

## CHAPTER 3

### DEBT

The power of a taxing authority to incur debt for public purposes is a power of local self-government provided by the Ohio Rev. Code through Chapter 133, the Uniform Public Securities Law. In addition, the taxing authority's charter, ordinances and resolutions may place further restrictions (or, in the case of a charter, fewer restrictions) on the taxing authority's power to incur debt.

In issuing debt, many governments either engage bond counsel or use a local financial institution to advise them regarding compliance with debt-related laws. Using legal counsel experienced with debt compliance can help a government meet Ohio Rev. Code Chapter 133 (and other requirements.) Auditors should consider this when determining the nature and extent of testing in this area.

Note: There are many Rev. Code Sections authorizing governmental debt, in addition to Chapter 133. Many requirements from other chapters refer to, and require compliance with certain Ohio Rev. Code §133 sections. It is impractical to describe every Rev. Code debt requirement in this chapter. This chapter focuses on some of the most common requirements applicable to local government securities. **However, auditors may need to refer to other Ohio Rev. Code sections, and amend the steps this Ohio Compliance Supplement Chapter lists for debt issued under other Ohio Rev. Code sections.**

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## Section A: Entities Other Than Community Schools

### Rev.

- HB 68, 126<sup>TH</sup> GA, Effective 6/29/05
- HB 530, 126<sup>TH</sup> GA, Effective: 3/30/06
- SB 321, 126<sup>TH</sup> GA, Effective: 9/5/06

**3-1 Compliance Requirement:** Ohio Const. Art. XII, Section 11; Ohio Const. Art. XVIII, Section 12 Ohio Rev. Code Sections 133.10, 133.22 133.24, 321.34, 5705.03, 5705.05, 5705.09 and 5705.10; 1981 Op. Atty Gen. No. 81-035 – **Issuing or Retiring Bonds and Notes.**

### **Summary of Requirements:**

#### *Common Types of Debt*

**BACKGROUND INFORMATION:** Per Ohio Rev. Code 133.01(Q), *general obligation* securities are those collateralized by a pledge of taxing authority, up to the subdivision's available tax limit (sometimes described as a taxing authority's "full faith, credit and taxing authority.")

The following are examples of securities that are **not** general obligations:

RC 133.01(LL) defines *self-supporting securities* as securities, or portions of securities where the fiscal officer estimates that revenue sources, excluding taxes, are sufficient to pay for operating costs plus debt service. These are securities collateralized by pledged revenue,<sup>1</sup> without a pledge of taxes. Enterprise utility operations often issue self-supporting securities. Ohio Rev. Code 133.01(MM) authorizes various subdivisions to issue self-supporting securities; such as municipalities, townships, counties, school districts, and certain other districts. (See the statute for a complete list.) Ohio Rev. Code 133.01(MM) does not list community schools.

RC 133.08 defines *revenue* securities as those a county issues, collateralized only by pledged revenue and which are not secured by a county's full faith, credit and taxing authority.

Ohio Const. Art. XVIII, Section 12, authorizes a municipality to issue bonds collateralized by pledged revenues or mortgages to acquire, construct, or extend public utilities. These bonds do not impose any liability on the municipality, except the creditor's right to the pledged revenue and / or mortgage. That is, this debt is not a general obligation.

#### *Issuance of Securities*

➤ Ohio Const. Art. XII, Section 11 states "No bonded indebtedness of the state, or any political subdivision thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

<sup>1</sup> *Pledged revenue* is revenue debt legislation or covenant provisions pledged as collateral to the debt owners.

- Ohio Rev. Code § 5705.03 provides that the taxing authority of each subdivision must levy sufficient taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes and certificates of indebtedness of such subdivision subject to the limitations of applicable statutes.
- Ohio Rev. Code § 133.23 describes the legislation required to authorize new securities. Per Ohio Rev. Code § 133.23(C), Legislation must identify the source(s) of repaying the bonds, which may be **any** moneys required by law to be used, or lawfully available, for the purpose. If the bonds are general obligations, or a property tax otherwise must be levied for the debt service, the legislation shall provide for levying a property tax sufficient to pay the bonds' debt charges; but the tax amount levied or collected in any year may be reduced by the amount to be available from special assessments,<sup>2</sup> revenues and surplus funds of public utilities, any surplus in the funds from which such bonds are to be retired, or other moneys specifically assigned by law or by legislation of the taxing authority for payment of such debt charges.

We interpret Ohio Rev. Code § 133.23(C) as follows:

- Revenue (tax or otherwise) pledged to repay debt must be used for debt service unless the debt is repaid from other sources.
- A government can use unrestricted money or money restricted to purposes consistent with paying a debt issue to pay debt service. For example, a government might use restricted grant revenue<sup>3</sup> to pay revenue anticipation note debt service, if the debt proceeds were spent for allowable grant purposes, even if the debt legislation pledges taxes.
- Therefore, if these bonds are a general obligation, a government must **authorize** a levy, but need not levy the tax if it can use other resources to pay the debt service.

### ***Retirement of Securities***

- Ohio Rev. Code § 5705.09(C) requires each subdivision to establish a bond retirement fund into which it must pay sufficient revenues to retire serial bonds, notes and certificates of indebtedness at maturity.
- Ohio Rev. Code § 5705.10 provides that all revenue derived from levies for debt charges on bonds, notes, or certificates of indebtedness must be paid into a [debt service] fund for that purpose.
- Ohio Rev. Code § 133.10(E) further provides that revenue anticipated (i.e. property taxes pledged to pay tax anticipation notes) may be appropriated for purposes other than paying debt charges only after deducting an amount sufficient to pay the debt. The amount (of anticipated revenues) to be applied to debt charges must be set aside in an account in the bond retirement fund. Ohio Rev. Code § 133.10(E) applies to certain other types of securities, for example in Ohio Rev. Code sections:
  - Ohio Rev. Code §133.13: Certain special assessments

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<sup>2</sup> FYI: Special assessment anticipation notes issued per Ohio Rev. Code 133.17 are collateralized by a pledge of special assessments, **and** as general obligations. However, notes issued per Ohio Rev. Code 133.13, anticipating special assessments collected in one installment are collateralized only by the assessments and are **not** general obligations.

<sup>3</sup> Unless the grant regulations prohibit debt payments. For example, Circular A-87 (now codified in 2 CFR 225) would generally permit using Federal grants to pay debt related to assets used in Federal programs, per Attachment B, item 23b.

- Ohio Rev. Code §133.17: Securities anticipating special assessments
- Ohio Rev. Code §133.32: All Ohio Rev. Code Chapter 133 securities
- Conservancy district special assessments RAN

#### ***Issuance of Notes***

- Ohio Rev. Code §133.22 requires that when a subdivision issues notes, its financial officer must notify the county auditor that such notes have been sold. Per Ohio Rev. Code 321.34(B), when a county auditor *advances* tax revenue to a subdivision, the county auditor must allocate the advance between the subdivision's general and debt service fund, to provide sufficient tax revenue to pay the subdivision's outstanding G.O. indebtedness.

#### ***Notification of the County Auditor and Division of Taxes by County Budget Commission***

- Per Ohio Rev. Code 133.23(D), if a government issues bonds or bond anticipation notes, the fiscal officer of the subdivision shall file a copy of the legislation with the county auditor of each county in which any part of the subdivision is located.
- Ohio Rev. Code §5705.31 requires the budget commission to ascertain that certain levies have been properly authorized, including division (B) "All levies for debt charges not provided for by levies in excess of the ten-mill limitation, including levies necessary to pay notes issued for emergency purposes" and, in part, division (D) "a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing unit".

#### ***Special Features***

- FYI: Ohio Rev. Code 133 securities may include the following features:
  - Floating interest rates [133.26(A)]
  - Early redemption or call provisions [RC 133.26(B)]
- Legislation authorizing a debt issuance may contain restrictions on the source of payment for debt charges.

#### ***Retiring Debt from Funds Other than a Debt Retirement Fund***

- ***Absent a specific requirement***, debt may be paid from any unrestricted monies held, segregated from restricted monies, in a fund which was established for a purpose not inconsistent with paying such debt. When evaluating compliance with the requirements in this section, place emphasis on the source of monies used to repay debt. When a subdivision pays debt from a fund other than a debt retirement fund, consider the following:
  - Ohio Rev. Code §5705.10 provides that money paid into a fund shall be used only for the purpose for which such fund was established. Therefore, money in a fund may be used to pay debt charges provided the payment of such debt charges is consistent with the purpose for which the fund was established;

- With regard to tax anticipation notes, Ohio Rev. Code §133.24(D) provides that, except for *capitalized interest*<sup>4</sup>, debt charges on tax anticipation notes are payable only from the revenue collected by the tax levy anticipated.
- Ohio Rev. Code §5705.05 prohibits using taxes levied for current expenses to pay debt charges.
- Ohio Rev. Code §5531.10(C) (issuing obligations for state infrastructure projects) provides that the holders or owners of such obligations shall have no right to have moneys raised by taxation by the state of Ohio obligated or pledged, and moneys so raised shall not be obligated or pledged, for the payment of bond service charges.
  - Per HB 68, municipal corporations and counties may pledge and obligate license and fuel tax monies, collected pursuant to Ohio Rev. Code §4501.04 (motor vehicle license tax), or division (A) (1) or (2) of the Ohio Rev. Code §5735.27, to retire loans, loan guarantees, letters of credit, leases, lease-purchase agreements, interest rate subsidies, debt service reserves, and other forms of aid from the Ohio Department of Transportation State Infrastructure Bank (SIB). The municipal corporations and counties are also permitted by the act to pledge and obligate any tax increment financing (TIF) service payments they receive in lieu of taxes for the same purposes. However, the act provides that such tax and TIF money can be so obligated, pledged, and paid only with respect to obligations issued exclusively for public transportation projects. (R.C. 4501.04, 4503.02, 5531.09, 5531.10, 5735.05, 5735.25, 5735.27, 5735.28, and 5735.29)
  - HB 530 repeals the above exception permitting pledging and obligating license and fuel tax money and TIF service payments for public transportation project obligations. Instead, the act amends R.C. 5531.10(C) to include a provision stating that moneys received as repayment of loans made by the SIB are not to be considered moneys raised by taxation by the State of Ohio regardless of the source of the moneys. Additionally, the act specifically permits townships receiving distributions from the Gasoline Excise Tax Fund in the state treasury to use that money to pay debt service on SIB obligations. (R.C. 5531.10 and 5735.27)
- 1981 Op. Atty Gen. No. 81-035 states:

Certain moneys paid into the general fund which are not derived from a general levy for current expenses are placed in the general fund precisely because their use is not restricted. (See Ohio Rev. Code §5705.10). Such monies may be used to pay debt charges provided that they have not been commingled with general fund monies which may not be used for debt payment. Where otherwise unrestricted monies have been paid into the general fund and have been commingled with restricted monies to the extent that the particular source from which the monies originated cannot be distinguished, such

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<sup>4</sup> Ohio Rev. Code 133.01(E) defines *capitalized interest* as interest received with the proceeds of a security. For example, this would include interest payable accruing between the security's issuance date and the date the security was sold. Since the government must pay this interest to the security owners, the government generally must set aside this interest for the first debt service payment and should not use it for the purpose for which the principal was issued. [EX133.16] Do not confuse this with *capitalized interest* discussed in FASB 34 & 62 or GASB 34, 37, etc.

monies may be used to pay debt charges only after they have been transferred to an appropriate fund pursuant to Ohio Rev. Code §5705.14.

➤ The Expedited Local Partnership Program provides a way for school districts to start approved school building projects using local funds while they wait for state funding under the “main” CFAP program. Once a district is eligible for CFAP, it may apply this advance expenditure of local resources toward its portion of the cost of its total CFAP project. If a district has spent more than its share of its CFAP project while proceeding under the Expedited Program, the School Facilities Commission must reimburse the district the amount of the over expenditure. Under SB 321, effective 9/5/06, school districts may first deposit reimbursed money into either the district's general fund or a permanent improvement fund to replace local resources the district withdrew from those funds for constructing classroom facilities included in the district's CFAP project. The remaining reimbursement monies must be used to pay debt service on classroom facilities constructed under the Expedited Program. (R.C. 3318.36(E)(2))

| In determining how the government ensures compliance, consider the following:  | What control procedures address the compliance requirement? | W/P Ref. |
|--|---|----------|
| <ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Bond Counsel/Lender Involvement</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul> |   |          |

#### Suggested Audit Procedures – Compliance (Substantive) Tests

For securities issued during the audit period, inspect the debt legislation and determine under which Rev. Code statute the debt was issued. If that section is not listed in this Ohio Compliance Supplement Chapter, read the specific statute and amend the testing steps to include tests to determine:

- The legality of the source of repayment and collateral. (We can normally rely on the work of bond counsel or the underwriter, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize in the permanent file.)
- Whether the government properly segregated any revenue pledged for debt service or capitalized interest and used that revenue for debt service. This will often require establishing a debt service fund.
- Whether the government used the proceeds for the purposes authorized.

- If the debt is still outstanding at the end of the audit period, include copies or summaries of the information related to the three bullet points above in the permanent file.
- If the debt includes features such as floating interest rates or early redemption or call provisions, determine if enabling legislation and the Ohio Rev. Code authorize those features. (For example, Ohio Rev. Code 133.22(D) describes features BAN can include.)

If a deficit exists in a bond retirement fund, inquire with management about the reasons. Determine whether the government complied with the debt contracts regarding segregating resources into the bond retirement fund pursuant to Ohio Rev. Code §5705.10.

If revenue-supported debt requires the government to set rates sufficient to cover debt service, inspect the government's computations supporting the sufficiency of revenue. Scan the trial balance of the fund receiving the revenue subject to the rate covenant. Determine if the receipts are sufficient to cover the fund's disbursements, including debt service. Note: *This is not an Ohio Rev. Code requirement. Therefore, auditors would cite the covenant requirement when reporting any violations.*

Inspect the county tax settlements and trace revenues to the funds indicated. If amounts from tax levies for bond retirement are being placed into funds other than bond retirement funds, inspect documentation that the government deducted an amount sufficient to pay the debt charges. (RC 5705.10B)

By reading the government's financial statements or inspecting its ledgers, determine where debt is paid from. If other than bond retirement funds, determine that:

- Debt paid from a restricted fund was paid from revenue which could be used for the same purpose for which the debt proceeds were spent [Ohio Rev. Code §5705.10 or 133.24(D)];
- restrictions, if any, in the debt-authorizing legislation were followed;
- revenue derived from a general levy for current expenses is not used to pay debt charges [Ohio Rev. Code §5705.05]; or
- monies used to pay debt from the general fund have not been commingled with general fund monies which may not be used for debt payment [1981 Op. Atty. Gen. No. 81-035].

Note: Where bond counsel was involved with debt issues we are testing, we can usually rely on documents they have prepared or opined on, as evidence that legislation authorizing the securities complies with statute. However, bond counsel would not "audit" the government's subsequent compliance with requirements. For example, we would not expect bond counsel to determine how the government accounted for debt proceeds or whether the proceeds were spent for authorized purposes.

Determine if the fiscal officer filed a copy of the legislation authorizing securities with the county auditor pursuant to Ohio Rev. Code §133.23(D).

If tax levies within the ten-mill limitation are being used to retire general obligation debt, determine whether the County Budget Commission ascertained that all levies were properly authorized and divided the income generated by those levies to a debt service fund where

appropriate. [Ohio Rev. Code 5705.31]. If noncompliance with this requirement was due to the County Budget Commission being unaware of a levy, consider making a recommendation to the government to notify the County Budget Commission of all authorized tax levies.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, reportable conditions/material weaknesses, and management letter comments):**

**3-2 Compliance Requirement:** Ohio Rev. Code Sections 133.10, 133.22 and 133.24 – Bond, Tax and Revenue Anticipation Notes (BAN, TAN and RAN).

**Summary of Requirements:** Per the Appendix at the end of this chapter, several Ohio Rev. Code sections authorize TAN, RAN or BAN. Short-term TAN or RAN are generally subject to (1) below.<sup>5</sup> Long-term TAN are *generally* subject to (2) below.<sup>5</sup> Significant requirements related to BAN are described at the end of step 3-2.

- 1) **Short-term** notes anticipating *current* revenues, most often current tax levies: A government cannot issue these notes for more than a defined percentage of the current-year's estimated revenue (for example,  $\frac{1}{2}$  the current annual estimated revenue from utility charges or grants [RC 133.10(B)], or approximately  $\frac{1}{2}$  of the next tax settlement, [RC 133.10(A)]). These notes normally mature within six months, or the end of the fiscal year, whichever occurs first. Most Ohio Rev. Code sections authorizing these notes require them to comply with Ohio Rev. Code 133.10. The remainder of this step refers to these notes as Ohio Rev. Code *133.10 short-term notes*.
- 2) **Long-term** notes anticipating *future tax* revenues, from voted tax levies, usually of a limited life: A government cannot issue these notes for more than the amount the levy will generate over its life, or a portion of its life. These notes mature over the life of the levy or a shorter period Ohio Rev. Code specifies, such as 5 or 10 years. Most Ohio Rev. Code sections authorizing these notes require them to comply with Ohio Rev. Code 133.24. The remainder of this step refers to these notes as Ohio Rev. Code *133.24 long-term notes*.

### **RC 133.10 short-term TAN or RAN**

#### **TAN:**

- TAN must mature no later than the last day of the sixth month after the issue date, and in no case may they mature after the end of the fiscal year. The aggregate amount outstanding cannot exceed  $\frac{1}{2}$  of the amount anticipated for the next six months (typically the next settlement minus advances). [RC 133.10(A)]
- C 133.10(C) amends 133.10(A) above for counties, municipalities, townships and school districts. If one of these entities issues TANs under Ohio Rev. Code 133.10(C), these TANs need not mature until the end of the year. (That is, they are not restricted to a six-month maturity.)
- Notes a school district issues anticipating a delayed property tax settlement may be for up to 90% of the amount estimated to be received by that settlement (other than taxes to be received for paying debt charges) minus advances, and may mature as late as the August 31 after the June 30 fiscal year end. [RC 133.10(D)]

#### **RAN:**

- The notes issued cannot exceed  $\frac{1}{2}$  of the amount of the projected revenues remaining to be received during the fiscal year, minus advances and prior collections, as estimated by the fiscal officer. [RC 133.10(B)]

<sup>5</sup> The references to *long-term* and *short-term* above refer to the legal requirements, not the classification of this debt under GAAP. Auditors should refer to GASB Codification B50 and GFOA General Purpose Government CAFR checklist for guidance on GAAP debt classifications.

- Notes issued anticipating current revenues in and for any fiscal year from any source or combination of sources, including distributions of any federal or state moneys, other than the proceeds of property taxes shall mature not later than the last day of the fiscal year for which the revenues are anticipated. [§133.10(E)(2)]

#### **All ORC 133.10 short-term TAN or RAN**

- Pledged revenue (tax or otherwise) collected to retire these notes is considered appropriated for debt charges and financing costs. The government can appropriate this revenue for other purposes only after deducting sufficient amounts to pay debt service. The government must deposit pledged revenue sufficient to pay the debt in an account in a debt service fund. [RC 133.10(E)(1)]
- These notes cannot be issued prior to the first day of the fiscal year. [RC 133.10(E)(2)] (The only exception is that a board of education of a school district may issue notes as early as 10 days before the first day of the fiscal year (i.e., by June 21), provided that the proceeds of the notes can neither be spent nor considered available for appropriation prior to the first day of the fiscal year [i.e., July 1]). [RC 133.10(H)]
- The government can spend note proceeds only for the purposes for which the related revenue can be spent. [RC 133.10(E)(3)] For example, if a government issues RAN, anticipating Federal grant proceeds, the government can spend the note proceeds only for purposes the Federal grant permits.

#### **RC 133.24 long- term TAN**

- The aggregate amount of principal outstanding may not exceed the anticipated levy proceeds provided in the applicable law by a statement of percentage or by a limitation on the amount of annual maturities. These TAN must mature by December 31 of the year authorized by statute, or by December 31 of the last year of the levy, whichever is earlier. [RC 133.24(B)] Therefore, the duration of these notes should match the levy's life. (Unless another Ohio Rev. Code section specifies a shorter period. See the appendix at the end of this chapter for examples.) The estimated annual debt service should approximate the annual levy proceeds.
- Debt service is payable only from the levy proceeds. (Except the government should use capitalized interest collected with the debt proceeds to pay capitalized interest due with the first debt service payment.) The levy proceeds are deemed appropriated for debt service, and must be deposited into an account in the debt service fund. (The interest payable from capitalized interest should be paid with capitalized interest.) [RC 133.24(D)]

--Any amount so deposited and not needed for the purpose in the particular fiscal year may, without compliance with any other law or approval by any other agency, be transferred to the special fund established for the proceeds of the tax levy [RC 133.24(D)] (such as a capital projects fund, if the tax was levied for both debt service and for a specific capital project.)

#### **Requirements applicable to BAN**

- Per Ohio Rev. Code 133.22, the legislative body must pass legislation authorizing:
  - The purpose for (eventually) issuing the bonds (which is limited to one purpose) [(A)(1)(a)]
  - The maximum amount of BAN, which cannot exceed the bond amount [(A)(2)(a)]
  - The maximum maturity, which cannot exceed (C). (See (C) below).

- If the bonds are eventually payable from a property tax, provides for the levy of property taxes while the BAN are outstanding;
- (Note: We can normally rely on bond counsel for assuring compliance with the following provisions. This requirement is listed as background information for you.) Per 133.22(C), BAN issued with a latest maturity of less than two hundred forty months may be renewed for up to two-hundred-forty months.
  - Per (C)(2), five years after issuing the original BAN, a portion of the principal shall be paid annually, in amounts at least equal to, and payable not later than the payment dates of, the principal that would have been paid if the government issued bonds at the expiration of the initial five-year period.
  - Per (C)(3), the latest maturity of BAN may not exceed the maximum maturity of the bonds anticipated plus five years. (Bond maturities can range from 5 to 50 years, per Ohio Rev. Code 133.20.)
  - Note: There are exceptions to these general rules, but they are too complex to summarize here. (Refer to Ohio Rev. Code 117.22(C) for exceptions.)
- (These features are listed for your information.) Per 133.22(D), BAN may include the following features:
  - Put options (D)(6)
  - Issue commercial paper in lieu of BAN (D)(7)
  - Floating interest rates (D)(8)
  - Interest rate swaps (D)(9)(b)

#### **Notification to the County Auditor**

- The subdivision's financial officer shall file a copy of the legislation authorizing the BAN with the county auditor. [RC 133.22(B)]

| In determining how the government ensures compliance, consider the following:  | What control procedures address the compliance requirement? | W/P Ref. |
|--|---|----------|
| <ul style="list-style-type: none"> <li>● Policies and Procedures Manuals</li> <li>● Knowledge and Training of personnel</li> <li>● Tickler Files/Checklists</li> <li>● Bond Counsel/Lender Involvement</li> <li>● Legislative and Management Monitoring</li> <li>● Management's identification of changes in laws and regulations</li> <li>● Management's communication of changes in laws and regulations to employees</li> </ul> |   |          |

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

For notes issued during the audit period, inspect the debt legislation and determine under which Rev. Code statute the debt was issued. If that section is not listed in this Ohio Compliance Supplement Chapter (including the appendix), read the specific statute and amend the testing steps to include tests for the 5 debt requirements below. If a note is outstanding at the end of the

audit period, include copies or a summary of documentation addressing the 5 compliance tests below in the permanent file.

Determine whether:

1. Note proceeds did not exceed Ohio Rev. Code limits, typically limited by the related revenue estimate (RAN or TAN) or bond proceed (BAN) estimates. (We can normally rely on the work of bond counsel or the underwriter, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize for the permanent file.)
2. Notes did not exceed limitations on the time to maturity. (*Usually*, notes issued for operating expenses must mature in one year. Notes used for capital improvements have longer maturities. BAN can mature up to the life of the eventual bonds.) (We can normally rely on the work of bond counsel or the underwriter, if they were involved with a debt issue. We should inspect their conclusions for reasonableness and summarize for the permanent file.)
3. The government repaid the debt with the pledged or other legal revenue (RAN and TAN), or refinanced BAN according to the BAN legislation.
4. The government properly segregated any revenue pledged for debt service and used that revenue for debt service.
5. The government used the note proceeds for the purposes authorized.

For BAN issued during the audit period, determine if the fiscal officer filed a copy of the legislation with the county auditor(s) per Ohio Rev. Code 133.22(A) & (B). The legislation should specify:

- The purpose for which bonds will be used;
- The election results, if from a voted levy;
- The sources of repayment;
- For anticipatory securities:
  - The maximum amount to be outstanding;
  - The method of determining interest due;
  - The dates debt service is due;
  - The debt service due each payment date;
  - Provisions for early redemption or prepayment;
  - The provision of any levy needed to redeem the securities.

**Audit implications (adequacy of the system and controls, and the direct and material effects of Non-compliance, effects on the audit opinions and/or footnote disclosures, reportable conditions/material weaknesses, and management letter comments):**

**3-3 Compliance Requirement:** Ohio Rev. Code § 3375.404 - Additional borrowing authority for boards of library trustees.

**Summary of Requirements:** Ohio Rev. Code § 3375.404 allows a board of library trustees of a public library that receives an allocation of the library fund to anticipate its portion of the proceeds of the library fund distribution and issue library fund facilities notes to pay the costs of financing the facilities (or certain other property), or to refund any refunding obligations.

A library board may issue such notes only if it projects that the annual note service charges (including interest, repayment of principal, and redemption premiums) are capable of being paid from the library's annual Library and Local Government Support Fund (LLGSF) (also known as: "public library funds" pursuant to SB 185, 127<sup>th</sup> General Assembly, effective 6/20/2008) receipts.

The maximum annual debt service for these notes cannot exceed 30% of the average LLGSF funding (public library funds) the library received for the two years preceding the year the notes were issued.

The notes are payable from the LLGSF monies (public library funds) received by the library board issuing the notes, or from the proceeds of notes, refunding notes, or renewal anticipation notes which may be pledged for such payment in the authorizing resolution. The notes are payable solely from the funds pledged for their payment as authorized by Ohio Rev. Code § 3375.404 and all notes must contain on their face a statement to that effect.

The maximum maturity, in the case of any anticipation notes, cannot exceed 10 years from the date of issue of the *original* anticipation notes.

For *refunding* notes or any notes that are not anticipation notes, the maximum maturity cannot exceed 25 years from the date of the original issue of notes.

| In determining how the government ensures compliance, consider the following:  | What control procedures address the compliance requirement? | W/P Ref. |
|--|---|----------|
| <ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Bond Counsel/Lender Involvement</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul> |   |          |

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

By reading the minutes, inspecting bond ledgers or other documents, or by inquiry, determine if the library used this type of borrowing.

Calculate, or inspect the library's calculations, that the maximum annual note debt service charges does not exceed 30% of the average LLGSF funding (public library funds) for the two years preceding the year in which the notes are issued. (This step should only apply in the year notes were issued.)

Inspect the notes for the statement that the notes are payable solely from the funds pledged for their payment as authorized by Ohio Rev. Code §3375.404.

Inspect the notes for the maximum maturities of 10/25 years.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, reportable conditions/material weaknesses, and management letter comments):**

**3-4 Compliance Requirement:** 17 C.F.R. 240.15c2-12

**Summary of Requirement:** Underwriters contracting subsequent to July 3, 1995 to issue municipal securities (bonds, notes, or other secured debt instruments issued by any state or local government regardless of whether the government is a municipality) will be subject to the amended disclosure requirements of the Rule. The SEC has imposed certain requirements on underwriters (such as brokers and dealers) selling securities. The Rule prohibits underwriters from selling municipal securities unless they have performed due diligence procedures. Other requirements:

1. The underwriter must review and agree to provide a copy of the official statement to any requesting party ***when issuing / marketing securities***. (That is, this step only applies when securities are issued.) The official statement must include:
  - The terms of the proposed issue.
  - Financial and/or operating data from each person material to potential investors, including information from all obligated persons.
  - A description of the secondary market disclosure undertaking.
  - Disclosure of any past failures to make required disclosures within the past five years.
2. The issuer and/or obligated persons (i.e., entities directly or contingently responsible for repaying the securities) must agree in writing, to provide to all approved Nationally Recognized Municipal Security Information Repositories (NRMSIRs) and to the State Information Depository (SID): See the appendix immediately following this section for the name and addresses of the Repositories.
  - **Annual** financial information and operating data.
  - Timely material event notices.\* Underwriters must also establish procedures to assure they receive these notices.
  - Audited financial statements, when and if available.
  - Timely notice of failure to provide required financial information.

\* Material Events defined:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or events affecting the tax-exempt status of the security;
7. Modifications to rights of security holders;
8. Bond calls;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the securities;
11. Debt ratings changes<sup>6</sup>; and
12. Failure to provide required annual financial information on or before the date specified.

Exemptions: Certain municipal security issues are exempted from the Rule such as:

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<sup>6</sup> We have been informed that ratings downgrades to bond insurance companies constitute a material event, requiring disclosure. (A number of such downgrades occurred early in 2008.) Should your bond's insurer receive a downgraded rating, you should file a Material Event Notice with DisclosureUSA referencing the relevant transaction and rating downgrade.

- Security issues of less than \$1 million.
- Securities with maturities of 18 months or less.
- Securities sold in denominations of at least \$100,000, with maturities of no more than nine months.
- Securities sold to no more than 35 “sophisticated investors” with maturities of no more than nine months.
- Securities for which no obligated person is obligated for more than \$10 million in aggregate Municipal securities.

Note: See AOS Bulletin 95-018 for additional information regarding this requirement.

| In determining how the government ensures compliance, consider the following:  | What control procedures address the compliance requirement? | W/P Ref. |
|--|---|----------|
| <ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Bond Counsel/Lender Involvement</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul> |   |          |

#### Suggested Audit Procedures - Compliance (Substantive) Tests:

Scan copies of annual information submitted to the NRMSIRs and the State Information Depository (SID). Document that such information was:

(1) filed with the NRMSIR's/SID and

(2) whether the auditor noted any material errors or omissions to the information. (*We do not expect auditors to make time-consuming examinations of data. Instead, scan for obvious errors, such as omission of financial statements or footnotes, whether the contractually agreed basis of accounting was followed, whether information requiring audit includes an opinion, etc.*)

In conjunction with other procedures related to debt issued subsequent to July 3, 1995, document whether any material events (as defined in amended SEC Rule 15c2-12) came to the auditor's attention. Document whether such material events were promptly disclosed to NRMSIRs/SID.

Auditors should obtain written representations that management has transmitted all required information to NRMSIR's/SID and underwriters required by SEC Rule 15c2-12.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures,**

**reportable conditions/material weaknesses, and management letter comments):**

## NRMSIRs

**Note: DisclosureUSA.org now provides a single, no -cost filing location, in lieu of filing with all the NRMSIRs and the State Information Depository. That website includes a link to a letter from the SEC authorizing this website to receive 15c2-12 filing information. Issuers should discuss this with their bond counsel.<sup>78</sup>**

1. **Bloomberg Municipal Repository**  
100 Business Park Drive  
Skillman, NJ 08558  
Ph. (609) 279-3225  
Fax (609) 279-5962  
Website: <http://www.bloomberg.com/markets/rates.html>  
E-mail: [munis@bloomberg.com](mailto:munis@bloomberg.com)
2. **Standard & Poor's Securities Evaluations, Inc.**  
55 Water Street - 45th Floor  
New York, NY 10041  
Ph. (212) 438-4595  
Fax (212) 438-3975  
Website: [www.disclosuredirectory.standardandpoors.com/kalert/KAsupport.html](http://www.disclosuredirectory.standardandpoors.com/kalert/KAsupport.html)  
Email: [nrmsir\\_repository@standardandpoors.com](mailto:nrmsir_repository@standardandpoors.com)
3. **FT Interactive Data**  
Attn: NRMSIR  
100 William Street, 15th Floor  
New York, NY 10038  
Ph. (212) 771-6999 or 800-689-8466  
Fax (212) 771-7390 (Secondary Market Information)  
Website: <http://www.ftinteractive.com>  
E-mail: [NRMSIR@interactive.com](mailto:NRMSIR@interactive.com)
4. **DPC Data, Inc.**  
One Executive Drive  
Fort Lee, NJ 07024  
Ph. (201) 346-0701  
Fax (201) 947-0107  
Website: [http://www.munifilings.com/munifilings/page\\_nrmsir.jsp](http://www.munifilings.com/munifilings/page_nrmsir.jsp)  
E-mail: [nrmsir@dpcdata.com](mailto:nrmsir@dpcdata.com)

## State Information Depository

1. **Ohio Municipal Advisory Council**  
9321 Ravenna Road, Unit K  
Twinsburg, Ohio 44087-2445  
Ph. (800) 969-6622 or (330) 963-7444  
Fax (330) 963-7553  
Website: <http://www.ohiomac.com> or <http://www.ohiosid.com>  
E-mail: [sid\\_filings@ohiomac.com](mailto:sid_filings@ohiomac.com)

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<sup>7</sup> Although NRMSIRs and SIDS convert files to an Adobe®Acrobat® Portable Document Format (PDF) before releasing them to requesting parties, governments should submit their filings to DisclosureUSA in PDF to reduce the possibility of subsequent data corruption.

<sup>8</sup> On July 30, 2008, the Securities and Exchange Commission voted to propose changes to Rule 15c2-12, designating the Municipal Securities Rulemaking Board (MSRB) as the sole repository for ongoing disclosure information through MSRB's Electronic Municipal Market Access System (EMMA). If the proposal passes, NRMSIR and SID filing requirements will be eliminated. Continuing disclosures will be submitted electronically through EMMA, through password-protected accounts, in a word-searchable PDF format. Electronic submission would be either through a web-based interface or an electronic computer-to-computer connection. The issuer, obligated person, or designated agent could make the submission. Individuals wishing to follow the status of this proposal may refer to the Current Events on the SEC's webpage at: <http://ftp.sec.gov/info/municipal.shtml> for the latest available information.

**3-5 Compliance Requirement:** Ohio Rev. Code §505.401 – Bonds Fire District Trustees authorize.

**Summary of Requirements:** Pursuant to Ohio Rev. Code Chapter 133, Ohio Rev. Code §505.401 provides additional borrowing authority for the board of trustees for fire districts organized under Ohio Rev. Code §505.37(C). This section allows the fire district's board of trustees to issue bonds to acquire fire-fighting equipment, buildings and sites for the district or to construct or improve a building to house fire equipment.

| In determining how the government ensures compliance, consider the following:  | What control procedures address the compliance requirement? | W/P Ref. |
|--|---|----------|
| <ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Bond Counsel/Lender Involvement</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul> |   |          |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

By reading the minutes, inspecting bond ledgers or other documents, or by inquiry, determine if the fire district used this type of borrowing.

If so,

- trace the bond issuance to the budget;
- inspect the resolution authorizing the bond issuance;
- determine whether the issuance is in accordance with Ohio Rev. Code Chapter 133 requirements; and
- determine whether the proceeds were used to acquire fire-fighting equipment, buildings or sites for the district or for the purpose of constructing or improving a building to house fire equipment.

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, reportable conditions/material weaknesses, and management letter comments):**

**3-6 Compliance Requirement:** Ohio Rev. Code §133.29 Governments investing in their own securities.

Important Note: Entities must have the legal authority to **both buy and sell** the debt. Ohio Rev. Code §133.29 authorizes entities to invest in their own securities; however, there must be a separate, specific authority to issue the debt before the Bond Retirement or other authorized Fund may purchase it.

**Summary of Requirement:**

Before a taxing authority sells any securities of the subdivision to others, the taxing authority may offer the securities at their purchase price and accrued interest to the officer or officers who have charge of the bond retirement fund of the subdivision, or in the case of a municipal corporation, to the treasury investment board for investment under §731.56 of the Ohio Rev. Code, or an officer or similar treasury investment board having the authority under a charter. (Ohio Rev. Code §133.29(A)).

This type of debt is often referred to as “manuscript debt”. Governments purchasing their own anticipatory securities should record them as “investments” on their accounting records. These investments are a form of interfund borrowing. Manuscript debt can be outstanding indefinitely as long as the principal on the debt is being retired every five years.

Any securities sold under this section shall bear interest at a rate(s) that is a fair market rate(s) for such securities at the time of the sale, and a certificate of the fiscal officer that the interest rate(s) borne by the securities is the fair market rate(s) binding and conclusive as to the statements set forth. (Ohio Rev. Code §133.29(B)).

**Accounting for Manuscript Debt**

Record proceeds from the sale of notes in the borrowing fund (often the general fund). Then record the amount received from the Bond Retirement Fund, or other authorized fund in the case of municipal corporations, as an investment on the investment record. Do not decrease the Bond Retirement or other authorized fund’s balance. When preparing the bank reconciliation, the maturity amount of the investment will be shown as a reconciling item.

The county auditor, having been properly notified of the debt service requirements, should allocate the tax settlement among the proper funds. The amount payable to the Bond Retirement or other authorized fund is the amount necessary to repay the principal plus interest on the outstanding note. Debt service payments, plus interest, should be recorded in the Bond Retirement or other authorized fund.

Note: Governments reporting under GAAP should record an interfund asset and offsetting interfund liability in the fund statements on both modified and full accrual bases. If the borrowing is between a governmental activity and a business type activity, the entity wide statements should also report this as an internal balance (GASB Cod. 1300.120 and 1800.102(a)). Cash or OCBOA governments should disclose the fund liabilities, including interest rates and repayment schedules, in their notes.

| In determining how the government ensures compliance, consider the following:       | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|----------|
| <ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> </ul> |   |          |

|   |  |  |
|---|--|--|
| <ul style="list-style-type: none"> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Bond Counsel/Lender Involvement</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul> |  |  |
|---|--|--|

Determine whether the entity issued manuscript debt during the audit period or has any manuscript debt outstanding as of fiscal year end.

If so, review the governing body's resolution approving the issuance and determine the legal authority under which such debt/investment was issued. If applicable, we may rely on an opinion from bond counsel to verify the entity's legal authority for issuing such debt. A copy of the resolution and bond counsel opinion should be placed in the permanent file.

Determine the issuance date of the debt/investment and review the entity's debt/investment schedules to determine whether the principal has been retired at least every five years.

Review the entity's debt/investment schedules and determine whether the entity has charged interest at the proper rate and amount in the Bond Retirement or other authorized fund.

**For all entities other than municipal corporations**, determine whether the amount of manuscript debt issued was limited to the available resources in the bond retirement fund.

**For municipal corporations**, determine whether the amount of manuscript debt issued was limited to the available resources in the general treasury or other authorized fund.

Scan the entity's debt schedules, investment records, and monthly bank reconciliations to determine whether the entity has properly accounted for all manuscript debt transactions (i.e., note proceeds, property tax and interest receipt allocations, debt service payments on principal and interest, and outstanding debt and investment amounts).

**Audit implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, reportable conditions/material weaknesses, and management letter comments):**

## Section B: Community Schools

**3-7 Compliance Requirement:** Ohio Rev. Code §3314.08(J) Foundation anticipation notes.

**Summary of Requirement:** A community school may borrow money to pay any necessary and actual expenses in anticipation of State Foundation receipts. The school may issue notes to evidence such borrowing. The proceeds of the notes shall be used only for the purposes for which the school may lawfully expend the anticipated foundation receipts. [Ohio Rev. Code Ohio Rev. Code § 3314.08(J)(1)(a)]

A community school cannot issue debt secured by taxes. [3314.08(H)]

A school may also borrow money for a term not to exceed fifteen years to acquire facilities. [Ohio Rev. Code Ohio Rev. Code §3314.08(J)(1)(b)]

| <b>In determining how the government ensures compliance, consider the following:</b>   | <b>What control procedures address the compliance requirement?</b> | <b>W/P Ref.</b> |
|--|--|-----------------|
| <ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Bond Counsel/Lender Involvement</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul> |  |                 |

### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

By reading the minutes, inspecting receipts journals, or by inquiry determine whether or not the School issued any type of debt.

Examine disbursements made of the proceeds to determine that they were used only for the purposes described in the debt agreement.

Determine that moneys borrowed to acquire facilities are for a term of fifteen years or less, and were not collateralized by taxes.

**Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, reportable conditions/material weaknesses, and management letter comments):**

**3-8 Compliance Requirement:** Ohio Rev. Code §3318.50(B) School classroom facilities loan guarantee program; Ohio Rev. Code §3318.52 Establishment of community school loan guarantee fund.

**Summary of Requirement:** All community schools may participate in the community school classroom facilities loan guarantee program.

The Ohio school facilities commission may guarantee for up to fifteen years, up to eighty-five percent of the sum of the principal and interest on a loan made to the governing authority of a community school established under Ohio Rev. Code Chapter 3314 for the sole purpose of assisting the governing authority in acquiring, improving or replacing classroom facilities<sup>9</sup> for the community school by lease, purchase, remodeling of existing facilities, or by any other means including new construction.

Per Ohio Rev. Code Ohio Rev. Code §3318.50, the commission shall not guarantee any loan under this section unless the loan is obtained from a financial institution regulated by the United States or this state.

| In determining how the government ensures compliance, consider the following:  | What control procedures address the compliance requirement? | W/P Ref. |
|--|---|----------|
| <ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• Bond Counsel/Lender Involvement</li> <li>• Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul> |   |          |

#### **Suggested Audit Procedures - Compliance (Substantive) Tests:**

By reading the minutes, inspecting records, or by inquiry determine whether or not the school participates in the community school classroom facilities loan guarantee program.

Determine that loan proceeds were used only to acquire, improve or replacing classroom facilities for the community school by lease, purchase, remodeling of existing facilities, or by any other means including new construction.

Note: While not a compliance test, assure the debt footnotes describe the guarantee properly.

**Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures,**

<sup>9</sup> Per 3318.50(A), classroom facilities means buildings, land, grounds, equipment, and furnishings a community school uses to fulfill its mission.

**reportable conditions/material weaknesses, and management letter comments):**

**3-9 Compliance Requirement:** Ohio Rev. Code §3314.30 ODE loans to community schools.

**Summary of Requirements:**

- 1.ODE must use Federal money to fund these loans [3314.30(B)].
- 2.The school must use the proceeds for any purpose described in the school's contract <sup>10</sup> with its sponsor (i.e., for any purpose consistent with the school's mission) [3314.30(C)].
- 3.A school can obtain more than one loan, but cannot have more than \$250,000 of loans from ODE outstanding at any time [3314.30(C)].
- 4.The loans must bear interest at the rate STAR Ohio is paying [3314.30(F)].
- 5.Each loan cannot be outstanding longer than 5 years [3314.30(G)].
- 6.ODE deducts debt service principal and interest from subsequent foundation payments[3314.30(G)].

| In determining how the government ensures compliance, consider the following:   | What control procedures address the compliance requirement? | W/P Ref. |
|---|---|----------|
| <ul style="list-style-type: none"> <li>• Policies and Procedures Manuals</li> <li>• Knowledge and Training of personnel</li> <li>• Tickler Files/Checklists</li> <li>• ODE Involvement</li> <li>• Sponsor, Legislative and Management Monitoring</li> <li>• Management's identification of changes in laws and regulations</li> <li>• Management's communication of changes in laws and regulations to employees</li> </ul> |   |          |

**Suggested Audit Procedures - Compliance (Substantive) Tests:**

By reading the minutes, inspecting records, inquiry, reading the prior audited statements and by scanning the accounting records, determine whether the school received this loan(s) from ODE.

Since ODE lends Federal money, assure the School includes this loan in its Federal Awards Schedule or in notes to the schedule. See the AICPA's Audit Guide, *Government Auditing Standards and Circular A-133 Audits*. 7.11 --- 7.12.

The school can use the proceeds for any purpose related to its mission. Therefore, any expenditure for a "proper public purpose" should be allowable.

Note: While not a compliance requirement, if material, assure the financial statements include the proceeds and repayment of the debt, and discloses the debt amortization, etc., and that the school will repay ODE via direct deductions from foundation receipts.

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<sup>10</sup> Ohio Rev. Code 3413.03 lists lengthy requirements the contract must address. Auditors can presume ODE reviewed the contract for compliance with 3413.03 requirements as part of their loan approval process.

**Audit Implications (adequacy of the system and controls, and the direct and material effects of non-compliance, effects on the audit opinions and/or footnote disclosures, reportable conditions/material weaknesses, and management letter comments):**

| <b>Step 3-2 Appendix</b><br><b>Tax and Revenue Anticipation Notes</b>   |  |   |                                     |
|---|--|---|-------------------------------------|
| <b>Ohio Rev. Code §<br/>and Entities to<br/>which it applies</b>  | <b>Purpose</b>                                     | <b>Reference to<br/>ORC §133.10</b>   | <b>Reference to<br/>ORC §133.24</b> |
| §118.17. Issuance of local government fund notes<br><br>Municipal corporation, county, or township (during fiscal emergency periods)              | Current operating expenses the commission approves | <p>§118.17(C)(3) states in part “Current revenue notes” means debt obligations described in <b>133.10</b> or Chapter 5705. of the Ohio Rev. Code or any other debt obligations issued to obtain funds for current operating expenses.”</p>  | No                                  |
| §118.23. Current revenue notes issued during fiscal emergency<br><br>Municipal corporation, county, or township (during fiscal emergency periods) | Current operating expenses the commission approves | <p>§118.23(A) states “This section shall be applicable to current revenue notes approved by the financial planning and supervision commission or, when authorized by the commission, the financial supervisor pursuant to §118.15 of the Ohio Rev. Code and issued by a municipal corporation, county, or township pursuant to <b>§133.10 of the Ohio Rev. Code</b> and this section during a fiscal emergency period.”</p> <p>§118.23(G) states “ Current revenue notes of a municipal corporation, county, or township issued during a fiscal emergency period may mature on or before the thirty-first day of December of the calendar year in which issued, may, when issued in anticipation of the collection of current tax revenues, anticipate one-half of the amount that the budget commission estimates the subdivision will receive from all property taxes that are to be distributed to the subdivision from all settlements of taxes that are to be made in the remainder of that year, other than taxes to be received for the payment of debt charges, and less all advances, and may, if issued during the last two months of the calendar year in which the fiscal emergency period commenced, anticipate one-half the estimated amount of ad valorem property taxes levied in that year for the tax budget of the following year which were authorized to be levied by the municipal charter or otherwise authorized by vote of the</p> | No                                  |

| <h2 style="text-align: center;">Step 3-2 Appendix</h2> <h3 style="text-align: center;">Tax and Revenue Anticipation Notes</h3>   |   |   |                                 |
|--|---|---|---------------------------------|
| <b>Ohio Rev. Code § and Entities to which it applies</b>   | <b>Purpose</b>  | <b>Reference to ORC §133.10</b>   | <b>Reference to ORC §133.24</b> |
|  |   | <p>electorate of the municipal corporation, county, or township and may mature not later than the thirty-first day of December of the year following the year in which such notes are issued, notwithstanding (i.e. <b>in spite of</b> section 133.10 of the Ohio Rev. Code.)</p>   |                                 |
| <p>§118.24. Advance tax payment notes</p> <p>Municipal corporation, county, or township <b>(during fiscal emergency periods)</b></p> <p>Note: <i>Advance tax payment notes</i> are not common, but involve a taxpayer prepaying taxes. In return, the government issues a note to the taxpayer. The face amount of the note = the tax prepayment + interest the government credits to the taxpayer over the life of the note. Therefore, these are discount notes. The taxpayer receives credit for the prepayment + accrued interest upon redemption.</p> | <p>For purposes the commission approves per §118.15</p> | <p>§118.24(H) states, “As used in this section <i>interest factor</i> means the amount calculated based on an interest rate, as determined by the fiscal officer as of the date of such note, that would have been paid by the municipal corporation, county, or township on current tax revenue notes, maturing in six months, issued on that date <b>pursuant to §133.10 of the Ohio Rev. Code.</b> The face amount of the note less the amount of the advance tax payment made in the purchase of such note, shall be and shall be deemed to be interest paid and received on such note.”</p> <p>§118.24(I) states “The aggregate principal amount of advance tax payment notes, together with the aggregate principal amount of any current revenue notes issued <b>under §133.10 of the Ohio Rev. Code</b> in anticipation of ad valorem property taxes for the same year that are outstanding at the time of issuance, shall not exceed one-half of the amount that the budget commission estimates the municipal corporation, county, or township will receive from all property taxes that are to be distributed to the municipality from all settlements of taxes that are to be made in the remainder of that year, after subtracting from such amount advances thereon and property taxes to be received for the payment of debt service on debt obligations or to be deposited with a fiscal agent as provided in §118.20 of the Ohio Rev. Code.”</p> | <p>No</p>                       |

| <h3 style="text-align: center;">Step 3-2 Appendix</h3> <h4 style="text-align: center;">Tax and Revenue Anticipation Notes</h4> |  |  |   |
|--|--|--|---|
| <b>Ohio Rev. Code § and Entities to which it applies</b>   | <b>Purpose</b>   | <b>Reference to ORC §133.10</b>  | <b>Reference to ORC §133.24</b>   |
| §306.49. Annual tax levy; purpose<br>Regional Transit Authority  | Current expenses (\$133.10) or Permanent improvements (\$133.24)   | §306.49(A) States in part: The regional transit authority may borrow money in anticipation of the collection of current revenues as provided in <b>§133.10 of the Ohio Rev. Code.</b>  | §306.49(A) <i>also</i> states in part “. . . the regional transit authority may levy upon the property within its territorial boundaries a tax, for all purposes other than bond debt charges, not in excess of five mills annually on the total value of all property as listed and assessed for taxation for any period <u>not exceeding ten years</u> . Such election shall be called, held, canvassed, and certified in the same manner as is provided for elections held pursuant to <b>§5705.191 (refers to ORC §133.24. See separate description for §5705.191 below.)</b> of the Ohio Rev. Code. On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds thereof, in the amount and manner and at the times as are provided in <b>§5705.193 (this section refers to §133.24 and is for permanent improvements)</b> of the Ohio Rev. Code. |
| §1545.21. Election of tax levy for use of district; anticipation bonds<br>Park District  | Acquiring and improving land   | No   | §1545.21(B) states in part “When a tax levy has been authorized as provided in this section or in §1545.041 of the Ohio Rev. Code, the board of park commissioners may <b>issue bonds<sup>11</sup> pursuant to §133.24 of the Ohio Rev. Code</b> in anticipation of the collection of such levy, provided that such bonds shall be issued only for the purpose of acquiring and improving lands.”   |
| §3313.483. Closing or delaying opening for financial reasons prohibited; plan for implementing reductions; loans agreement     | Permits obtaining various types of debt, <u>including</u> “§133.10 notes,” up to the amount of the deficit the | §3313.483(E)(4) states “Pursuant to the terms of such a loan, a board of education may issue its notes in anticipation of the collection of its voted levies for current expenses or its receipt of such state funds or both. Such | No  |

<sup>11</sup> Ohio Rev. Code § 1545.21(B) mentions a bond issuance per Ohio Rev. Code § 133.24. However, § 133.24 only refers to notes. We will not object to the legal form of the debt if the government follows the advice of their legal or bond counsel.

| <h3 style="text-align: center;">Step 3-2 Appendix</h3> <h3 style="text-align: center;">Tax and Revenue Anticipation Notes</h3> |  |   |   |
|--|--|---|---|
| <b>Ohio Rev. Code § and Entities to which it applies</b>   | <b>Purpose</b>   | <b>Reference to ORC §133.10</b>   | <b>Reference to ORC §133.24</b>   |
| School District  | AOS certifies.   | notes shall be issued in accordance with <b>division (E) of §133.10 of the Ohio Rev. Code</b> and constitute Chapter 133 securities to the extent such division and the otherwise applicable provisions of Chapter 133. of the Ohio Rev. Code are not inconsistent with this section, provided that in any event <b>§133.24 and §5705.21 and divisions (A), (B), (C), and (E)(2) of §133.10 of the Ohio Rev. Code do not apply</b> to these notes.” |   |
| §3318.052. Payment of district's portion of basic project cost from available tax proceeds; credits; issuance of securities    | Permanent improvement levy for a stated number of years, per §5705.218   | No  | §3318.052 (E) states in part “Issue securities to provide moneys to pay all or part of the district's portion of the basic project cost of its classroom facilities project in accordance with an agreement entered into under division (A) of this section. Securities issued under this section shall be Chapter 133. securities and may be issued as general obligation securities or issued in anticipation of a school district income tax or as property tax anticipation notes under <b>§133.24 of the Ohio Rev. Code.</b> ” |
| §3381.16. Tax levy upon affirmative vote; authorized uses of funds; anticipation notes and borrowing; resubmission of levy     | To grant money to other arts and cultural organizations, or for the District's operating or capital asset costs. | §3381.16(A) states in part: The district may borrow money in anticipation of current revenues as provided in <b>§133.10 of the Ohio Rev. Code.</b> ”  | §3381.16(A) <i>also</i> states in part “On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds thereof, in the amount and manner and at the times as are provided in §5705.193 ( <b>this section refers to §133.24 and is for permanent improvements</b> ) of the Ohio Rev. Code, for the issuance of notes by a county in anticipation of the proceeds of a tax levy.   |
| §4582.14. Tax levy; anticipatory notes   | Any allowable port authority expense including debt charges.   | §4582.14 states in part, “The port authority may borrow money anticipating current revenues as provided in <b>§133.10 of the Ohio Rev. Code.</b> ”  | §4582.14 <i>also</i> states in part “... the port authority may levy upon the property within its jurisdiction a tax, for all purposes including bond debt charges, not in excess of one mill annually on the total value of all property as listed and assessed  |

| <h3 style="text-align: center;">Step 3-2 Appendix</h3> <h4 style="text-align: center;">Tax and Revenue Anticipation Notes</h4>                 |   |   |   |
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| <b>Ohio Rev. Code § and Entities to which it applies</b>   | <b>Purpose</b>  | <b>Reference to ORC §133.10</b>   | <b>Reference to ORC §133.24</b>   |
|  |   |   | for taxation for any period <u>not exceeding five years, except that when the tax is for the payment of bond debt charges, such tax shall be for the life of the bond indebtedness</u> . On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds thereof, other than the proceeds to be received for the payment of bond debt charges, in the amount and manner and at the times as are provided in §5705.193 of the Ohio Rev. Code ( <b>this section refers to 133.24 and is for permanent improvements</b> ), for the issuance of notes by a county in anticipation of the proceeds of a tax levy.  |
| §4582.40. Tax levy to provide necessary funds<br><br>Newly created port authorities  | Any allowable port authority expense including debt charges.  | §4582.40 states in part “... The port authority may borrow money in anticipation of the collection of current revenues as provided in <b>§133.10 of the Ohio Rev. Code.</b> ” | §4582.40 <u>also</u> states in part “... the port authority may levy upon the property within its jurisdiction a tax, for all purposes including bond debt charges, not in excess of one mill annually on the total value of all property as listed and assessed for taxation for any period <u>not exceeding five years, except that when the tax is to pay bond debt charges, the tax shall be for the life of the bond indebtedness</u> . On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds of the tax levy, other than the proceeds to be received for the payment of bond debt charges, in the amount and manner and at the times as are provided in §5705.193] ( <b>this section refers to 133.24 and is for permanent improvements</b> ) of the Ohio Rev. Code, for the issuance of notes by a county in anticipation of the proceeds of a tax levy. |
| §5705.191. Approval of excess levy; issuing notes<br><br>Any subdivision, other than the board of education of a school district or the taxing | If it is necessary to levy a tax in excess of the 10 mill limit for any of the purposes in ORC 5705.19, | No  | §5705.191 states in part: “The notes shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b> , shall have principal payments during each year after the year of their issuance <u>over a period not exceeding the life of</u>   |

| <b>Step 3-2 Appendix</b><br><b>Tax and Revenue Anticipation Notes</b> |  |                                     |  |
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| <b>Ohio Rev. Code §<br/>and Entities to<br/>which it applies</b>      | <b>Purpose</b>   | <b>Reference to<br/>ORC §133.10</b> | <b>Reference to<br/>ORC §133.24</b>  |
| authority of a county school financing district                       | or to supplement the general fund for one or more of the following purposes: public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary, or special election to be held at a time therein specified. |                                     | <p><u>the levy</u> anticipated, and may have a principal payment in the year of their issuance."</p> <p>An entity can also levy for operating expenses. The <u>levy amounts</u> <u>notes</u> cannot exceed 50% of the proceeds of the levy. Notes issued for operations can mature over the life of a fixed-term levy. For an unlimited life levy, these notes must mature within 10 years.</p>  |
| §5705.193.<br>County  | Permanent Improvement  | No                                  | <p>§5705.193 states in part "Such notes shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b>, shall have <u>principal payments during each remaining year of the life of the levy</u> after the year of their issuance, and may have a principal payment in the year of their issuance."</p>  |
| §5705.194<br>School District  | Emergency levy   | No                                  | <p>§5705.194 states in part "After the approval of the levy and prior to the time when the first tax collection from the levy can be made, the board of education may <u>anticipate a fraction of the proceeds</u> of the levy and issue anticipation notes in an amount not exceeding the total estimated proceeds of the levy to be collected during the first year of the levy.</p> <p>The notes shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b>, <u>shall have principal payments during each year after the year of their issuance over a</u></p> |

| <b>Step 3-2 Appendix</b><br><b>Tax and Revenue Anticipation Notes</b>       |  |                                     |   |
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| <b>Ohio Rev. Code §<br/>and Entities to<br/>which it applies</b>            | <b>Purpose</b>                                 | <b>Reference to<br/>ORC §133.10</b> | <b>Reference to<br/>ORC §133.24</b>   |
|   |  |                                     | <u>period not to exceed five years</u> , and may have principal payment in the year of their issuance.”   |
| §5705.198. Levy by joint recreation district                                | Parks and recreational purposes per 5705.19(H) | No                                  | §5705.198 (limited to a fraction of the proceeds of that levy) “ <b>such notes shall be issued as provided in §133.24 of the Ohio Rev. Code.</b> ” These notes must mature by December 31 of the 5th year after the levy’s passage.   |
| §5705.21. Special election on additional school levy<br><br>School District | Permanent improvements                         | No                                  | <p>§5705.21(C)(2) states” After the approval of a levy for general permanent improvements for <b>a specified number of years</b>, or for permanent improvements having the purpose specified in division (F) of §5705.19 of the Ohio Rev. Code, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy remaining to be collected in <u>each year over a period of five years after the issuance of the notes</u>.</p> <p>The notes shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b>, shall have principal payments during each year after the year of their issuance over a period <u>not to exceed five years</u>, and may have a principal payment in the year of their issuance.”</p> <p>§5705.21(C)(3) states “After approval of a levy for general permanent improvements for <b>a continuing period of time [i.e. an unlimited life levy]</b>, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected in each year over a specified period of years, not</p> |

| <b>Step 3-2 Appendix</b><br><b>Tax and Revenue Anticipation Notes</b>  |  |                                     |   |
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| <b>Ohio Rev. Code §<br/>and Entities to<br/>which it applies</b>   | <b>Purpose</b>   | <b>Reference to<br/>ORC §133.10</b> | <b>Reference to<br/>ORC §133.24</b>   |
|  |  |                                     | <p><u>exceeding ten</u>, after the issuance of the notes.</p> <p>The notes shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b>, shall have principal payments during each year after the year of their issuance over a <u>period not to exceed ten years</u>, and may have a principal payment in the year of their issuance.”</p>  |
| §5705.217. Special elections on additional tax for school district purposes; anticipation notes<br><br>School District | Current operating expenses and permanent improvements                  | No                                  | <p>§5705.217(B)(3) provides that “after approval of a levy for general permanent improvements for a continuing period of time, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected in each <u>year over a specified period of years</u>, not <u>exceeding ten</u>, after the issuance of the notes.</p> <p>The notes shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b>, shall have <u>principal payments during each year after the year of their issuance over a period not to exceed ten years</u>, and may have a principal payment in the year of their issuance.”</p> |
| §5705.218. Special elections on school district bond issues and tax levies; anticipation notes<br><br>School Districts | Bonds or BAN for permanent improvements and current operating expenses | No                                  | <p>§5705.218(F)(3) states “After the approval of a tax for general, ongoing permanent improvements under this section, the board of education may anticipate a fraction of the proceeds of such tax and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the tax to be collected in <u>each year over a specified period of years</u>, not <u>exceeding ten</u>, after issuance of the notes.</p>   |

| <b>Step 3-2 Appendix</b><br><b>Tax and Revenue Anticipation Notes</b>   |   |                                     |   |
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| <b>Ohio Rev. Code §<br/>and Entities to<br/>which it applies</b>  | <b>Purpose</b>  | <b>Reference to<br/>ORC §133.10</b> | <b>Reference to<br/>ORC §133.24</b>   |
|   |   |                                     | <p>Anticipation notes under this section shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b>. Notes issued under division (F)(1) (for current operating expenses) mature within the next fiscal year. BAN issued under (F)(2) (specific permanent improvements) shall have principal payments during each year after the year of their issuance <u>over a period not to exceed five years</u>, and may have a principal payment in the year of their issuance. Notes issued under division (F)(3) (ongoing permanent improvements) shall have <u>principal payments during each year after the year of their issuance over a period not to exceed ten years</u>, and may have a principal payment in the year of their issuance.”</p>   |
| <p>§5705.23. Resolution for special levy for public library; submission to electors</p> <p>Public Library</p> | <p>Current expenses or for constructing specific permanent improvements</p> | <p>No</p>                           | <p>Yes - §5705.23 states in part “After the approval of a levy on the current tax list and duplicate to provide an increase in current expenses, and prior to the time when the first tax collection from such levy can be made, the taxing authority at the request of the board of library trustees may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the <u>total estimated proceeds of the levy to be collected during the first year of the levy</u>.</p> <p>After the approval of a levy to provide revenues for <u>the construction or acquisition of any specific permanent improvement or class of improvements</u>, the taxing authority at the request of the board of library trustees may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated</p> |

| <b>Step 3-2 Appendix</b><br><b>Tax and Revenue Anticipation Notes</b> |  |                                     |  |
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| <b>Ohio Rev. Code §<br/>and Entities to<br/>which it applies</b>      | <b>Purpose</b>   | <b>Reference to<br/>ORC §133.10</b> | <b>Reference to<br/>ORC §133.24</b>  |
|   |  |                                     | <p>proceeds of the levy to be collected in each year over <u>period of ten years</u> after the issuance of such notes.</p> <p>The notes shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b>, shall have principal payments during each year after the year of their issuance over a <u>period not to exceed ten years</u>, and may have a principal payment in the year of their issuance.”</p>  |
| §5705.24. County tax levy for children services<br>County             | Operating or capital improvement expenditure necessary for the support of children services and the care and placement of children | No                                  | <p>§5705.24 states in part “After the approval of such levy and prior to the time when the first tax collection from such levy can be made, the board of county commissioners may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not to exceed fifty per cent of the total estimated proceeds of the levy throughout its life.</p> <p>Such notes shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b>, shall have principal payments during each year after the year of their issuance <u>over a period not exceeding the life of the levy</u>, and may have a principal payment in the year of their issuance.”</p> |
| §5748.05. Income tax anticipation notes<br>School District            | Current operating expenses or permanent improvements   | No                                  | <p>§5748.05 states in part “a board of education may anticipate a fraction of the proceeds of the tax and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the tax <u>to be collected for its first year</u> of collection as estimated by the tax commissioner. The anticipation notes are Chapter 133. securities and shall be issued as provided in <b>§133.24 of the Ohio Rev. Code as if property tax anticipation notes</b>.”</p>   |
| §5748.08. Election on income tax and bond issue as one ballot         | Permanent improvement bonds or BAN   | No                                  | §5748.08(G) states “After approval of a question under this section, the board of education  |

| <b>Step 3-2 Appendix</b><br><b>Tax and Revenue Anticipation Notes</b> |                |                                     |  |
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| <b>Ohio Rev. Code §<br/>and Entities to<br/>which it applies</b>      | <b>Purpose</b> | <b>Reference to<br/>ORC §133.10</b> | <b>Reference to<br/>ORC §133.24</b>  |
| question<br>School District   |                |                                     | may anticipate a fraction of the proceeds of the school district income tax in accordance with §5748.05 of the Ohio Rev. Code. Any anticipation notes under this division shall be issued as provided in <b>§133.24 of the Ohio Rev. Code</b> , shall have principal payments during each year after the year of their issuance over a <u>period not to exceed five years</u> , and may have a principal payment in the year of their issuance.” |