



Travis County Commissioners Court Agenda Request

Meeting Date: January 28, 2014

Prepared By/Phone Number: Travis R. Gatlin, 512-854-9065

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

Commissioners Court Sponsor: Judge Samuel T. Biscoe

AGENDA LANGUAGE: CONSIDER AND TAKE APPROPRIATE ACTION ON RESPONSE TO THE INTERNAL REVENUE SERVICE REGARDING THE REQUEST FOR A SMALL GOVERNMENTAL BOND EXAM QUESTIONNAIRE RELATED TO THE DEBT ISSUANCE FOR PERMANENT IMPROVEMENT BONDS, SERIES 2010.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

See attached backup.

STAFF RECOMMENDATIONS:

The Planning and Budget Office recommends approval of the response.

ISSUES AND OPPORTUNITIES:

Internal Revenue Service (IRS) routinely examines municipal debt issuances to determine compliance with Federal tax requirements. Travis County recently received a request from the IRS regarding our issuance of Permanent Improvement Bonds in 2010. The IRS has stated in their request that they have no reason to believe that this debt issuance fails to comply with any of the applicable tax requirements. The Bee Cave Road District, Number 1 received a similar request in September 2012 and no follow-up information was requested.

The Planning and Budget Office has worked with the County Attorney's Office, County Auditor's Office, Bond Counsel and the County Financial Advisor to the prepare the questionnaire and related additional support information. Should any additional information be requested, then we would inform the Commissioners Court and work with the same group as appropriate.

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

FISCAL IMPACT AND SOURCE OF FUNDING:

N/A.

REQUIRED AUTHORIZATIONS:

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

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

David Salazar, County Judge's Office, (512) 854-9555

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



PLANNING AND BUDGET OFFICE
TRAVIS COUNTY, TEXAS

MEMORANDUM

TO: Commissioners Court

FROM: Travis R. Gatlin, Assistant Budget Director *Travis R. Gatlin*

DATE: January 22, 2014

RE: Response to a Request from the Internal Revenue Service related to the Issuance of Permanent Improvement Bonds, Series 2010

The Internal Revenue Service (IRS) routinely examines municipal debt issuances to determine compliance with federal tax law requirements. The Planning and Budget Office received notification from the IRS on January 15, 2014, that Travis County's issuance of Permanent Improvement Bonds, Series 2010, was selected for such an examination. A response from the County is requested by January 29, 2014. The IRS has stated in their request that they have no reason to believe that this debt issuance fails to comply with any of the applicable tax law requirements. The Bee Cave Road District, Number 1, received a similar request in September 2012. The District replied to the short questionnaire and no follow-up information was requested by the IRS.

The questionnaire and supplemental information notes the County has not implemented formal written procedures regarding post issuance compliance. The response also notes the County has been working with assigned Bond Counsel on the development of such procedures and they are currently in draft form. The procedures are anticipated to be implemented this fiscal year. While the County does not yet have written procedures, 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 of federal tax law requirements.

cc:

David Escamilla, County Attorney
Nicki Riley, County Auditor
Leslie Browder, PBO
Diana Ramirez, PBO
Ladd Pattillo, County's Financial Advisor
Victoria Ozimek, Bracewell & Giuliani

John Hille, County Attorney's Office
Hannah York County Auditor's Office
Jessica Rio, PBO
Deborah Lauder milk, PBO
Glenn Opel, Bracewell & Giuliani

Attn: Jessica Rio

Internal Revenue Service

RECEIVED COUNTY JUDGE'S OFFICE Department of the Treasury RECEIVED

14 JAN 13 AM 11:10

14 JAN 15 AM 10:14

TRAVIS COUNTY PLANNING & BUDGET OFFICE

Date: 8 January, 2014
Contact Person: Cathy Webster
Employee ID Number: 1000875810
Contact Telephone Number: 501-396-5967
Contact Address: Internal Revenue Service
SE:T:GE:TEB:F: 7213
700 West Capitol MS:4900
Little Rock, AR 72201

> Travis County, Texas
Attn: Samuel T. Biscoe, County Judge
P.O. Box 1748
Austin, TX 78767

Re: Examination of \$11,315,000 Permanent Improvement bonds, Series 2010

Dear Sir or Madam:

We have selected the debt issuance named above for examination. The Internal Revenue Service (IRS) routinely examines municipal debt issuances to determine compliance with Federal tax requirements.

Your debt issuance was selected for examination as part of a project involving issuances of small governmental bonds. The primary purpose of this examination will be to ascertain the compliance of your debt issuance with the Federal tax requirements applicable to governmental bonds. At this time, we have no reason to believe that your debt issuance fails to comply with any of the applicable tax requirements. As always, we reserve the right to expand this examination to any aspect of your debt issuance.

Please review the enclosed Form 4564, *Information Document Request*, and provide all requested information by the date indicated on the Form 4564. Other items may be requested as the examination proceeds. If necessary, we will request information by submitting additional information document requests.

If you desire to appoint a representative to act on your behalf, a power of attorney must be filed with the IRS in order for the IRS to discuss or provide your representative with confidential information. A Form 2848, *Power of Attorney and Declaration of Representative*, or any other properly written power of attorney or authorization may be used for this purpose. Copies of Form 2848 may be obtained from any IRS office or downloaded at <http://www.irs.gov>. Instructions for completing Form 2848 for municipal debt issuances are attached.

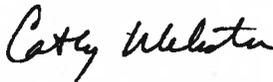
During this examination the IRS may need to contact third parties. Third party contacts may include, but are not limited to bond counsel, special tax counsels, employees and trustees, GIC providers and underwriters.

714000

We are providing this notification in accordance with section 7602(c)(1) of the Internal Revenue Code, which became effective for third party contacts made after January 18, 1999.

Thank you for your cooperation in this matter. Please feel free to call or write if you have any questions or concerns about this matter or are unable to promptly respond to the Form 4564.

Sincerely,



Cathy Webster
Tax Law Specialist
Tax Exempt Bonds

Enclosures:
Publication 1-TEB
Form 4564
Instructions for completing Form 2848

Form 4564	Department of the Treasury Internal Revenue Service Information Document Request	Request Number 01
To: Travis County, Texas		Subject: Examination of the tax- advantaged status of the Bonds described below
		Submitted to: Samuel T. Biscoe, County Judge
		Dates of Previous Requests:

Description of Documents Requested:

Re: \$11,315,000 Permanent Improvement bonds, Series 2010 (the "Bonds")

Please provide your responses to the following questions by the date indicated below. Use additional sheets as necessary to complete each response. All responses should relate to the tax-exempt obligation identified (the "Bonds"). If you have questions about the information requested or you will not be able to provide the information by the date specified, please contact the requestor identified below. Providing as many of the documents as possible on a CD, DVD or other electronic media will facilitate the examination process.

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

YES NO

(2) Are there any unspent proceeds? *please also see the attached letter noted as page 5 of 5.*

YES NO

If YES, please provide an explanation of the original intended use of such proceeds and the issuer's current plans for using the 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?

Information Due By <u>29 January, 2014</u>	At Next Appointment	Email In	X
Name and Title of Requestor Cathy Webster, Tax Law Specialist Employee #: 1000875810		Date: 1/8/2014	
FROM	Office Location: 700 West Capitol MS:4900 Little Rock, AR 72201	Phone: 501-396-5967 e-mail: cathy.a.webster@irs.gov FAX 855-243-0738	Page 1

Form 4564	Department of the Treasury Internal Revenue Service Information Document Request	Request Number 01
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To: Travis County, Texas	Subject: Examination of the tax- advantaged status of the Bonds described below
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	Dates of Previous Requests:

Description of Documents Requested:

YES _____ NO

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) Internal Revenue Code section 6001 requires that every person liable for any tax imposed by title 26 of the U.S. Code shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Have adequate records necessary to substantiate compliance and support the continued exclusion from gross income of the interest paid on the Bonds been retained?

YES NO _____

If "NO", please describe any deficiencies in the records retained.

(5) Are there written procedures, other than bond documents provided at closing, which contain the following key characteristics to ensure that violations are timely identified and corrected so that the Bonds remain in compliance with federal tax requirements from the time they are issued until they are no longer outstanding:

please also see the attached letter noted as page 5 of 5.

(a) Due diligence review at regular intervals?

YES _____ NO

(b) Identification and training of the officer or employee responsible for review?

YES _____ NO

(c) Retention of adequate records to substantiate compliance (e.g., records relating to the allocation of proceeds, etc.)

Information Due By <u>29 January, 2014</u>	At Next Appointment.	Email In	X
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FROM	Name and Title of Requestor Cathy Webster, Tax Law Specialist Employee #: 1000875810	Date: 1/8/2014
	Office Location: 700 West Capitol MS:4900 Little Rock, AR 72201	Phone: 501-396-5967 e-mail: cathy.a.webster@irs.gov FAX 855-243-0738

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Description of Documents Requested:

YES ___ NO

(d) Procedures reasonably expected to timely identify noncompliance?

YES ___ NO

(e) Procedures to ensure that steps will be taken to timely correct noncompliance.

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 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 and select TEB Voluntary Compliance.

Power of Attorney

Please complete and email Form 2848 if you intend to have a representative handle this examination. (you may download Form 2848 and its instructions from <http://www.irs.gov>.)

Information Due By <u>29 January, 2014</u>	At Next Appointment	Email In	X
FROM	Name and Title of Requestor Cathy Webster, Tax Law Specialist Employee #: 1000875810	Date: 1/8/2014	
	Office Location: 700 West Capitol MS:4900 Little Rock, AR 72201	Phone: 501-396-5967 e-mail: cathy.a.webster@irs.gov FAX 855-243-0738	Page 3

Form 4564	Department of the Treasury Internal Revenue Service Information Document Request	Request Number 01
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To: Travis County, Texas	Subject: Examination of the tax- advantaged status of the Bonds described below
	Submitted to: Samuel T. Biscoe, County Judge
	Dates of Previous Requests:

Description of Documents Requested:

When providing your response to this Information Document Request, please include the following:

Signature: _____ **Date:** _____

Printed Name: _____

Title: _____

Telephone Number: _____

The information requested above is to assist us in determining compliance of your bond issue with the relevant tax exempt bond provisions of IRC sections 103, and 141 through 150 of the Internal Revenue Code. Additional information may be requested at a later date if needed.

Information Due By <u>29 January, 2014</u>	At Next Appointment	Email In	X
FROM	Name and Title of Requestor Cathy Webster, Tax Law Specialist Employee #: 1000875810	Date: 1/8/2014	
	Office Location: 700 West Capitol MS:4900 Little Rock, AR 72201	Phone: 501-396-5967 e-mail: cathy.a.webster@irs.gov FAX 855-243-0738	Page 4

ATTACHMENT TO RESPONSE TO FORM 4564, INFORMATION DOCUMENT REQUEST

Travis County, Texas

Tax ID: 26-3214894

RE: Examination of \$11,315,000 Permanent Improvement Bonds, Series 2010

2. Are there any unspent proceeds?

Unspent proceeds of the Permanent Improvement Bonds, Series 2010 (the "Bonds") issued by Travis County, Texas (the "County") will be expended in connection with the construction and improvement of County parks and the acquisition of land and interests in land in connection therewith, including without limitation, the acquisition of open space parkland. It is the County's goal to expend proceeds of its tax-exempt obligations with due diligence, and, in keeping therewith, the County expects to spend all remaining proceeds related to the Bonds within the next two to three years. The County understands that these unspent amounts are no longer subject to temporary period exception from yield restriction under Section 148 of the Internal Revenue Code of 1986, as amended and the Income Tax Regulations promulgated thereunder.

5. Are there written procedures, other than bond documents provided at closing, which contain the following key characteristics to ensure that violations are timely identified and corrected so that the Bonds remain in compliance with federal tax requirements from the time they are issued until they are no longer outstanding?

The County has been working with our Bond Counsel on the development of written procedures for post issuance federal tax compliance for tax-exempt debt. The procedures are currently in draft form and are anticipated to be implemented in the current fiscal year. Assigned staff from the County Auditor's Office, the County Attorney's Office and the Planning and Budget Office monitor the County's tax-exempt bonds for compliance with applicable use of proceeds, arbitrage/rebate and record retention requirements and regularly meet with the County's third party Financial Advisor and Bond Counsel to discuss issues related to compliance with the same. Staff assigned to these reviews receives on-going training regarding tax-exempt debt and compliance with federal tax law requirements.

The County uses 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 County 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.