

RESOLUTION NO. 13-2014

RESOLUTION OF THE FERGUS COUNTY, MONTANA ADOPTING A  
POLICY CONCERNING COMPLIANCE WITH IRS REQUIREMENTS  
FOR TAX-EXEMPT BONDS ISSUED BY THE COUNTY

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), contains numerous requirements that must be met by issuers of tax-exempt bonds in order for interest on the bonds to remain tax-exempt; and

WHEREAS, the attached policy sets forth a general good faith effort of compliance with such Code requirements and provides guidelines to the County Officers.

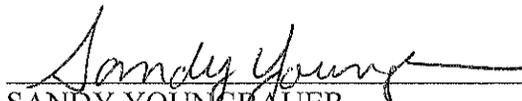
NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners (the "Board") of Fergus County, Montana (the "County"), as follows:

Section 1. This Board adopts the attached Issuance and Post-Issuance Compliance Policy for the County's tax-exempt bond issues and designates the County Treasurer as the Designated Officer to keep the records indicated. The County Treasurer is to keep a copy of the policy available for public inspection as a part of the County's records.

PASSED AND ADOPTED by the Board of County Commissioners of Fergus County, Montana, this 9<sup>th</sup> day of May, 2014.

  
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Chairman, KEN RONISH

  
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CARL SEILSTAD

  
\_\_\_\_\_  
SANDY YOUNGBAUER

ATTEST:

  
\_\_\_\_\_  
RANA WICHMAN, Clerk and Recorder

**FERGUS COUNTY, MONTANA**  
**TAX COMPLIANCE POLICY FOR ISSUANCE AND POST-ISSUANCE OF**  
**TAX-EXEMPT BONDS**

The Internal Revenue Code of 1986, as amended (the "Code"), contains numerous requirements that must be met by Fergus County, Montana (the "Issuer") at the issuance and after its tax-exempt bonds are issued in order for interest on the bonds to remain tax-exempt. The Issuer has adopted this Tax Compliance Policy for Issuance and Post-Issuance Compliance for tax-exempt bonds (the "Policy") in order to meet tax requirements under the Code.

The Code contains numerous issuance and post-issuance requirements for issuers and conduit borrowers to abide by laws and regulations, maintain records, provide arbitrage calculations, report necessary arbitrage information to the Internal Revenue Service ("IRS") and prevent excessive private business use of bond-financed property in order for the Issuer to retain tax-exemption of interest on tax-exempt bonds. This Policy sets forth a reference guide for issuance of tax-exempt bonds and a process for post-issuance compliance including: (1) all records that must be maintained under the Code, including proper and efficient record retention measures, and record retention responsibilities; (2) responsibilities for arbitrage calculations and arbitrage reporting; (3) responsibilities for monitoring private use of bond-financed property; and (4) proper education to Issuer officials, employees and staff to meet Code requirements for tax-exempt bonds.

Officers, employees and staff are hereby directed to follow this Policy in order to obtain and maintain tax-exempt status of Issuer's tax-exempt bonds and to prevent violations of the Code.

**Issuance Compliance**

(1) The Issuer, through its Board of County Commissioners and officers, with the assistance of its professional advisers in the issuance of the County's tax-exempt obligations, will in good faith attempt to follow the Compliance Guide requirements of the IRS office of Tax-Exempt Bonds published in IRS Publication 4079, a copy of which is on file with the County Treasurer.

**Post-Issuance Compliance Responsibility**

(1) *Responsibility.* The Board of County Commissioners (the "Governing Body") has final responsibility for monitoring and enforcing post-issuance compliance under this Policy. The Governing Body has designated the Issuer's Treasurer as the primary official responsible for effectuating this Policy (the "Designated Official"). The Designated Official, as primary official, is authorized and directed to take all necessary action to ensure compliance with this Policy.

(2) *Professional Financial Service Providers.* The Governing Body recognizes that the requirements under the Code for post-issuance compliance are numerous and complex, and as such, outside resources, including use of professional advisers, may be necessary to properly comply with this Policy. The Governing Body has authorized and directed the Designated Official to execute and deliver any agreements or documents with qualified professional financial services provider(s) that the Designated Official deems necessary to ensure compliance with this Policy.

**Records Retention**

(1) *Time.* All records required to be retained under this Policy must be kept until at least six years after the final maturity date for the bond issue or, if the bonds are redeemed prior to final maturity, at least six years after the date of prior redemption.

(2) *Form.* All records required to be retained under this Policy must be kept in paper form, or in electronic form such that they can easily be produced in paper form. Records should be conspicuously labeled and, to the extent possible, stored in a central location for each bond issue.

(3) *Documents required to be retained.* The following table sets forth the documents that must be retained and the official, employee or staff responsible for retaining such records.

<b>Document to be Retained</b>	<b>Responsible Official</b>
Bond documents (closing documents, transcript of the proceedings, all agreements that occurred at the time of the bond issue, etc.)	Designated Official
Bond proceed expenditures (purchase contracts, construction contracts, progress payment requests, invoices, cancelled warrants, payment of bond issuance costs, reimbursement and pre-issuance expenditures, etc.)	Designated Official
Documents related to payment of principal and interest on bonds	Designated Official
Investments of bond proceeds, including any agreements or contracts (such as swaps) that could be construed as investments under the Code	Designated Official
Receipts of earnings on bond proceed investments	Designated Official
Certificate of Official Intent for reimbursement of pre-bond issue costs	Designated Official
Documents demonstrating calculations for arbitrage spending exceptions	Designated Official
Documents demonstrating arbitrage rebate calculations	Designated Official
Documents filed with the IRS regarding arbitrage spending exceptions, arbitrage rebate amounts and payments of arbitrage rebate amounts (e.g., Form 8038-T)	Designated Official
Refunding bond documents (all refunding documents must be maintained with the refunded bond issue documents)	Designated Official
Yield-restricted advance refunding investments	Designated Official
Escrow investments	Designated Official
Redemption and Defeasance documents	Designated Official
List of all bond-financed property	Designated Official
Contracts regarding use of any bond-financed property or facilities, including management, service, use and research contracts with nongovernmental entities, as well as documentation that such contracts do not adversely affect the tax-exempt status of the bonds financing the property	Designated Official
Additional documents regarding bonds and use of bond-financed property (e.g. litigation involving bond proceeds or bond-financed property)	Designated Official
Form 990s, if applicable, and related schedules	Designated Official

The Designated Official shall conduct a review of the records for each bond issue every five years in order to maintain continued record retention compliance.

## **Code Compliance for Tax-Exempt Bonds**

The Designated Official, working in conjunction with any contracted professional adviser, shall perform all necessary actions prior to completing and filing any required form with the IRS and/or any other applicable regulatory agency to ensure the bonds meet all Code requirements, including:

- (a) ensuring, to the extent applicable, all documents set forth in the previous section are being properly retained;
- (b) ensuring the bond proceeds have been and are being used in the manner, time and for the purposes set forth in the applicable tax certificate and/or bond resolution; and
- (c) ensuring, to the extent applicable, the use of the bond proceeds meet all private activity bond restrictions.

## **Arbitrage Calculations and Arbitrage Reporting**

(1) *Responsibility.* The Designated Official, working in conjunction with any contracted professional adviser, shall perform all necessary calculations to meet arbitrage requirements each fiscal year. Such calculations shall include, but not be limited to:

- (a) computing “yield” of bond proceeds in investments, including investments in financial investment agreements such as swaps and guaranteed investment contracts;
- (b) determining applicable arbitrage spending exceptions and monitoring spending compliance during the applicable exception time period;
- (c) determining allocation of bond proceeds and investment earnings to project expenditures, including reimbursement and pre-issuance expenditures;
- (d) monitoring compliance with “temporary period” construction expenditures of bond proceeds (prior to the 6-month, 18-month, and 2-year spending exceptions to rebate described in section 1.148-7 of the Treasury Regulations) and providing for yield restriction or yield reduction payments if expectations are not met; and
- (e) determining/computing arbitrage rebate amounts.

All such calculations shall be documented and retained in order to demonstrate, in the event the Issuer is audited by the IRS, that the Issuer has complied with Code requirements for arbitrage yield restriction and rebate requirements.

(2) *Filing.* The Designated Official, working in conjunction with any contracted professional adviser, shall file all necessary arbitrage calculation and rebate documents and pay any necessary arbitrage rebate amounts to the IRS for each applicable fiscal year.

(3) *Miscellaneous.*

(a) The Designated Official, working in conjunction with any contracted professional adviser shall adopt procedures to ensure that investments acquired with bond proceeds are purchased at fair market value.

(b) The Designated Official shall review all funds created and used to pay debt service to determine whether such funds must be invested at restricted yield.

### **Restrictions on Private Business Use of Bond-Financed Property and Private Loans**

(1) *General.* Use of bond proceeds and bond-financed property by nongovernmental entities may cause the interest on tax-exempt bonds to become taxable. Accordingly, the Issuer desires to monitor and prevent nongovernmental use of bond proceeds and bond-financed properties except as when it is determined by the Governing Body to be in the best interest of the Issuer.

(2) *Responsibilities.* The Designated Official shall adopt procedures to educate pertinent staff on the applicable restrictions on private business use and loans to nongovernmental persons set forth in the Code.

Such education will include guidance advising that:

(a) "Private Business Use" means use by any person, other than a state or local governmental unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in a trade or business activity, the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, certain management or service contracts, output contract for the purchase of electricity or water, privately sponsored research contracts, certain naming rights contracts, public-private partnerships or any similar use arrangement that provides special legal entitlements for the use of bond-financed property;

(b) No more than 5 percent of the net proceeds of any tax-exempt bond issue may be used for private business use, and any unrelated private business use counts towards the 5 percent limit. "Use" includes use of the proceeds as well as use of the property financed with bond proceeds. "Unrelated Private Business Use" means a private business use that is not functionally related to the governmental purposes of the bonds; and

(c) No more than the lesser of \$5,000,000 or 5 percent of the proceeds of the tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local governmental unit.

(3) *Consultation.* The Governing Body recognizes that determining whether a use is a private business use may be difficult. Accordingly, before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the Designated Official must provide a description of the proposed nongovernmental use arrangement and consult with such professional advisers as may be necessary, including bond counsel or special tax counsel, to determine whether such proposed nongovernmental use arrangement will be consistent with the restrictions on private business use of bond-financed property to retain tax-exempt status of the bonds.

(4) *Periodic Review.* The Designated Official shall conduct a review of all nongovernmental special arrangements associated with bond proceeds and bond-financed property every five years in order to ensure compliance with the private business use requirements.

## **Education of Designated Official and Staff**

(1) *Continued Education.* The Designated Official, subject to County budget constraints, shall obtain education and training on updates to federal tax law regarding tax-exempt bonds relating to his or her duties.

(2) *Staff Training.* The Designated Official shall, subject to County budget constraints, provide training to staff of departments which benefit from tax-exempt bond proceeds and bond-financed property to ensure compliance with this Policy. The Designated Official shall provide copies of this Policy to the staff of departments which benefit from tax-exempt bond proceeds. Departments receiving bond proceeds or using bond-financed property as a result of bond issues that occur after this Policy shall receive training at the time of such issue.

The Designated Official is authorized, subject to County budget constraints, to determine, from time to time, any additional education or training regarding federal tax compliance necessary for staff to ensure compliance with this Policy.

## **Determination of Violations and Remedial Actions**

In the event the Designated Official becomes aware that a Code requirement has or is likely to be violated, she shall contact the Issuer's professional advisers immediately. The Designated Official shall rely upon advice of professional advisers as to any required corrective and remedial actions, including informing the Issuer, any trustee of the bond issue and bond counsel for the bond issue and the IRS. The Designated Official shall, if appropriate and recommended by the Issuer's professional advisers, investigate the possibility of entering into the Voluntary Closing Agreement Program, as described in IRS Notice 2008-31.