Tax-Exempt Bond Compliance

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This policy highlights the procedures in place to ensure compliance with federal laws relating to the issuance and post-issuance monitoring of tax-exempt bonds. Dickinson College’s (the “College”) overall policy on debt is included in the Debt Management Policy.

The consequences are severe if a bond loses its exempt status. The College works with the issuer (typically a state or local government authority), trustee, bond counsel and underwriter to ensure bonds are issued in compliance with applicable tax rules. The College is responsible for monitoring the use and investment of bond proceeds to ensure they remain in compliance with these requirements.

The rules surrounding tax-exempt bonds are numerous and complex. Thresholds, private use tests, arbitrage, information reporting, registration, and refunding are just a few of the rules that need to be addressed. The remaining sections are intended to highlight some of the key areas of compliance and are not all encompassing. Appropriate personnel in the Financial Operations division are responsible for staying current with changes in the rules governing tax-exempt bonds and may rely on outside advisors for guidance and assistance with these matters.

The College maintains all material records and information necessary to support the bond issue’s compliance and the College’s records retention requirements. The Assistant Treasurer is responsible for maintaining all accounts and records relating to tax-exempt bond proceeds and works closely with the Assistant Vice President for Financial Operations & Controller to monitor tax-exempt bond compliance throughout the year. In addition, appropriate personnel in Financial Operations meet with employees in Facilities on a regular basis to review any changes to the operational use of buildings that were financed with tax-exempt debt.

To the extent that the College discovers any noncompliance with federal regulations, general counsel and bond counsel (or other professional advisors) will be consulted to determine a course of action to remediate such noncompliance in a timely manner. If no solution is available, the College will attempt to address and correct post-issuance noncompliance with the Internal Revenue Service through the voluntary closing agreement program for tax-exempt bonds and tax credit bonds (“TEB VCAP”).

Bond Proceeds
Private activity bond proceeds used to finance issuance costs may not exceed two percent (2%) of the face amount of the bond issue. These costs include accountants’ fees, attorney fees, financial advisor fees, printing, the underwriters’ spread, and the cost of notice and public approval. The two percent (2%) that may be used for issuance costs counts against the private use limitations. The College and its advisors monitor this limit during the bond issuance and closing process to ensure the College remains in compliance.

Each bond issuance is assigned a unique fund number in the general ledger, which is used to record and reconcile all activity. The Assistant Treasurer is responsible for requesting reimbursements from bond proceeds in accordance with the intended uses noted in the bond documents.

The Vice President for Finance and Administration directs the investment of bond proceeds in accordance with requirements noted in bond documents and the College’s Investment Policy.

**Private Business Use**

Private activity bonds are issued to the College in the form of qualified 501(c)(3) bonds. If more than a limited amount of bond proceeds is used in a private trade or business that is not a qualified use, then the interest on the bonds will not be tax-exempt to the bondholders.

IRC section 145 provides that bonds will be qualified 501(c)(3) bonds if the property is owned by a section 501(c)(3) organization and at least 95 percent (95%) of the property is used and secured or paid for by the 501(c)(3)’s related business.

Neither private use nor unrelated use is qualified use. Unrelated use and private use are not necessarily the same and, therefore, it is necessary to monitor each separately. For example, while the outsourcing of a campus bookstore to a commercial company is not unrelated use, it may be considered private use.

Any contracts relating to bond-financed property (including the use of space) must be vetted through the appropriate channels, including general counsel and Financial Operations, before committing the College to such relationships. The Associate Vice President for Financial Operations & Controller and the Assistant Controller monitor private business use on a regular basis and collect private business use information for reporting on an annual basis as part of the preparation of Form 990.

**Management Contracts**

A contract with a service provider for services involving all, a portion of, or any function of a facility is a management contract. However, a contract for services is not a management contract if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties (e.g. janitorial, office equipment repair, or similar services). In general, in order to be a qualified management contract, the contract must provide for reasonable compensation for services rendered with no compensation based in whole or in part on a share of net profits from the operation of the facility.
Leases are considered private business use. Whether a management contract is actually a lease is
determined by the facts and circumstances including the degree of control exercised by the
nongovernmental person and whether the nongovernmental person bears risk of loss of the financed
property.

Research Agreements

A research agreement with respect to financed property results in private business use of that
property if the sponsor is treated as the lessee or owner of financed property for federal income tax
purposes. Governmental organizations are treated in the same manner as private business
corporations for purposes of this analysis.

Corporate-sponsored research will not result in private business use:

- If any license or other use of resulting technology by the sponsor is permitted only on the
  same terms as the College would permit that use by any unrelated, non-sponsoring party;
  and
- The price paid for that use is determined at the time the license or other resulting
technology is available for use, not when the research contract is signed. The College is
  not required to permit persons other than the sponsor to use any license or resulting
  technology, but the sponsor must pay no less than the amount a non-sponsoring party
  would pay for these rights.

Industry or federally-sponsored research agreements relating to property used pursuant to such
agreements will not result in private business use if:

- Either single or multiple sponsors agree to fund basic research\footnote{Basic research includes any original investigation for the enhancement of scientific knowledge not having a specific commercial objective.} performed by the
  College;
- The College determines what the research is and how it is to be performed (such as
  selection of research personnel);
- Title to any patent or other product incidentally resulting from the basic research lies
  exclusively with the College; and
- Sponsors are entitled to no more than a nonexclusive, royalty-free license to use the
  product of any of that research.

Arbitrage
A bond that is an arbitrage bond is not tax-exempt. Certain arbitrage profits, even if permissible, have to be rebated to the federal government. Investments subject to arbitrage restrictions include any security, bond, annuity contract, or other investment property.

Certain arbitrage is permissible and will not cause a bond to lose its tax-exempt status. A bond may be invested in higher yielding securities for a “temporary period” until the proceeds are needed for the purpose for which they were issued. The temporary period is generally three years but may be reduced to as little as six months in the case of a pooled financing. In addition, certain tests must be met in order to take advantage of the three-year temporary period.

Amounts held in a bona fide debt service fund may be invested in higher yielding investments for a 13-month period. Up to ten percent (10%) of bond proceeds may be invested in materially higher investments for purposes of establishing a reserve or replacement fund. In addition, the lesser of five percent (5%) of the bond proceeds or $100,000 may be invested in higher-yielding securities without violating the arbitrage rules.

All permissible arbitrage and any earnings on that arbitrage must be rebated to the federal government unless a rebate exception applies. Ninety percent (90%) of the rebate amount must be paid at least once every five years, with the balance due sixty days after the retirement of the bond issue. Although IRS rules require computation every five years, some bond documents may require computation every year. Yield on variable rate bonds is computed every five years, whereas yield on fixed rate bonds may be computed over the term of the bond.

There are certain exceptions to rebate when gross proceeds are spent within six months of the date of issue of the bond or when the College meets other de minimis exceptions.

The Assistant Treasurer works with a third party to perform arbitrage rebate calculations and prepare Form 8038-T, when appropriate. The Associate Vice President for Financial Operations & Controller and Assistant Controller gather third party reports as part of the Form 990 preparation process.

### Related Information

Debt Management Policy
Investment Policy
Sponsored Projects and Grants Administration

### History/Revision Information