

Tax Anticipation Notes: State & Federal Requirements

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Topics

- Authorization
- Purpose for Use of Funds
- Sizing (\$\$)
- Calendar Year Issuers
- Form of Borrowing
- Lenders
- Need for Legal Opinion

Authorization

- RSA 33:7 provides authority, but no specific voter approval needed
- General Obligation Issues so backed up by power to tax
- Term of TAN cannot be longer than 1 Yr
- Not considered long term debt (excluded from “net indebtedness” definition-RSA 33:1, III)

Authorization (cont.)

- Town/Village District: Annual meeting gives governing body standing authority
- Required wording of warrant article in RSA 33:7, V
- Simple majority vote at annual meeting
- Authorization valid until rescinded
- Usually, standing authority adopted decades ago; check DRA file and historic Town records

Authorization (cont.)

- To use authority to issue TAN, requires action by the governing body at a duly called meeting
- Clerk Certification:
 - Standing authority adopted at annual meeting
 - Has not since been rescinded
 - Governing body took action at duly called meeting
 - Governing body action remains valid
- Cities: authorized by Council Resolution with 2/3 vote-
RSA 33:9

Purpose

- Two Types of TAN Borrowing Permitted by 33:7
 - “in order to pay current maintenance and operation expenses”
 - “In order to meet necessary expenses which may arise”
 - Significant difference in language?
 - Has more to do with timing of when the TAN is being issued

Purpose (cont.)

- Recall limitations on purpose: current maintenance and operation/necessary expenses
- So...CANNOT use TAN for:
 - New capital expenditure
 - To pay existing debt service (principal or interest)
 - To cover a long term structural debt
- Also cannot roll over TAN to successive year

Sizing-State Law

- “Sizing” = how much \$\$\$ can we get
- “current maintenance and operation expenses”
- Cannot exceed total tax levy of prior fiscal year; if tax levy already set, then cannot exceed tax levy for current fiscal year
- Treasurer will need to certify to this amount

Sizing-Federal Law

- For the TAN to be tax-exempt, federal law limits how much money can be borrowed
- In essence, based on your anticipated need plus a small cushion
- “Need” = prepare cash flow projection and calculate maximum monthly cumulative cash flow deficit
- “Cushion” = 5% prior year’s capital and working capital expenditures made from current revenues

Sizing-Federal Law (cont.)

TOWN OF RANDOMVILLE
CASH FLOW PROJECTION
FOR FISCAL YEAR 2022
(YEAR FOR WHICH LOAN IS SOUGHT)

<u>Month</u>	Column I Estimated <u>Receipts</u>	Column II Estimated <u>Expenditures</u>	Column III Monthly Surplus (<u>Deficit</u>)	Column IV Cumulative Cash Flow Surplus (<u>Deficit</u>)
Starting cash balance = \$300,000				
January	289,725	1,643,209	(1,053,484)	(1,053,484)
February	1,480,364	1,930,704	(450,340)	(1,508,824)
March	296,458	1,298,745	(1,002,287)	(2,511,111)
April	308,435	658,701	(350,266)	(2,861,377)
May	1,518,747	865,662	653,085	(2,208,292)
June	1,518,747	1,113,073	405,674	(1,802,618)
July	1,518,747	1,138,232	380,515	(1,422,103)
August	1,518,747	1,159,557	359,190	(1,062,913)
September	1,518,747	945,736	573,011	(489,902)
October	1,518,747	835,216	685,531	195,629
November	1,518,747	952,898	565,849	761,478
December	1,518,747	2,189,269	(670,522)	90,956

Sizing-Federal Law (cont.)

- “Need”: use chart to determine max. anticipated cash flow deficit
- Then add 5% cushion
 - 5% of prior year’s capital and working capital expenditures made from current revenues
 - For Towns, see MS 232 Form
- Need + Cushion = Max. amount that can be borrowed as Tax-Exempt
- Treasurer Certification as to both

Sizing-Federal Law (cont.)

- Post Issuance Tax Compliance
 - File Form 8038-G with the IRS
 - Temporary Period
 - Arbitrage
 - Private Activity: no loans from TAN funds
 - “Bank Qualified Tax-Exempt Obligation”

Calendar Fiscal Year Issuers

- For towns and village districts:
 - with a calendar fiscal year; and
 - that do not have standing authority to issue TANs (RSA 33:7, V)
- The select board or village governing body may issue a TAN:
 - for up to 30% of the prior year's tax receipts;
 - to pay “necessary expenses” during the period from January 1 to the annual meeting.

Form of Tax Anticipation Notes

All TANs are general obligations (pledge the full faith and credit – taxing power)

The Note can be:

- the bank's off-the-shelf loan document; or
- prepared by bond counsel

The maximum term of a TAN is 1 year.

Shorter TANs can be refunded or renewed.

Form of Tax Anticipation Notes (cont.)

TANs can be issued:

- Lump sum – entire principal amount is provided on Day 1; or
- Drawdown – municipality can draw against the principal as needed during the year
 - For IRS reporting purposes, the “issue date” is the first date on which more than the lesser of \$50,000 or 5% of the principal amount is drawn
- Revolving Line of Credit – not permitted for tax-exempt TANs

Lenders

- The Bond Bank does not issue TANs
- Use a local bank
 - check with your deposit bank
 - seek bids from banks

Procurement

- Check procurement policy
 - Formal bidding (sealed bids)
 - Informal requests for quotes
- Provide information to banks
 - Taxable or Tax-exempt
 - Bank qualification (expect to issue <\$10MM in tax-exempt debt during the calendar year)
 - Lump sum or drawdown
- Evaluate bids based on actual interest cost
 - Lenders can compute interest differently

Need for Legal Opinion

Required at the discretion of the lender

Provides assurance to lender that the TAN will be repaid

Bond counsel provides an independent legal opinion to the lender that the TAN is:

- Enforceable – properly authorized and executed

 - Standing authority per RSA 33:7, V

 - Vote or resolution of governing body

 - Statutory compliance

- Tax-exempt/Bank qualified

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ATTORNEYS AT LAW

Questions?

Thank You



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