

## **104            ARBITRAGE POLICY**

To maintain tax-exempt status for its governmental bonds, TRWD, as the issuer of the bonds, must comply with federal tax laws that are in effect at the time of issuance of the bonds and over the period that the bonds are outstanding. To assist in the timely detection and correction of a potential violation of federal tax law, post-issuance compliance policies and procedures should be identified and observed. Compliance with the rules set forth in this Policy and TRWD's post-issuance compliance procedures must be documented by records that meet IRS regulations. This Policy also serves as documentation in the event of an IRS audit.

Federal tax laws and regulations restrict the amount of arbitrage that can be earned and retained from investing the proceeds of tax-exempt bonds. There are two categories of restrictions; if either are not satisfied, the tax-exempt bonds become arbitrage bonds and could lose their tax-exempt status. The two categories of restriction are:

- Yield Restriction – bond proceeds may not be invested at a materially higher yield than the yield on the bonds, and
- Rebate – any actual earnings in excess of the yield on the bonds must be paid as a “rebate” to the federal government. Rebate, if any, is due every five years or when bonds are paid off, either at maturity or redemption.

To comply with both the yield restriction and rebate rules, an issuer needs to have procedures that identify the type of, and return on, investments made with bond proceeds and when proceeds are spent.

**104.1            Designation of Compliance Officer.** The Director of Finance will serve as TRWD's Compliance Officer. The Compliance Officer is responsible for overseeing compliance efforts related to this Arbitrage Policy, identifying any potential or actual noncompliance with the tax rules relating to the tax-exempt bonds and recommending action to correct any identified areas of noncompliance. The Compliance Officer will review any prior post-issuance compliance and remedial action procedures, tax documents for existing and future bonds and the related information returns, if any, filed in connection with the bonds (examples of these returns include IRS Forms 8038, 8038-G, 8038-TC or 8038-CP) and the instructions for such informational returns. The Compliance Officer will consult with bond counsel and other professionals as needed.

**104.2            Training for Compliance Officer.** Compliance training for the Compliance Officer and any individuals delegated duties associated with this Policy includes consulting with bond counsel to discuss monitoring compliance with applicable tax laws prior to the issuance of a new bond and attendance at post-issuance compliance trainings organized by bond counsel, the Internal Revenue Service, or entities such as the National Association of Bond Lawyers, the Government Finance Officers Association or similar organizations once every two years.

**104.3 Succession Planning.** TRWD will ensure that, if the current Compliance Officer leaves this position, the responsibility for tax compliance will be explained in detail to his or her successor and compliance training will be provided to the incoming Compliance Officer.

**104.4 Annual Due Diligence Reviews.** The Compliance Officer will annually review:

- This policy;
- Tax and financing documents relating to the issuer's outstanding bonds;
- Information returns for such bonds; and
- The status and use of the bond-financed or refinanced property.

In addition to this annual review, the Compliance Officer will work with TRWD's Financial Advisor to ensure that a review and, where applicable, any annual required calculation, is completed at the following intervals:

- Six months prior to each five-year anniversary of the issue or the execution and delivery date of the bonds;
- Within 30 days of the date the bonds are retired, defeased, refunded, or terminated;
- When any rebate payment is made; and
- If any of the representations, statements, circumstances, or expectations of the issuer that are set forth in the tax or financing documents for bonds are no longer true, have changed or have not come to pass.

The foregoing review will be made for the purposes of identifying any possible violation of federal tax requirements related to the bonds and to ensure the timely correction of those violations pursuant to the remedial action provisions outlined above or through the voluntary closing agreement program of the Internal Revenue Service. If any possible violation is identified, the Compliance Officer will notify the General Manager, the Chief Financial Officer, and TRWD's bond counsel so that any existing or expected violation can be corrected.

The Compliance Officer shall establish an Arbitrage Policy and Procedures checklist for documentation of annual review.

**104.5 Records Retention.** All records shall, at minimum, be retained in accordance with the Texas State Library and Archives Commission schedules and TRWD's Records Management Policy and Records Retention Schedules. The

Compliance Officer in coordination with the Records Management Officer shall establish and implement specific records retention procedures related to the books and records for any bond issue.

Management and retention of records related to the TRWD's bonds will be supervised by the Compliance Officer in coordination with the Records Management Officer. Records shall be retained an additional three years after the life of the bond or the life of any refunding bonds. These records should include information relating to:

- General information regarding the bond issue;
- Expenditure of the bond proceeds;
- Use, ownership, and disposition of bond-financed facilities; and
- Investment of gross proceeds of the bonds.

Records may be in the form of documents or electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.

The District's Records Management Department maintains the physical and electronic storage of the arbitrage documents. Documents cannot be destroyed without the written authorization of both the Compliance Officer and the Chief Financial Officer.

**104.6 Post-Issuance Tax Compliance Procedures.** The Compliance Officer shall establish and implement Post-Issuance Tax Compliance Procedures for TRWD to:

1. Maximize its compliance with federal law requirements applicable to its outstanding tax-exempt bonds; and
2. Identify and resolve any noncompliance matters, on a timely basis, to preserve the tax-exempt status of the outstanding bonds.

**104.7 Bond Counsel Review.** The Compliance Officer may work with TRWD's retained bond counsel to assist in implementing the Post-Issuance Tax Compliance Procedures including, but not limited to, assistance in the following areas:

- Rebate calculations and compliance;
- Records retention,
- Periodic review of Bond Records for compliance with federal tax laws regarding private business use,
- Determination of whether a violation of federal tax law requirements applicable to that Bond issue may have occurred and the Issuer's options

to address the violation so the preferential tax status of the Bond issue is maintained,

- Termination or modification of any interest rate swaps or other derivatives,
- Modifications to Bond Documents, and
- Other federal tax law compliance, including any annual reporting requirements that may be imposed by the IRS.