

SUMMARY OF INTERNAL REVENUE SERVICE REIMBURSEMENT BOND GUIDELINES

INTRODUCTION

If the rules described in this memorandum are followed, reimbursement bond proceeds will be treated as “spent” when they are allocated to reimburse an issuer or a private activity bond conduit borrower for prior capital expenditures. This will free the reimbursement bond proceeds from federal tax rules such as the arbitrage rebate requirements. These rules may apply to only a portion of a bond issue.

Definition of Reimbursement Bond

A reimbursement bond is the portion of a bond issue used to reimburse the issuer or conduit borrower for an original expenditure made before the reimbursement bonds are issued and paid from a source other than a reimbursement bond.

Short Summary

The issuer or conduit borrower must declare official intent to issue bonds to reimburse itself not later than 60 days after payment of the original expenditure.

- The issuer must declare official intent if the reimbursement bond is a private activity bond (other than a qualified 501(c)(3) bond, a qualified mortgage bond, a qualified student loan bond or a qualified veterans’ mortgage bond). For other types of bonds, either the issuer or the conduit borrower may declare official intent.
- Reimbursement bond proceeds must be allocated to payment for the original expenditure within 18 months after the expenditure was paid or the financed property was placed in service (whichever is later), but in no event more than three years after the original expenditure was paid (these time limits are longer for certain under-\$5 million bond issuers).
- If the issuer qualifies for the arbitrage rebate exception for small governmental issuers that expect to issue \$5,000,000 or less of bonds in the calendar year, reimbursement bond proceeds must be allocated to payment for the original expenditure within three years after the expenditure was paid or the financed property was placed in service (whichever is later).
- The expenditure financed with reimbursement bond proceeds must be a capital expenditure, an issuance cost for the reimbursement bonds, an extraordinary working capital item, a grant, a qualified student loan or a qualified veterans’ mortgage loan.

- Certain de minimis preliminary expenditures may be paid earlier than 60 days before declaration of official intent, and the 18-month or three-year maximum reimbursement period does not apply to these items.

Effective Date

The new reimbursement rules apply to bonds issued after June 30, 1993.

No Application to Certain Bonds

The 60-day official intent declaration requirement and the timing of issuance of the reimbursement bonds do not apply to the smaller of \$100,000 or five percent of the bond proceeds. Original expenditures up to this amount may be reimbursed with bond proceeds without following the reimbursement bond rules.

Similarly, the 60-day official intent declaration requirement and the 18-month or three-year maximum reimbursement period does not apply to preliminary expenditures of up to 20% of the issue price of the reimbursement bonds. Preliminary expenditures include architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred before commencement of acquisition, construction or rehabilitation of the financed property. Land acquisition, site preparation and other costs incident to commencement of construction do not constitute preliminary expenditures.

PRELIMINARY REQUIREMENTS

This section describes the requirements that bond issuers or conduit borrowers must meet within 60 days of paying any original expenditure that they intend to reimburse with tax-exempt bond proceeds.

Official Intent Declaration Requirement

The municipal issuer or ultimate borrower of the bond proceeds must declare “official intent” for the original expenditure within 60 days of paying the expenditure. This official intent may be made before any expenditures are paid. The points that must be covered in the official intent declaration are as follows:

- The declaration of official intent may be made in any reasonable form including a resolution of the issuer, action of an authorized person or specific legislative authorization for a particular project.
- The declaration of official intent must contain a general functional description of the project, property or program to be financed by the reimbursement bonds (for example, “school building renovation,” “highway capital improvement program”). A project description is sufficient if it identifies, by name and functional purpose, the fund or account from which the original expenditure is paid (for example, “parks and recreation fund--recreational facility capital improvement program”).

- The declaration of official intent must state the maximum principal amount of debt expected to be issued (or incurred) for the project.

Timing Requirement for Official Intent Declaration

The issuer or the conduit borrower must declare its official intent within 60 days of making the original expenditure with respect to which it will issue reimbursement bonds. The official intent declaration may be adopted before any expenditures are made.

Type of Property Requirement

The expenditure to be reimbursed must be a “capital” expenditure. A capital expenditure is any cost of a type that is properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax principles. Most working capital cannot be financed with the proceeds of reimbursement bonds. Original expenditures for extraordinary, non-recurring items that are not customarily payable from current revenues, such as casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage may be financed with reimbursement bond proceeds. In addition, costs of issuance of the reimbursement bonds may be financed as can grants, qualified student loans, qualified mortgage loans or qualified veterans’ mortgage loans.

Reasonableness Requirement

On the date of adoption of the official intent declaration, the issuer or conduit borrower must have a reasonable expectation that it will reimburse the original expenditure with proceeds of the reimbursement bonds. Official intent declarations made as a matter of course or in amounts substantially in excess of the amounts expected to be necessary for the project are not reasonable. Similarly, a pattern of failing to reimburse original expenditures covered by official intent declarations is evidence of unreasonableness.

REFINANCING RULES

Rules prohibit reimbursement bond proceeds from being applied to pay principal or interest on an obligation that financed an original expenditure. Prior reimbursement bonds may be refunded if the prior reimbursement bonds met the reimbursement requirements in effect on the date they were issued.

BOND ISSUANCE REQUIREMENTS

There are certain bond issuance and proceeds allocation requirements that must be met at the time of issuance of the reimbursement bonds.

Timing Requirements for Reimbursement Bonds

Reimbursement bonds must be issued and bond proceeds allocated to reimburse the issuer or conduit borrower not later than the date that is 18 months after:

- (a) the date the original expenditure was paid, or

(b) the date that the project to be financed was placed in service.

but in no event more than three years after the original expenditure was paid.

In the case of governmental units with general taxing powers that expect to issue no more than \$5 million of governmental bonds in the calendar year, reimbursement bonds that are not private activity bonds must be issued within three years of the date the original expenditure was paid or within three years after the property is placed in service.

Allocation Requirement

In order for reimbursement bond proceeds to be treated as expended, the bond proceeds must be “allocated” to the expenditures on the books and records of the issuer or conduit borrower. The allocation must result in the bond proceeds being relieved from all restrictions or covenants contained in the bond documents and state law. An allocation made within 30 days of issuance of the reimbursement bonds may be treated as made on the date of issuance of the reimbursement bonds.

An allocation is invalid and does not result in an expenditure of reimbursement bond proceeds if, within one year after the allocation, money corresponding to the proceeds of the reimbursement bonds allocated to the original expenditure are used to create a sinking fund, pledged fund or otherwise establish an account that has a nexus to the governmental purpose of the reimbursement bonds resulting in the creation of replacement funds.

Reasonable Changes to Project

The rules allow reasonable deviations between the project descriptions contained in the intent resolutions and the actual projects financed by the reimbursement bond proceeds. The project actually financed must be reasonably related in function to the project described in the official intent declaration.