Post Bond Issuance Compliance

Training For Managers of Bond-Funded Programs

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Overview

Purpose of Training

- Increase understanding of tax-exempt bond compliance issues by reviewing State law and federal tax law requirements
- Illustrate how your involvement is critical to ensuring compliance by the State
- Discuss agency/capital program manager compliance responsibilities:
  - Program/project descriptions
  - Spending of bond proceeds (qualified capital projects, administrative spending, rate of spending)
  - Use of funded project/facility over the life of the bonds (use, sale/disposition, private management)
  - Records retention

What is Post-Bond Issuance Compliance?

- Compliance with federal tax law:
  - Use of bond proceeds (qualified capital and administrative expenditures)
  - Use of qualified private management contracts
  - Use and disposition of bond-financed property/facilities
  - Arbitrage and investment of bond proceeds, including reserve funds
  - Written compliance policies and procedures
  - Records retention
- Compliance with State law:
  - Use of bond proceeds
  - Grant and use agreements
  - Use and disposition of bond-financed property/facilities
- If in conflict, the more stringent law applies

Why Worry About Post-Issuance Compliance?

- Tax-exempt municipal bonds provide a vehicle for the State to finance capital projects at low interest rates
- The federal government estimates that revenues lost due to the municipal bond tax-exemption total $37 billion. In their view this is a major drain on the U.S. Treasury
- Consequences of non-compliance with federal law can include:
  - Costly penalties to preserve tax-exempt status
  - Loss of tax-exempt status on the bonds
    - Lost income to bondholders who will file lawsuits
    - Reduced market access
    - Negative impact on credit ratings

IRS Actively Audits Tax-Exempt Bonds

- Burden of proof is on the issuer and recordkeeping is critical
- Auditing rigor and frequency, sometimes many years after the issuance date, is increasing
- What to expect if you are involved in an audit
  - Work with issuer, such as the OPFC or Treasurer of State
  - Significant time commitment due to short turnaround
  - Information document requests for detailed records
- Voluntary Closing Agreement Program (VCAP)
  - State-identified violations may be remedied through this negotiated process
  - Key is notifying IRS before discovery via an audit

State Law /
Legal Authority

Legal Authority

Article VIII of the Ohio Constitution **prohibits** the state from **incurring debt** except to:

- Finance authorized capital improvements that have been approved through constitutional amendment
  - constitutional amendments authorize the incurrence of debt for specific purposes
  - Examples: Higher Education, Common Schools, Prisons, Parks and Recreation, Third Frontier R&D, and Highways
  - Capital projects must fit within one of these Constitutional purposes
- Defend the state in time of war or rebellion
- Fund casual deficits not to exceed $750,000

Legal Authority

Statutory Implementation

- The Ohio Revised Code (ORC) implements the authorized programs, such as creating bond funds, debt service funds, and bond issuance limitations

Legal Opinion

- Bond counsel must give an opinion that the bonds are legal and valid obligations for each bond sale

Capital Bill

- General Assembly usually passes a two-year capital bill every even-numbered year which includes project appropriations and bond issuance authority
- OBM projects the affordable size of future capital bills

State Law Authorization

Constitutional & Statutory Authorization/Purposes

- Elementary and Secondary Public Schools (Art. VIII, Sec. 2n; ORC 151.03) – facilities for a system of common schools throughout the state
- Higher Education (Art. VIII, Sec. 2n; ORC 151.04) – facilities for state-supported and state-assisted institutions of higher education
- Mental Health Facilities (Art. VIII, Sec. 2i; ORC Ch. 154) – capital improvements for mental health and addiction services, and developmental disabilities
- State Office Buildings, Correctional Facilities, and Cultural & Sports Facilities (Art. VIII, Sec. 2i; ORC Ch. 154) – capital improvements for housing of branches and agencies of state government
- Parks & Recreation Facilities (Art. VIII, Sec. 2i; ORC Ch. 154) – capital improvements for parks and recreation
- Natural Resources (Art. VIII, Sec. 2l; ORC 151.05) - capital improvements for state and local parks and land and water recreation facilities; soil and water restoration and protection; land management, water management including dam safety, and flood control; fish and wildlife resource management; and other projects that enhance the use and enjoyment of natural resources by individuals
- Conservation (Art. VIII, Sec. 2o; ORC 151.09) – conservation and preservation of natural areas, open spaces, and agriculture/farmlands, including acquiring land or interests therein, and actions that permit and enhance the availability, public use, enjoyment of natural areas and open spaces in Ohio; and land, forest, water, and other natural resource management projects
- Coal Development (Art. VIII, Sec. 15; ORC 151.07) – for research and development of coal technology that will encourage the use of Ohio coal, to any individual, association, or corporation doing business in this state, or to any educational or scientific institution located in this state

State Law Authorization

Constitutional & Statutory Authorization/Purposes (continued)

- Research & Development (Art. VIII, Sec. 2p; ORC 151.10) – research and development in support of Ohio industry, commerce, and business, which includes research and product innovation, development, and commercialization through efforts by and collaboration among Ohio business and industry, state and local public entities, public and private education institutions, or research organizations
- Site Development (Art. VIII, Sec. 2p; ORC 151.11) – development of sites and facilities in Ohio for and in support of industry, commerce, distribution, and research and development purposes
- Local Government Infrastructure (Art. VIII, Sec. 2p/2s; ORC 151.08) – roads and bridges, waste water treatment systems, water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities, including real property, interests in real property, facilities, and equipment related to or incidental thereto
- Highway Capital Improvements (Art. VIII, Sec. 2m; ORC 151.06) – highway capital improvements
- Major New State Infrastructure (Art. VIII, Sec 13; ORC 5531.10) – any public or private transportation project, including the replacement of transportation facilities and the acquisition of real or personal property; any highway, public transit, aviation, rail, or other transportation project eligible for financing or aid under any federal or state program; and any project involving any highway, road, street, parkway, public transit, aviation, or rail project
- Veterans Compensation (Art. VIII, Sec. 2r) – to provide compensation to veterans of the Persian Gulf, Afghanistan, and Iraq
- Certificates of Participation (COPs) (Uncodifed Law): OAKS, MARCS, STARS, EDCS, TMS, BCIRS

Related Agreements
(Grant, Loan, Joint-Use)

- Related agreements often extend State law and federal tax compliance responsibilities to the grantee or recipients of bond proceeds over the term of the bonds
- If the state or higher education institution does not own the facility, capital bills require either a long-term lease of the facility or a long-term agreement with using non-profit organization establishing state use or benefit
- Examples of related agreements include:
  - DHE joint use agreements
  - DNR and FCC grant agreements
  - CF cooperative agreements
  - OPWC grant and loan agreements
  - MHA/DDD agreements/mortgages
  - Other grant and loan agreements

Related Agreements (Grant, Loan, Joint-Use)

- Grant and loan recipients must agree to certain terms and make covenants to continue public use through the final maturity of the bonds, including:
  - Ensure the use of funds is consistent with the capital appropriation language and the limitations on the use of capital appropriations set-forth in the capital bill
  - Accept sole responsibility for the operation, maintenance, and upkeep of the property or facilities acquired or improved with the funds
  - Maintain adequate insurance coverage to cover a complete loss of the project
  - Set forth the extent and nature of the State's use or benefit, or right to use, or interest in the project or improvement through the final maturity of the bonds
  - Provide for pro rata reimbursement to the State should the arrangement for the State's use, right to use, or interest in the project be terminated prior to the term of the agreement
  - Comply with all requirements within its control necessary to preserve the tax status of the State's tax-exempt bonds used to provide funding
  - Agree not to dispose of all or any part of the funded project without the prior written consent of the state
  - Comply with record retention requirements for a period of not less than the life of the bonds plus three years

Capital Expenditures:
Federal Tax and State Law Requirements

Qualified Capital Expenditures under Federal Tax Law

- Qualified capital expenditures defined:
  - Any cost properly chargeable to a capital account under general federal income tax principles. In other words, are the expenditures capitalizable?
- Examples include:
  - Land/real estate
  - Buildings, facilities, structures, and machinery
  - Furniture, fixtures, and equipment
  - Certain operational activities if incurred in research and development

- Qualified capital expenditures have long useful lives that match the long-term maturity of State bond issues

State Allowable Capital Costs

Each capital bill also sets forth limitations on use of capital appropriations:

- Acquisition of real property or interests in real property;
- Buildings and structures including their internal systems and utilities;
- Directly related architectural, engineering, and professional expenses;
- Machinery that is necessary to the operation or function of the project at the time of initial acquisition or use;
- New computer systems including integration of existing and new systems, but excluding regular or ongoing maintenance or support agreements; and
- Furniture, fixtures, or equipment with a useful life of at least five years, a unit cost of about $100 or more, and is directly related to and necessary for the function of the project or essential to bringing it to its intended use

Non-Qualified Capital Expenditures

What is <u>not</u> a qualified capital expenditure:

- General maintenance
- Repair costs that do not extend the life of the asset
- Working capital, such as administrative or operational expenses

Administrative Spending

- Federal law limits expenditures for program administration ("working capital") to no more than 5% of the bond proceeds and provided costs are directly related to the bond-funded capital program
- Directly related costs may include:
  – Salaries and related personnel expenses
  – Technical review and scoring of grant or project RFP's
  – Processing vendor payments
  – Rent, utilities, and office supplies
  – Directly related expenses that cannot be capitalized

- State law also limits administrative charges and may be more restrictive than federal tax law
- Engineering, architectural, and planning costs of capital-related work, including feasibility studies, are qualified capital expenditures (i.e., not considered administrative spending under federal tax law)

Allowable Capital Expenditure Policy Guidelines

OBM publishes <u>Allowable Capital Expenditure Guidelines</u> to ensure compliance with state law and federal tax law:

- Allowable Equipment and Furnishings
  - Essential in bringing the facility up to its intended use or is necessary for the facility to function. The equipment or furnishing must be an integral part of or directly related to the basic purpose or function of the facility
  - Have a unit cost of about $100 or more.
  - Have a useful life of at least five years
  - Used primarily in the rooms or areas covered by the financed project
  - Allowable equipment and furnishings would include computers and computer peripherals, workstations, lab and research equipment, desks, chairs, tables, bookshelves, file cabinets, carpeting/flooring, blinds, and curtains, provided that they satisfy all of the above criteria

Equipment and furnishings that do not meet the above criteria generally are not allowable capital expenditures

Allowable Capital Expenditure Policy Guidelines (cont'd)

Maintenance/Repairs

- Maintenance and repairs, including maintenance/service contracts, are <u>not</u> eligible for capital funding
- Maintenance includes a recurring activity necessary to maintain the operation, functionality, appearance or safety of a piece of equipment, building or structure
- Repairs are maintenance projects that fix a problem but do not extend the original useful life of an asset
- Maintenance and repairs generally include any project with the objective of retaining or restoring an asset back to its original intended use or state

EXAMPLES:

- fixing a part or component of the heating or cooling system
- fixing a leaky pipe
- repainting
- sealing windows or floors
- replacing sections of flooring or ceiling tiles
- glass replacement
- resetting exterior walkways
- partial replacement of roofing shingles
- brick mortar repair/patching (tuckpointing)

Allowable Capital Expenditure Policy Guidelines (cont'd)

Renovations

- Renovations are more extensive enhancements, upgrades, or replacements of buildings or structures or systems and are an appropriate use of capital funds

EXAMPLES:

- replacing a component of the HVAC system that extends its useful life
- renovations of classrooms or other space into computer or research laboratories
- upgrading electrical equipment or plumbing system components
- replacing a roof or windows
- replacing carpet
- upgrading a security system
- replacing stairs or walkways to meet ADA standards
- total brick mortar replacement (repointing)

- Repairs and maintenance expenditures when completed as part of a major renovation that includes the replacement of a major component or substantial structural part (e.g., resealing building envelope with roof and windows replacement) may be allowable

Allowable Capital Expenditure Policy Guidelines (cont'd)

Information Technology (IT) System Funding

- Capital funds may be used to support the application development, deployment, and integration (including project management) of information technology systems that constitute or are part of larger approved capital projects
- Operating, not capital, funds <u>must</u> be used to support the ongoing operation and maintenance of IT systems and other regular, recurring expenses

Allowable IT Expenditures

- IT systems developed for internal use that have a useful life of five or more years. Allowable costs generally include the design/configuration of software and interfaces, coding, and installation of hardware, including testing
- IT system upgrades may also be considered an allowable capital expenditure when they add significant functionality or are necessary to postpone obsolescence
  - Postponement of obsolescence must be due to the upgrade and not due simply to ongoing maintenance or the maintenance component of the upgrade.

Allowable Capital Expenditure Policy Guidelines (cont'd)

Allowable IT Hardware

- Necessary for the IT system and its components, including but not limited to: servers, network equipment, desktops/laptops, monitors, printers, scanners, etc.

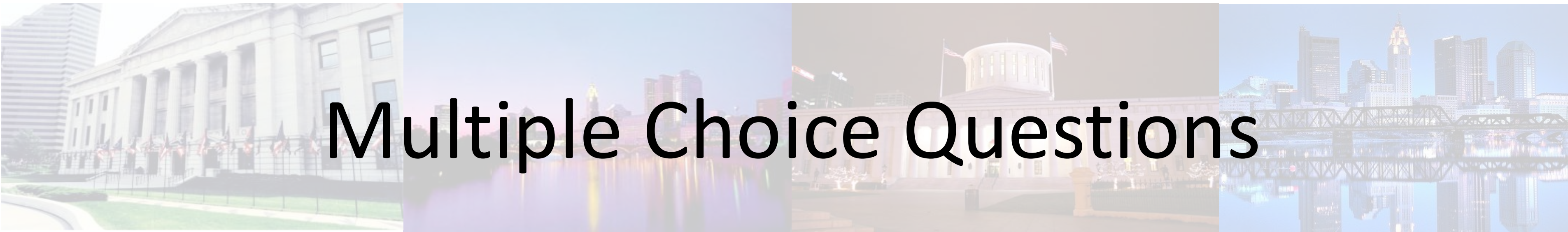
Allowable Software & Licensing

- "Off-the-shelf" software with an expected useful life of least least five years that has been tailored/customized to a specific function or purpose
- Application development, configuration or deployment
- Software related to initial deployment when necessary to bring newly renovated/constructed facility or an allowable piece of equipment up to its intended use (e.g. a computer lab)
- Software licenses paid for upfront as part of the development stage and that have a term of at least five years
- Software licenses for cloud based products provided the State agency has a contractual right to take possession of the software and it is feasible to run the software on its own hardware
- Purchase of perpetual licenses enabling the acquisition of shared electronic resources and databases
- Data conversions required to make the new IT system operational

Allowable Capital Expenditure Policy Guidelines (cont'd)

Non-Allowable IT Expenditures

- Replacement of end-of-life hardware/equipment (computers, peripherals, etc.) that do not upgrade or add functionality to an IT system
- Standard off-the-shelf software or any software package with individual license costs under $500, including:
  - periodic software upgrades
  - minor upgrades and patches
  - minor configurations
  - security management
  - software licenses for premise-based and cloud-based products post-implementation, including annual licensing and subscription-based software
- Planning or post-implementation/operations of an IT project, including:
  - project-related research and planning
  - service management
  - strategic planning
  - project and change management (post-implementation)
  - Data conversions not required for an IT system to be operational
- Costs associated with the solicitation, review and selection of professional service providers or vendors, including contract development
- Costs and expenses of State and higher education employees working on IT projects and training of personnel on new IT system



Multiple Choice Questions

Which projects are qualified capital expenditures (select one)?

A. Install heating and air conditioning system in newly constructed building

Try again!

B. Replace existing air conditioning system with a new cooling system

Try again!

C. Perform routine maintenance to an existing HVAC system

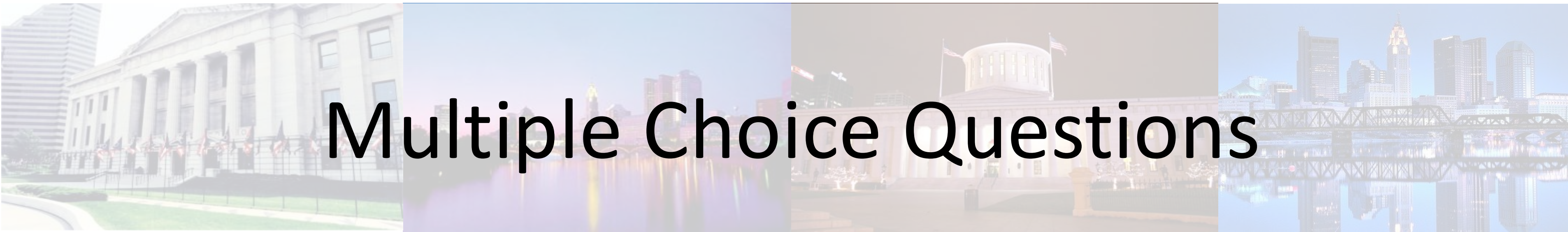
Incorrect!

D. A and B only

Correct! New HVAC systems have long useful lives and are necessary for the intended use of the facility. Performing maintenance only maintains the existing system and does not extend its original useful life.

E. All of the above

Incorrect.



Multiple Choice Questions

Which projects are not qualified capital expenditures (select one)?

A. Replace worn-out weather sealants on the Riffe Building

Try again!

B. Resetting exterior walkways around the Statehouse

Try again!

C. Replace several roofing shingles to fix a major water leak at the EXPO Celeste Center

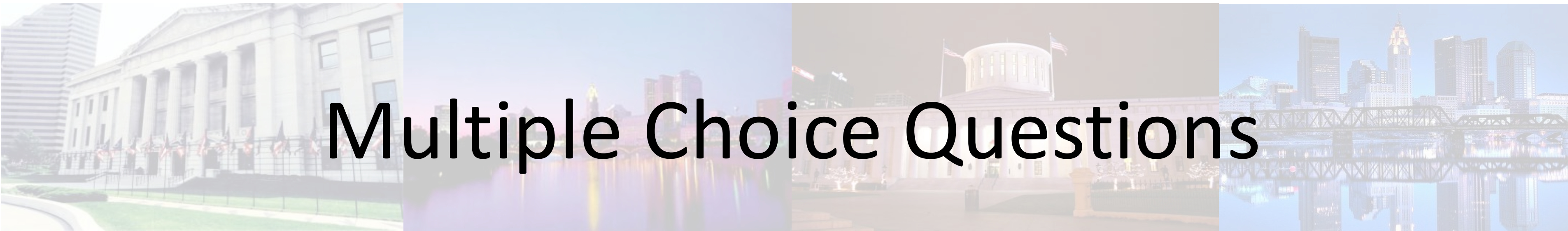
Try again!

D. All of the above

Correct! All of these expenditures are considered maintenance and repairs because they only maintain the existing asset and keep it in its originally intended use or state.

E. None of the above

Incorrect.



Multiple Choice Questions

Rhodes Tower is currently undergoing a major exterior renovation. Which of the below expenditures associated with the renovation are considered qualified capital expenditures (select one)?

A. Replace old windows with new energy efficient windows

Try again!

B. Costs of project contractor and architectural designer

Try again!

C. Replace granite and insulation with new energy efficient materials

Try again!

D. Replace old worn-out weather sealants

Try again!

E. A and C only

Incorrect.

F. All of the above

Correct! All of these expenditures are qualified because they have a useful life > 5 years and extend the useful life of the asset. Replacing weather sealants is also allowable because it's part of a major renovation.

Multiple Choice Questions

Which of the following are considered administrative/working capital expenditures (select one)?

A. Technical review and scoring of grant or project RFP's

Try again!

B. Staff salaries to process vendor payments

Try again!

C. Rent, utilities and office supplies

Try again!

D. New flooring materials for lobby renovation

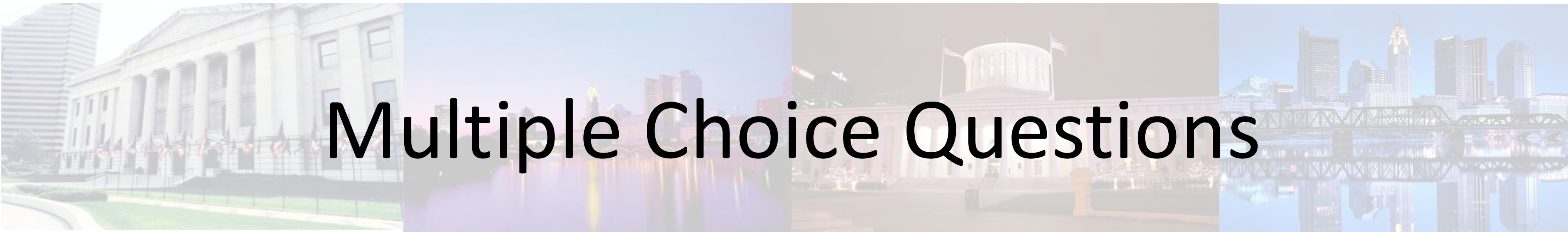
Incorrect.

E. A, B and C

Correct! A, B and C are considered administrative/working capital expenditures subject to the 5% working capital expenditure limitation. New flooring materials for lobby renovation are considered to be a qualified capital expenditure.

F. All of the above

Incorrect.



Multiple Choice Questions

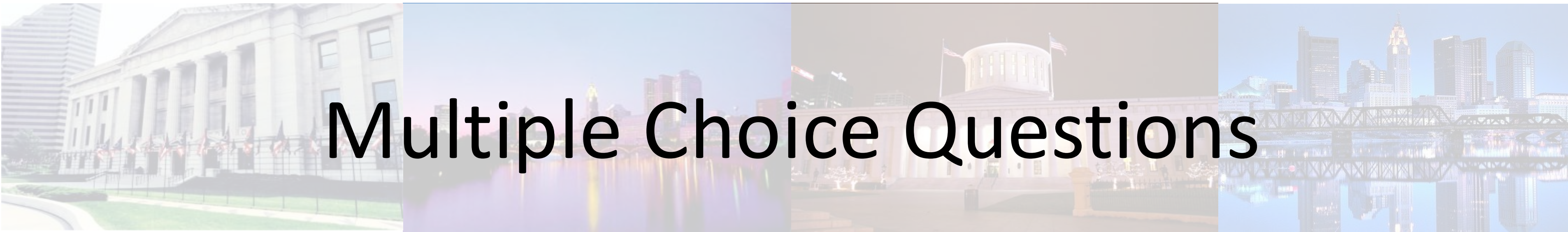
Is the replacement of fire extinguishers throughout the State of Ohio Computer Center a qualified capital expenditure?

A. Yes

B. No

Correct!
-Fire extinguishers are considered necessary for the facility to function
-Have a unit cost of about $100 or more
-Useful life of at least five years.

Incorrect.



Multiple Choice Questions

Which projects are not qualified capital expenditures (select one)?

A. Fix damage to dining room tables and chairs in a correctional facility

Try again!

B. Lawn maintenance contract for Statehouse grounds

Try again!

C. Hardware maintenance contract for the State of Ohio Computer Center (SOCC)

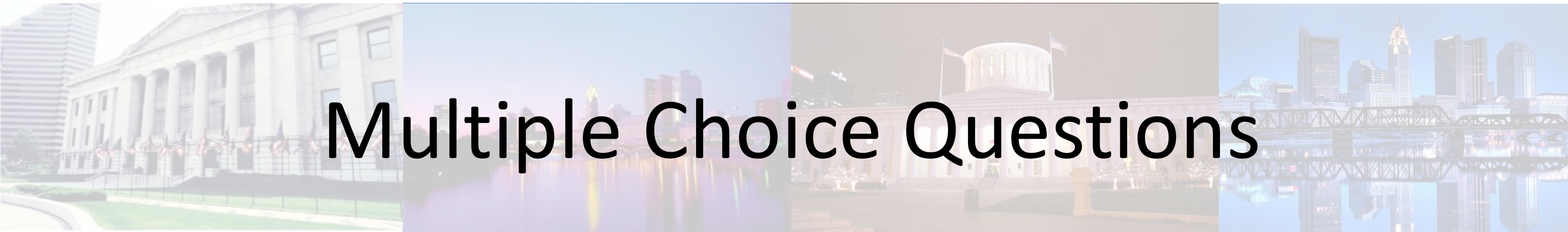
Try again!

D. Replace entire security monitoring system at a youth correctional facility

Try again!

E. A, B and C

Correct! A, B and C are considered repairs and maintenance. Replacing security system equipment is considered a qualified capital expenditure because it has a useful life > five years and is an integral part and directly related to the basic function or purpose of the facility.



Multiple Choice Questions

Are renovations to convert a storage area into a computer lab, including new tables/chairs, IT equipment and carpet, an allowable use of capital?

A. Yes

B. No

Correct! Renovations are more extensive enhancements, upgrades or replacements of buildings or structures or systems and are an appropriate use of capital funds.

Incorrect.

Multiple Choice Questions

Which of the following are allowable IT project capital expenditures (select all that apply)?

A. Network equipment for new Medicaid IT system

Correct!

B. Replace broken server on Dept. of Insurance records system

Incorrect. End of life or replacement hardware equipment that do not add functionality or extend the life of an IT system are not allowable.

C. Pay Oracle to configure software on Ohio Business Gateway expansion

Correct!

D. Off-the-shelf software customized for MARCS expansion with 5-year useful life

Correct!

OBM's Role in the Capital Release Process

- OBM debt and budget analysts review and approve the release of capital appropriations approved by the Controlling Board or OBM Director.
- As part of this activity, OBM:
  - Confirms federal and state law as well as state policy compliance
  - Consults with bond counsel and agency program managers and fiscal officers when necessary

Federal Tax Law:
Public v. Private Use

Governmental v. Private Use

- Tax-exempt bonds are intended to finance governmental projects, but many projects have elements of non-governmental or private use
- What entities/users constitute private users?
- What types of contracts/arrangements result in private use?
- What is the Private Activity Bond Test?
  - Private use
  - Private payment/security
- Requires ongoing monitoring and compliance

Private Activity Bond Test

- Private activity bond test is applied to each bond issuance to determine if private (non-governmental) use in the project precludes the bonds from tax-exempt status:
  - Two parts: i) private use limit and ii) private payment/security limit
- Private payments refer to cash or other items of value received by the issuer in connection with private use of a tax-exempt financed project
- Private security refers to the security of property in a private use
- If <u>both</u> the use and payment/security limits are exceeded, the bonds are private activity bonds and generally lose their tax-exempt status
- Allowable private use and private payment limit for governmental bonds is 5% (possibly 10% if the private use is directly related to the governmental use), but further limited to $15 million for each bond issue

Private Use Limit Applies to "Use" By Private Persons

- Private use occurs when a private person is involved in the financed project
  - Sale of bond-financed facilities or equipment (i.e., change in ownership)
  - Lease of bond-financed facilities or equipment (i.e., change in usage)
  - Management or service contracts for bond-financed facilities (e.g., property manager, food services, parking lot management)
  - Contract to Fund Research (i.e., sponsored research)
  - Job Training/Workforce Development (e.g., non-credit job training)
  - Joint purchasing or shared-services agreements
  - Sale of naming rights (e.g., sports facilities, medical facilities)
  - Other rights to use property

Private Use Limit Applies to Use By “Private Persons”

- Who is a private person?
  - For-Profit Entities (e.g., private corporations and businesses)
  - Not-for-Profits (e.g., 501(c)(3) charities, private Universities, and Hospitals)
  - Federal Government (including all federal agencies)
  - <u>*Not*</u> cities, counties, state agencies, public universities, community and technical colleges, etc.
  - <u>*Not*</u> natural persons as long as they are not using the property in a trade or business

Private Payment

- Cash or other items of value received by the issuer (state agency) in connection with the tax-exempt financed project
  - Loans, not grants, may result in private payments (loan repayments) and/or private loans
  - Rent or lease payments, profit sharing, royalties, sale proceeds
  - Payment does not have to come from the private user or be in cash (e.g., services or usage of facilities, advertising or other “in kind” benefit to State)

Management and Service Contracts

- Not all management or service contracts result in private business use
- IRS regulations and guidelines establish safe harbors that, if satisfied, preclude the use from being treated as private use
- Contracts which compensate the private business based on a share of net profits (or burden with a share of net losses) from operation of the facility generally result in private use

Qualified Management Contracts

- Management or service contracts treated as <u>not</u> giving rise to private use:
  - Contracts for services solely incidental to the primary function of the financed facility (i.e., custodial, landscaping, equipment maintenance/repair, security, or similar services)
  - Contracts in which the only compensation is the reimbursement of actual expenses and reasonable related administrative overhead expenses
  - Contracts satisfying 6-Factor Safe Harbor Test
  - Contracts entered into before August 18, 2017 (and not materially modified after) that satisfy the requirements of the “old” safe harbor

Qualified Management Contracts 6-Factor Safe Harbor Test

1. Compensation Test – reasonable compensation; does not result in sharing of net profits or bearing of net losses from operations
2. Term – term of contract (including renewal options) does not exceed the lesser of 30 years or 80% of the weighted average reasonably expected economic life of the managed property
3. Control – State exercises a significant degree of control over the managed property by approving its (i) annual budget, (ii) capital expenditures, (iii) disposition of property, (iv) use rates, and (v) general nature and use
4. Risk of Loss – State bears risk of loss upon damage or destruction
5. No Inconsistent Tax Position – example, service provider agrees not to claim depreciation or amortization deductions
6. No Substantial Limitation on Exercise of Rights – example, service provider does not have role or relationship within State that substantially limits State's ability to exercise rights under management contract

Ongoing Monitoring and Compliance

- Private use and private payment/security limits apply throughout term of bonds
- Identify *expected* or p*otential* private use and private payment/security prior to issuance
- Unexpected private use and private payments/security also subject to same limits
- State agencies must diligently monitor private use and notify issuer of any expected new private use ***before it occurs***

Reimbursements

- Federal tax law requirements to use bond proceeds to reimburse a prior capital expenditure include:
  - Within 60 days of the expenditure, demonstrated/documented official intent to seek reimbursement (typically through the bond issuer)
  - Reimbursement is completed within 18 months of the date of the original spend or within 18 months of a clear placed in service date, (but never more than 3 years from the date of the original spend)
  - Reimbursed amount must be for a qualified capital expenditure
- Project specific capital appropriations may serve as official intent
- State has also developed a form that can be used to document official intent

Discussion Project:
EXPO – Quarter Horse Congress

- Quarter Horse Congress (QHC) show at EXPO fairgrounds presents a host of private activity issues because of their non-profit (501(c)5) status and long-term (10-year) contract to use EXPO facilities.
- Facilities use and payments
  - Capital bill appropriated bond moneys to construct a new Agricultural Facility to be used predominately by QHC resulting in “private use”
  - EXPO entered into multi-year contract with QHC to use AG facility and other facilities for a certain number of days each year
  - Contract includes annual payments for use of AG facility resulting in “private payments”
  - Private use and private payments threatened tax-exempt status of Bonds
- Factors potentially mitigating private activity
  - Rental contracts and leases for meeting space may be structured to meet short-term federal exceptions
  - Eliminate “use” payments or structure the payment such that it covers only operations and maintenance costs (i.e., utilities, cleaning, etc.)
  - Structure “use” payments to meet federal de-minimis exceptions
  - Allocate all private use to non tax-exempt bond funding sources (e.g., issue federally *taxable* bonds)

Federal Tax Law: Arbitrage & Rebate

Arbitrage Yield Restriction & Rebate

- What is arbitrage yield restriction and rebate?
  - Profit from investing lower-yield tax-exempt bond proceeds in higher-yield taxable investments
  - Rebate payments are required if the investment yield on the bond proceeds is higher than the bond yield
- Spend-down exceptions to rebate
- Temporary periods and yield restriction
- Reasonable expectation basis
- Arbitrage compliance and reporting

Spending Exceptions to Rebate

- If spending meets certain timing thresholds the bond issue can be exempted from the rebate requirement
- 24-month spending test for construction issue
  - 75% of proceeds must be used for construction (no land acquisition)
  - 10% spent in 6-mos; 45% in 12-mos.; 75% in 18-mos.; 100% in two-years
- 18-month test for non-construction issue
  - Often utilized in connection with land acquisition
  - 15% spent in 6-mos.; 60% in 12-mos.; 100% in 18-mos.

Temporary Period

- A period of time exception to yield restriction and/or yield reduction payments
- 3-year temporary period for new money bonds
  - 85% of proceeds expected to be spent within 3-years
  - Substantial binding obligation to spend at least 5% of proceeds within 6-mos.
  - Reasonable expectations basis
- Bond proceeds used to pay capitalized interest are included in determining spending exception and temporary period compliance

Federal Tax Law

- Federal tax law requirements for tax-exempt bonds summed up in simple everyday terms:
  - Don’t issue too much
  - Don’t issue too soon
  - Borrow for qualified capital expenditures
  - Borrow for a governmental purpose

Agency/Capital Program Manager Responsibilities

Agency Role in Bond Issuance

- Participate in bond issuance conference calls, document reviews, and rating agency presentations
- Provide and be prepared to discuss:
  - Program description(s)
  - Use of proceeds
    - Confirms qualified capital use, including identification of private activity, reimbursements, leases, and administrative spending
  - Disbursement schedule
    - Monthly estimates through final disbursement
    - Demonstrates reasonable expectation to spend bond proceeds
  - Private Management Contracts

Execute Tax Compliance Certificate with Agency Certification

- Tax Compliance Certificate reviews the federal tax law requirements applicable to the bonds
- Agency certification
  - Confirms agency's understanding of its post-issuance responsibilities
  - Includes administrative spending limit, applicable spend-down exception and temporary period, reimbursement of prior spending requirements, and records retention requirements
  - Signed by agency director and capital program manager(s) responsible for approving disbursements

Organize and Retain Records

- Project spending detail
  - Project description and summary of scope of work
  - Disbursement detail (amount, date, receipt/vendor, nature of expenditure)
- Grant, loan, joint use, and other spending related agreements
- Records substantiating that the use of proceeds conforms to statute and regulations
- Certain information must be entered into the State’s accounting system (OAKS)

Organize and Retain Records

Records to be Captured in the OAKS System	Other Records to be Maintained
Name of the HEI/DHE/State Agency	Total Cost of Project by Funding Source
Appropriation Line Item Name and Number	Vendor Contracts & Agreements
Appropriation Amount	Project Agreements (Grant and Loan)
Project Name and ID#	Joint or Cooperative Use Agreements
Project Description (expanded chartfield for detail)	Invoices and Receipts Documenting each Expenditure
Account Code Description (expanded chartfield for detail)	Revenue or Payments Received
For each Expenditure: date, amount, vendor, and specific services and/or items purchased	Private Activity Reports / Changes in Use (including leases, management contracts, sales, etc)

- Retention period: 3 years after final maturity of bonds
  - More stringent than State records schedule
- Electronic and/or paper are acceptable
  - Data requirements above must be provided for
  - Careful to keep required information when moving from paper to electronic

Notification to Issuer

- State agencies are required to ensure appropriate use of proceeds and monitor spend-down of bond proceeds
- Provide timely notification of any prospective changes in use or deviation from original expectations
  - Change of use may occur long after funding of long-lived assets
    - Sale/disposition of a facility or asset
    - Leasing a portion of building
    - Non-qualified private management contract
    - Other non-governmental use / privatization
  - Consult with OBM or TOS to determine if private use and payment limits are exceeded.
  - Diligently monitor private use and provide notification of any expected new private use *before that new private use occurs*

Review

1. Provide an example of private use with respect to state capital projects or facilities.
2. Administrative costs for bond projects are limited to 10% of bond proceeds? (T/F)
3. Name the three items an agency should be prepared to provide for a bond issuance.
4. For how many years do bond-related records need to be maintained?
5. If federal tax law requirements are not met, bonds may lose their tax-exempt status and result in financial loss for the State. (T/F)

Resources

Debt Management Policies, Procedures and Guidelines

http://obm.ohio.gov/BondsInvestors/PoliciesProcedures.aspx

Ohio Public Facilities Commission (OBM) Contact:

Larry Scurlock, Assistant Debt Manager, OBM
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Treasurer’s Office Contact:

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