

## **IIT Post-Issuance Compliance Policy Tax Exempt Bond Financings**

Effective Date: January 1, 2013

Revised: January 8, 2014

### **Policy Statement**

IIT (“IIT”) funds eligible capital projects through qualified 501(c)(3) tax-exempt bonds (“TEBs”) issued on its behalf, as a conduit borrower, by the Illinois Finance Authority (“IFA”) or another authorized state or local government agency. The interest paid to holders of TEBs is tax-exempt. TEBs retain their tax-exempt status throughout their life. The tax exemption is subject to compliance by IIT with certain federal laws and regulations, including laws and regulations governing investment, expenditure and use of bond proceeds. This policy provides guidance and describes IIT’s methodologies regarding TEB compliance.

### **Reasons for Policy**

This policy is to ensure compliance with all laws, regulations and contracts relating to IIT’s TEBs.

### **Primary Guidance to which this Policy Responds**

This policy primarily responds to the provisions of the Internal Revenue Code and Treasury Regulations governing TEBs, as well as agreements IIT has entered into with IFA and other government agencies in connection with TEBs issued on behalf of IIT.

### **Responsible IIT Officer**

Vice President for Finance and Administration (the “VP”). The VP may designate, as she or he deems necessary or appropriate, other employees of IIT to perform certain tasks and activities required by this policy.

### **Who is Governed by This Policy**

The VP will notify relevant personnel and departments of their responsibilities under this policy as needed but in no event less than annually.

This policy applies to all IIT employees and departments involved in any stage or aspect of any TEB issuance on behalf IIT and/or management or use of TEB-financed facilities or projects, including but not limited to:

- Decision-making prior to TEB issuance including with respect to identification of eligible projects and due diligence on environmental and tax aspects of projects;
- Issuance of TEBs;
- Use of TEB proceeds and timing of use;
- Investing of TEB proceeds and arbitrage processes;
- Use of property financed by TEBs; and
- Recording, reporting or documenting use of proceeds, arbitrage, return filings, private use and financial transactions.

## **Who Should Know this Policy**

All IIT employees described above should know this policy.

## **Policy Text**

It is the policy of IIT to comply with all laws, regulations and contracts applicable to TEBs issued on its behalf. Some specific compliance requirements and related procedures are set forth below:

### ***Roles and Responsibilities***

The VP is primarily responsible for monitoring compliance with all issues relating to post-issuance TEB compliance. Other departments have certain responsibilities with respect to ensuring compliance with this policy and providing information to the VP or to relevant tax and/or legal personnel. The VP will notify the relevant personnel and departments of their responsibilities under this policy as needed but in no event less than annually.

### ***Project Eligibility***

All property financed by TEB proceeds must be owned or, under certain circumstances, leased by IIT and the intended use must be consistent with IIT's tax-exempt purpose. Additional technical criteria will apply to determine eligibility of a project.

### ***Private Business Use***

*General.* Generally, no more than 5% of the proceeds of a TEB issuance, or \$15 million, whichever is less, may be used for private business use ("PBU"). The costs of issuance of the TEBs (which are limited to 2% of the proceeds) are applied against the limit. PBU occurs when private business users are given special entitlements to use TEB proceeds or bond-financed property. Private business users include for-profit entities, the federal government, tax-exempt organizations that are not 501(c)(3)s, and 501(c)(3) organizations if their use is an unrelated trade or business for either the 501(c)(3) or IIT.

*Monitoring of PBU.* It is the policy of IIT to monitor the use of TEB-financed projects from the time the projects are placed into service until three years after the bonds have been paid. The VP will maintain a database of the IIT's TEB-financed facilities. The IIT process for monitoring PBU includes the conduct of an annual review of TEB-financed spaces. The annual review will be coordinated by the VP and will include a review of physical use of space as well as examination of IIT's UBIT tax filings, management and service contracts, research agreements and other relevant agreements. Some aspects of the annual review are described below:

Sponsored Research Agreements – All IIT sponsored research agreement must be in compliance with the private business use rules applicable to IIT. See Revenue Procedure 2007-47, as the same may be amended from time to time. The VP will maintain an exceptions list that will be provided to and reviewed by the relevant tax and/or legal personnel on an annual basis.

Management and Service Contracts – Each year, the VP will collect new and renewed management and service leases and contracts that allow use of TEB-financed space and will evaluate the same for compliance with the private business use rules applicable to

IIT. See Revenue Procedure 1997-17, as the same may be amended from time to time. The VP will review contracts as necessary with relevant tax and/or legal personnel.

Unrelated Trade of Business Activities – Each year the VP will provide the relevant tax and/or legal personnel with a list of contacts and revenues from activities that may generate Unrelated Trade or Business Income (UBI) under Section 513 of the Internal Revenue Code. The relevant tax and/or legal personnel will request necessary use information related to the UBI activity from the relevant IIT departments.

Physical Use of Space – The buildings located at 35 West 34<sup>th</sup> Street, 3301 South State Street, 3140 South Federal, 3120 South Dearborn and 3440 South Dearborn have been leased in their entirety on long-term bases; consequently, the proceeds of any IIT TEBs cannot be used at these locations for as long as such leases remain in effect. The buildings located at 35 West 34<sup>th</sup> Street, 55 West 34<sup>th</sup> Street, 3440 South State Street, and 3420 South State Street are occupied and utilized by IIT and leased to non-IIT entities; consequently, the proceeds of any IIT TEBs cannot be used at these locations until a determination has been by the VP that such use of these proceeds will not contravene applicable regulatory requirements.

IIT unit heads are responsible for tracking the physical use of the IIT space for which they are responsible. Each year, the VP will conduct meetings with unit heads to review the use of all IIT properties and to confirm known physical uses.

If potential PBU is identified, the VP will ensure that it is evaluated with relevant IIT employees and IIT's bond counsel. If the use is found to be PBU, it will be included in the annual calculation described below.

*Annual Calculation and IRS Reporting.* Each year, the relevant tax personnel will calculate, in accordance with the procedures approved by bond counsel, the annual percentage PBU of facilities financed under each outstanding TEB issuance. The relevant tax personnel will use the calculation to prepare the Schedule K of the IRS Form 990.

#### ***Arbitrage Yield Restriction and Rebate Requirements***

The Internal Revenue Code contains two sets of requirements relating to arbitrage: yield restriction requirements, which generally provide bond issue proceeds may not be invested at a yield in excess of the bond yield, and rebate requirements, which generally provide that when arbitrage is earned on an issue is in excess of permitted amounts, the excess earnings must be paid to the U.S. Department of Treasury. IIT will retain a qualified rebate professional to perform all required rebate calculations at least every five years and upon final redemption or maturity of the TEBs and will coordinate with the IFA (or other applicable state or government agency) to ensure that IIT is in compliance with the IRS's arbitrage yield restriction requirements and rebate requirements, subject to spending exceptions.

#### ***Document Retention***

As of the date of this policy, IRS guidelines require that TEB records be retained until three years after the final redemption date of the TEBs and, in the case of a TEB issue refunded by one or more subsequent issues, until three years after the final redemption of all such TEB issues.

Although the required records to be retained depend on the specific transaction and the requirements imposed by the Internal Revenue Code and regulations, records common to most tax-exempt bond transactions include:

- Basic records relating to the bond transaction (including the trust indenture, loan agreements, and bond counsel opinion);
- Documentation evidencing expenditure of bond proceeds;
- Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);
- Documentation evidencing all sources of payment or security for the bonds; and
- Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).

All records will be kept in a manner that ensures their complete access to the IRS for so long as they are material. Although this will typically be accomplished through the maintenance of hard copies, IIT may keep records in an electronic format if applicable requirements are satisfied. See Revenue Procedure 97-22, as the same may be amended from time to time.