

AGENDA ITEM #: 19-22
COUNCIL MTG OF: March 14, 2019
FROM: Dave Caron, Town Administrator
OFFERED BY: Susan Hickey, Chief Financial Officer
PREPARED BY: Susan Hickey, Chief Financial Officer
SUBJECT: Post-Issuance Compliance Policy

INTRODUCTION: At the closing of a tax-exempt bond or note issuance, the Town's governing board signs a No Arbitrage and Tax Certificate. This document provides Bond Counsel with the information necessary to make a determination that the bond or note is tax exempt at the time of issuance.

TOWN ADMINISTRATOR COMMENTS

The Council is encouraged to adopt the Resolution which would assist with our compliance requirements to the Internal Revenue Service.

BACKGROUND

The Internal Revenue Service (the "IRS") has focused on the post-issuance tax compliance of municipal bond issuers. During that time, there have been an increased number of IRS examinations of bonds and tax notes to determine compliance with the requirements of the Internal Revenue Code of 1986, as amended (the "Code"). One of the questions posed by the IRS in such examinations is whether the issuer has adopted written procedures to ensure compliance with the Code provisions applicable to tax-exempt bonds and notes.

DISCUSSION

The IRS includes guidance on its website that makes it evident that written procedures are an important part of an issuer's tax-exempt bond program. The IRS updated its Form 8038-G to add questions about whether the issuer has established written procedures to address private activity concerns and to monitor the requirements of section 148 related to arbitrage rebate.

The IRS also now requests more detail about an issuer's reimbursement for pre-issuance expenditures on this form. In order to address this increased level of review by the IRS, we have prepared a form of Post-Issuance Tax Compliance Policies and Procedures. This form of policy names a "Coordinator" who has the responsibility to monitor compliance with the policy. It follows the requirements of the Code and closely tracks the information included in the No Arbitrage and Tax Certificate that is signed at the closing of a bond or tax note financing.

As the Town may be planning to finance a project with tax exempt bonds, may need to issue tax anticipation notes or may be considering a lease-purchase arrangement we recommend implementing these policies. As a result, the Town would be able to answer "yes" to the questions on the Form 8038-G, thereby showing the IRS that it is aware of its post-issuance obligations under the Code and that it intends to meet those obligations. An additional reason for the timely adoption of these policies is the IRS's indication that an issuer who discloses a

compliance issue that is discovered as a result of its own internal review will be looked upon favorably by the IRS in determining a resolution to the problem.

FISCAL IMPACT

There is no fiscal impact in the adoption of the attached policy.

RECOMMENDED ACTION & MOTION BY COUNCIL

Please see Resolution #2019-008