

Department of Administrative Services
Budget and Management Division - Capital Investment Section
Article XI-Q Bond Procedures
May 13, 2011

Authority

Oregon Laws 2011, chapter 14 directs the Department of Administrative Services to adopt procedures under which a project agency, as defined in law, may request:

- (a) Financing for real or personal property projects that may be financed with Article XI-Q bond proceeds; or
- (b) Refinancing of borrowings issued before the effective date of Article XI-Q of the Oregon Constitution that financed or refinanced real or personal property projects that would have been eligible for financing under Article XI-Q.

Oregon Laws 2011, chapter 14 authorized the Department of Administrative Services to periodically bill any project agency for an appropriate share of the bond-related costs of the bonds issued to finance the agency's projects or refinance the agency's bonds. The law further authorizes the Department of Administrative Services to bill at such intervals as are established in the department's procedures. A project agency that receives a bill for bond-related costs shall pay the amount billed by the time and in the manner designated in the billing statement.

A project agency that receives or holds proceeds of Article XI-Q bonds shall, at the direction of the Department of Administrative Services, take action necessary to obtain and maintain:

- (a) The excludability of interest on Article XI-Q bonds from gross income under the Internal Revenue Code; or
- (b) A federal interest subsidy payment or any other tax-advantaged status granted under the Internal Revenue Code for Article XI-Q bonds.

Definitions

Unless the context indicates otherwise, capitalized terms used in this procedure shall have the following meanings:

- (1) Benefiting Agency or Division refers to a State Agency or Division that has direct control of or responsibility for an asset that is paid for through Article XI-Q Proceeds. A Benefiting Agency or Division has the same meaning as Project Agency under Oregon Laws 2011, chapter 14, and in "(2)" below.
- (2) Project agency means a state agency that administers a project that is financed with Article XI-Q bond proceeds.

(3) CIS or Department means the Department of Administrative Services, Budget and Management Division, Capital Investment Section.

(4) Director means the Director of the Department of Administrative Services.

(5) Division means any division, office or board under the organizational structure of, or a part of, the Department of Administrative Services.

(6) State Agency or Agency has the meaning given in ORS 291.002.

Budget Requests for Assets to be Financed with Article XI-Q Bond Proceeds

(1) Any Division or State Agency intending to acquire real property or personal property using Article XI-Q bond proceeds in the upcoming biennium must notify the Finance Manager of the Department as a part of the Division or Agency budget preparation process.

(2) Divisions and Agencies that have identified the need for Article XI-Q bond proceeds during their budget preparation process may receive priority for the Director's approval in the event demand exceeds the available biennial authority or limitation for Article XI-Q proceeds.

(3) For Agencies subject to ORS 276.429, when requesting approval of Article XI-Q proceeds to acquire office quarters, such Agencies will provide a) evidence that the action has received approval from the Legislative Assembly; or b) such information as is requested by the Director so that the planned action can be reported to the legislative review agency established in ORS 291.371 prior to the Director's approval.

(4) For Agencies not subject to ORS 276.429, requests for approval of Article XI-Q proceeds to acquire office quarters shall include evidence that such acquisitions are authorized under the Agency's governing laws, rules or policies.

(5) The Department will recommend the form of finance structuring most suitable for a particular transaction to the State Treasurer based on:

(a) Cost advantages the structure of a proposed transaction may offer;

(b) The form of financing which is appropriate for a specific purchase;

(c) Other factors as appropriate including, but not limited to, financial condition and business strength of other parties to the agreement, proposed terms and conditions of the agreement(s) including prepayment and termination provisions and administrative considerations.

(d) Availability of Article XI-Q issuance authority and limitation in the fiscal year the asset is expected to be financed.

(6) Requests for financing asset acquisitions will be made to the Finance Manager of the Department by May 15 in each even-numbered year. If a Division or Agency requests financing through the issuance of Article XI-Q bonds, the Division or Agency benefiting from the issuance of the Article XI-Q bonds must provide a letter of commitment to the Director before the Department will begin work on the transaction. The letter will express the commitment of the Division or Agency to complete the financing and it will clarify the nature of the financing needs of the project.

Records Creation and Maintenance, and Ongoing Use of Financed Assets

(1) In conjunction with the financing of assets with Article XI-Q bonds, the Benefiting Agency or Division must enter into a written agreement with the Director outlining the division's or agency's responsibilities related to asset maintenance, recordkeeping and debt repayment. The agreement must include, without limitation, the following terms:

(a) identification of the source of funds the Benefiting Agency or Division intends to use to repay the Financing Agreement;

(b) a commitment by the Benefiting Agency or Division:

(i) to use its best efforts to seek funds and budget authority each biennium to repay the Article XI-Q bonds so long as it is outstanding;

(ii) to inform the Finance Manager of the Department in the event available funds expected to be used to repay Article XI-Q bonds are not appropriated; and

(iii) that the financed property will be used only by state government and only for authorized government purposes, unless the Benefiting Agency or Division first obtains written consent from the Finance Director of the Department; and

(iv) not to lease, sublease, sell or otherwise encumber any financed property without prior written consent of the from the Finance Director of the Budget and Management Division of the Department of Administrative Services.

(2) A Benefiting Agency or Division may not: permit the property to be used by anyone except state government for authorized government purposes, lease, sublease, sell or otherwise encumber any property, unless it first obtains written consent from the Finance Director of the Department.

(3) Prior to property acquisition or development of capital assets, each Division or Agency will certify that all property or capital assets paid for through Article XI-Q bonds is essential to providing the governmental functions that the Division or Agency performs and that the property is free and clear of all liens and encumbrances at least 60 days prior to the sale of bonds.

(4) Benefiting Agencies and Divisions must cooperate with the Department and the State Treasurer in their efforts to comply with provisions of the Internal Revenue Code and regulations related to federally tax-exempt bonds;

(5) Benefiting Agencies and Divisions must:

(a) record the appropriate accounting entries for all Article XI-Q bonds related to their project(s);

(b) maintain all records related to asset acquisition or development financed with Article XI-Q bonds, and ongoing use of the asset in compliance with state law and provisions of the Internal Revenue Code;

(c) prepare and file Form 1099 and other tax documents required as a result of payment to vendors or contractors for asset acquisition or development;

(d) file all forms and take any other required action related to tax matters, including those to ensure ongoing compliance with the Internal Revenue Code, as requested by the Director for Article XI-Q bonds that are federally tax-exempt borrowings. Costs incurred by the Department related to tax compliance, including but not limited to the fees of bond counsel, financial advisors or other experts will be the responsibility of the Benefiting Agency or Division.

(6) The Department will also retain records related to Article XI-Q bonds. Benefiting Agencies or Divisions must respond promptly to any requests for information from the Department related to a Financing Agreement.

(7) The Department will:

(a) assist any Benefiting Agency or Division in developing debt service budgets for its outstanding Article XI-Q bonds;

(b) bill (annually and in advance) and collect from all Benefiting Agencies or Divisions their respective portion of debt service relative to each Division or agency's outstanding Article XI-Q bonds and;

(c) will send moneys that are collected from Benefiting Agencies or Divisions to the Treasurer for payments due under the Article XI-Q bonds;

(d) at the direction of the State Treasurer, manage the investments of all Article XI-Q sale proceeds or debt service funds. At the end of each debt service cycle, the earnings from any investment of moneys may be credited to the appropriate Benefiting Agency or Division or may be credited against the interest due on outstanding bonds at the next payment date, at the discretion of the Department. When allocating such interest earnings, the department may take any actions necessary to achieve cost-effective administration, provided such actions do not have a materially adverse impact any outstanding certificates or the funds or accounts used to pay them.

(e) After the Article XI-Q bonds, for which moneys held by Treasurer are completely paid and no longer outstanding, any remaining moneys, together with interest earnings, will be provided to the appropriate Benefiting Agency or Division.

Management of Proceeds

(1) All costs incurred by the Department of Administrative Services and State Treasurer to administer outstanding Article XI-Q bonds will be charged to the appropriate Benefiting Agency or Division.

(2) All proceeds from Article XI-Q bonds must be separately accounted for and held in separately designated accounts in the Oregon State Treasury or with an independent agent. The Benefiting agency or Division and the Department shall exchange information to ensure that the proceeds are spent only on lawfully authorized expenditures and, if funded with a federally tax-exempt bond in compliance with any provision of the Internal Revenue Code and applicable regulations. The Benefiting Agency or Division shall consult with the Department and follow its directives with respect to appropriate accounting and record keeping for such expenditures.

(3) Any reserve account equal to the maximum allowable reserve authorized in the Internal Revenue Code at the time Article XI-Q bonds are issued shall be held by the Treasurer or an independent agent. Interest earnings on the reserve shall be used to pay debt service on the Article XI-Q bonds after the payment of any arbitrage earnings payable under the Internal Revenue Code, when due.

(4) The Department will not disburse to a local government or other public body the proceeds of any Article XI-Q bond(s) entered into for the purposes described in ORS 283.085(4)(a)(B) or (C) until the recipient of the proceeds has entered into an agreement with the State of Oregon that is in form and substance satisfactory to the Director regarding the deposit and expenditure of the proceeds, nature and use of the project(s) to be financed with the proceeds and, if applicable,

compliance with provisions of the Internal Revenue Code and procedures necessary to maintain the federally tax-exempt status of the Financing Agreement from which the proceeds were derived.

Charges for Administering Article XI-Q bonds and proceeds

The Capital Investment Section shall charge the following fees in connection with the services, duties and activities related to issuance and approval of Article XI-Q bonds:

- (1) Actual charges for fiscal agent services, disbursement agent and trustee services for any Article XI-Q bonds and related proceeds will be passed through to the Benefiting Agency or Division.
- (2) All other costs incurred by the Department, including bond counsel or other legal fees, to administer outstanding Article XI-Q bonds and related proceeds will be charged to the appropriate Benefiting Agency or Division.
- (3) Administrative costs of CIS will be recovered as described below.
 - (a) Public sale of Article XI-Q bonds:
 - (i) For a single series sale with a single project, Benefiting Agencies or Divisions will be charged \$26,000;
 - (ii) For a single series sale with more than one project, Benefiting Agencies or Divisions will be charged \$35,000, plus \$2,500 for each project beyond three to a maximum amount of \$50,000 per series issued. The charge will be prorated among the projects financed based upon the principal amount allocated to each project;
 - (iii) For a multiple series sale, with a single project, fees charged to Benefiting Agencies or Divisions will be determined as follows:
 - (A) a base fee of \$26,000 shall be assessed; plus
 - (B) \$20,000 for each additional series issued (i.e. the first series is excluded from additional assessment). All fees under this section (iii) will be prorated among the Benefiting Agencies or Divisions based on principal allocated to each project.
 - (iv) For a multiple series sale, with more than one project, fees charged to Benefiting Agencies or Divisions will be determined as follows:
 - (A) A base fee of (a) \$35,000 plus (b) \$2,500 for each project beyond three to a maximum base fee of \$50,000; plus
 - (B) \$20,000 for each additional series issued (i.e. the first series is excluded from additional assessment). All fees under this section (iv) will be prorated among the Benefiting Agencies or Divisions based on principal allocated to each project.
- (4) Refunding Sales.
 - (a) A fee of \$25,000 will be charged for advance refundings (as defined by the Internal Revenue Code) of outstanding series per series refunded.
 - (b) No additional fee will be charged for a current refunding (as defined by the Internal Revenue Code) provided such refunding is structured as a separate series. If such current refunding are combined with series including projects, an additional fee of \$25,000 will be charged to Benefiting agencies.
- (5) Economic or Legal Defeasances

(a) For the economic or legal defeasance of outstanding bonds, Certificates of Participation or other Financing Agreements, the Department of Administrative Services will charge a fee of \$10,000.

(5) Arbitrage Calculations.

The charges for calculation of arbitrage liability for statewide financial reporting and each five year reporting period will be as follows:

(a) If the calculation and documentation is performed by the Department:

(i) Each series with a single Benefiting Agency or Division that has unspent proceeds or a reserve funded with proceeds from Article XI-Q bonds will be charged \$1,000 annually each August when CIS provides the calculation to the Benefiting Agency of the estimated arbitrage liability.

(ii) Each series with multiple Benefiting Agencies or Divisions that has unspent proceeds or a reserve funded with proceeds from a Article XI-Q bonds will be charged \$500 annually per agency or division each August when CIS provides the calculation to the Benefiting Agency or Division of the estimated arbitrage liability.

(b) If the calculation and documentation is performed by a private contractor under a professional services contract with CIS, the Benefiting Agencies or Divisions will reimburse CIS for the actual costs of the services performed.

(c) In addition, Benefiting Agencies or Divisions will reimburse CIS for the direct cost of any work performed by bond counsel or other contractors hired by CIS to provide assistance related to Internal Revenue Code compliance requirements.