

RESOLUTION NO. 2020-07

A RESOLUTION TO ADOPT TAX COMPLIANCE POLICIES FOR TAX-EXEMPT GOVERNMENTAL BONDS; AND RELATED MATTERS

WHEREAS, Kamas City has recently closed on a Water Revenue Refunding Bond, Series 2020; and

WHEREAS, in order to ensure compliance with the bond requirements and conditions, the City is adopting these policies;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Kamas, Utah, as follows:

A. 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. The following policies are intended to establish compliance by **Kamas, Utah** and its aggregated issuers (together, the “*Issuer*”) with these rules in connection with the issuance of tax-exempt governmental bonds. These Tax Compliance Policies may also be used by the Issuer to ensure compliance with federal tax rules for its currently outstanding tax-exempt governmental bonds.

The Mayor (the “Oversight Officer”) will be responsible for overall administration and coordination of this policy.

B. Delegation of Responsibility

To the extent that any of the responsibilities set forth in these Tax Compliance Procedures are delegated to any other party, the Issuer will keep a record of such delegations with respect to each bond issue.

C. Schedule of Reviews

The Issuer will establish routines for monitoring on-going compliance that are consistent with discovering any noncompliance in a timely manner so that it may be corrected. While specific review processes are described in detail below, timing for such reviews will be as follows:

1. Non-Exempt Use: All contracts, leases or other arrangements providing special legal entitlement to use of bond-financed facilities will be reviewed prior to execution to ensure that they will not cause private use limits to be exceeded with respect to any issue of bonds.
2. Arbitrage Compliance: With respect to each bond issue, the Issuer will ensure that it understands at the time of bond closing which funds and accounts containing bond proceeds may become subject to yield-restriction investment

rules and will keep a record of the dates upon which such rules will begin to apply.

3. Rebate Compliance: While rebate calculations may be performed more often, the Issuer will ensure upon the fifth anniversary date of the issuance date of the bonds, every five years thereafter, and upon final retirement of the bonds, that either no rebate is owed or provision has been made for the payment of any rebate owed within 60 days.
4. Change in Use/Ownership: Prior to executing any contract, lease or other document which would materially change the use of the bond-financed project or selling of any bond-financed property, the Issuer will (i) confirm that such change will not require a remedial action to be taken with respect to any bond issue, (ii) take a remedial action, if necessary, or (iii) discuss with bond counsel whether a voluntary closing agreement with the Internal Revenue Service is appropriate.

D. Tax Requirements Associated with Sale and Issuance of Bonds

Review and retention of tax documents related to the sale and issuance of bonds will be supervised by the Oversight Officer.

1. Issue Price. The “issue price”, as defined in the Internal Revenue Code of 1986, as amended (the “Code”), of the bonds will be documented at the time of issuance. Certifications of an underwriter, placement agent or purchaser and a final numbers package (if applicable) will establish “issue price” and will be reviewed and included in the bond transcript or other records maintained for the bond issue.
2. Weighted Average Maturity. The weighted average maturity (taking into account the various issue prices of the maturities of the bonds) will be documented at the time of issuance.
3. Information Reporting. Form 8038-G will be reviewed and filed not later than the 15th day of the 2nd calendar month following the quarter in which the bonds were issued. Filing of the Form 8038-G will be confirmed with bond counsel.

E. Expenditure of Proceeds for Qualified Costs

Expenditure of bond proceeds will be reviewed by the Oversight Officer.

1. Requisitions. The Oversight Officer will establish a form and procedures for preparation and review of requisitions of bond proceeds, and maintain records of the date, amount and purpose of the disbursement. Requisitions must identify the financed property in conformity with the Tax Certificate and Agreement executed by the Issuer at closing, including any certifications as to the location and character of the bond-financed property.

2. Investment Earnings. Investment earnings on sale proceeds of the bonds will be tracked and will be requisitioned only for appropriate expenditures.
3. Capital Expenditures. The Issuer will verify that all costs for which it requisitions bond proceeds are capital expenditures, except as otherwise permitted by the Tax Certificate executed by the Issuer at closing.
4. Debt Service Reserve Funds. Bond-funded reserve funds cannot exceed the least of (i) 10% of the par amount of the bonds (or the issue price of the bonds, if there is more than a de minimis amount of original issue discount or premium), (ii) maximum annual debt service, and (iii) 125% of average annual debt service. The initial funding of any reserve fund will be measured against this limit.
5. Reimbursement. Requisitions for costs that were paid prior to the issuance of the bonds are, in general, limited to costs paid subsequent to, or not more than 60 days prior to, the date a “declaration of intent” to reimburse the costs was adopted by the Issuer. If proceeds are used for reimbursement, a copy of the declaration will be obtained and included in the records for the bonds, if not already part of the bond transcript.
6. Final Allocation. Requisitions will be summarized in a “final allocation” of proceeds to uses not later than 18 months after the in-service date of the financed property (and in any event not later than 5 years and 60 days after the issuance of the bonds).
7. Timing of Expenditures. Expenditure of proceeds will be measured against the Issuer’s expectations, as set forth in the Tax Certificate and Agreement executed in connection with the particular bond issue, to spend or commit 5% of net sale proceeds within 6 months, to spend 85% of net sale proceeds within 3 years, and to proceed with due diligence to complete the project and fully spend the net sale proceeds. Expected expenditure schedules, project timelines, and plans and specifications will be maintained to support expectations. Reasons for failure to meet the expected schedule will be documented and retained in the records for the bonds.
8. Rebate Spending Exceptions. Expenditure of proceeds will be monitored for compliance with spending exceptions to the rebate requirement, as follows:
 - a. If the six-month spending exception applies, expenditure of gross proceeds will be monitored against the following schedule.

100% within 6 months
 - b. If the 18-month spending exception applies, expenditure of gross proceeds will be monitored against the following schedule.

15% within 6 months
60% within 12 months

100% within 18 months

- c. If the two-year spending exception applies, expenditure of “available construction proceeds” will be measured against the following schedule.

10% within 6 months

45% within 12 months

75% within 18 months

100% within 24 months

F. Use of Bond-Financed Property

Use of bond-financed property when completed and placed in service will be reviewed by the Oversight Officer. Use of bond-financed property must be measured separately for each bond issue.

1. Limit on Private Use. Average annual non-exempt use of bond-financed property over the life of the issue cannot exceed 10% of the proceeds (or 5% if the use is unrelated to the governmental use or disproportionate to the governmental use). Non-exempt use will be determined annually as a percentage of total use of proceeds of the issue.
2. Review of Agreements. Agreements with private business users for lease, management, sponsored research, or any other potential non-exempt use of bond-financed property will be reviewed prior to execution for compliance with the private use limits. This review will include a determination of whether any arrangement meets the safe harbors of Internal Revenue Service Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39, or, with respect to research arrangements, Rev. Proc. 2007-47. It will also include a determination of whether any arrangement meets the exception for incidental use under Treas. Reg. § 1.141-3(d)(5), the exception for general public use under Treas. Reg. § 1.141-3(c), or the exception for certain short-term arrangements under Treas. Reg. § 1.141-3(d)(3).
3. Tracking Private Use. Agreements with private business users or non-profit organizations for lease or management or services contracts or other private business use involving bond-financed property will be tracked and aggregated with other private business uses for compliance with the 10% (or 5%) limit, as set forth in the Tax Certificate and Agreement for the applicable bonds.
4. Change in Use. No item of bond-financed property will be sold or transferred to a non-exempt party without advance arrangement of a “remedial action” under the applicable Treasury Regulations (see Treasury Regulations § 1.141-12).

G. Investments and IRS Filings

Investment of bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the Oversight Officer.

1. Guaranteed Investment Contracts. Guaranteed investment contracts (“GIC”) will be purchased only using the three-bid “safe harbor” (see Treasury Regulations § 1.148-5(d)(6)(iii)), in compliance with fee limitations on GIC brokers (see Treasury Regulations § 1.148-5(e)(2)(iii)); provided, however, that to the extent that the safe harbor provisions cannot be met, the Issuer will consult with bond counsel.
2. Fair Market Value of Investments. Other investments will be purchased only in market transactions.
3. Rebate Calculations. Calculations of rebate liability will be performed by outside consultants at the end of construction and at least every fifth bond year.
4. Rebate Payments. Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance of the applicable bonds and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee, if applicable.
5. Note First Rebate Due Date. The date for the first rebate payment will be identified and entered in the records for the issue at time of issuance of the bonds.

H. Refunding Issues

When tax-exempt governmental bonds are used to refund other bonds (“Refunded Bonds”), the new bonds (“Refunding Bonds”) will be treated as having financed the property originally financed with the Refunded Bonds (or any bonds refunded by the Refunded Bonds), such that financed property must be tracked until the last bonds (whether Refunded Bonds or Refunding Bonds) attributable to that property are retired. The Oversight Officer will continue reviewing the use of the any bond-financed property until the last bonds attributable to that property are retired; except to the extent that tracking is no longer required due to the economic life of the property coming to an end.

Refunding Bonds the proceeds of which are used to retire Refunded Bonds more than 90 days after the issue date of the Refunding Bonds are “Advance Refunding Bonds”. Advance Refunding Bonds may not be issued as tax-exempt governmental bonds.

I. Correction of Violations

The Issuer expects that its compliance with the procedures outlined above will prevent any violations of federal tax rules pertaining to the Issuer’s outstanding tax-exempt governmental bonds (including any Refunded Bonds). However, if the Issuer discovers a potential violation through its ongoing monitoring or otherwise, it will determine in conjunction with its bond counsel whether a violation actually exists. If it is found that a violation actually exists, the issuer will determine whether (i) any remedial actions are available, or (ii) a voluntary closing agreement with the Internal Revenue Service is appropriate. Common examples of violations are as follows:

- a. Failure to purchase 0% SLGs at the appropriate time.

- b. Nonexempt use of bond-financed property resulting in overall nonexempt use in excess of the 10% (or 5%) de minimis limit.
- c. Failure to pay rebate in a timely manner.
- d. Improper reimbursement of expenditures (too old or not capital).

J. Records

Management and retention of records related to tax-exempt bond issues will be supervised by the Oversight Officer.

- 1. Records will be retained for the life of the bonds plus any Refunding Bonds plus three (3) years. This means that the Issuer will maintain records regarding Refunded Bonds until three years after the final Refunding Bonds (including through a series of refundings) is retired. Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.
- 2. Retainable records generally include transcript documents executed in connection with the issuance of the bonds (including the authorizing documents, offering materials, Form 8038-G, and the Tax Certificate, and any elections made with respect to the bonds, if applicable) and any amendments, and copies of rebate calculations and records of payments, including Forms 8038-T.
- 3. Retainable records pertaining to expenditures of bond proceeds include requisitions, account statements and the final allocation of proceeds.
- 4. Retainable records pertaining to use of property include all agreements reviewed for non-exempt.
- 5. Retainable records pertaining to investments include GIC documents under the Treasury Regulations, records of purchase and sale of other investments, and records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

K. Training

The Issuer will use its best efforts to ensure that any officers and employees responsible for carrying out these procedures are properly trained for that responsibility. Such training will include:

- 1. Ensuring access to the necessary records.
- 2. Ensuring that such persons have reviewed a copy of these procedures and the tax certificates and Forms 8038-G related to the relevant bond issues.

3. Permitting attendance on free educational conference calls or webinars sponsored by the Internal Revenue Service, bond-related professional associations or law firms.
4. Permitting access to free educational websites, such as:
<http://www.irs.gov/taxexemptbond/index.html>

Adopted and Resolved by the City Council of Kamas, Utah this 9th day of June, 2020.

Mayor

ATTEST:

Kim Peacock, City Recorder