



COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

Office of the Comptroller
Scott B. Manske, Comptroller

DATE : August 26, 2022
TO : County Executive, David Crowley
County Board Chairperson, Marcelia Nicholson
FROM : Scott B. Manske, Comptroller
SUBJECT : Bond Eligibility Guidelines

Policy Issue:

Wisconsin State Statute 59.255 (2) (a) states that the Milwaukee County Comptroller is the chief financial officer of the county, and the administrator of the County's financial affairs. The Comptroller is also responsible for overseeing the County's debt.

The Office of the Comptroller is responsible for determining whether or not expenditures are eligible for bond financing. [Wisconsin State Statute 67.04\(2\)\(a\)](#) states that any municipality may borrow money and issue bonds to finance any project undertaken for a public purpose. Therefore, all projects must have a public purpose to be financed with bonds or notes.

This memo is meant to give policymakers and Departments **general guidance** for types of expenditures the Office of the Comptroller considers eligible for bond financing and background on how the determinations are made.

The information provided is **not meant to replace analysis** performed by the Office of the Comptroller for individual projects as part of the budget process or bond issuance and monitoring/management of the bonds.

No Bonding for Operating Expenditures

Wisconsin Statute 67.04 (5) (a) prohibits the use of proceeds of any bonds or notes issued by a county to be used to fund the operating expenses of the general fund of the county or to fund the operating expenses of any special revenue fund of the county.

Operating expenses include:

- Wages, salaries, and fringe benefits
- Materials or supplies
- Contractual services
- Equipment with a useful life of less than one year.
- Maintenance agreements/expenses, warranties and training expenses that may be included in contracts when a Project is initially constructed or acquired.
- Repair and maintenance

Operating expenses do **not** include ancillary charges¹ incurred in the acquisition, development, or construction of real property or property with a useful life of one year or more.

Characteristics of an Operating Expenditures (Repairs and Maintenance)

Repairs and maintenance are expenditures incurred in connection with existing capital assets that do not:

- Lengthen the originally estimated useful life
- Increase the service capacity of the asset.

There are some areas of interpretation regarding the classification of repairs and maintenance. Listed below are some examples of expenditures that are appropriately classified as repairs and maintenance:

- Plumbing or electrical repair
- Cleaning or other periodic maintenance
- Interior decorations such as draperies, blinds, curtain rods, wallpaper, paint, etc.
- Exterior decorations such as detachable awnings decorative fences, etc.
- Maintenance type interior renovations such as repainting, plastering, replacement, partitions, flooring and ceiling tiles and/or repairs of existing flooring.
- Maintenance type exterior renovations such as repainting, caulking, replacement and/or repairs of sections of deteriorated siding, roof, or masonry, etc.
- Adding, removing and or moving walls relating to renovation projects that are not considered major rehabilitation projects and do not increase the value of the building.
- Improvement project of minimal or no added life expectancy and/or value to the building
- Any other maintenance-related expenditure which does not increase the value of the asset
- General equipment repairs
- Lease expenses
- Maintenance contracts and warranties

¹ Ancillary Charges are defined in Wis Stat. 67.04 (1) (a). They include site preparation expenditures, professional fees, legal claims directly attributable to asset acquisition and interest costs incurred prior to and during construction.

Definition of Capital Expenditures (Unit Costs)

Capital assets, which include property, plant, equipment, and infrastructure assets (e.g. roads, bridges, drainage, buses, HVAC systems and similar items) have an initial, individual cost of more than \$5,000 and an estimated useful life in excess of one year. The dollar threshold has increased from \$2,500 for general equipment and \$1,000 for data processing equipment. The higher dollar threshold for capital assets will make it easier for them to be managed. The cost of normal maintenance and repairs are not capitalized if they do not add to the value of the asset or materially extend the useful life of the asset.

As it relates to capital improvements to existing structures, the bond financing policy is that the useful life extension must be the greater of 50% of the original useful life of the asset or 10 years.

Intangible Assets

The Governmental Accounting Standards Board (GASB) establishes accounting and financial reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles (GAAP). The County typically only capitalizes intangible assets like software only if the software meets specific criteria outlined in GASB 51 and GASB 96 and the overall project cost associated with the implementation of the software is greater than \$1,000,000.

Software

Intangible assets are considered internally generated if they are owned by the County and created or produced by the government or an entity contracted by the County, or if they are acquired from a third party but require more than minimal incremental effort on the part of the County to begin to achieve the expected level of service capacity.

Expenditures related to the development of internally generated intangible asset that is identifiable should be capitalized only upon the occurrence of all the following:

- Determination of the specific objective of the project and the nature of the service capacity that is expected to be provided by the intangible asset upon the completion of the project.
- Demonstration of the technical or technological feasibility for completing the project so that the intangible asset will provide its expected service capacity.
- Demonstration of the current intention, ability, and presence of effort to complete or, in the case of a multiyear project, continue development of the intangible asset.

The activities involved in developing and installing internally generally computer software, other than subscription or licensing fees, can be grouped into three stages:

1. *Preliminary Project Stage.* Activities in this stage include the conceptual formulation and evaluation of alternatives, the determination of the existence of needed technology, the final selection of alternatives for the development of the software and vendor selection. **Expenditures generally expensed.**
2. *Initial Implementation Stage.* Activities in this stage include all ancillary charges necessary to place the asset into service such as the design of the chosen path, including software configuration and software interfaces, coding, installation to hardware, and testing, including the parallel processing phase. **Expenditures generally capitalized.**
3. *Operation and Additional Implementation Stage.* Activities in this stage include subsequent implementation activities, maintenance, and other activities for ongoing operations related to the software agreement. **Expenditures generally expensed.**

Training is expensed regardless of the project stage. Non-internally generated software such as service, cloud or hosted software is owned by an outside entity and expensed. Licensing or subscription fees are expensed.

Similar to internally generated software, if there are more than minimal incremental effort on the part of the County to begin to achieve the expected level of service capacity, some components may be capitalized. Generally, the capitalized components would occur during the application development stage of the project. The nature of the components is the factor in determining the appropriate classification stage.

Minimum Project Expenditure Amounts (Total Project Costs)

The Office of Strategy, Budget and Performance (SBP) coordinates the compilation of the budget requests for the Director of the Department of Administration under Wisconsin Statute 59.60. The minimum total expenditure amount for a Project is \$100,000. The Office of the Comptroller limits bond financing to capital projects. Therefore, the minimum capital project cost for bond financing is \$100,000.

Debt issuance for County assets, 501(c)(3) entities and private activity.

When does the County issue Tax-Exempt Debt?

The County primarily issues debt on a tax-exempt basis for projects associated with Milwaukee County land and buildings. Tax-exempt debt has a lower interest rate compared to taxable debt since interest received by bondholders on tax-exempt bonds/notes is not subject to federal income tax. If bonds are issued on a tax-exempt basis, the County represents and covenants that, while the bonds are outstanding, the ownership, management, and use of projects financed by bonds will not cause the bonds to be Private Activity Bonds within the meaning of Section 141 of the Internal Revenue Code of 1986 ("Tax Code").

What is Private Activity?

Generally, Private Activity Bonds means that nongovernmental entities (i.e. private businesses) gain some special benefit from the projects financed by the bonds through the ownership, management or use of the projects. Private Activity can occur when Milwaukee

County assets are used for “private business use”. IRC Section 141 (b) (6) defines "private business use" as use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, any activity carried on by a person other than a natural person must be treated as a trade or business. For example, Milwaukee County leases county owned facilities to private businesses for event sites, as restaurants, and as facilities for operating a business. Any improvements made to those County facilities would be considered a Private Activity.

Funding for Assets with Private Activity

Some assets owned by the County are managed and/or used in a way that causes improvements to the asset to be unable to be financed with tax-exempt debt. Typically, these types of assets have private business use that is a result of a lease or other use agreement. The Office of the Comptroller may seek authorization to issue taxable debt or recommend that the improvements be financed with cash.

What is a 501(c)(3) entity?

Organizations described in IRS code section 501(c)(3) are commonly referred to as charitable organizations. Organizations described in section 501(c)(3) are eligible to receive tax-deductible contributions. The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may benefit any private shareholder or individual. These are not governmental entities. The County has component units that are 501(c)(3) organizations such as the War Memorial/Art Museum, Milwaukee Public Museum, Charles Allis/Villa Terrace, and the Zoological Society.

Bond funding for Qualified 501(c)(3) Organizations

Some projects that are owned, managed or used by one or more 501(c)(3) entities can be financed with tax-exempt bond proceeds as Qualified 501(c)(3) Bonds even though the 501 (c)(3) entities are not governmental entities. The issuance of tax-exempt bonds for Qualified 501 (c) (3) purposes requires that a public hearing be scheduled to allow citizens to comment on the issuance of the bonds. These assets that have **501(c)(3) use** and require public hearings include the War Memorial/Art Museum, Milwaukee Public Museum, Charles Allis/Villa Terrace, Zoological Society and some various parks assets. Tenants agree that they will not use or permit the use of the facilities in a manner that would result in a “Private Business Use” as defined under the Tax Code.

RECOMMENDATION

This report is informational. It is recommended that the report is received and placed on file. It is also recommended that guidelines about capitalization and bond eligibility are incorporated into the County's Administrative Manual of Operating Procedures.

Scott B. Manske _____

Scott B. Manske
Comptroller

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