

Internal Revenue Service
Tax Exempt and Government Entities Division

Department of the Treasury

Date:

Person to Contact/ID Number:

Contact Telephone Numbers:

Response Due Date:

Employer Identification Number:

Dear Sir or Madam:

We are conducting a compliance check of your Build America Bonds as part of our ongoing efforts to promote voluntary compliance with Federal tax requirements applicable to Build America Bond issuers. As more fully described below, we are asking you to complete the enclosed compliance check questionnaire about your Build America Bonds and your post-issuance compliance practices.

What is a Compliance Check?

This letter constitutes a compliance check. A compliance check is neither an audit nor an investigation under Internal Revenue Code section 7605(b) nor an audit under section 530 of the Revenue Act of 1978. A compliance check is a review by the IRS to determine adherence to certain requirements. This is not a review of an organization's books and records.

We have enclosed Publication 4386, *Compliance Checks*, which answers some frequently asked questions about compliance checks.

General Information

The Build America Bonds referred to in this letter are tax-advantaged bonds issued as described in section 54AA(g) of the Internal Revenue Code ("Direct Pay Bonds"). Issuers of Direct Pay Bonds may receive a refundable credit payment equal to a percentage of the interest payable on such bonds on each interest payment date.

The tax-advantaged status of Direct Pay Bonds remains throughout the life of the bonds if all applicable federal tax laws are satisfied while the bonds are outstanding. Various requirements apply under the Internal Revenue Code (the "Code") and Income Tax Regulations (the "Regulations") including information filing and other requirements related to issuance, the proper and timely use of bond-financed property, and arbitrage yield restriction and rebate requirements.

Unique Requirements for Build America Bonds/Direct Pay

Direct Pay Bonds have special requirements that must be followed. These special requirements are in addition to other requirements under the Code and the Regulations referred to above which apply generally to tax-exempt governmental bonds.

Capital Expenditure Requirement

With respect to Direct Pay Bonds, 100% of the excess of (1) *the Available Project Proceeds* of the issue, over (2) the amount in a reasonably required reserve with respect to such issue, must be used for capital expenditures. No amount of proceeds of Direct Pay Bonds may be used for working capital expenditures.

As used above, the term "*Available Project Proceeds*" means: (1) the amount of (a) proceeds from the sale of the issue, minus (b) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds) plus (2) the proceeds from any investment of the amount referred to in (1) above.

Put another way, the term "*Available Project Proceeds*" means (1) plus (2), where (1) equals the amount of proceeds from the sale minus the costs of issuance financed by the issue, and (2) equals the amount earned from investing the amount described in (1). The costs of issuance financed by the issue cannot exceed 2 percent of the proceeds from the sale of the issue.

De Minimis Premium Rule

A bond does not qualify as a Direct Pay Bond if the issue price of the bond has more than a de minimis amount of premium over the stated principal amount of the bond as described in section 54AA(g) of the Code. A de minimis amount of premium on a Direct Pay Bond is an amount that is not greater than 1/4 of 1 percent of the stated redemption price at maturity for the bond, multiplied by the number of complete years to the earlier of the maturity date for the bond or the first optional redemption date for the bond, if applicable. Generally, up to 2.5 percent of premium over the stated principal amount of the bond may be considered to be de minimis premium for bonds that mature in 10 or more years.

Irrevocable Election

Additionally, the issuer of Direct Pay Bonds is required to make an irrevocable election to have section 54AA(g) of the Code apply and must timely file a correctly completed Form 8038-CP, *Credit for Qualified Bonds Allowed to Issuer*, in order to receive payment of the credit from the government.

Continued Compliance

To comply with these and any other applicable Federal tax requirements, issuers of Direct Pay Bonds must ensure that the rules are met at the time the bonds are issued and throughout the term of the bonds. Generally, this includes the continued maintenance of records sufficient to establish compliance with all applicable Federal tax requirements until three years after the final maturity of the bonds. Also, continued maintenance of records related to periods before the bonds are issued and after the bonds mature is generally necessary, particularly in instances involving the reimbursement of prior expenditures or the refunding of prior bond issues.

What You Need To Do

Please complete the enclosed Form 14127, *Direct Pay Bonds Compliance Check Questionnaire*, and follow the instructions below for sending the questionnaire to us.

How To Send The Information To Us

Attach a copy of this letter to the front of the requested information, and send the information to us, by the due date shown above, using one of the following methods:

- Mail your reply to the address shown in the heading of this letter.
- Email your reply (in PDF format) or questions to teb.cpm@irs.gov and indicate "Direct Pay Bonds Questionnaire" in the subject line. Be sure to include your name, telephone number and the best time to reach you; as we will be replying to your questions by telephone. Note: This email address is for replies or questions related to this letter only, we cannot respond to other information or questions.

Failure to use the above mailing address or email address may result in processing delays. If an issuer fails to reply by the above date, we may forward one or more of the issuer's Direct Pay Bond issues for examination consideration.

In the spaces below, please provide an official's name, title, telephone number and most convenient time for us to call should we need to speak with someone regarding your Direct Pay Bond issue.

Name of official: _____ Title: _____

Telephone Number: () _____ Convenient Time for us to call: _____

More Information

Through our website at www.irs.gov/bonds you can access materials relating to Direct Pay Bonds including Notice 2009-26, *Build America Bonds and Direct Payment Subsidy Implementation* (click on [IRS Releases Guidance on ARRA Bond Provisions](#)) and Publication 4079, *Tax Exempt Governmental Bonds Compliance Guide*, which provides an overview of the Federal tax rules and filing requirements applicable to tax-exempt bonds. You can find answers to frequently asked questions about record retention requirements under "Frequently Asked Questions About Tax Exempt Bonds." In addition, you will find an article entitled, "After the Bonds are Issued: Then What?" in Publication 4344, *Report of Recommendations Advisory Committee on TE/GE*, intended for government officials in developing policies, procedures and systems to ensure that your bonds remain tax-exempt.

If you have any questions about this letter, you can contact the person named in the heading or email your questions to the address shown under How To Send The Information To Us.

Thank you for your cooperation.

Sincerely,

Manager, Tax Exempt Bonds
Compliance & Program Management

Enclosures:
Form 14127
Publication 4386

Direct Pay Bonds Compliance Check Questionnaire

We are asking for information regarding your Direct Pay Bonds, post-issuance bond compliance and record retention practices. Direct Pay Bonds referred to in this questionnaire are Build America Bonds described in section 54AA(g) of the Internal Revenue Code. Please complete the questionnaire and follow the instructions in the accompanying letter for returning it to us. Please note that section references in this questionnaire are to sections of the Internal Revenue Code unless otherwise indicated. For all accompanying documentation, please clearly label the question to which it relates.

Name of Governmental Entity: _____

Employer Identification Number: _____

1. Do you have written procedures to ensure that none of the maturities of your Direct Pay Bonds are issued with more than a de minimis amount of premium as required by section 54AA(d)(2)(C)? Yes No

If Yes, date they were implemented? _____ (dd/mm/yyyy)

If Yes, describe in detail your procedures for ensuring compliance with such de minimis rule and how you implement such procedures, including dates of revisions, if any. In lieu of the above description, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure Direct Pay Bonds issued with premium fall within the de minimis rule. (*Attach sheet with description*)

2. Are records of secondary market trading activity for your Direct Pay Bonds available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (*see <http://www.emma.msrb.org>*)? Yes No Do not know

If Yes, did you or a consultant to the issuer, other than the underwriter or initial purchaser of the Direct Pay Bonds, review the records of the secondary market trading activity for the Direct Pay Bonds after the sale date of the bonds but before the bonds were delivered on the date of issue? Yes No Do not know

If Yes, that is, if such records were reviewed as described above, did any of your Direct Pay Bonds trade at a price greater than the issue price prior to the delivery of those Direct Pay Bonds on the date of issue? Yes No Do not know

3. Do you have written procedures to ensure that your Direct Pay Bonds remain in compliance with the following Federal tax requirements after the bonds are issued:

- a. Timely expenditure of bond proceeds? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)
- b. Correct calculation of Available Project Proceeds (See section 54A(e)(4))? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)
- c. Use of 100% of Available Project Proceeds less amount in a reasonably required reserve fund only for capital expenditures (See section 54AA(g)(2)(A))? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)
- d. Arbitrage yield restriction and rebate? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)
- e. Costs of issuance financed by the issue do not exceed 2% of the proceeds of sale (See section 54A(e)(4)(A)(ii))? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)
- f. Proper determination of the amount of interest payable on each interest payment date? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)
- g. Proper amount of refundable credit reported on Form 8038-CP? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)
- h. Timely filing of Form 8038-CP? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)
- i. Payment of refundable credit will be made to the proper person? Yes No
If Yes, date they were implemented? _____ (dd/mm/yyyy)

If Yes, describe in detail your procedures for each of the above items (a-i) and how you implement such procedures, including dates of revisions, if any. In lieu of the above descriptions, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure bond financings are in compliance with Federal tax requirements. (Attach sheet with description)

4. Do you have written procedures to ensure timely identification of violations of Federal tax requirements after your Direct Pay Bonds are issued and the timely correction of any identified violation(s) through remedial actions described in the Treasury Regulations or through the Tax Exempt Bonds Voluntary Closing Agreement Program described under Notice 2008-31? Yes No

If Yes, date they were implemented? _____ (dd/mm/yyyy)

If Yes, describe in detail your procedures for timely identification and correction of any such violations and how you implement such procedures, including dates of revisions, if any. In lieu of the above description, you may attach a copy of your written procedures. If you have no written procedures, explain what guidelines you have in place and from what source these guidelines are derived that ensure timely identification and correction of any violations of Federal tax requirements. (*Attach sheet with description*)

5. Do you maintain records necessary to support the status of the bonds as qualified to receive the tax advantaged treatment described in section 54AA(g)? Yes No

If yes, for how long?

- Less than life of bonds
- Life of bonds
- Life of bonds plus 3 years

6. How do you maintain your bond records?

- On Paper
- Electronic media (*e.g., CD, disks, tapes*)
- Combination of paper and electronic

Under penalties of perjury, I declare that I have examined this completed questionnaire, including accompanying documents and statements, and to the best of my knowledge and belief, the completed questionnaire contains all the relevant facts relating to the answers to the questionnaire, and such facts are true, correct, and complete.

Signature: _____

Date: _____

Printed Name: _____

Title: _____

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws.

The IRS may not conduct or sponsor, and an organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103 and 6104.

Compliance Checks

Examination, Audit or Compliance Check?

Tax Exempt and Government Entities Division

- **What is an examination? What is an audit?**

An examination is a review of an organization's books and records. In addition, an examination may involve the questioning of third parties to determine the organization's tax liabilities. Another term for an examination is an audit.

- **What is a compliance check?**

A compliance check is a review conducted by the IRS to determine the following:

- Whether an organization is adhering to recordkeeping and information reporting requirements.
- Whether an organization's activities are consistent with their stated tax-exempt purpose.

It is a review of information and forms that we require organizations to file or maintain – for example, Forms 990, 990-T, 940, 941, W-2, 1099, or W-4. The check is a tool to help educate organizations about their reporting requirements and to increase voluntary compliance.

The 990 series of forms are used by tax-exempt organizations, including charities, private foundations and other nonprofit organizations, to provide information required by section 6033 of the Internal Revenue Code, which includes information about their programs and activities. Information on these returns is generally disclosable to the public as provided by law.

It should be noted that a compliance check is not an examination; it does not directly relate to determining a tax liability for any particular period.

- **What occurs during a compliance check?**

At the beginning of a compliance check, we will inform the officer or director that the review is a compliance check and not an examination. We will not ask to examine any books and records or ask questions regarding tax liabilities. We may ask the organization whether they understand or have questions about filing obligations for required forms. We may also ask questions about an organization's activities. If, during a compliance check, we decide an examination is appropriate, we will notify the organization that we are commencing an examination before asking questions related to tax liability.

- **Is there a penalty for refusing to submit to a compliance check?**

No. The officer or director may refuse to participate in a compliance check without penalty. However, we have the option of opening a formal examination, whether or not the organization agrees to participate in a compliance check.

- **How often can the IRS do compliance checks?**

Because a compliance check only reviews whether an organization is adhering to record keeping and information reporting requirements and/or whether an organization's activities are consistent with its stated tax-exempt purpose and is not an examination, it is possible to have more than one compliance check for a tax year if facts and circumstances warrant.