



National Association of Bond Lawyers

TAX COMPLIANCE CHECKLIST 501(c)(3) BONDS

NAME OF ISSUER: _____

NAME OF BORROWER: _____

**PRINCIPAL AMOUNT
OF BOND ISSUE: \$** _____

DATE: _____

Counsel should indicate for each item one or more of the following that apply:

- (1) The item is addressed in the tax regulatory agreement between the Issuer and the 501(c)(3) entity as Borrower, Issuer's tax certificate, and/or Borrower's tax certificate.
- (2) The item is addressed in some other Issuer certificate or document in the transcript (identify by transcript index number).
- (3) The item is addressed in some other Borrower certificate or document in the transcript (identify by transcript index number).
- (4) The item is addressed in advice of counsel contained in the transcript.
- (5) The item is addressed in a document outside the transcript (identify in attachment).
- (6) The item is not relevant to the facts of the bond issue.

The completed checklist should be reviewed with an official of the Borrower and, where applicable, the Issuer responsible for issuance of the bonds, signed by counsel and made available to the Borrower and upon request to the Issuer. The purpose of the signed checklist and the referenced documents, if true, correct and complete, is to provide support for the bond opinion establishing that the bond interest is excludible from gross income in conformity with the closing opinion of bond counsel. Accordingly, if it is necessary for counsel to provide further documentation in addition to the checklist in order to support their due diligence obligations in conjunction with the bond opinion, that documentation will be in a separate written document. Checking off an item in the checklist indicates that counsel has either reviewed the material as noted, or discussed the matter with the Issuer or the Borrower, as appropriate. This checklist does not address the impact of First Amendment issues.

Diligence procedures will depend on particular facts but can include (1) discussion and review with officials of the Issuer and the Borrower of the plan of finance, the use of financed facilities, and any certificates prepared by bond counsel for execution by the public officials or the Borrower, (ii) review of authorizing legislation or resolutions for the issue, (iii) review of feasibility studies prepared by consultants or internal staff, (v) review of description of payment sources in draft offering materials, (vi) review of draw schedule for expenditure of proceeds, and (vii) review of the Borrower's procedures for calculation and payment of arbitrage rebate.

| | (1) Tax certificate | (2) Other document of Issuer | (3) Other document of Borrower | (4) Transcript advice | (5) External document | (6) Not relevant |
|--|---------------------------|---------------------------------------|--|-----------------------------|-----------------------------|------------------------|
| 1. GENERAL | | | | | | |
| (a) Issuer is a State, the District of Columbia, or a political subdivision with substantial sovereign powers of taxation, eminent domain, police power. <i>See</i> Treas. Reg. § 1.103-1; Rev. Rul. 77-165. | | | | | | |
| (b) Issuer is a constituted authority created by or under special state law and issuing on behalf of a State or political subdivision. | | | | | | |
| (c) Issuer is a nonprofit corporation issuing under Rev. Rul. 63-20 (Rev. Proc. 82-26) or another qualified form of entity. | | | | | | |
| (d) Bonds meet state law requirements for valid issuance, public purpose, voter approval, and maturity. | | | | | | |
| (e) Bonds are issued in registered form. | | | | | | |
| (f) Issuance of bonds is reported to IRS on Form 8038. | | | | | | |
| 2. DEBT OBLIGATIONS | | | | | | |
| (a) Dates and amounts of payments are specified. | | | | | | |
| (b) Interest rate is a fixed rate or a qualified floating rate. <i>See</i> Treas. Reg. § 1.1275-4(d) | | | | | | |
| (c) Obligation to make payments is incurred in exercise of power to borrow. <i>See</i> Rev. Rul. 72-77 (interest on condemnation award is not tax-exempt). | | | | | | |
| 3. 501(C)(3) BONDS: ORGANIZATION AND USE OF PROCEEDS | | | | | | |
| (a) Borrower or a governmental unit owns for federal income tax purposes all property being acquired with Bond proceeds of the issue. | | | | | | |

| | (1) Tax certificate | (2) Other document of Issuer | (3) Other document of Borrower | (4) Transcript advice | (5) External document | (6) Not relevant |
|---|---------------------------|---------------------------------------|--|-----------------------------|-----------------------------|------------------------|
| (b) No bond-financed property used in an unrelated trade of business (also examine any leases of bond-financed facilities to other 501(c)(3) organizations for compliance. <i>See</i> Section 145(a)(2)(A) of the Code. | | | | | | |
| (c) 501(c)(3) status verified by legal opinion of counsel to Borrower. | | | | | | |
| (d) Exempt purpose verified by review of: | | | | | | |
| (i) Form 1023 | | | | | | |
| (ii) Form 990T | | | | | | |
| (iii) charter or articles of incorporation | | | | | | |
| (iv) bylaws | | | | | | |
| (v) IRS determination letter | | | | | | |
| (vi) IRS correspondence file requested of Borrower | | | | | | |
| (e) At least 95% of net proceeds used by Borrower in furtherance of its exempt purpose or by governmental unit. | | | | | | |
| (f) No management contract, or | | | | | | |
| (g) Qualified management contract under Rev. Proc. 97-13. If does not meet safe harbor, include explanation. | | | | | | |
| (h) No arrangement for sponsorship of research in the facilities, or | | | | | | |
| (i) Sponsorship meets guidelines of Rev. Proc. 97-14. If does not meet safe harbor, include explanation. | | | | | | |
| (j) No other private business user has a contract, arrangement, or special legal entitlement for the use of the facilities. | | | | | | |
| (k) Facilities do not confer special economic benefits on any private business user other than Borrower or governmental unit. | | | | | | |

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|---|---------------------------|---------------------------------------|--|-----------------------------|-----------------------------|------------------------|
| (l) Not more than 5% of the net proceeds secured by an interest in property, or payments in respect of property, used by a 501(c)(3) organization in furtherance of an unrelated trade or business or by a private user. | | | | | | |
| (m) Costs financed by the proceeds are capital costs rather than operating expenses. | | | | | | |
| (n) Issue qualifies for 5% working capital provision. | | | | | | |
| (o) If issue refunds a prior issue, the use of facilities complies with the 501(c)(3) use requirements on the basis of combined measuring period for both issues, or | | | | | | |
| (p) Prior issue and refunding issue each comply on basis of separate measurement periods. <i>See Prop. Reg. § 1.141-13.</i> | | | | | | |
| (q) Application of \$150,000,000 limitation to “nonhospital” bond. Section 145(b)(5). | | | | | | |
| (r) Proceeds used for residential housing are for first use of property; meet rules of 142(d) or are substantially rehabilitated. <i>See Section 145(d)(2).</i> | | | | | | |
| 4. 501(C)(3): PRIVATE BUSINESS PAYMENTS | | | | | | |
| (a) Debt service on not more than 5% of the net proceeds of the bond issue can be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used by the Borrower in furtherance of an unrelated trade or business or by a private user. | | | | | | |
| 5. CONTINUING COMPLIANCE | | | | | | |
| (a) Issuer reasonably expects at date of issuance that use of facilities will continue for life of issue. <i>See Treas. Reg. § 1.141-2(d).</i> | | | | | | |

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| (b) Bond terms permit optional redemption within 10.5 years for remediation of private use. <i>See</i> Treas. Reg. § 1.141-12. | | | | | | |
| 6. ARBITRAGE BONDS: NEW MONEY | | | | | | |
| (a) Issuer, in reliance upon representations from the Borrower, reasonably expects the Borrower to enter a binding contract for at least 5% of proceeds within six months, to spend 85% of proceeds within three years, or five years with certification by licensed architect or engineer, and completion of projects and expenditure of proceeds will proceed with due diligence. | | | | | | |
| (b) Issuer, in reliance upon representations from the Borrower, reasonably expects that amount of issue does not exceed reasonable needs of project. | | | | | | |
| (c) Declaration of official intent to use bond financing to reimburse prior expenditures was adopted by Issuer or Borrower not later than 60 days after the date of the expenditures; project not in service for more than 18 months; expenditures not more than three years old; de minimis exception. | | | | | | |
| (d) Investment contract was purchased in bona fide competitive bidding under three-bid safe harbor. | | | | | | |
| (e) Fees for brokers of investment contract comply with Treas. Reg. § 1.148.5(e)(iii). | | | | | | |
| 7. ARBITRAGE: CURRENT REFUNDINGS | | | | | | |
| (a) Proceeds of current refunding will be used to retire prior bonds in not more than 90 days. | | | | | | |
| 8. ARBITRAGE: ADVANCE REFUNDINGS | | | | | | |
| (a) Proceeds of advance refunding will be used to retire prior bonds more than 90 days after issuance of refunding bonds. | | | | | | |

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| (b) Advance refunding is first advance refunding of post-1985 new money bonds, or first or second advance refunding of pre-1986 new money bonds. | | | | | | |
| (c) Prior bonds will be redeemed at first optional redemption date if purpose of advance refunding is to save debt service. | | | | | | |
| (d) Refunding escrow invested in Treasury securities of State and Local Government Series (SLGs), or | | | | | | |
| (e) Refunding escrow is invested in market securities purchased using bona fide competitive bidding under three-bid safe harbor with yield at least as high as comparable portfolio of SLGs and no derivative financial instruments included in yield. | | | | | | |
| (f) Yield on refunding escrow does not exceed yield on refunding bonds by more than de minimis permitted spread. | | | | | | |
| 9. OTHER ARBITRAGE REQUIREMENTS | | | | | | |
| (a) Revenues will not be set aside for debt service except in bona fide debt service fund (depleted at least annually except for carryover balance equal to earnings in prior year or one twelfth of prior year debt service if greater). | | | | | | |
| (b) Fee for qualified guarantee cannot be taken into account in yield calculation if fee is for services or separate investment rather than credit support. <i>See</i> Treas. Reg. § 1.148-4(f)(4); Rev. Rul. 94-42. | | | | | | |
| (c) Payments for qualified hedge cannot be taken into account in yield calculation unless hedge is identified to issue on issuer's records within three days of being entered. <i>See</i> Treas. Reg. § 1.148-4(h)(2) and 4(h)(5). | | | | | | |
| (d) Advice related to 6-month, 18-month or two-year spending exceptions from arbitrage. | | | | | | |

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| (e) Borrower agrees to pay required arbitrage rebate beginning 60 days after fifth anniversary of issuance or 60 days after bond retirement if sooner. | | | | | | |
| (f) Fundraising literature reviewed to see if replacement proceeds created; issue structured to allow payment of debt service of designated pledge receipts within one year of receipt to qualify as a debt service fund. | | | | | | |
| (g) Endowment does not create pledged fund. | | | | | | |
| (h) No other pledged funds. | | | | | | |
| (i) All financial covenants reviewed to see if replacement proceeds created. | | | | | | |
| 10. PRIVATE ACTIVITY BOND REQUIREMENTS APPLICABLE TO 501(C)(3) BONDS | | | | | | |
| (a) Average maturity of bonds is within 120% of useful life of project. <i>See</i> Section 147(b) of the Code, if pooled Bonds, see Section 147(b)(4). | | | | | | |
| (b) Prohibition on the use of proceeds for airplanes, skyboxes, other private luxury box, facility primarily used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises. <i>See</i> Section 147(e). | | | | | | |
| (c) TEFRA Public Approval Requirement. <i>See</i> Section 147(f). 1. Initial owner or operator 2. Street Address 3. Description of project 4. Principal amount of issue 5. Date and place of public hearing 6. At least 14 days published notice. If less than 14 days' notice, explain why shorter period is reasonable. | | | | | | |

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|---|---------------------------|---------------------------------------|--|-----------------------------|-----------------------------|------------------------|
| (d) 2% of proceeds allocated to Costs of Issuance. <i>See</i> Section 147(g). 1. Determine proceeds 2. Include: Underwriter's discount or spread Counsel fees Financial advisor fees Rating agency fees Trustee fees Trustee/Paying Agent fees Accounting fees Printing costs Costs of TEFRA notice Costs of engineering and feasibility studies necessary to issuance of bonds (can exclude studies related to completion of project) Bond insurance premiums and letter of credit fees not treated as interest expense 3. Verify 2% is not exceeded | | | | | | |
| 11. NO FEDERAL GUARANTEES | | | | | | |
| (a) Payments of principal or interest on bonds or underlying loans are not guaranteed by United States or any Federal agency (unless permitted by statutory exceptions, <i>e.g.</i> , housing bonds). | | | | | | |
| 12. POOLED FINANCING BONDS | | | | | | |
| (a) No loan of proceeds to two or more borrowers without compliance with statutory tests. | | | | | | |
| 13. HEDGE BONDS | | | | | | |
| (a) Reasonably expected expenditure of spendable proceeds is 85% in three years (with no guaranteed yield investment of more than 50% of proceeds for four years or more), <u>or</u> 10% by end of first year, 30% by end of second, 60% by end of third, and 85% by end of fifth year. | | | | | | |
| (b) Expenditure expectations are not based on possible change in interest rates. | | | | | | |

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| (c) Hedge bond tests are satisfied for prior bonds if present issue is a refunding. | | | | | | |
| 14. NO OTHER BONDS TREATED AS PART OF SAME ISSUE | | | | | | |
| (a) No other bonds have been or will be sold within 15 days in common plan of finance with same source of payment. <i>See</i> Treas. Reg. 1.150-1(c). | | | | | | |
| 15. STRUCTURAL MATTERS | | | | | | |
| (a) Multiple bond issues or funding sources for same project with different tax theories. <i>See</i> Treas. Reg. 1.141-14 example 4 (one bond issue seeks to avoid private activity bond definition by showing public use of proceeds but has private payments for debt service, while second bond issue for same project has private use of proceeds but shows tax-supported debt service). | | | | | | |
| (b) A single party makes or receives payments having different arbitrage attributes; <i>e.g.</i> , Treas. Reg. 1.148-4(f)(4) (service fee must be separately stated from credit charge). | | | | | | |
| (c) Financings that blend different yield-restricted escrows. <i>See</i> Treas. Reg. § 1.148-10(d) example 2. | | | | | | |
| (d) Transactions using or disregarding safe harbors (competitive bidding, management contracts, sponsored research contracts, replacement proceeds, cost allocations with qualified guarantees or hedges, etc.). | | | | | | |
| (e) Debt service structures involving unnecessarily long maturities or back weighted debt service (little or no current interest). <i>See</i> Treas. Reg. § § 1.141-14(b) example 5; 1.148-10(d) example 3. | | | | | | |
| (f) Any transaction with substantially different arbitrage consequences depending on whether the transaction is treated as a reissuance of bonds. <i>See</i> Treas. Reg. § 1.148-10(d) example 4. | | | | | | |

Counsel signature: _____

Date: _____