

Statewide Policy on Debt Issuance and Post Issuance Compliance (v3)

General Statement:

The State of Missouri (the "State") periodically finances portions of its capital facilities and equipment with Tax-Exempt Bonds and tax-exempt leases. The State understands that in exchange for the right to participate in tax-exempt financing, the Internal Revenue Code and related regulations impose ongoing requirements on the State. These requirements pertain to the investment, use and expenditure of proceeds of the Tax-Exempt Bonds and related funds by the State. In addition, there are restrictions on which entities can use assets which were financed in whole or in part by tax-exempt bonds and/or leases.

In August 2011, the Internal Revenue Service (IRS) stated that all governmental issuers should have a separate written policy and procedure regarding ongoing compliance with the federal tax requirements for Tax-Exempt Bonds. The IRS has stated that the documentation and certifications covenants and agreements agreed to by a governmental issuer in connection with each Tax-Exempt Bond issue are insufficient, unless supplemented by an overall comprehensive set of procedures applicable to all issues of Tax-Exempt Bonds.

In order to comply with the IRS directive and to improve tax compliance and documentation, this Statewide Debt Policy is issued by the Commissioner of the Office of Administration. If the provisions of this policy conflict with a Tax Compliance Agreement or any other specific written instructions of Bond Counsel, the terms of the Tax Compliance Agreement or specific written instructions of Bond Counsel will supersede and govern in lieu of this Statewide Debt Policy.

Scope:

This policy covers any bond, note, installment sale agreement, lease or certificate intended to be a debt for federal income tax purposes if the State issued the obligation or if the State has received a portion of the proceeds of the obligation from another entity, if: (1) the interest is excluded from gross income for federal income tax purposes; (2) the holder of the obligation is entitled to claim a federal income tax credit on account of its ownership of the Tax-Exempt Bond; or (3) the State is entitled to a payment from the United States measured by the interest paid on the obligation. Any such bond, note, installment sale agreement, lease or certificate will be referred to collectively as a "tax-exempt obligation" throughout the remainder of this policy.

Responsible Parties:

Chapter 33 and 34, RSMo, requires the Office of Administration, to have oversight of the state's accounts and contracts, and its revenue, debt and fiscal affairs. Accordingly, the Office of Administration is interested in efficient and effective administration of the tax exempt financing requirements.

Division of Accounting will be responsible for:

1. Maintenance of a master listing of outstanding tax-exempt obligations for the State
2. Maintenance of files for each transaction that include:
 - a. The intent resolution, if applicable.
 - b. Bond Transcript or Lease agreement.
 - c. Financed Written Allocation and/or all available accounting records showing expenditures allocated to the proceeds of the tax-exempt obligation.
 - d. All rebate and yield reduction payment calculations and all investment records provided to Rebate Analyst for purposes of preparing the arbitrage calculation.
 - e. Forms 8038-T together with proof of filing and payment of rebate.
 - f. Any item required to be maintained by the terms of the Tax Compliance Agreement, if applicable, including any leases, management agreements or service contracts involving the financed assets.
 - g. Any opinion of Bond Counsel regarding the tax-exempt obligation not included in previously required documentation
 - h. Any amendments, modifications or substitute agreements to any agreements.
 - i. Building schematics including the entities occupying the space and the total square footage of the building and the space occupied by each entity, if applicable.
3. Development and maintenance of annual tax compliance checklists related to the financed assets.
4. Implementation of procedures to limit private use of financed property that is necessary to preserve the tax-exempt or tax-favored status of the tax-exempt obligation.
5. The identification of tax compliance deficiencies and the consultation with Bond Counsel for recommendations on how to remediate the noncompliance.
6. Arrangement of arbitrage rebate and yield-restriction computations to be performed for the tax-exempt obligation by a Rebate Analyst as necessary.
7. Signing all tax forms related to tax-exempt financing activities including all IRS Forms 8038, 8038G, 8038GC, and 8038-T.
8. Coordinating responses to any IRS audit or request for information relating to a tax-exempt obligation.

Departments, Agencies, State Entities are responsible for:

1. Obtaining Office of Administration, Division of Accounting approval prior to entering into a financing transaction including those transactions with an interest rate of 0.00%.
2. Informing the Division of Accounting of tax-exempt obligation proposals in advance so that approvals may be given timely.
3. Ensuring that existing assets that have been funded in whole or in any portion by tax-exempt financing follow the IRS rules related to private use.
4. Discussing with the Division of Accounting regarding any planned policy changes which could impact the private use status of any financed assets.
5. Completing annual due diligence questionnaires from the Division of Accounting required to accurately and timely comply with tax compliance requirements.

General Rules:

1. The approval to enter into a tax-exempt obligation will depend on the size of the proposed financing, the source of repayment, and the operational necessity of the asset to be purchased.
2. Equipment purchases will be financed through the state-wide master lease contract awarded by the Office of Administration Division of Purchasing unless: (1) the master lease contractor refuses to finance the assets within the terms of the contract; (2) another source of financing is proven to be economically more advantageous to the State; or (3) extenuating circumstances exist which make using the master lease contract unacceptable.

Exceptions:

The Commissioner of Administration may delegate the document retention and tax compliance responsibilities to certain agencies, departments, or divisions on a case by case basis.