POST-ISSUANCE TAX COMPLIANCE SERVICES
FOR TAX-EXEMPT BONDS
FOR NONPROFIT CORPORATIONS

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Table of Contents

What is Post-Issuance Tax Compliance?

Post-issuance tax compliance is a process that monitors how tax-exempt bond proceeds were invested prior to being expended, as well as how the assets or facilities funded with such tax-exempt proceeds were used after they were placed in service, to ensure that an organization is complying with the applicable tax laws under which tax-exempt proceeds were borrowed.

NEW IRS REPORTING

IRS Schedule K Private Business Use Reporting Requirements Now In Effect

As part of its new strategic focus on tax-exempt bonds, the IRS announced that post-issuance tax compliance is among its highest priorities. As evidence of this new focus, the IRS has imposed an annual reporting requirement on 501 (c)(3) nonprofit corporations (in the form of Schedule K, to be filed with IRS Form 990), regarding the application and use of proceeds of tax-exempt bonds issued for their benefit. Nonprofit organizations who have borrowed money on a tax-exempt basis via state and local government entities since 2003 are now faced with the annual burden of filing Schedule K to report the amount of private business use on all bond financed property, on a per bond issue basis.

Noncompliance with the federal tax law requirements could result in an audit, or worse, the loss of the tax-exempt status of your bonds.

What Are the IRS Schedule K Reporting Requirements?

The questions asked on IRS Schedule K relate to the current use of tax-exempt bond financed projects. Both general and very specific questions are asked to determine how effectively nonprofits are monitoring private business use and post-issuance tax compliance matters.

In addition to questions relating to record retention and post-issuance compliance policies, nonprofits are required to calculate an accurate percentage of private business use allocable to the property financed by each bond issue. The IRS is not looking for rough estimates – they are requesting figures to the *nearest tenth of a percentage point*. Such calculations need to be based on reasonable methods grounded in tax law and regulations related to tax-exempt bonds, and require complex mathematical equations that take into consideration one or more of the following:

- time and space usage of the bond-financed facility
- expenditure of bond proceeds on the bond-financed facility
- revenue derived from the bond-financed facility

The completion of IRS Schedule K will also require nonprofit organizations to review management and research contracts and other arrangements with outside organizations to determine if such contracts give rise to private use or unrelated trade or business use of bond financed property.

The IRS Schedule K annual reporting requirements impose a significant burden on nonprofit organizations to continuously monitor the use of bond-financed facilities for compliance with applicable Federal tax rules. Many organizations have never undertaken detailed private use calculations for their individual tax-exempt bond issues, as no formal reporting requirement previously existed.

Your organization and even your accountants may lack the time, effort and the knowledge of the Federal tax rules required to accurately and efficiently meet the new IRS reporting requirements.

Why is the IRS focused on post-issuance tax compliance?

The IRS wants to ensure that the Federal interest subsidy benefit provided to nonprofits who borrow on a tax-exempt basis is being properly applied. The cost to the Federal government, the complexity of the Federal tax rules and the average life for a typical tax-exempt bond (20 years or more), make this a significant priority for the IRS.

Nonprofits may lack the records and experience required to comply with these new IRS reporting requirements.

ARE YOU PREPARED?

What Should Your Organization Do To Be Prepared?

While the reporting requirements and internal policies and procedures that IRS Schedule K imposes are ambitious in scope, nonprofits that start the review process early will be in a much better position to respond in time for the Form 990 filing due dates.

1. **ESTABLISH POLICIES AND PROCEDURES.** The IRS has high expectations regarding nonprofit organizations' internal controls and policies regarding tax-exempt bonds. The formulation of a post-issuance tax compliance policy helps a nonprofit organization manage general post-issuance tax requirements and identifies parties within the organization responsible for compliance. In addition, implementation of a policy demonstrates active monitoring of post-issuance requirements and will help a nonprofit organization maintain continuity of best practices during organizational transitions or turnover.

   The IRS believes that by implementing policies and procedures and assigning responsibility to certain individuals, nonprofit organizations are taking post-issuance compliance seriously.

Benefits Of A Comprehensive Post-Issuance Tax Compliance Program

- Ease in completion of IRS Schedule K
- Remove the risk of non-compliance and the associated hazards
- Generate efficient and prompt response to an IRS audit
- Easy and cost-effective review process at the time of a refunding
- Identify remaining portion of bond proceeds allowed for private business use
- Provide historic analysis of post-issuance tax compliance on outstanding tax-exempt debt
- Memorialize institutional memory in cases of staff turnover

2. CALCULATE ACCURATE PERCENTAGE OF PRIVATE BUSINESS USE ON ALL FACILITIES FINANCED WITH TAX-EXEMPT BONDS. The private business use calculations required to accurately complete IRS Schedule K are time-intensive and require a comprehensive review of the documents and circumstances relating to the use of bond financed property against complex private use tax rules. Evaluating private business use requires a thorough analysis of the varied sources of funding that financed each facility or property, as well as third party use and unrelated trade or business use by the organization, another nonprofit or a governmental user. The determination of a private use percentage will involve detailed calculations, adopting a reasonable private use measurement methodology (including the incorporation of any advance refundings, neutral costs, and investment earnings). In addition to the successful completion of Schedule K, a private use calculation can be performed over the life of the bonds to ensure compliance with Federal tax law and to better position borrowers to take advantage of future refunding opportunities.

Nonprofits are likely to face the additional hurdles of limited resources and experience in this area.

3. RETAIN RECORDS FOR ALL TAX-EXEMPT BOND ISSUES. Organizations that borrow on a tax-exempt basis are required to maintain certain documentation for the life of the tax-exempt bonds (including any refunding bonds) plus three years, including:

- Closing documents, transcripts
- List of all bond-financed facilities
- Documented final allocation of bond proceeds to expenditures
- Invoices, requisitions and canceled checks
- Trust and investment agreement statements
- Contracts relating to bond financed facilities, including research and management contracts, and lease agreements
- Documentation relating to naming rights
- Documentation relating to third-party use (trade or business activities) of bond-financed facilities

Is all of this documentation stored and easily accessible for all of your bond financed facilities?

Increasing IRS Focus on Tax-Exempt Bonds

The IRS has increased the number of employees of their Enforcement Branch to over 100 employees. The IRS is taking post-issuance tax compliance very seriously and so should you.

4. SEEK PROFESSIONAL POST-ISSUANCE TAX COMPLIANCE ASSISTANCE

IRS officials have emphasized that nonprofit borrowers need to have a comprehensive record retention system in place that will serve as a roadmap when making decisions and to identify any actions that could potentially render the interest on the bonds taxable. In light of these comments, you may wish to consider outside assistance with respect to your overall responsibility for monitoring tax compliance.

Nonprofit organizations that have effective post-issuance tax compliance programs in place are significantly more likely to respond to an IRS inquiry on a successful and cost-effective basis.

WHY HIRE BLX?

BLX Can Help

To the extent that all requirements of IRS Schedule K cannot be met with current staffing, organizations should seek guidance from legal counsel and outside experts. To assist nonprofit organizations in meeting their ongoing tax responsibilities, BLX offers a range of post-issuance tax compliance services including:

- Comprehensive review of the expenditures and use of bond proceeds
- Periodic review of all contracts, leases and arrangements with private parties relating to the use of bond financed facilities
- Annual private business use review and calculation
- Review of and recommendations relating to internal post-issuance tax compliance policies and procedures
- Preparation of individualized checklists to support compliance with bond document requirements
- Assistance with and completion of IRS Schedule K
- Assistance with IRS inquiry and responding to post-issuance questionnaires

About BLX

BLX is an SEC registered investment advisory firm which is a wholly-owned subsidiary of Orrick, Herrington & Sutcliffe LLP offering a comprehensive range of financial and consulting services to the public finance community. Since 1989, our team of professionals has provided pre and post-issuance financial consulting services for over 17,000 bond issues for 2,400 issuers and nonprofit organizations. In addition to the private use and IRS Schedule K related services, BLX also provides arbitrage rebate and yield restriction services, IRS refund request assistance, IRS audit representation, investment advisory and placement services, evaluation of proposed financing strategies, complex cashflow modeling, continuing disclosure services, and swap advisory services.

With more than 50 public finance professionals in nine offices nationwide, BLX can assemble a team of consultants with the appropriate skills and experience to formulate solutions to even the most demanding projects.

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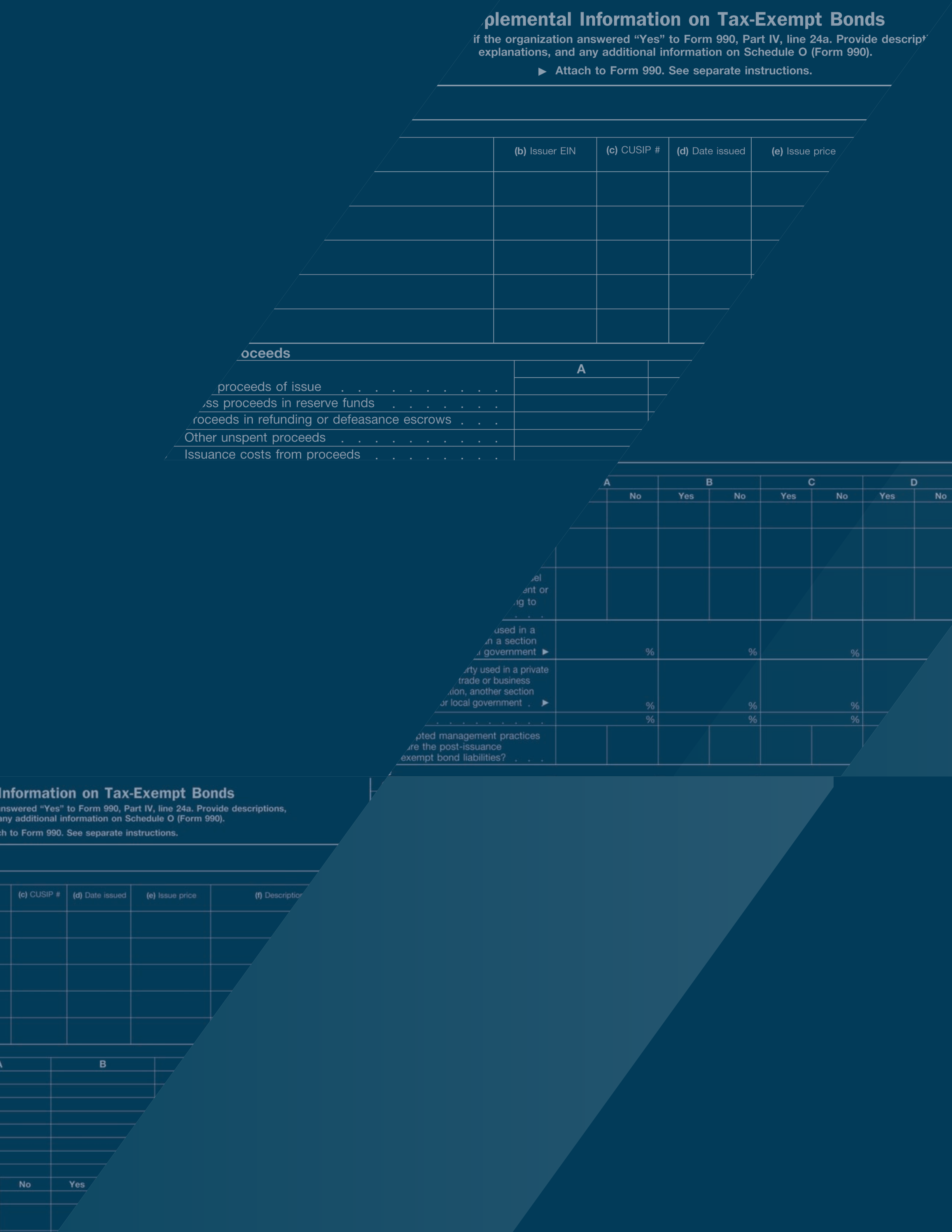

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if the organization answered "Yes" to Form 990, Part IV, line 24a. Provide descript
explanations, and any additional information on Schedule O (Form 990).
▶ Attach to Form 990. See separate instructions.
(b) Issuer EIN
(c) CUSIP #
(d) Date issued
(e) Issue price
oceeds
A
proceeds of issue
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Other unspent proceeds
Issuance costs from proceeds
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pted management practices
re the post-issuance
exempt bond liabilities?
Information on Tax-Exempt Bonds
nswered "Yes" to Form 990, Part IV, line 24a. Provide descriptions,
any additional information on Schedule O (Form 990).
h to Form 990. See separate instructions.
(c) CUSIP #
(d) Date issued
(e) Issue price
(f) Description
B
No
Yes

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