



## Travis County Commissioners Court Agenda Request Travis County Bee Cave Road District No. 1

**Meeting Date:** September 11, 2012

**Prepared By/Phone Number:** Travis R. Gatlin, 854-9065

**Elected/Appointed Official/Dept. Head:** Leslie Browder, County Executive, Planning and Budget *LB*

**Commissioners Court Sponsor:** Judge Samuel T. Biscoe

**AGENDA LANGUAGE:** Ratify response to the I.R.S. regarding the request for a Small Governmental Bond Exam questionnaire for debt issuance from the Travis County Bee Cave Road District No. 1.

**BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:**  
See attached.

**STAFF RECOMMENDATIONS:**

PBO recommends the ratification of the response.

**ISSUES AND OPPORTUNITIES:**

PBO worked the County Attorney's Office, County Auditor's Office, Bond Counsel and the County's Financial Advisor to prepare the questionnaire and related additional support information. Should any additional information be requested then PBO inform the Board of Directors and work with the same group as appropriate.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

N/A

**REQUIRED AUTHORIZATIONS:**

**Leslie Browder, Planning and Budget Office (512) 854-9106**

**Leroy Nellis, Planning and Budget Office, (512) 854-9106**

**Jessica Rio, Planning and Budget Office, (512) 854-9106**

**Cheryl Aker, County Judge's Office, (512) 854-9555**

**AGENDA REQUEST DEADLINE:** All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, [Cheryl.Aker@co.travis.tx.us](mailto:Cheryl.Aker@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.



**PLANNING AND BUDGET OFFICE**  
TRAVIS COUNTY, TEXAS

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**MEMORANDUM**

**TO:** Board of Directors, Bee Cave Road District No. 1  
*Travis R. Gatlin*  
**FROM:** Travis R. Gatlin, Assistant Budget Director  
**DATE:** September 4, 2012  
**RE:** Ratification of a response to a request from the I.R.S. related to debt issued by the Travis County Bee Cave Road District No. 1.

The Planning and Budget Office received a request on August 3, 2012, from the I.R.S. notifying the Travis County Bee Cave Road District No. 1 that it was selected for the examination of the District's Unlimited Tax Bond, Series 2008, that were issued on September 4, 2008. A response was required on August 20, 2012 and PBO complied with the request. This memo is to inform the Board of this examination and to ratify the County Judge/President of the Board's signature on the response.

The proceeds from 2008 Road District issuance were used solely for the purchase of public road improvements near the Hill County Galleria and were fully expended within one year of issuance. The letter noted that the I.R.S. did not have a reason to believe that the reference bonds have failed to comply with any of the applicable federal tax requirements. PBO understands that the I.R.S. is focusing on issuances from small governments this year and that is the likely reason this issuance was selected. As soon as the letter was received, PBO began working with the County Attorney's Office, County Auditor's Office, Bond Counsel and the County's Financial Advisor to complete the attached form and supplemental response.

The questionnaire and supplemental information notes the District does not have formal written procedures regarding post issuance compliance. However, the response noted that assigned staff from the County Auditor's Office, County Attorney's Office and the Planning and Budget Office monitor the District's bonds for compliance with applicable use of proceeds, arbitrage/rebate and record retention requirements and regularly meet with the County's contracted Financial Advisor and Bond Counsel to discuss issues related to compliance with the same. The County Judge/President of the Board signed the response so it could be sent to the I.R.S. before the requested deadline with the understanding the completed document would be brought before the Board of Directors for ratification as soon as possible. Further, the Planning and Budget Office is working with the Purchasing Office to modify the contract with Bracewell and Giuliani for assistance in drafting a post issuance compliance policy for Travis County that would also be applied to its subsidiaries (including the Travis County Bee Cave Road District No. 1). It is anticipated the item will be brought forward in September.

**cc:**

**David Escamilla, County Attorney**

**Nicki Riley, County Auditor**

**Leslie Browder, PBO**

**Leroy Nellis, PBO**

**Glenn Opel, Bracewell & Giuliani**

**Tom Nuckols, County Attorney's Office**

**Hannah York County Auditor's Office**

**Jessica Rio, PBO**

**Ladd Pattillo, County's Financial Advisor**

**Victoria Ozimek, Bracewell & Giuliani**

Form <b>4564</b>	Department of the Treasury - Internal Revenue Service	Request Number
<b>Information Document Request</b>		<b>#1</b>
<b>To: (Name of Taxpayer &amp; Company, Division or Branch)</b> <b>Travis County Bee Cave Road District No. 1</b> <b>Attn: Finance Department</b> <b>314 West 11<sup>th</sup> Street, Ste 520</b> <b>Austin, TX 78701</b>		<b>Subject Form 8038-G</b> <hr/> <b>Submitted to: Finance Department</b> <hr/> <b>Dates of Previous Requests</b> N/A

**Description of the Documents Requested**

c. Timely expenditure of bond proceeds?

YES \_\_\_ NO

d. Arbitrage yield restriction and rebates?

YES \_\_\_ NO

e. Timely remediation of noncompliance to maintain the tax-exempt status of the Bonds?

YES \_\_\_ NO

For each of the items (a-e) for which there are no written procedures, explain what guidelines are in place to timely identify and correct violations to ensure the Bonds remain in compliance with federal tax requirements for so long as they are outstanding.

6. Are you aware of any problems that may impact the tax-exempt status of the Bonds identified in this Information Request (whether such problems were discovered as a result of preparing responses to this Information Request or otherwise)?

YES \_\_\_ NO

If YES, please provide an explanation of the problems.

<b>Information Due By:</b> <u>Date: August 20, 2012.</u>		
<b>From:</b>	<b>Name and Title of the Requestor</b> Charlotte K. Caldwell, Revenue Agent, TEB Group 7214 Badge # 100088238	<b>Date</b> July 30, 2012
	<b>Office Location</b> 55 N. Robinson MS 4800:CKC Oklahoma City, OK 73102-8229 Attention: Charlotte K. Caldwell	<b>Phone:</b> 405-297-4707 <b>Fax:</b> 405-297-4496

Form <b>4564</b>	Department of the Treasury - Internal Revenue Service	Request Number
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<b>To: (Name of Taxpayer &amp; Company, Division or Branch)</b> <b>Travis County Bee Cave Road District No. 1</b> <b>Attn: Finance Department</b> <b>314 West 11<sup>th</sup> Street, Ste 620</b> <b>Austin, TX 78701</b>	<b>Subject Form 8039-G</b>	
	Submitted to: Finance Department	
	Date of Previous Request N/A	

**Description of the Documents Requested**

Please provide your responses to the following questions by the due date indicated below. Instructions for returning this request to us are provided in the accompanying letter. All responses should relate to the bond issue identified (the "Bonds"). Please use additional sheets as necessary to complete each response. For any accompanying documentation, please clearly identify the question to which the documentation relates. Section references in this Information Request are to sections of the Internal Revenue Code unless otherwise indicated.

1. Did the issuer of the Bonds possess the lawful right, power and authority to issue the Bonds?

YES  NO

2. Have all the proceeds of the Bonds, including investment earnings, been spent?

YES  NO

If NO, please provide the amount of unspent proceeds and a description of the planned use of such proceeds.

3. Certain uses and arrangements that constitute private business use are described in Section 1.141-3(b) of the Income Tax Regulations. For example, use by an association, or other private organization (including private, not-for-profit organizations), management contracts, operating agreements, and leases, among other uses and arrangements, may constitute private business use.

Has Bond financed property been used for private business use as described in section 1.141-3 of the Regulations?

YES  NO

Information Due By: **Date: August 20, 2012.**

<b>From:</b>	<b>Name and Title of the Requester</b> Charlotte K. Caldwell, Revenue Agent, TEB Group 7214 Badge # 1000668238	<b>Date</b> July 30, 2012
	<b>Office Location</b> 65 N. Robinson MS 4900:CKC Oklahoma City, OK 73102-6229 Attention: Charlotte K. Caldwell	<b>Phone: 405-297-4707</b> <b>Fax: 405-297-4495</b>

Form 4564

Department of the Treasury - Internal Revenue Service

Request Number

# Information Document Request

#1

To: (Name of Taxpayer & Company, Division or Branch)

Travis County Bee Cave Road District No. 1  
Attn: Finance Department  
314 West 11<sup>th</sup> Street, Ste 520  
Austin, TX 78701

Subject Form 8038-G

Submitted to: Finance Department

Date of Previous Requests  
N/A

### Description of the Documents Requested

If Yes, please describe such use including the percentage of such use and the source of payment of the principal and interest on the Bonds.

4. Various sections of the Code and Regulations including, but not limited to, sections 103, 141-150, and 6001 require the retention of the records necessary to substantiate compliance with federal tax requirements applicable to tax-exempt bonds. Do you maintain adequate records necessary to substantiate compliance and support the continued exclusion from gross income of the interest paid on the Bonds?

YES  NO

If NO, please describe any deficiencies in the records retained with respect to the Bonds.

5. Do you have written procedures to ensure the Bonds remain in compliance with the following federal tax requirements from the time they are issued until they are no longer outstanding?

*Please also see the attached letter noted as page 6 of 6.*

- a. Proper use of bond proceeds?

YES  NO

- b. Proper use of bond-financed property?

YES  NO

Information Due By: Date: August 20, 2012.

From:

Name and Title of the Requester  
Charlotte K. Caldwell, Revenue Agent, TEB Group 7214  
Badge # 1000688238

Date  
July 30, 2012

Office Location  
55 N. Robinson  
MS 4800:CKG  
Oklahoma City, OK 73102-9229  
Attention: Charlotte K. Caldwell

Phone: 405-297-4707  
Fax: 405-297-4495

Form <b>4564</b>	Department of the Treasury - Internal Revenue Service	Request Number
<b>Information Document Request</b>		<b>#1</b>
<b>To: (Name of Taxpayer &amp; Company, Division or Branch)</b> <b>Travis County Bee Cave Road District No. 1</b> <b>Attn: Finance Department</b> <b>314 West 11<sup>th</sup> Street, Ste 520</b> <b>Austin, TX 78701</b>		<b>Subject Form 8038-G</b> <hr/> <b>Submitted to: Finance Department</b> <hr/> <b>Dates of Previous Requests</b> <b>N/A</b>

**Description of the Documents Requested**

7. Are you aware of the option available through the Tax Exempt Bonds Voluntary Closing Agreement Program ("VCAP") to correct failures to comply with federal tax requirements that cannot be remediated under existing remedial action provisions or other tax-exempt bond closing agreements programs contained in the regulations or published guidance?

YES  NO

If NO, please access the Internal Revenue Service/Tax Exempt Bonds website at [www.irs.gov/taxexemptbond/index.html](http://www.irs.gov/taxexemptbond/index.html) and select TEB Voluntary Compliance.

<b>Information Due By: Date: August 20, 2012.</b>		
<b>From:</b>	<b>Name and Title of the Requester</b> Charlotte K. Caldwell, Revenue Agent, TEB Group 7214 Badge # 100066238	<b>Date</b> July 30, 2012
	<b>Office Location</b> 55 N. Robinson MS 4800:CKC Oklahoma City, OK 73102-9229 Attention: Charlotte K. Caldwell	<b>Phone: 405-297-4707</b> <b>Fax: 405-297-4495</b>

Form <b>4564</b>	Department of the Treasury - Internal Revenue Service	Request Number
<b>Information Document Request</b>		<b>#1</b>
To: (Name of Taxpayer & Company, Division or Branch) <b>Travis County Bee Cave Road District No. 1 Attn: Finance Department 314 West 11<sup>th</sup> Street, Ste 520 Austin, TX 78701</b>		Subject Form <b>8038-G</b>
		Submitted to: Finance Department
		Date of Previous Requests N/A

**Description of the Documents Requested**

When providing your response to this Information Document Request, please include the following signed penalty of perjury statement:

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

Signature: Samuel T. Biscoe Date: August 16, 2012  
 Printed Name: Samuel T. Biscoe  
 Title: Travis County Judge / Board President  
 Telephone Number: 512-854-9555

Information Due By: Date: August 20, 2012.

<b>From:</b>	Name and Title of the Requester Charlotte K. Caldwell, Revenue Agent, TEB Group 7214 Badge # 100088238	Date July 30, 2012
	Office Location 55 N. Robinson MS 4900:CKC Oklahoma City, OK 73102-8229 Attention: Charlotte K. Caldwell	Phone: 405-297-4707 Fax: 405-297-4495



**ATTACHMENT TO RESPONSE TO FORM 4564, INFORMATION DOCUMENT REQUEST**

**Travis County Bee Cave Road District No. 1**

**Tax ID: 26-3214894**

**RE: Unlimited Tax Bonds, Series 2008, Issued September 4, 2008 (Reported Issue Price \$14,551,102)5.**  
***Do you have written procedures to ensure the Bonds remain in compliance with the following federal tax requirements from the time they are issued until they are no longer outstanding?***

The Travis County Bee Cave Road District No. 1 (the "District") is a special district created with the approval of Travis County, Texas (the "County"). As noted in the response, the District does not have formal written procedures regarding post issuance compliance. However, assigned staff from the County Auditor's Office, County Attorney's Office and the Planning and Budget Office monitor the District's bonds for compliance with applicable use of proceeds, arbitrage/rebate and record retention requirements and regularly meet with the County's contracted Financial Advisor and Bond Counsel to discuss issues related to compliance with the same. Staff assigned to these reviews receive on-going training regarding tax-exempt debt and compliance with federal tax law requirements. In addition, the County is in the process of requesting approval to proceed with obtaining assistance to draft a written post issuance compliance policy that will incorporate procedures to monitor compliance with respect to the County's special districts and be brought forward to District for approval.

The proceeds of the District's Unlimited Tax Bonds, Series 2008 (the "Bonds") were used solely for the purchase of public road improvements. Such improvements have not been used and are not expected to be used for a private purpose in the future. Section 83.039 of the road district policies and procedures requires that the right-of-way for the road be conveyed to the County. Since the county owns this land, it cannot be used for any purpose other than the purpose of the bonds (i.e., a road) without the County's consent as owner. The proceeds of the Bonds were expended within one year of issuance. As such, there are no projected arbitrage or rebate compliance problems with the Bonds. Nonetheless, the County and its subsidiaries (including the District) use the services of a private arbitrage consultant to calculate any potential yield restrictions and rebates for issued debt. All applicable records have and will be maintained for so long as the Bonds are outstanding, plus three years, to substantiate compliance with federal tax laws, and the District will continue to review the Bonds for compliance with applicable requirements. If any noncompliance is identified, steps will be taken in a timely manner to correct such noncompliance, including as may be applicable and with the advice of Bond Counsel, remediation under Section 1.141-12 of the Regulations and/or a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31.

## Travis R Gatlin

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**To:** Sam Biscoe; Ron Davis; Sarah Eckhardt; Karen Huber; Margaret Gomez  
**Cc:** Cheryl Aker; Jessica Rio; Leroy William Nellis; Leslie Browder; Hannah York; David Escamilla; Nicki Riley; victoria.ozimek@bgllp.com; glenn.opel@bgllp.com; PattilloDL@aol.com; Tom Nuckols  
**Subject:** Update to the Bee Cave Road District Item on Sept 11 Agenda  
**Attachments:** IRS response to TC Bee Cave Rd District #1.pdf

Dear Commissioners Court,

There is an item on Tuesday's agenda to Ratify Response to the I.R.S. Regarding the Request for a Small Governmental Bond Exam Questionnaire for Debt Issuance from the Travis County Bee Cave Road District No. 1. We just received a response today from the I.R.S. that they "have made a determination to close the examination with no change to the position that the interest received by beneficial owners of the Bonds is excludable from gross income under section 103 of the Internal Revenue Code." I thought you might enjoy the good but expected news.

Please let me know if you have any questions.

Travis R. Gatlin  
Planning and Budget Office  
512-854-9065

Internal Revenue Service  
Tax Exempt and Government **ENTITLED** Division  
1122 Town & Country Commons  
Chesterfield, MO 63017

12 SEP -6 PM 1:04

TRAVIS COUNTY  
PLANNING & BUDGET OFFI

Attn: Jessica  
Rio  
Department of the Treasury FYI

COUNTY RECEIVED  
12 SEP 2008 PM 2:45

Travis County Bee Cave Road District No. 1  
Attn: Samuel T. Biscoe  
314 West 11<sup>th</sup> Street, Ste. 520  
Austin, TX 78701

Date: August 17, 2012

Contact Name:  
Charlotte Caldwell  
Employee ID:  
1000688238  
Contact Telephone Number:  
405-297-4707  
Contact Address:  
Internal Revenue Service  
SE:T:GE:TEB:CPM  
55 North Robinson  
Mail Stop 4900 OKC:CC  
Oklahoma City, OK 73102

EIN: 26-3214894

Re: Notification of No Change Determination for the \$14,551,102 Unlimited Tax Bonds,  
Series 2008, issued September 4, 2008

Dear Mr. Biscoe:

We have recently completed our examination of the bond issue named above (the "Bonds"). As a result of our review of your responses to our information document request, we have made a determination to close the examination with no change to the position that interest received by the beneficial owners of the Bonds is excludable from gross income under section 103 of the Internal Revenue Code.

However, your response to our information document request indicates that you did not maintain written post-issuance monitoring procedures to ensure the Bonds remain in compliance with applicable federal tax requirements. Written monitoring procedures are a useful tool to assist in the regular performance of effective due diligence reviews throughout the life of the Bonds. Without performing such due diligence reviews, you may not become aware of actions or events which could result in noncompliance. Noncompliance could result in penalties and/or the taxability of interest received by the beneficial owners of the Bonds.

Please note, if the need arises to open another examination on the Bonds, books and records will be reviewed and any change resulting from that future examination may affect all open years of bondholders from the issue date of the bonds.  
If you have any questions concerning this matter, please contact the person whose name and phone number are shown above.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'S.A.C.', written in a cursive style.

Steven A. Chamberlin  
Manager, Tax Exempt Bonds  
Compliance and Program Management