Post-Issuance Compliance
Making Sure Your Tax-Exempt Bonds Stay Tax-Exempt

Community College CFO's Annual Conference
April 16 - 18, 2008
Starved Rock State Park

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Tax-Exempt Bond Process

- Planning your issue
- Board approval
- Selling your bonds
- Closing
- Post-Closing
Post-Closing (What's That?)

- IRS has determined that issuers of tax-exempt bonds must retain certain records and monitor certain events on an ongoing basis.

- RECORDS MUST BE MAINTAINED FOR THE LIFE OF THE BOND ISSUE PLUS THREE ADDITIONAL YEARS!

- IRS has initiated a post-closing compliance initiative. Higher education and Community Colleges are on the radar screen.
Your Obligation

- Retain certain records
- Monitor use of financed facilities
- Track and document changes in use
- Track and monitor contracts, leases, etc., involving financed facilities (research contracts, management contracts, lease of space)
- Develop a post-compliance program
- Respond to IRS inquiries
Retain Certain Records

- Basic records
  - Transcript
  - Ordinances
  - Opinion

- Documentation evidencing expenditure of bond proceeds

- Documentation evidencing all sources of payment or security for bonds
Retain Certain Records

- Documentation pertaining to any investment of bond proceeds

**REMEMBER, THE BURDEN OF PROOF IS ON YOU TO ESTABLISH THE BONDS ARE TAX-EXEMPT IF YOU ARE AUDITED.**
Monitor Use of Financed Facilities

- What was intended use of facility being financed by the bonds?

- Who was using it, who is using it, and who may use it?

- Is there any bad use? How much? (10% Rule)

- Practical difficulties – you’re just the CFO … who else has control of the building and programming? (Need for formal policy and procedures)
Track and Document Changes in Use

- Create central repository, clearinghouse process through your office!
- Review any change in the use of the financed facilities
- Changes in use can trigger change in the tax status if not done properly
- Case-by-case, very fact intensive
Track and Monitor Contracts / Leases that Touch Financed Facilities

- Review all leases
- Review all management and services contracts
- Research contracts
- Partnerships with private uses?
- Facilities Use Agreements versus Leases and how they can help you out
Develop a Post-Closing Compliance Program

- IRS sees a problem with bad record keeping
- They suggest development of a system to monitor these issues
- Appropriate to ask bond counsel to assist in developing a policy (framework) for post-issuance compliance – they should be doing this
- Good model is compliance checklist provided by Ice Miller LLP
- Records must be kept for LIFE OF BONDS plus 3 years - - who will be around?
Respond to IRS Inquiries

- IRS is sending out Questionnaires to issuers of tax-exempt debt to monitor / assess compliance with post-issuance rules
- Don't ignore this – call our office if you get one
- Will your answers cause you to get audited?
- New Form 990 (for foundations)
Summary

- The tax-issues do not go away once you close the bonds
- Continuing obligations are important
- Uses of your buildings that were financed with bond proceeds will probably change over 20 plus years
- IRS is becoming concerned as issuers grow. They are especially concerned with Higher Education compliance
We are there to help and can assist you before, during, and after a bond deal.

Comprehensive advice with respect to your bond deal.

Not just there when you are thinking about doing bonds – Ice Miller is a full-service firm and our job is to protect our client.
With over 250 attorneys Ice Miller has served as bond counsel and special counsel to state and local governments since 1910.

Each year, we approve 250 to 430 municipal financings with a total principal of up to $6.6 billion.

Ice Miller attorneys are prominent in national bond attorney groups. Ice Miller has been ranked among national leaders in many types of government financings, including hospitals, schools, higher education, infrastructure, tax increment and economic development transactions.

We were ranked number one in the Midwest (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin) by The Bond Buyer newspaper for our 2005 deals and number four in 2006.
Higher Education Group

Ice Miller is committed to practicing higher education law. More than 50 Ice Miller professionals assist higher education clients accomplish their goals. We have served over 120 higher education clients throughout the United States, covering the spectrum of higher education, including state-wide higher education systems, large public research institutions, private universities and colleges, professional schools, faith based institutions, athletic conferences, industry, lobby and trade associations, support foundations, research foundations, philanthropic entities, and individual higher education leaders.

We immerse ourselves in the complex environment in which our higher education clients operate, stay on top of education developments, and listen to our clients carefully. This focus enables us to provide efficient, cost-effective and creative solutions to our college and university clients.
Tim represents schools, community colleges, park districts, counties, townships, municipalities and other units of local government in all matters related to the issuance of municipal securities. He also maintains an active practice as an underwriter and disclosure counsel on municipal debt issues.

He has been involved with hundreds of bond transactions across the State of Illinois and is a frequent speaker on municipal, park district, county, township, and school and community college finance. He has authored several articles on public finance topics.

He is also active in local government, having served as Vice Chairman of McHenry County College and currently an elected Park District Commissioner for the Glencoe Park District.

Tim is a member of the Illinois Government Finance Officers Association (IGFOA), the Illinois Association of Park Districts, Illinois Community College Trustees Association, Illinois Association of School Administrators and has served two terms on the State Bar of Illinois Section Council on Local Government Law.

Tim earned a bachelor of science degree in political science and history from Ball State University. He received his juris doctorate, cum laude, from Thomas M. Cooley Law School.
Jeff Lewis' primary practice concentrations are in higher education law and in tax-exempt finance and securities law, with a focus on transactions for colleges, universities, independent schools, museums and other educational or cultural institutions. Mr. Lewis is the Chair of the Firm's College and University Practice Group.

He has been a regular panelist on a variety of topics at national seminars of the National Association of Bond Lawyers, as well as a speaker at the annual President's Institute of the Counsel of Independent Colleges. He has also been a presenter for the National Association of Independent Schools and the Council for Advancement and Support of Education (Case V). Mr. Lewis has written various articles which can be found on the Ice Miller website, focusing on 1st Amendment and church/state issues in tax-exempt finance, tax-exempt financing and resource allocation tools for non profits. He is a member of the Indianapolis Bar Association, the Indiana Municipal Lawyers Association, National Association of College & University Attorneys, and the National Association of Bond Lawyers. Jeff is Ice Miller's primary representative for the National Association of College and University Business Officers (NACUBO.) He is a Fellow of the Indianapolis Bar Foundation. Mr. Lewis has also served as an advisor to the Association of Presbyterian Colleges and Universities as a member of its Capital Improvements Team.

Mr. Lewis is also active in the community, having served as President of the Board of Directors of Indianapolis Opera, and as Vice Chairman of the Indianapolis Opera Foundation. He is one of the founding members of the Board of Trustees of University High School of Indiana. He has also been a member of the Advisory Board of the Heartland Film Festival, and is currently serving on the President’s Roundtable and the Strategic Planning Task Force of the Louisville Presbyterian Theological Seminary.

Jeff is a native of Carmi, Illinois, and received his Bachelor of Arts in religion and political science from DePauw University where he was elected to Phi Beta Kappa and graduated, with high distinction, in 1974. He is a 1979 graduate of both the Louisville Presbyterian Theological Seminary and the University of Illinois College of Law, where he graduated cum laude.

Mr. Lewis joined Ice Miller in 1979. He is admitted to practice in the state of Indiana.

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