

RESOLUTION

Moved by Brannell Seconded by Mauro  
that the following resolution be adopted:

WHEREAS, to ensure continuing tax-exempt status, issuers of tax-exempt governmental bonds must comply with federal tax rules pertaining to expenditure of bond proceeds, rate of expenditure, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records, and

WHEREAS Polk County has numerous tax-exempt bonds outstanding and is required to comply with applicable federal tax rules, and

WHEREAS staff from the budget office, Auditor's Office, and Treasurer's Office routinely perform functions to maintain the tax-exempt status of County bonds but no written policy has heretofore been adopted, and

WHEREAS staff from the budget office, Auditor's Office, and Treasurer's Office, in conjunction with bond counsel, have developed a proposed post issuance compliance policy to formalize its compliance procedures and evidence the County's commitment to federal tax rule compliance,

NOW, THEREFORE, BE IT RESOLVED that the Polk County Board of Supervisors adopts the Polk County Tax Compliance and Record Retention Policy for Tax-Exempt Governmental Bonds.

POLK COUNTY BOARD OF SUPERVISORS

Angela Connolly  
Chairperson

Submitted By:

Ben Lacey  
Mary Maloney, Polk County Treasurer

Keith Olson  
Keith Olson, Central Accounting Manager

Deborah A. Anderson  
Deb Anderson, Budget Manager

ROLL CALL FOR ALLOWANCE  
E.J. Giovannetti  Yea  Nay  
Robert Brownell  Yea  Nay  
John F. Mauro  Yea  Nay  
Tom Hockensmith  Yea  Nay  
Angela Connolly  Yea  Nay  
JUL 10 2012  
ALLOWED BY VOTE OF BOARD  
Yea  5 Nay  0  
Above tabulation made by BD  
Angela Connolly  
CHAIRPERSON

#16

**Polk County, Iowa**  
**Tax Compliance and Record Retention for Tax-Exempt Governmental Bonds**  
**Effective Date: July 10, 2012**

**Definitions**

“Advisors” means the Issuer’s bond counsel, financial advisor, paying agent, and rebate analyst.

“Bonds” mean bonds, notes or other obligations subject to the Code, Rules and applicable securities regulations.

“Code” means the Internal Revenue Code of 1986, as amended.

“Governing Body” means the Board of Supervisors of the Issuer.

“Issuer” means Polk County, State of Iowa.

“Rules” means Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder.

**Purpose**

Issuers of tax-exempt governmental Bonds must comply with 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.

As an issuer of such Bonds, the Governing Body, is required by Rules to take certain actions subsequent to the issuance of the Bonds to ensure the continuing tax-exempt status of such Bonds. Further, Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations impose record retention requirements on the Issuer with respect to its tax-exempt governmental Bonds.

The procedures encompassed herein are intended to assure that the Issuer shall meet its compliance obligations as an issuer of tax-exempt bonds and particularly with respect to the 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.

**Effective Date and Term**

The effective date of this policy shall be the date of approval by the Governing Body, and shall remain in effect until superseded or terminated by action of the Governing Body. The Issuer shall comply with this policy upon issuance of Bonds and as long as the Bonds remain outstanding. This policy may be revised to comply with amendments to the Rules during the period the Bonds are outstanding.

**Responsible Parties**

The Budget Manager shall be the party primarily responsible for ensuring that the Issuer successfully carries out its tax compliance requirements under applicable provisions of the Rules with regard to all obligations of the Issuer. The Budget Manager is referred to as the "Compliance Officer" for purposes of this policy. The Compliance Officer shall be assisted by other staff and officials when appropriate and at the Compliance Officer's discretion. The Compliance Officer shall also be authorized to retain and consult with the Advisors during the time the Bonds are outstanding for assistance in carrying out post-issuance tax compliance requirements.

The Compliance Officer shall be responsible for assigning post-issuance tax compliance responsibilities to other staff. The Compliance Officer shall consult Advisors or such other professional service organizations as are necessary to ensure compliance with the post-issuance tax compliance requirements of the Issuer. The Compliance Officer shall provide training and educational resources to staff responsible for ensuring compliance with any portion of the tax compliance requirements of this policy.

**Expenditure of Bond Proceeds -- Review Process:**

The Compliance Officer shall review the resolution authorizing issuance for each tax-exempt obligation, and shall:

- a) obtain a computation of the yield on such issue from the Issuer's financial advisor;
- b) create separate Business Units (with as much supporting documentation as shall be necessary to allocate proceeds among the projects being funded by the issue) into which the proceeds of the issue shall be deposited;
- c) advise staff managing the projects being funded by the issue of the authorized uses of the bond proceeds and direct staff to review all requisitions, draw schedules, draw requests, invoices and bills requesting payment from the Business Unit;

- d) advise staff managing the projects being funded by the issue to determine whether payment from the Business Unit is appropriate, and if so, make payment from the Business Unit;
- e) maintain records of the payment requests and corresponding evidence of payment through accounting entries in the Issuer's financial management software; paper copies of such documentation shall be retained pursuant to the Issuer's standard document retention policy and not necessarily physically maintained in a separate location or for an exceptional period of time;
- f) maintain records showing the earnings on, and investment of, the Project Fund;
- g) ensure that investments acquired with proceeds are purchased at fair market value;
- h) identify bond proceeds or applicable debt service allocations that must be invested with a yield-restriction and monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted;
- i) in the event the Issuer seeks to utilize bond proceeds for costs that were incurred prior to the issuance of the Bonds, the Compliance Officer shall consult with the Advisors to ensure that such expenditures are within the sixty (60) day period prior to the date in which the Issuer made a "declaration of intent" to reimburse such costs or are preliminary expenditures under the Code. If proceeds are used for such reimbursement, a copy of the declaration of intent shall be obtained and included in the records for the Bonds if not already part of the transcript; and
- j) if not otherwise provided for in the Tax Exemption Certificate executed by the officers of the Issuer at closing, the Compliance Officer shall prepare an "allocation memorandum" for each issue of Bonds that accounts for the allocation of the proceeds of the Bonds to expenditures not later than the earlier of:
  - i. Eighteen (18) months after the later of (i) the date the expenditure is paid, or (ii) the date the project that is financed by the Bonds is placed in service; or
  - ii. Sixty (60) days after the earlier of (i) the fifth (5th) anniversary of the issue date of the Bonds, or (ii) the date sixty (60) days after the retirement of the Bonds.

**Rate of Expenditure:**

The Compliance Officer shall ensure that the expenditure of bond proceeds will be monitored against the expenditure expectations represented in the tax exemption certificate for such bond issue to ensure that:

- Five percent (5%) of the net sale proceeds were spent or committed within six (6) months of the issue date;
- Eighty-five percent (85%) of the net sale proceeds were spent within three (3) years of the issue date; and
- the Issuer proceeded with due diligence to complete the project and fully spend the net sale proceeds; or
- One hundred percent (100%) of proceeds used for current refunding within ninety (90) days of issuance.

Failure to meet the expected expenditure expectations represented in the tax exemption certificate for such bond issue shall be documented and retained by the Compliance Officer in the records for the bond issue.

**Arbitrage Rules and Rebate Requirements**

The Compliance Officer shall review or cause to be reviewed the Tax-Exemption Certificate for each tax-exempt obligation and the expenditure records, and shall ensure staff or Advisors:

- a) monitor and ensure that proceeds of each such issue are spent within the temporary period set forth in such certificate;
- b) if the “small issuer” exception does not apply (not more than \$5 million issued in a calendar year), monitor and ensure that the proceeds are spent in accordance with one or more of the applicable exceptions to rebate as set forth in such certificate (e.g. six month exception, eighteen month exception, two year “construction issue” exception);
- c) not less than sixty (60) days prior to a required expenditure date within applicable rebate exception(s), confer with bond counsel if it appears expenditures will fail to meet the applicable temporary period or rebate exception expenditure requirements of the Tax-Exemption Certificate;
- d) in the event of failure to meet a temporary period or rebate exception:
  - i. procure a timely computation of any rebate liability and, if rebate is due, file a Form 8038-T and arrange for payment of such rebate liability;

- ii. arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable;
- e) ensure that the investment of bond proceeds is made only in permitted investments of the Issuer as outlined in Iowa Code chapters 12B and 12C, and any official policy;
- f) consult with the Advisors to ensure that the investment of bond proceeds is performed in compliance with the arbitrage rules and rebate requirements;
- g) consult with the Advisors to identify bond proceeds that must be yield-restricted and monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted;
- h) consult with the rebate analyst (and, if appropriate, bond counsel) prior to the fifth anniversary of the date of issuance of each issue of bonds of the Issuer and each fifth anniversary thereafter to arrange for calculations and reports of the rebate requirements with respect to such bonds;
- i) if a rebate payment is required to be paid by the Issuer, the Compliance Officer shall prepare or cause to be prepared the appropriate form to be filed with the IRS (Form 8038-T);
- j) ensure that 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. All other investments will be purchased only in market transactions.

#### **Filings with Internal Revenue Service**

The Compliance Officer, with assistance from bond counsel, shall ensure that each issuance of Bonds is properly reported with the Internal Revenue Service (IRS) as required by Section 149(e) of the Code. On the issue date of each series of Bonds, the Compliance Officer shall consult with the Advisors to identify the deadline to file the requisite IRS form for such issue.

If a bond issue consists of tax-exempt Bonds, the Issuer must report the tax-exempt portion on Form 8038-G or 8038-GC.

### **Reporting the Issuance of Tax-Exempt Bonds**

The original issuance of a tax-exempt bond issue with an issue price of one-hundred thousand dollars (\$100,000) or greater shall be reported on Form 8038-G. The original issuance of a tax-exempt bond issue with an issue price less than one-hundred thousand dollars (\$100,000) shall be reported on Form 8038-GC.

- Forms 8038-G and 8038-GC shall be filed by the Compliance Officer or bond counsel no later than the 15th day of the 2nd calendar month following the quarter in which the Bonds were issued.
- The Compliance Officer shall consult with the Advisors to ensure the Form 8038-G is accurately filled out.

### **Rebate Reporting Requirements**

The Compliance Officer or assigned staff shall consult with the rebate analyst prior to the 5th anniversary of the issue date on each series of Bonds and each 5th anniversary thereafter to arrange for calculations of the rebate requirements with respect to such Bonds. If a rebate payment is required to be paid, the Compliance Officer or assigned staff shall prepare or cause to be prepared a Form 8038-T, and submit such Form 8038-T to the IRS with the required rebate payment.

If the Issuer is authorized to recover a rebate payment previously paid, the Compliance Officer or assigned staff shall prepare or cause to be prepared a Form 8038-R, with respect to such rebate recovery, and submit such Form 8038-R to the IRS.

### **Use of Bond-Financed Property**

The Compliance Officer shall monitor the use of all bond-financed facilities in order to determine whether private business uses of bond-financed facilities have exceeded the *de minimis* limits set forth in Section 141(b) of the Code (generally 10% of bond proceeds) as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements or other arrangements that provide special legal entitlements to nongovernmental persons. Prior to entering into such leases or other contracts, the Compliance Officer shall consult with bond counsel to ensure appropriate action is taken with respect to the bond-financed facilities.

To this end, the Compliance Officer shall:

- a) maintain appropriate records and a list of all bond financed facilities. Such records shall include the actual amount of proceeds (including investment earnings) spent on each of the bond financed facilities;

- b) with respect to each bond financed facility, the Compliance Officer will monitor and confer with bond counsel with respect to all proposed:
- i. management contracts,
  - ii. service agreements,
  - iii. research contracts,
  - iv. naming rights contracts,
  - v. leases or sub-leases,
  - vi. joint venture, limited liability or partnership arrangements,
  - vii. sale of property;
  - viii. any other change in use of such asset; or
  - ix. output contracts (including retail and wholesale requirements contracts);
- c) maintain a copy of the proposed agreement, contract, lease or arrangement, together with the response by bond counsel with respect to the proposal for at least three (3) years after retirement of all tax-exempt obligations issued to fund all or any portion of bond financed assets, or obligations issued to refund those obligations;
- d) provide training and educational resources to managerial staff overseeing the operation, maintenance, or inspection of bond-financed facilities with regard to the limitations on the private business use and on the private security or payments with respect to bond-financed facilities;
- e) ensure that no item of bond-financed real property is sold or transferred to a nonexempt party without advance arrangement of a “remedial action” under the applicable Treasury Regulations and consult with bond counsel prior to the sale or transfer of any bond-financed real property; and
- f) In the event of an action with respect to a bond financed facility, which may cause the private business tests or private loan financing test to be met, the Compliance Officer shall contact bond counsel for advice and ensure timely remedial action under IRS Regulation Sections 1.141-12.

## **Advance Refundings**

The Compliance Officer shall be responsible for the following current, post issuance and record retention procedures with respect to advance refunding bonds:

- a) Identify and select bonds to be advance refunded with advice from internal financial personnel, and/or the Issuer's financial advisor;
- b) Identify, with advice from Advisors, any possible federal tax compliance issues prior to structuring any advance refunding;
- c) Review the structure with the input of the Advisors, of advance refunding issues prior to the issuance to ensure (i) that the proposed refunding is permitted pursuant to applicable federal tax requirements if there has been a prior refunding of the original bond issue; (ii) that the proposed issuance complies with federal income tax requirements which might impose restrictions on the redemption date of the refunded bonds; (iii) that the proposed issuance complies with federal income tax requirements which allow for the proceeds and replacement proceeds of an issue to be invested temporarily in higher yielding investments without causing the advance refunding bonds to become "arbitrage bonds"; and (iv) that the proposed issuance will not result in the Issuer's exploitation of the difference between tax exempt and taxable interest rates to obtain a financial advantage nor overburden the tax exempt market in a way that might be considered an abusive transaction for federal tax purposes.
- d) Collect and review data related to arbitrage yield restriction and rebate requirements for advance refunding bonds. To ensure such compliance, the Issuer shall engage a rebate consultant to prepare a verification report in connection with the advance refunding issuance. Said report shall ensure said requirements are satisfied.
- e) Ensure, whenever practicable, the purchase of demand deposit Treasury securities from the State and Local Governmental Series ("SLGS") to size each advance refunding escrow. The financial advisor shall be included in the process of subscribing SLGS. To the extent SLGS are not available for purchase or are not economical, the Compliance Officer shall, in consultation with bond counsel and the financial advisor, comply with IRS regulations.
- f) To the extent Issuer elects to purchase a guaranteed investment contract, the Compliance Officer shall ensure, after input from bond counsel, compliance with any bidding requirements set forth by the IRS regulations.

- g) In determining the issue price for any advance refunding issuance, the Compliance Officer shall obtain and retain issue price certification by the purchasing underwriter at closing.
- h) After the issuance of an advance refunding issue, the Compliance Officer shall ensure timely identification of violations of any federal tax requirements and engage bond counsel in an attempt to remediate same in accordance with IRS regulations.

### **Record Retention**

Management and retention of records related to the Issuer's bond issues shall be supervised by the Compliance Officer. Records and documents pertaining to cancellation, transfer, redemption or replacement of Issuer bonds shall be preserved by the Issuer or its agent for a period of not less than 11 years, as set forth in Iowa Code Section 76.10. Other records shall be retained during the period in which the bonds remain outstanding (plus any refunding bonds) plus three (3) years. Records may be in the form of documents, electronic copies of documents, or electronic databases, appropriately indexed to specific bond issues and compliance functions.

The Compliance Officer shall collect and retain the following records with respect to each issue of Bonds of the Issuer and with respect to the facilities financed with the proceeds of such Bonds:

- audited financial statements of the Issuer;
- appraisals, demand surveys, or feasibility studies, if any, with respect to the facilities to be financed with the proceeds of such Bonds;
- publications, brochures, and newspaper articles, if any, related to the bond financing;
- trustee or paying agent statements;
- records of all investments and the gains (or losses) from such investments;
- annual paying agent or trustee statements regarding investments and investment earnings;
- reimbursement resolutions, if any, and expenditures reimbursed with the proceeds of such Bonds;
- allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (paper copies of documentation including requisitions, invoices, bills, and cancelled checks with respect to such expenditures shall be retained pursuant to the Issuer's standard document retention policy and not necessarily physically maintained in a separate location or for an exceptional period of time) ;
- contracts entered into for the construction, renovation, or purchase of bond-financed facilities;
- an asset list or schedule of all bond financed depreciable property and any depreciation schedules with respect to such assets or property;
- records of the purchases and sales of bond-financed facilities;

- private business uses of bond-financed facilities that arise subsequent to the date of issue through leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons and copies of any such agreements or instruments;
- arbitrage rebate reports and records of rebate and yield reduction payments, if any;
- resolutions or other actions, if any, taken by the Governing Body subsequent to the date of issue with respect to such Bonds;
- formal elections authorized by the Code or Treasury Regulations that are taken with respect to such Bonds
- relevant correspondence relating to such Bonds;
- documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into subsequent to the date of issue;
- copies of any and all forms filed with the IRS for each series of Bonds including, as applicable, Form 8038-G, Form 8038-GC; and
- the official transcript prepared by bond counsel with respect to each series of Bonds of the Issuer.

#### **Identification of Violations and Corrections**

If, during the period the Bonds remain outstanding, it is determined that a violation of federal tax requirements has occurred, the Compliance Officer shall immediately consult with the Advisors to ensure that corrective or remedial action is taken. In consultation with bond counsel, the Compliance Officer shall become acquainted with the remedial actions under Treasury Regulations, Section 1.141-12, to be utilized in the event that private business use of bond-financed facilities exceeds the de minimus limits under Section 141(b)(1) of the Code. In consultation with bond counsel, the Compliance Officer shall become acquainted with the Tax Exempt Bonds Voluntary Closing Agreement Program, described in Notice 2008-31, 2008-11 I.R.B. 592, to be utilized as a means for an issuer to correct any post-issuance infractions of the Rules with respect to its outstanding Bonds.

#### **Continuing Disclosure Obligations**

In addition to its post-issuance compliance requirements under applicable provisions of the Rules, the Issuer has agreed to provide continuing disclosure, such as annual financial information and event notices, pursuant to a continuing disclosure certificate or similar document (the "Continuing Disclosure Certificate") prepared by bond counsel and made a part of the transcript with respect to each issue of Bonds of the Issuer that is subject to such continuing disclosure requirements. The Continuing Disclosure Documents shall be executed by the Issuer to assist the underwriters of the Issuer's Bonds in meeting their obligations under Securities and Exchange Commission Regulation, 17 C.F.R. Section 240.15c2-12, as in effect and interpreted from time to time ("Rule 15c2-12"). The continuing disclosure obligations of the Issuer shall be

governed by the Continuing Disclosure Certificate and by the terms of Rule 15c2-12. The Compliance Officer, in consultation with Advisors, shall be primarily responsible for undertaking such continuing disclosure obligations and to monitor compliance with such obligations.

#### **Other Post-Issuance Actions**

If, in consultation with the Advisors, the Compliance Officer determines that any additional action not identified in this policy must be taken by the Compliance Officer to ensure the continuing tax-exempt status or “qualified” status of any issue of the Issuer’s Bonds, the Compliance Officer shall take such action if the Compliance Officer has the authority to do so. If, after consultation with the Advisors, the Compliance Officer determines that this policy shall be amended or supplemented to ensure the continuing tax-exempt status or “qualified” status of any issue of the Issuer’s Bonds, the Compliance Officer shall follow the appropriate Issuer policy that this document be so amended or supplemented.

#### **Taxable Governmental Bonds**

Most of the provisions of this policy, other than the provisions in the Continuing Disclosure Obligations subsection of this policy, are not applicable to governmental Bonds the interest on which is includable in gross income for federal income tax purposes (i.e. “taxable governmental Bonds”). If an issue of taxable governmental Bonds is later refunded with the proceeds of an issue of tax-exempt governmental Bonds, then the uses of the proceeds of the taxable governmental Bonds and the uses of the facilities financed with the proceeds of the taxable governmental Bonds shall be relevant to the tax-exempt status of the refunding Bonds. Therefore, if there is any reasonably foreseeable possibility that an issue of taxable governmental Bonds may be refunded, in whole or in part, with the proceeds of an issue of tax-exempt governmental Bonds then, for purposes of this policy, the Compliance Officer shall treat the issue of taxable governmental Bonds as if such issue were an issue of tax-exempt governmental Bonds and shall carry out and comply with the requirements of this policy with respect to such taxable governmental Bonds. The Compliance Officer shall seek the advice of bond counsel as to whether there is any reasonably foreseeable possibility of issuing tax-exempt governmental Bonds to refund an issue of taxable governmental Bonds.