Top 10 Pitfalls to Avoid In Community College Financings

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10. Failing to file annual continuing disclosure and/or material events disclosure

- **Problem:** Failing to do your annual continuing disclosure filings or reportable events disclosure can make your bonds unmarketable because underwriters may be prohibited from offering them and/or the rating agencies might hold it against you.

- **Solution:** Do your annual filings! Or hire someone to do them for you. Know your reportable events and disclose them! The most common one is a rating downgrade.
9. Setting aside money to pay off your bonds

- **Problem:** Setting up a special reserve or set-aside fund to pay or pre-pay your bonds, if the payment date is more than one year from the set-aside, could cause your bonds to become “arbitrage bonds” and lose their tax exemption.

- **Solution:** If you have funds on hand that you want to set aside for the payment of bonds that are not yet callable, set up an escrow with a third party escrow agent and invest in yield-restricted investments, restricted to the yield on the bonds.
8. Ignoring arbitrage rebate liability

- **Problem:** Failing to make a determination, if required, of whether a rebate payment is accruing, or, at the five-year mark, due to the US Treasury could cause loss of tax exemption.

- **Solution:** Determine whether you meet an exception to the rebate requirement (small issuer, construction expenditure exception, etc.). If you do not, hire a rebate service to analyze whether you have earned arbitrage and need to rebate it to the U.S.
7. **Keeping unspent proceeds invested in CDs 3 years after issuance of bonds**

- **Problem:** Continuing to invest in certificates of deposit or "savings" accounts after the expiration of the three-year temporary period violates the federal tax prohibition against investing proceeds in federally guaranteed investments and causes your bonds to lose their tax exempt status.

- **Solution:** Liquidate the CD’s and invest in money market mutual funds or direct Treasury obligations AND spend the proceeds!
6. Misusing leftover bond proceeds

- **Problem:** Never spending your bond proceeds, or not applying left over bond proceeds, after completion of a project or purpose, as specified in the bond proceedings and tax certificate could cause loss of tax exemption or taxpayer protest.

- **Solution:** Consult your bond counsel and investment banker if you have leftover proceeds to discuss your options. You may be able to apply them to another project or use them to pay the bonds.
5. **Allowing a private business to manage your bond-financed facilities**

- **Problem:** Entering into a management contract, a lease, a license, or similar use agreement for bond-financed facilities without regard to the tax certificate or without contacting bond counsel for advice could cause impermissible private business use and loss of tax exemption.

- **Solution:** If you want to hire an outside private business to manage your bookstore or food service, it may be possible without causing a problem, but consult tax counsel about the limitations and guidelines.
4. **Selling or leasing your bond-financed property**

- **Problem:** Applying the bond-financed project (such as a building) to a different purpose, in whole or in part, during the life of the bonds (e.g., renting out recreational facilities to private users) could cause impermissible private business use and loss of tax exemption.

- **Solution:** (a) Don’t do it or (b) consult bond counsel. You may be able to do it with board action and in a limited manner.
3. **Failing to keep accurate and thorough records**

- **Problem:** Failing to keep complete records of receipt of bond proceeds, investments, investment returns, and ultimate disbursement violates IRS strong recommendation to establish and comply with a record-keeping policy and could cause loss of tax exemption in the event of an audit.

- **Solution:** Keep thorough records of: bond transcript, expenditures of proceeds (invoices, etc.), investment of proceeds (bank statements, etc.), use of proceeds and facilities financed with proceeds.
2. Spending your bond proceeds on the wrong thing

- **Problem:** Spending the bond proceeds on some project or purpose other than as stated in the bond proceedings and tax certificate could cause federal tax problems or be considered a misuse of proceeds under state law.

- **Solution:** Carefully consider how your project is described in your bond resolution. Use broad language so that you retain flexibility to deal with changing project budgets.
1. Failing to respond to the IRS or SEC

**Problem:** Failing to respond to the Federal Government can get you in all kinds of trouble. If it is the IRS, they could declare your bonds taxable and charge penalties and interest. If it is the SEC, they could accuse you of fraud or misrepresentation. These agencies are enforcement agencies with punitive powers.

**Solution:** If the IRS contacts you, respond immediately (and call your lawyer and your banker). If the SEC contacts you, do the same thing. The contact is probably harmless, but if you do not respond you WILL be in trouble.
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