

Agenda

Minnetonka Economic Development Authority

Monday, December 18, 2017

Following the Regular Meeting

Council Chambers

1. Call to Order
2. Roll Call: Bergstedt-Wagner-Ellingson-Allendorf-Acomb-Wiersum-Schneider
3. Approval of Agenda
4. Approval of Minutes: None
5. Business Items:
 - A. Resolution approving post-issuance compliance procedures and policy for tax-exempt governmental bonds

Recommendation: Adopt the resolution (4 votes)
6. Adjourn

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Sundays at 9 p.m., Wednesdays at 12 p.m. and Fridays at 9 a.m.
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**Economic Development Authority Agenda Item #5A
Meeting of December 18, 2017**

Brief Description Resolution approving post-issuance compliance procedures and policy for tax-exempt governmental bonds

Recommendation Adopt the resolution

Background

The IRS requires municipal tax exempt issuers to indicate whether they have established policies to ensure compliance with all required rules and laws for using the proceeds of their tax exempt bonds. On March 5, 2012, the city council adopted policy 2.16 related to post-issuance compliance of bonds. Staff is requesting that the Economic Development Authority (EDA) formally adopt the same policy related to tax exempt bonds that are issued through the Economic Development Authority.

The EDA's upcoming sale of refunding bonds for Glen Lake approved at the November 6, 2017 EDA meeting has prompted such a request for assurance, and the city's bond counsel recommends we adopt the attached Council Policy 2.16, which outlines the related compliance rules.

Recommendation

Staff recommends the Economic Development Authority adopt the resolution enacting Exhibit A, Council Policy 2.16, which directs the same compliance procedures to be followed by the EDA after issuance of tax exempt government bonds.

Submitted through:

Geraldyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Merrill King, Finance Director

Originated by:

Alisha Gray, EDFP, Economic Development and Housing Manager

Supplemental Information

Exhibit A Council Policy 2.16 – Post-Issuance Procedure and Policy for Tax-Exempt Governmental Bonds

EDA Resolution No. 2017-_____

Resolution Approving Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds

Be it resolved by the Board of Commissioners (the “Board”) of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) as follows:

Section 1. Background.

- 1.01. The Authority from time to time issues tax-exempt governmental bonds to finance various public capital improvements.
- 1.02. Under Sections 103 and 140 to 150 of the Internal Revenue Code of 1986, as amended, and related regulations, the Authority is required to take certain actions after the issuance of such bonds to ensure that interest on those bonds remains tax-exempt.
- 1.03. On March 5, 2012, the City Council of the City of Minnetonka (the “City”) adopted Policy Number 2.16 – Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds (the “Policy”).
- 1.04. The Authority has determined to adopt written procedures regarding how the Authority will carry out its bond compliance responsibilities, and to that end has determined to adopt the Policy as the Authority’s written procedures.
- 1.05. The Board has reviewed the Policy and has determined that it is in the best interest of the Authority to adopt the Policy.

Section 2. Policy Approved.

- 2.01. The Board approves the Policy in Exhibit A and any changes the city council makes to the policy in the future.
- 2.02. Authority staff are authorized to take all actions necessary to carry out the Policy.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on December 18, 2017.

Terry Schneider, President

ATTEST:

David E. Maeda, Secretary

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on December 18, 2017.

Secretary

Policy Number 2.16
Post-Issuance Compliance Procedure and Policy
For Tax-Exemption Governmental Bonds

Purpose of Policy: To ensure that the city complies with its post-issuance compliance obligations under applicable provisions of the code and treasury regulations

Introduction

The city of Minnetonka issues tax-exempt governmental bonds (“TEBs”) to finance capital improvements. As an issuer of TEBs, the city is required by sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (the “code”), and the associated treasury regulations (the “treasury regulations”), to take certain actions after the issuance of TEBs to ensure the continuing tax-exempt status of the bonds. In addition, section 6001 of the code and section 1.6001-1(a) of the treasury regulations impose record retention requirements on the city.

Effective Date and Term

The effective date of this policy is March 5, 2012, and this policy will remain in effect until superseded or terminated by the city council.

Responsible Parties

The finance director is the party primarily responsible for ensuring that the city successfully carries out its post-issuance compliance requirements under federal law. The finance director will be assisted by finance department staff and by other city staff and officials when appropriate. The finance director will also be assisted in carrying out post-issuance compliance requirements by the following organizations:

- Bond counsel
- Financial advisor
- Paying agent (the person, organization, or officer of the city primarily responsible for providing paying agent services for the city); and
- Rebate analyst (the organization primarily responsible for providing rebate analyst services for the city).

The finance director is responsible for assigning post-issuance compliance responsibilities to finance department staff, other city staff, bond counsel, paying agent, and rebate analyst. The finance director may use other professional service organizations as necessary to ensure compliance with the city’s post-issuance compliance requirements. The finance director will provide training and educational resources to city staff responsible for ensuring compliance with this policy.

Post-Issuance Compliance Actions

The finance director will take the following post-issuance compliance actions or verify

that they have been taken on behalf of the city with respect to each issue of TEBs:

- The finance director will prepare a transcript of principal documents (this action will be the primary responsibility of bond counsel).
- The finance director will file with the Internal Revenue Service (the "IRS"), within the time limit imposed by code section 149(e) and applicable treasury regulations, an information return for tax-exempt governmental obligations, form 8038-G (this action will be the primary responsibility of bond counsel).
- The finance director will prepare an "allocation memorandum" for each issue of TEBs in accordance with the provisions of treasury regulations, section 1.148-6(d)(1). This memorandum will account for the allocation of the TEB proceeds to expenditures not later than the earlier of:
 - eighteen months after the later of the date the expenditure is paid, or the date any project financed by the TEBs is placed in service; or
 - sixty days after the earlier of the fifth anniversary of the issue date of the TEBs, or 60 days after the retirement of the TEBs.
- The finance director will identify proceeds of TEBs that must be yield-restricted and will monitor the investments of those funds to ensure that the yield does not exceed the applicable restrictions.
- The finance director will determine whether the city is subject to the rebate requirements of code section 148(f) regarding each issue of TEBs. The finance director will determine whether the city is eligible for any of the temporary periods for unrestricted investments and is eligible for any of the spending exceptions to the rebate requirements, for each issue of TEBs. The finance director will contact the rebate analyst (and, if appropriate, bond counsel) before the fifth anniversary of the issuance date of each issue of TEBs and each fifth anniversary thereafter to arrange for calculations of the rebate requirements for such TEBs. If a rebate payment is required to be paid by the city, the finance director will prepare or cause to be prepared the arbitrage rebate, yield reduction and penalty in lieu of arbitrage rebate, form 8038-T, and submit the form to the IRS with the required rebate payment. If the city is authorized to recover a rebate payment previously paid, the finance director will prepare or cause to be prepared the request for recovery of overpayments under arbitrage rebate provisions, form 8038-R, and submit the form to the IRS.

Procedures for Monitoring, Verification, and Inspections

The finance director will institute such procedures as the finance director deems necessary and appropriate to monitor the use of the proceeds of TEBs issued by the city, to verify that certain post-issuance compliance actions have been taken by the city, and to provide for the inspection of the facilities financed with the proceeds of such bonds. At a minimum, the finance director will establish the following procedures:

- The finance director will monitor the use of the proceeds of TEBs to: (1) ensure

compliance with the expenditure and investment requirements under the temporary period provisions set forth in treasury regulations, section 1.148-2(e); (2) ensure compliance with the safe harbor restrictions on the acquisition of investments set forth in treasury regulations, section 1.148-5(d); (3) ensure that the investments of any yield-restricted funds do not exceed the yield to which such investments are restricted; and (4) determine whether there has been compliance with the spend-down requirements under the spending exceptions to the rebate requirements set forth in treasury regulations, section 1.148 7.

- The finance director will monitor the use of all bond-financed facilities in order to: (1) determine whether private business uses of bond-financed facilities have exceeded the *de minimis* limits set forth in code section 141(b) 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; and (2) determine whether private security or payments that exceed the *de minimis* limits set forth in code section 141(b) have been provided by nongovernmental persons regarding such bond-financed facilities. The finance director will provide training and educational resources to any city staff who have the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities regarding the limitations on the private business use of bond-financed facilities and the limitations on private security or payments regarding bond-financed facilities.
- The finance director will undertake the following for each outstanding issue of city TEBs: (1) an annual review of the books and records maintained by the city for such bonds; and (2) an annual physical inspection of the facilities financed with the proceeds of such bonds, conducted by the finance director with the assistance with any city staff who have the primary responsibility for the operation, maintenance, or inspection of such facilities.

Record Retention Requirements

The finance director will collect and retain the following records regarding each issue of city TEBs and the facilities financed with the proceeds of such bonds: (1) audited financial statements of the City; (2) appraisals, demand surveys, or feasibility studies for the facilities to be financed with the proceeds of such bonds; (3) publications, brochures, and newspaper articles related to the bond financing; (4) trustee or paying agent statements; (5) records of all investments and the gains (or losses) from such investments; (6) paying agent or trustee statements regarding investments and investment earnings; (7) reimbursement resolutions and expenditures reimbursed with the proceeds of such bonds; (8) allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks for such expenditures); (9) contracts entered into for the construction, renovation, or purchase of bond-financed facilities; (10) an asset list or schedule of all bond-financed depreciable property and any depreciation schedules for such assets or property; (11) records of the purchases and sales of bond-financed assets; (12) private business uses of bond-financed facilities that arise after the issue date 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; (13) arbitrage rebate reports and records of rebate and yield reduction payments; (14) resolutions or other actions taken by the governing body after the issue date regarding such bonds; (15) formal elections authorized by federal law that are taken regarding such bonds; (16) relevant correspondence relating to such bonds; (17) documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into after the issue date; (18) copies of all form 8038Ts and form 8038-Rs filed with the IRS; and (19) the transcript prepared regarding such TEBs.

The records collected by the city will be stored in any format deemed appropriate by the finance director and will be retained for a period equal to the life of the relevant TEBs (which includes the life of any bonds issued to refund any portion of such TEBs or to refund any refunding bonds) plus three years.

Remedies

The finance director will become acquainted with the remedial actions under treasury regulations, section 1.141-12, to be used if private business use of bond-financed facilities exceeds the *de minimis* limits under code section 141(b)(1). The finance director will become acquainted with the tax exempt bonds voluntary closing agreement program described in notice 2008-31, 2008-11 I.R.B. 592, to be used as a means for the city to correct any post-issuance infractions of federal law regarding outstanding TEBs.

Continuing Disclosure Obligations

In addition to the federal law requirements, the city has agreed to provide continuing disclosure, such as annual financial information and material event notices, pursuant to a continuing disclosure certificate or similar document (the "continuing disclosure document") prepared by bond counsel and made a part of the transcript for each issue of city bonds that is subject to continuing disclosure requirements under 17 C.F.R. section 240 ("rule 15c2-12"). The continuing disclosure documents are executed by the city to assist the bond underwriters in meeting their obligations under rule 15c2-12. The finance director is primarily responsible for undertaking, and monitoring compliance with, such continuing disclosure obligations.

Other Post-Issuance Actions

If the finance director determines that additional action not identified in this policy must be taken to ensure the continuing tax-exempt status of any issue of city TEBs, the finance director will take such action if authorized to do so. If the finance director determines that this policy must be amended or supplemented to ensure the continuing tax-exempt status of any issue of city TEBs, the finance director will recommend to the city council that this policy be so amended or supplemented.

Taxable Governmental Bonds

Most of the provisions of this policy, other than the continuing disclosure obligations, are not applicable to taxable governmental bonds. On the other hand, if an issue of taxable governmental bonds is later refunded with the proceeds of an issue of TEBs, 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 will be relevant to the tax-

exempt status of the governmental refunding bonds. Therefore, if there is any reasonable possibility that an issue of taxable governmental bonds may be refunded, in whole or in part, with the proceeds of an issue of TEBs, then for purposes of this policy, the finance director will treat the issue of taxable governmental bonds as if such issue were an issue of TEBs and will carry out and comply with the requirements of this policy regarding such taxable governmental bonds. The finance director will seek the advice of bond counsel as to whether there is any reasonable possibility of issuing TEBs to refund an issue of taxable governmental bonds.

Qualified 501(c)(3) Bonds

If the city issues bonds to finance a facility to be owned by the city but which may be used, in whole or in substantial part, by a nongovernmental organization that is exempt from federal income taxation under code section 501(c)(3) (a "501(c)(3) organization"), the city may elect to issue the bonds as "qualified 501(c)(3) bonds" the interest on which is exempt from federal income taxation. Although such qualified 501(c)(3) bonds are not governmental bonds, the finance director may treat such bonds as if they were TEBs and will comply with the requirements of this policy regarding such bonds. Alternatively, in cases where compliance activities are reasonably within the control of the relevant 501(c)(3) organization, the finance director may determine that all or some portion of compliance responsibilities described in this policy will be assigned to the relevant organization.

Conduit Bonds

The city may also issue tax-exempt bonds, the proceeds of which are loaned to certain private entities, including qualified 501(c)(3) organizations (referred to as "conduit bonds"). The city will require, as part of approval of any conduit bonds, that the borrower assumes the duties of post-issuance compliance described in this policy, including provisions for reporting to the city.

Adopted by Resolution No. 2012-
Council Meeting of March 5, 2012