

<b>POST ISSUANCE COMPLIANCE:</b>  <b>TAX-EXEMPT BOND FINANCINGS</b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	FR-DF-PR-1000
	<b>Version Number:</b>	01

**1.0 Purpose:**

The purpose of this procedure is to describe the actions necessary to implement Policy FR-DF-PL-1000.

**2.0 Scope:**

This procedure applies to all Divisions of the Santa Clara Valley Transportation Authority (VTA) and all users of VTA property and equipment which has been financed with tax-exempt bonds.

**3.0 Responsibilities:**

Each Division Chief is responsible for assuring that staff has implemented this procedure. Failure to perform these responsibilities could lead to bonds being declared taxable or to substantial payment (as much as 50% or more of the principal amount of bonds plus interest) to the IRS to close an audit without declaring the bonds taxable. Either result could lead to an SEC investigation and enforcement actions based on the premise that the official statement for the bond had failed to properly disclose the tax risk. A declaration of taxability would also likely lead to lawsuits from bondholders.

**4.0 Procedures:** The following procedures have been developed to ensure post-issuance compliance of federal tax requirements:

**4.1 GENERAL MATTERS**

**4.1.1 Department of Finance** shall confirm that Bond Counsel filed IRS Form 8038-G, *Information Return for Tax-Exempt Governmental Obligations*, no later than the 15<sup>th</sup> day of the second calendar month following the quarter in which the bonds were issued and that a copy of the filed form is included in the official Transcript of Proceedings for the issuance of each set of bonds;

**4.1.2 Financial Accounting** shall make allocations of bond proceeds to expenditures needed under Treas. Reg § 1.148-6(d) and § 1.141-6(a) by 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than the earlier of five years after the bonds were issued or 60 days after the issue is retired.

<b>Original Date:</b>	<b>Revision Date:</b>	Page 1 of 7
3/17/2009	N/A	

<b><i>POST ISSUANCE COMPLIANCE:</i></b>  <b><i>TAX-EXEMPT BOND FINANCINGS</i></b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	FR-DF-PR-1000
	<b>Version Number:</b>	01

## 4.2 ARBITRAGE YIELD RESTRICTIONS & REBATE REQUIREMENTS

### 4.2.1 Department of Finance shall:

- 4.2.1.1 Ensure that key staff attend initial and refresher training (as needed) on federal tax requirements applicable to tax-exempt bonds;
- 4.2.1.2 Arrange for timely computation of rebate liability and, if rebate is payable, for timely filing of Form 8038-T and payment of rebate;
  - a. First installment of arbitrage rebate due on fifth anniversary of bond issuance plus 60 days;
  - b. Succeeding installments are paid to IRS every five years;
  - c. Final installment due to IRS 60 days after retirement of last bonds of issue;
  - d. Record rebate liabilities to general ledger and ensure funds are deposited to relevant rebate funds, if they exist;
- 4.2.1.3 Monitor compliance with “temporary period” expectations for expenditure of bond proceeds, typically three years for new money bonds, and provide for yield restriction of investment or “yield reduction payments” if expectations are not satisfied;
- 4.2.1.4 Monitor compliance with 6-month, 18-month, and 2-year spending exceptions to rebate requirement;
- 4.2.1.5 Ensure investments acquired with bond proceeds (and certain pledged funds) are purchased at fair market value;
- 4.2.1.6 Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on bonds without determining in advance whether such funds must be invested at restricted yield;
- 4.2.1.7 Consult with bond counsel before engaging in post-issuance credit enhancement transactions (e.g., bond insurance, letter of credit) or hedging transactions (e.g., interest rate swap, cap);
- 4.2.1.8 Identify situations in which compliance with applicable yield restrictions depends upon later investments, e.g., purchase of 0% SLGS from U.S. Treasury, and monitor implementation;

### 4.2.2 Financial Accounting shall:

- 4.2.2.1 Choose accounting method with respect to bond proceeds and interest earnings, investments, and expenditures;

<b>POST ISSUANCE COMPLIANCE:</b>  <b>TAX-EXEMPT BOND FINANCINGS</b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	FR-DF-PR-1000
	<b>Version Number:</b>	01

4.2.2.2 Establish procedure for allocation of bond proceeds and interest earnings to expenditures, including reimbursement of pre-issuance expenditures;

4.2.2.3 Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on bonds without determining in advance whether such funds must be invested at restricted yield.

#### 4.3 RESTRICTIONS ON PRIVATE BUSINESS USE AND PRIVATE LOANS

##### 4.3.1 **Department of Finance** shall:

4.3.1.1 Identify existing property financed with tax-exempt bond proceeds;

4.3.1.2 Provide notice to Financial Accounting, Real Estate & Project Administration, and Division Chief(s) responsible for the maintenance and disposition of property financed with tax-exempt bond proceeds and restrictions regarding Private Business Use of such property;

##### 4.3.2 **Division Chiefs** who have received notice specified in Section 4.3.1.2 shall:

4.3.2.1 Provide annual certification, no later than 30 days beyond the end of each fiscal year, that no Private Business Use arrangements for property financed with tax-exempt bonds have been made with private entities (including federal agencies) beyond permitted *de minimus* amounts provided by the Department of Finance.

4.3.2.2 Obtain written request for approval from Chief Financial Officer prior to entering into any special use arrangement that involves the use of bond-financed property. Requests for approval shall include a description of the proposed arrangement and calculations used to determine whether proposed arrangement is consistent with the restrictions on Private Business Use of the tax-exempt bond financed property.

#### 4.4 RECORDS TO BE MAINTAINED FOR TAX-EXEMPT BONDS

##### 4.4.1 **Department of Finance** shall obtain and store for three years beyond the life of the bonds (and any bonds issued to refund or re-refund all or a portion of the bonds):

4.4.1.1 The official Transcript of Proceedings prepared by Bond Counsel;

4.4.1.2 Relevant records as to investment and expenditure of bond proceeds, including the following:

- a. Records showing purchases and sales of investments made with bond proceeds and receipts of earnings on those investments;

<b>POST ISSUANCE COMPLIANCE:</b>  <b>TAX-EXEMPT BOND FINANCINGS</b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	FR-DF-PR-1000
	<b>Version Number:</b>	01

- b. Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments;
- c. Monthly bank and investment statements and records of reconciliation activities;
- d. Records sufficient enough to document expenditures (by project number and time period) funded with bond proceeds (including investment earnings on bond proceeds).

4.4.1.3 Maintain records of Private Business Use, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, including documentation whether the uses are consistent with the tax-exempt status of the bonds that financed the property.

4.4.2 **Financial Accounting** shall store for three years beyond the life of the bonds (and any bonds issued to refund or re-refund all or a portion of the bonds):

4.4.2.1 Relevant records as to expenditure of bond proceeds, including the following:

- a. Records of reconciliation activities related to investment and expenditure of bond proceeds (including investment earnings on bond proceeds);
- b. Records sufficient enough to document expenditures funded with bond proceeds (including investment earnings on bond proceeds), including:
  - 1. Record of general ledger entries by project number and WBS (or other data necessary to identify invoice numbers and contracts/purchase orders);
  - 2. Support data for expenditures, including invoices, cancelled checks and relevant purchase orders or contracts;
  - 3. Asset list or schedule of all bond-financed property and equipment, which includes a mapping of which property was funded by which bonds;
  - 4. Depreciation schedules for bond-financed property and equipment;
  - 5. Records of purchase and sale of bond-financed assets.

<b>Original Date:</b>	<b>Revision Date:</b>	Page 4 of 7
3/17/2009	N/A	

<b>POST ISSUANCE COMPLIANCE:</b> <b>TAX-EXEMPT BOND FINANCINGS</b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	FR-DF-PR-1000
	<b>Version Number:</b>	01

4.4.3 **Contracts and Materials Management** shall store for three years beyond the life of the bonds (and any bonds issued to refund or re-refund all or a portion of the bonds) relevant records as to expenditure of bond proceeds, including purchase contracts, construction contracts, progress payment requests.

#### 4.5 FORMS OF RECORDS TO BE MAINTAINED

4.5.1 Records required to be maintained in accordance with these procedures may be hardcopy if they are for bond issues that pre-date the implementation of this procedure. Every effort should be made to convert such data to authorized electronic media.

4.5.2 Records post-implementation of this procedure shall be maintained in an electronic storage system that either images hardcopy (paper) books and records, or transfers computerized books and records, to an electronic storage media.

4.5.3 Records held in an electronic storage media or system shall meet the requirements of IRS Revenue Procedure 97-22, Section 4.01, specifically:

4.5.3.1 The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information;

4.5.3.2 The system must: i) include reasonable controls and quality assurance and data integrity, ii) provide reliability, iii) prevent and detect unauthorized creation of, addition to or alteration of records, and iv) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.

4.5.3.3 The system must be accessible to IRS access upon audit or examination.

#### 5.0 Definitions:

5.1 **Temporary Period:** Time period in which investing proceeds at a materially higher yield will not cause the bonds to become "arbitrage" bonds.

5.2 **Arbitrage Yield Restrictions:** Although there are some exceptions, the Code generally restricts the rate of return on investments purchased with bond proceeds (or some funds pledged to the repayment of bond proceeds) to a yield that is not higher than the yield paid on the bonds. If the yield received on bond proceeds are in excess of the yield paid on the bonds, there is a rebate requirement; specifically, the excess earnings shall be returned to the IRS.

<b>POST ISSUANCE COMPLIANCE:</b>  <b>TAX-EXEMPT BOND FINANCINGS</b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	FR-DF-PR-1000
	<b>Version Number:</b>	01

**5.3 Private Business Use:** Use by any person other than a state or local government unit (including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity and any federal agency) that results from:

- 5.3.1 sale of the property;
- 5.3.2 use of the property under a lease, management or service contract (except for certain “qualified” management or service contracts);
- 5.3.3 output contract for the purchase of electricity or water;
- 5.3.4 privately sponsored research contract (except for certain “qualified” research contracts);
- 5.3.5 “naming rights” contract;
- 5.3.6 public-private partnership arrangement;
- 5.3.7 any use arrangement that provides special legal entitlements for the use of the bond-financed property.

**6.0 Records:**

None.

**7.0 Appendices:**

None.

**8.0 Training Requirements:**

**8.1** Key staff and principal operating officials of those departments of VTA for which property is financed with proceeds of tax-exempt bonds shall be provided with education and training on federal tax requirements applicable to tax-exempt bonds. Such education and training is vital as a means of helping to ensure that VTA remains in compliance with federal tax requirements.

**8.1.1 Chief Financial Officer** shall provide to the Department of Employee Development, a list of key staff and principal operating officials who should receive education and training on federal tax-requirements applicable to tax-exempt bonds.

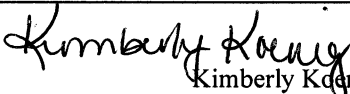
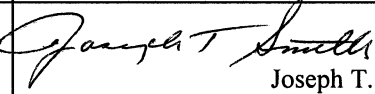
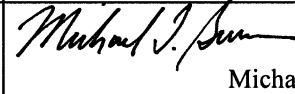
**8.1.2 Employee Development** shall ensure its budgetary requests for Employee Development Training includes an allocation for training on federal tax-exempt requirements applicable to tax-exempt bonds.

<b>POST ISSUANCE COMPLIANCE:</b> <b>TAX-EXEMPT BOND FINANCINGS</b>	<b>PROCEDURE</b>	
	<b>Document Number:</b>	FR-DF-PR-1000
	<b>Version Number:</b>	01

**9.0 Summary of Changes:**

Initial release of this Procedure.

**10.0 Approval Information:**

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 Kimberly Koenig Manager, Department of Finance	 Joseph T. Smith Chief Financial Officer	 Michael Burns General Manager

<b>Original Date:</b>	<b>Revision Date:</b>	Page 7 of 7
3/17/2009	N/A	