

**HARDIN COUNTY FISCAL COURT
RESOLUTION NO. 2023-152**

RESOLUTION REGARDING IRS REGULATIONS

**RESOLUTION OF THE COUNTY OF HARDIN,
KENTUCKY ADOPTING CERTAIN PROCEDURES IN
CONNECTION WITH THE ISSUANCE OF TAX-EXEMPT
OBLIGATIONS; AND OTHER MATTERS RELATING
THERE TO.**

RECITALS:

1. The Fiscal Court of the County of Hardin, Kentucky (the "County") has previously issued, or intends to issue, general obligation bonds the interest on which is excluded from the gross income of the holders thereof for federal income tax purposes (the "Bonds"); and
2. Federal income tax law requires that issuers of tax-exempt obligations comply with certain post-issuance requirements set forth in the Internal Revenue Code; and
3. To maximize the likelihood that certain applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met, the County desires to adopt the Written Procedures Related to Tax-Exempt Obligations, attached hereto as **Exhibit A**;

**NOW, THEREFORE, BE IT RESOLVED BY THE FISCAL COURT OF THE
COUNTY OF HARDIN, KENTUCKY:**

Section 1. Approval of Written Procedures. The Written Procedures Related to Tax-Exempt Obligations attached hereto as **Exhibit A** are hereby incorporated into this section as if expressly set forth herein. The County hereby covenants that unless it receives an opinion of bond counsel to the effect that failure to comply with such policies will not adversely affect the exclusion from gross income of interest on the applicable Bonds, it will comply with the Procedures to the extent necessary to maintain the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

Section 2. Amendment of Procedures. The Fiscal Court hereby delegates to the County Judge/Executive, in consultation with legal counsel, the authority to amend the Procedures on a case-by-case basis, as deemed necessary.

Section 3. Applicable Provisions of Law. This Resolution shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Section 4. Authorizations. All officials and employees of the County, including the County Judge/Executive, are authorized and empowered, collectively or individually, to take all other actions and steps as they shall deem necessary or desirable in connection with the adoption and compliance with the Procedures.

Section 5. Effective Date. This Resolution shall take effect immediately upon its adoption.

Introduced, read, adopted, and enacted by the Fiscal Court of the County of Hardin, Kentucky, at a duly convened meeting held on July 25, 2023, signed by the County Judge/Executive indicating approval, and attested by the County Clerk.

COUNTY OF HARDIN, KENTUCKY



Keith L. Taul
Hardin County Judge/Executive

ATTEST




Brian D. Smith
Hardin County Clerk

CERTIFICATE OF COUNTY CLERK

I, the duly qualified and acting County Clerk of the Fiscal Court of the County of Hardin, Kentucky, do hereby certify that the foregoing is a true, complete, and correct copy of a Resolution read, adopted, and enacted by the Fiscal Court of the County on July 25, 2023, executed by the County Judge/Executive and attested by the County Clerk, and that said Resolution has been duly recorded in the official records of the County, as shown by the official records of said County in my custody and under my control.

IN TESTIMONY WHEREOF, witness my signature as County Clerk of the County this July 25, 2023.



Brian D. Smith
Hardin County Clerk

COUNTY OF HARDIN, KENTUCKY

WRITTEN PROCEDURES RELATED TO TAX-EXEMPT OBLIGATIONS

The Internal Revenue Code of 1986, as amended (the “Code”) and the regulations promulgated thereunder (the “Regulations”) impose certain requirements on tax-exempt obligations, including but not limited to, restrictions on the use of bond proceeds and bond-financed property, arbitrage yield restrictions, and the arbitrage rebate requirement. These requirements are generally applicable throughout the period that the bonds remain outstanding.

References herein to a “bond” or to “bonds” apply to all forms of tax-exempt obligations including, but not limited to, notes and lease/purchase agreements.

The October 2021 revision to the Form 8038-G, Information Return for Tax Exempt Governmental Obligations (“Form 8038-G”) requires the issuer to represent whether it has established written procedures to (a) ensure that any nonqualified bonds (within the meaning of Section 1.148-12(j) of the Regulations) are remediated in accordance with the Code and the Regulations; and (b) monitor the requirements of Section 148 of the Code, including, but not limited to, the arbitrage rebate and arbitrage yield restriction requirements.

In addition to the above-described Form 8038-G representations, the County of Hardin, Kentucky (the “County”) has been advised that additional procedures are recommended in order for the County to document compliance with the applicable federal tax requirements. Actions pursuant to these procedures (collectively referred to as “post-issuance tax compliance”) are intended to assist the County in documenting compliance with the applicable federal tax requirements. Post-issuance tax compliance begins with the process of issuing bonds itself and includes a continuing focus on investment of bond proceeds and use of bond-financed property. Post-issuance tax compliance requires identifying the responsible people and the applicable procedures.

Procedures

The **Treasurer** (hereinafter referred to as the “County Representative”) of the County is designated as being responsible for post-issuance tax compliance. The County Representative may delegate to her staff or contract with independent contractors (such as an arbitrage/rebate consultant or a consulting engineer) responsibility for different aspects of post-issuance tax compliance. For example, coordinating and documenting the expenditure of bond proceeds on projects may be delegated to the consulting engineer. However, the County Representative will be ultimately responsible for implementing the procedures described herein.

Issuance of Bonds – The County Representative will:

(a) Confirm the filing of the Form 8038-G (or applicable successor form) with Internal Revenue Service (“IRS”). Filing of the applicable Form 8038-G is usually overseen by bond counsel at or soon after the closing of a bond issue.

(b) Obtain and store the Transcript of Proceedings prepared by bond counsel (which typically includes the applicable Form 8038-G and the Federal Tax Certificate containing the County’s expectations as of the date of issuance of the bond issue).

Recordkeeping – The County Representative will:

(a) Establish a plan for keeping relevant books and records as to the investment and the expenditure of bond proceeds.

(b) Keep accurate records including:

- Basic records relating to the bond transactions (including the bond resolutions, loan agreements, and bond counsel opinion, which should be found in the Transcript of Proceeding, above);
- Documentation evidencing the expenditure of bond proceeds (e.g., construction contracts, purchase orders, invoices, trustee requisitions, and payment records);
- Documentation evidencing use of bond-financed property by public and private sources (e.g., copies of management contracts, and leases);
- Documentation evidencing all sources of payment or security for the bonds; and
- Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGS subscriptions, investments, investment agreements, guaranteed investment contracts, yield calculations for each class of investments, actual investment income received from the investment of proceeds, and rebate calculations).

(c) Keep all records in a manner that ensures their complete access to the IRS so long as they are material. While this is typically accomplished through the maintenance of hard copies, records may be kept in an electronic format if certain requirements are satisfied, in accordance with the guidelines in Revenue Procedure 97-22, 1997-1 C.B. 652.

(d) Keep the relevant records for each issue of bonds for as long as such issue of bonds is outstanding (including any bonds issued to refund such issue of bonds) plus three years after the final redemption date of the bonds.

Arbitrage Rebate and Arbitrage Yield Restriction – The County Representative will:

(a) Engage the services of an arbitrage/rebate consultant for assistance in compliance with arbitrage related issues.

(b) Work with the County’s bond counsel, financial advisor, and/or arbitrage/rebate consultant to monitor compliance with “temporary period exceptions” for expenditure of bond proceeds, typically three years for new money bonds, and provide for yield restriction of investments or “yield reduction payments” if exceptions are not satisfied.

(c) Work with the County’s bond counsel and financial advisor to ensure investments acquired with bond proceeds are purchased at fair market value. This may include use of bidding procedures under the regulatory safe harbor of the Regulations.

(d) Consult with the County’s bond counsel prior to the creation of funds that would reasonably be expected to be used to pay debt service on tax-exempt bonds to determine in advance whether such funds must be invested at a restricted yield.

(e) Consult with the County’s bond counsel and financial advisor before engaging in post-issuance credit enhancement transactions (e.g., bond insurance, letter of credit) or hedging transactions (e.g., interest rate swap, cap).

(f) Consult with the County's bond counsel, financial advisor, and/or arbitrage/rebate consultant to identify situations in which compliance with applicable yield restrictions depends upon subsequent investments and monitor implementation.

(g) Work with the County's arbitrage/rebate consultant to arrange for timely computation of rebate/yield reduction payment liability and, if an amount is payable, for timely filing of Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (or applicable successor form), and payment of such liability.

(h) Rebate payments are required no later than 60 days after each 5-year anniversary of the issue date of the bonds, and no later than 60 days after the last bond of each issue is redeemed.

Private Use of Bond-Financed Facilities - The County Representative will:

(a) Create and maintain records of which proceeds of bond issues were used to finance which facilities. These records shall incorporate the refunding or partial refunding of any bond issues.

(b) Record the allocation of bond proceeds to expenditures, including reimbursements. These records will be consistent with the expenditures used for arbitrage purposes.

(c) Record the allocation of bond proceeds, and funds from other sources, in connection with any bond funded project. Review expenditure of bond proceeds with bond counsel and/or consulting engineer to ensure bond proceeds are used for qualifying costs.

(d) Review with bond counsel prior to the sale or lease of a bond-financed facility, or the granting of a license or management contract, or any other arrangement allowing private use of a bond financed facility, the terms of such arrangement.

(e) Keep records of private use, if any, of bond financed facilities to monitor the amount of private use of bond financed facilities. Private use of bond-financed facilities shall be reviewed once a year (in connection with the preparation of the annual financial statements). If a change in private use occurs, bond counsel will be consulted to determine if remedial action is necessary.

Reissuance – The County Representative will:

(a) Consult with bond counsel to review any post-issuance modification to the terms of bonds which could be treated as a current refunding of "old" bonds by "new" bonds, often referred to as a "reissuance."

(b) Consult with bond counsel to determine whether any "remedial action" (see item (e) under "Private Use of Bond-Financed Facilities" above) in connection with private use must be treated as a "reissuance."

These Procedures are dated July 25, 2023, the date of its approval by the Fiscal Court.