then discuss with the financial advisor and/or auditor the most advantageous period to choose.
 2. Should an arbitrage calculation be prepared annually, or upon the fifth anniversary of the bond year?
 - a. Consideration should be given to the fact that positive arbitrage must be rebated to the IRS 60 days after the end of each fifth bond year, or 60 days after all proceeds are expended.
 - b. Prepare or contract to have prepared the arbitrage calculation.
 - c. Rebate any positive arbitrage to the IRS (if unspent proceeds still exist, then only 90% of the liability must be rebated).
- E. The Chief Financial Officer shall be responsible for monitoring the above compliance, as well as maintaining receipt (including investment earning) and disbursement records in sufficient detail, such that compliance can be met.

II. NON-QUALIFIED ISSUE MONITORING

- A. Determine if the issue, or a portion of the issue, was used to finance local government facilities.
- B. If not, then no future monitoring is required.
- C. If "yes" the following must be performed until the issue is fully paid:
 - 1. Monitor the facility that was constructed or renovated with the proceeds of the issue to determine whether any of the following conditions were met:
 - a. Sale of the facility
 - b. Lease of the facility
 - c. Non-qualified management contract.
 - d. Non-qualified research contract
 - e. Special legal entitlement.
 - 2. If none of the conditions were met, then no further action is required.
- D. If any of the conditions were met, then the following must be addressed:
 - 1. Did any of the above-mentioned events, either individually or collectively, represent greater than 5% of the use of the facility?
 - 2. If "no" then nothing further is required.
 - 3. If "yes" remedial action (an action that causes the issue to meet the private activity test, i. e. less than 5%) must be taken.
- E. The Chief Financial Officer, in conjunction with the Administrator, will be responsible for monitoring the above compliance. Bond Counsel should be consulted when necessary.

Adopted: January 6, 2021



Betty Ann Cowling-Carson
Mayor
Borough of Magnolia