



# PA TURNPIKE COMMISSION POLICY

*This is a statement of official Pennsylvania Turnpike Policy*

**NUMBER:** 7.09

**APPROVAL DATE:** 12-6-2011

**EFFECTIVE DATE:** 12-21-2011

**REVISED DATE:** 00-00-0000

**POLICY SUBJECT:**

Tax-Exempt Debt, Build America Bonds and Other Tax-Advantaged Debt Post-Issuance Compliance Policies and Procedures

**RESPONSIBLE DEPARTMENT:**

Finance and Administration

**A. PURPOSE:**

The Pennsylvania Turnpike Commission (the "PTC") has covenanted in the applicable issuance documents to comply with all applicable federal tax rules related to its tax-exempt debt, Build America Bonds and other tax-advantaged debt issuances (Build America Bonds and other tax-advantaged debt issuances are referred to collectively herein as "Tax-Advantaged Debt"). This includes compliance with all applicable federal tax documentation and filing requirements, yield restriction limitations, arbitrage rebate requirements, use of proceeds and financed projects limitations and recordkeeping requirements. The PTC's Chief Financial Officer on behalf of the PTC hereby adopts the following policies and procedures (these "Policies and Procedures") to facilitate compliance with the federal tax law applicable to outstanding tax-exempt debt and other Tax-Advantaged Debt issuances.<sup>1</sup> This policy is to be used in conjunction with the bond issuance documentation and is not a substitute for specific bond documents.

**B. Accountability**

Except as otherwise described herein, the PTC's Finance Department (the "Finance Department") will have primary responsibility for ensuring that outstanding tax-exempt debt and other Tax-Advantaged Debt issuances are, and will remain, in compliance with applicable federal tax law. The Finance Department will consult with other departments within the PTC, as well as third-party professionals (e.g., bond counsel and arbitrage rebate provider), as necessary, to ensure compliance with such rules, including these Policies and Procedures.

The Chief Financial Officer (the "Compliance Officer") shall have the primary operating responsibility within the Finance Department to monitor adherence to these Policies and Procedures. The Compliance Officer may delegate aspects of such responsibility to other employees or outside professionals or counsel of the PTC, but shall retain overall responsibility

<sup>1</sup> Approved by the Board of Commissioners of the PTC at its meeting on December 6, 2011.

for ensuring compliance and coordinating compliance when more than one individual or contractor is given responsibility.

### **C. Closing of Debt Issuances**

- Tax Certificates - In connection with each issuance of tax-exempt debt or other Tax-Advantaged Debt, the PTC will employ bond counsel experienced with the federal tax laws applicable to tax-exempt debt or other counsel experienced in the federal tax laws applicable to any other Tax-Advantaged Debt (any of such counsel for a specific issuance are referred to herein as “bond counsel”). Bond counsel, with assistance from the PTC and other professionals associated with the financing, shall prepare a Tax Certificate in connection with the issuance of each series of tax-exempt debt or other Tax-Advantaged Debt, to be executed by an appropriate officer of the PTC (or as otherwise appropriate) at closing. The Tax Certificate shall serve as the operative document for purposes of establishing the PTC's reasonable expectations as of the date of issuance, as well as provide a summary of the federal tax rules applicable to such issuance. The Compliance Officer, in consultation with bond counsel, will review each Tax Certificate prior to the closing of the issue.
- Internal Revenue Service Form 8038-G – Tax-Exempt Bonds - Bond counsel, with assistance from the PTC and other professionals associated with the financing, shall prepare an Internal Revenue Service Form 8038-G in connection with each tax-exempt debt issuance issued by the PTC, which the Compliance Officer will review prior to closing. Each Internal Revenue Service Form 8038-G prepared for a tax-exempt debt issuance will be filed with the Internal Revenue Service by no later than the 15th day after the 2nd calendar month after the close of the calendar quarter in which the tax-exempt obligation to which such Form 8038-G relates is issued.
- Other Tax-Advantaged Bonds - Bond counsel, with assistance from the PTC and other professionals associated with the financing, shall prepare any Internal Revenue Service Form required in connection with any issuance of Tax-Advantaged Debt, which the Finance Department will review prior to closing. Such forms shall be timely filed with the Internal Revenue Service by such date and in such manner as directed by bond counsel. The Compliance Officer, in consultation with bond counsel, will review each such form prior to the closing of the issue.

### **D. Special Provisions Applicable to Tax-Advantaged Debt.<sup>2</sup>**

- Use of Available Project Proceeds. One hundred percent (100%) of the available project proceeds of each issue of Build America Bonds shall be used to finance capital expenditures. As part of the review process described in Part IX, the Compliance Officer shall review the application of the proceeds of Build America Bonds with respect to this requirement.
- Preparation and Filing of IRS Form 8038-CP. The Finance Department will prepare, or cause to be prepared, a separate IRS Form 8038-CP for each claimed refundable credit payment. In the

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<sup>2</sup> Assumes that no new issuances of Build America Bonds are authorized and that there is no other Tax-Advantaged Debt which the PTC currently plans to issue. The Compliance Officer will work with bond counsel to amend these procedures as appropriate if the issuance of Tax-Advantaged Debt is authorized in the future.

case of fixed rate Build America Bonds,<sup>3</sup> the PTC will complete an IRS Form 8038-CP for each interest payment date, such IRS Form 8038-CP to be filed no later than 45 days prior to the interest payment date for which such refundable credit is claimed and no earlier than 90 days prior to the applicable interest payment date for which such refundable credit is claimed. For each issuance of Build America Bonds, the PTC required a financial professional to prepare a schedule setting forth the interest scheduled to be paid to the holders of the bonds, the date on which such amounts are expected to be paid and the amount of refundable credits expected to be claimed by the PTC from the Treasury Department. This schedule was attached to the IRS Form 8038-B filed in connection with each issuance of Build America Bonds and will serve as the basis for the IRS Form 8038-CPs.

- Retention of Records. The Finance Department will retain a copy of each IRS Form 8038-CP submitted on behalf of the PTC, together with records of interest paid by the PTC for which such refundable credits are claimed, as described in Part VIII, "Recordkeeping," below.

## **E. Use of Debt Proceeds**

- Restrictions on Private Business Use. The Compliance Officer shall enforce the restrictions on private business use (as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), and further described below) that apply to land, buildings, facilities and equipment ("property") which are financed with proceeds of tax-exempt bonds or Build America Bonds.<sup>4</sup> Under Section 141 of the Code, no more than generally 10% of such proceeds (5% in certain cases) of any bond issue (including the property financed with the bonds) may be used for private business use.<sup>5</sup>
- "Private business use" is use by any person other than a state or local government unit (a "nongovernmental person"), including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain "qualified" management or service contracts), output contract for the purchase of electricity or water, privately sponsored research contract (except for certain "qualified" research contracts), "naming rights" contract, "public-private partnership" arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property.
- Before the PTC enters into any use arrangement with a nongovernmental person<sup>6</sup> with respect to bond-financed property, the Compliance Officer will evaluate whether that use arrangement,

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<sup>3</sup> The PTC has not issued any variable rate Build America Bonds.

<sup>4</sup> For Tax-Advantaged Debt other than Build America Bonds, the PTC shall obtain advice in the Tax Certificate for such issue as to whether the restrictions in this Part are applicable.

<sup>5</sup> Private business use must be combined with private payments (as defined in Section 141 of the Code) for an issue of bonds to violate the federal tax laws. If private business use is determined, the analysis of any corresponding private payments should be part of the review by the Compliance Officer and bond counsel.

<sup>6</sup> Arrangements with a state or local government unit shall be reviewed as well to the extent that such state or local government unit has the right to allow nongovernmental persons to use the subject property. The United States of America is a nongovernmental person for purposes of the determination of

if put into effect, will be consistent with the restrictions on private business use of the bond-financed property. In connection with the evaluation of any proposed nongovernmental use arrangement, the Compliance Officer shall determine whether to engage nationally recognized bond counsel to obtain advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any "remedial action" permitted under section 141 of the Code may be taken with respect to such use arrangement.

- Private business use starts on the first date on which the PTC enters into a binding contract with a nongovernmental person for use of the financed property which is not subject to any material contingencies.
- Records shall be maintained of nongovernmental uses, if any, of financed property, including copies of the pertinent leases, contracts or other documentation, any related determination that those nongovernmental uses are not inconsistent with the status of the debt that financed the property, including any advice received from bond counsel, and, if required, any remedial actions taken.
- Private Loans. The Compliance Officer shall enforce the restriction that under section 141 of the Code, no more than the lesser of \$5,000,000 or 5% of the proceeds of a bond issue may be used to make or finance a loan to any person other than a state or local government unit.

#### **F. Accounting for Debt Proceeds**

- General. Except as otherwise described below or in the applicable Tax Certificate, it is the policy of the PTC to apply a direct costing method of accounting for and allocating its tax-exempt debt and other Tax-Advantaged Debt proceeds.
- Investment of Proceeds. Proceeds of tax-exempt debt and other Tax-Advantaged Debt shall be held in a separate fund or account held by the applicable trustee, and invested as set forth in the indenture (or other operative document) pursuant to which such debt is issued, and subject to any restrictions in the applicable Tax Certificate.
- Expenditure of Proceeds on Capital Projects. Proceeds of tax-exempt debt or other Tax-Advantaged Debt issues will be expended as follows:
  1. Projects (Work Breakdown Structure ("WBS") elements and associated purchase orders) to be funded by such issue are identified.
  2. The Accounting Department processes invoices for payment by charging them to purchase orders or WBS elements thus charging the appropriate fund.
  3. Accounts payable generates check runs which produce payment documents. A transaction is then run that uses the payment documents to calculate the amount of payments from each fund (account).
  4. Monies are then transferred from each fund (account) to the disbursement account.
  5. All invoices and records of payment will be retained by the Accounting Department.

The Accounting Department shall maintain an active ledger, updated with each payment of an expenditure from tax-exempt debt and other Tax-Advantaged Debt proceeds that for each outstanding debt issuance shows:

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private business use.

1. The name and date of issue to which the proceeds relate.
2. The specific projects and costs, including any “soft costs” such as architectural and engineering, financed with the proceeds of the issue.
3. The proceeds of the issue used to finance each project, as of any specified date.
4. The amount of unspent proceeds of the issue to be used to finance projects.
5. The date on which the debt proceeds were fully expended.

## G. Arbitrage

- Arbitrage Rebate Monitor. The PTC will continue to retain an independent, third-party arbitrage rebate monitor to review its outstanding tax-exempt debt and other Tax-Advantaged Debt issuances. The arbitrage rebate monitor will perform calculations (at least annually) to ascertain whether the PTC owes an arbitrage rebate payment or yield reduction payment to the Internal Revenue Service, and whether any issue qualifies for an exception to the arbitrage rebate rules.
- Payment of Arbitrage Rebate and Yield Reduction Liability. In the event the PTC owes arbitrage rebate or has accrued a yield reduction payment liability to the Internal Revenue Service, the PTC will timely submit Internal Revenue Service Form 8038-T, Arbitrage Rebate Yield Reduction and Penalty in Lieu of Arbitrage Rebate, to the Internal Revenue Service, as prepared by the arbitrage rebate monitor, together with payment in the amount equal to the arbitrage rebate or yield reduction payment liability calculated by the arbitrage rebate monitor in accordance with the Tax Certificate related to such debt issue. The Compliance Officer shall review each Form 8038-T prior to submission.
- Yield Restriction Limitations. Each Tax Certificate prepared for tax-exempt debt and other Tax-Advantaged Debt issues shall contain the applicable yield restriction investment limitations, including the applicable investment limitations imposed on proceeds of the debt issuance and any temporary periods during which the PTC may invest proceeds of the debt issuance at an unrestricted yield.
- Arbitrage Rebate Exceptions. Each Tax Certificate prepared for tax-exempt debt and other Tax-Advantaged Debt issuances shall contain the arbitrage rebate exception(s) applicable to the debt issuance, which arbitrage rebate exceptions will be applied by the arbitrage rebate monitor in assessing whether the PTC owes arbitrage rebate.
- Interest Rate Hedges. The PTC will engage a third party financial advisor (or use its then-current financial advisor) for all interest rate hedges entered into by the PTC, whether any such hedge is acquired through a direct negotiation with the provider or procured through a bidding process. In all cases, the PTC will obtain appropriate certifications from its financial advisor and/or the provider to establish the fair market value of the hedge. The PTC will consult with bond counsel prior to entering into any interest rate hedge (including any amendments to or other modifications of existing interest rate hedges). The PTC shall (either in the applicable Tax Certificate or otherwise) obtain advice from bond counsel on the effect of each interest rate hedge on the yield of the applicable issue of tax-exempt debt or Tax-Advantaged Debt and take all steps advised by bond counsel to appropriately identify any hedges which are intended to be integrated into the yield on an issue.

## H. Recordkeeping

- General. The PTC is aware of its ongoing recordkeeping responsibilities associated with its tax-exempt debt and other Tax-Advantaged Debt issuances. Unless otherwise provided in the applicable Tax Certificate, the provisions of this Part VIII shall apply to all records described herein.
- Means of Maintaining Records. The PTC may maintain all records required to be held as described in paper and/or electronic (e.g., CD, disks, tapes) form.
- Transcript and Use of Debt Proceeds. The PTC shall maintain, or cause to be maintained, all records relating to the tax-exempt status of its tax-exempt debt issuances and the qualification of other Tax-Advantaged Debt and the representations, certifications and covenants set forth in its respective Tax Certificates until the date 3 years after the last outstanding obligation of the issue to which such records and Tax Certificate relate has been retired. The records that must be retained include, but are not limited to those shown on Attachment A.
- Investment Records. The PTC will require its investment manager(s) and/or its trustees to maintain detailed records with respect to every investment acquired with proceeds of its tax-exempt debt and other Tax-Advantaged Debt, as further described on Attachment B. The PTC shall be provided with copies of such records regularly and maintain all such records until the date 3 years after the last outstanding obligation of the issue to which such records and non-purpose investments relate has been retired.
- Arbitrage Rebate and Yield Reduction Payment Records. The Finance Department shall maintain all records of arbitrage rebate payment and yield reduction payment calculations performed by the arbitrage rebate monitor and records related to any arbitrage rebate payments or yield reduction payments made to the Internal Revenue Service, including the calculations performed by the arbitrage rebate monitor substantiating such payments, together with the Internal Revenue Service Form 8038-T that accompanied all such payments, until the date 3 years after the last outstanding obligation of the issue to which such records and rebate payments relate has been retired.
- Overpayment of Arbitrage Rebate Records. In the event the PTC has overpaid to the United States an arbitrage rebate or yield reduction payment liability, the PTC shall maintain all records of such arbitrage rebate payments or yield reduction payments, including calculations performed by the arbitrage rebate monitor, together with the Internal Revenue Service Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, that accompanied the request for a recovery of such overpayment until the date 3 years after the last outstanding obligation of the issue to which such records and rebate overpayments relate has been retired.
- Refundable Credit Payment Records. The Finance Department shall maintain all records of each claimed refundable credit payment for Build America Bonds and the calculations with respect to such refundable credits, together with the Internal Revenue Service Form 8038-CP requesting each such payment until the date 3 years after the last outstanding obligation of the issue to which such records and refundable credit payments relate has been retired.
- Other Records. In addition to the records described above, the PTC will maintain the records shown on Attachment C, to the extent applicable to a particular tax-exempt debt offering, until the date 3 years after the last outstanding obligation of the issue to which such relate has been retired.
- Applicability of Recordkeeping Requirement in the Event of a Refunding. In the event the PTC issues tax-exempt debt or other Tax-Advantaged Debt to retire prior debt, the PTC shall maintain all of the records described in this part with respect to the refunded debt until the date

that is 3 years after the last outstanding tax-exempt obligation or other Tax-Advantaged Debt of the issue the proceeds of which were used to retire the refunded debt has been retired.

#### **I. Annual Review**

The Compliance Officer shall review, at regular intervals, on at least an annual basis, whether the provisions of this Compliance Policy have been followed for each issuance by the PTC of tax-exempt debt or other Tax-Advantaged Debt and whether any violations of the applicable federal tax law have been determined for any issue of tax-exempt debt or other Tax-Advantaged Debt. This review shall include an examination of the records generated in compliance with these Policies and Procedures to determine whether such records show any violation or potential violation of the applicable federal tax law for any issue of tax-exempt debt or other Tax-Advantaged Debt.

- In the case of failure to follow this Compliance Policy, the Compliance Officer shall review such failure with the appropriate PTC employees or outside professionals or counsel and determine appropriate action to ensure future compliance.
- In the case of a violation or potential violation of the applicable federal tax law, the Compliance Officer shall review and comply with the appropriate remedial actions as described in Part X.

#### **J. Remedial Actions**

If the Compliance Officer determines that an action or failure to act on the part of the PTC has resulted in, or could result in, a violation of the applicable federal tax law for any issue of tax-exempt debt or other Tax-Advantaged Debt, the Compliance Officer shall consult with the PTC's Chief Counsel and bond counsel as to the appropriate remedy for such violation or potential violation and take such steps as are reasonably required to implement such remedies so as to continue to comply with the PTC's covenants to maintain the tax-exempt status of tax-exempt debt or to preserve the status of Tax-Advantaged Debt, as applicable.

Currently available remedies for certain violations of the federal tax laws include:

1. For violations of the restrictions on private business use, Treasury Regulations Section 1.141-12 set forth certain remedial actions which can be taken following a deliberate action<sup>7</sup> which causes private business use, including redemption of bonds, alternative use of proceeds and alternative use of financed facilities. Certain remedies must be taken by the date of the deliberate action or shortly thereafter (within 90 days, for example, for redemptions). A deliberate action occurs on the first date on which the issuer enters into a binding contract with a nongovernmental person for use of the financed property which is not subject to any material contingencies.

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<sup>7</sup> Generally, a deliberate action is any action taken by the issuer which is within its control. An intent to violate the federal tax law is not required in order to have a deliberate action.

2. The Internal Revenue Service has a voluntary closing agreement program for tax-exempt debt and other Tax-Advantaged Debt (“TEB VCAP”) which allows issuers to voluntarily resolve violations of the Code or applicable regulations through closing agreements with the Internal Revenue Service. TEB VCAP is not available when: (a) absent extraordinary circumstances, the violation can be remediated under existing remedial action provisions or other tax-exempt bond closing agreement programs; (b) the issue is under examination; (c) the tax-exempt status or tax-advantaged status of the debt is at issue in any court proceeding or is being considered by the IRS Office of Appeals; or (d) the Internal Revenue Service determines that the violation was due to willful neglect.
3. For certain violations of the rebate and arbitrage rules, an issuer can pay a penalty under Treasury Regulations Section 1.148-3(h) or make yield reduction payments under Treasury Regulations Section 1.148-5(c).

The Compliance Officer shall also review this Compliance Policy in light of such violation or potential violation and determine whether amendments are needed to the procedures set forth herein in order to prevent any future occurrence thereof.

#### **K. Training**

Based on his or her experience, the Compliance Officer, upon assuming such role, shall determine whether he or she needs to attend training in order to perform the duties hereunder. The Compliance Officer shall also determine the same for any employee who has been delegated responsibility under this policy, and shall arrange for the appropriate training in each case. In addition, the Compliance Officer or the appropriate delegate shall attend (in person or via the internet) at least one conference, seminar or webinar each year in which current issues with respect to compliance with the arbitrage rules and private business use rules of the federal tax code are discussed.

The Compliance Officer may also consult with bond counsel, request to attend such other training program (for him or herself or another employee) or obtain such training materials as are reasonably required in order to permit the Compliance Officer or any delegate to perform his or her duties hereunder.



Attachment A

Transcript Records/Documents

Name of Issuer	_____
Principal Amount	_____
Date of Issue	_____
Purpose of Issue	_____
Interest Payment Dates	_____
Principal Payment Dates	_____
Final Maturity Date	_____
CUSIP for Final Maturity	_____
Pledge/Security	_____
Trustee or Paying Agent/Contact	_____
Bond Counsel/Contact	_____
Underwriter/Contact	_____
Financial Advisor	_____
Escrow Agent (if Applicable)	_____
Verification Agent (if Applicable)	_____
Swap/Investment Advisor (if Applicable)	_____
Swap Counterparty (if Applicable)	_____
Trust Agreement or Indenture (if Applicable)	_____
Tax Certificate	_____
Copy of IRS Form 8038 (together with proof of filing)	_____
Issue Price Certificate (and any other documentation related to issue price)	_____
Official Statement	_____
Escrow Agreement	_____
Verification Report	_____
Credit Enhancement Documents	_____
Bond Counsel Opinion(s)	_____

Attachment B

Investment Records

Type of investment	_____
Purchase date	_____
Purchase price	_____
Any discount or premium	_____
Information establishing fair market value on the date such investment became allocated to gross proceeds of the debt	_____
Any accrued interest paid or received	_____
Par or face amount	_____
Coupon or stated interest rate	_____
Periodicity of interest payments	_____
Compounding period	_____
Maturity date	_____
Disposition price	_____
Disposition date	_____
Broker	_____
Broker's fees paid (if at all) or other administrative costs	_____
Yield	_____

Attachment C

Other Records

Meeting minutes for the resolutions described immediately below

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Resolutions authorizing the issuance of, or the reimbursement of expenditures using proceeds of, the financing

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Documentation relating to any third-party funding for a project to which tax-exempt debt proceeds will be applied (including government grants)

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Records of any Internal Revenue Service audit(s) or compliance check(s), or any other Internal Revenue Service inquiry related to the debt.

*This Policy Letter supersedes all previous Policy Letters on this subject.*