**TOWN**

**PUBLIC INDEBTEDNESS**

**LEGAL COMPLIANCE AUDIT GUIDE**

**PUBLIC INDEBTEDNESS**

Introduction

The power of a Town to incur indebtedness is governed by statutory provisions. Each type of borrowing instrument may be governed by different statutes. Therefore, it is essential that the auditor examine the specific statutes that are applicable to the particular borrowing transaction.

This questionnaire is intended only to highlight certain general provisions of the Minnesota statutes relating to indebtedness and is not intended to cover all questions that may be pertinent.

Which of the following types of borrowing has the Town been involved with during the past year? Please check all forms of borrowing that have either been issued or redeemed during the past year or which are currently outstanding at year‑end.

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|  | **During the Year** | |
| **LONG-TERM BORROWING:** | **Issued** | **Outstanding** |
| General Obligation Bonds (Minn. Stat. ch. 475) |  |  |
| Revenue Bonds (Minn. Stat. ch. 475) |  |  |
| General Obligation Revenue Bonds (Minn. Stat. ch. 475) |  |  |

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|  | **During the Year** | |
| **SHORT-TERM BORROWING:** | **Issued** | **Outstanding** |
| Orders Not Paid for Want of Funds (Minn. Stat. § 367.19) |  |  |
| Loans Funded or Secured Under United States Agriculture Department Programs  (Minn. Stat. § 465.73) |  |  |
| Temporary Improvement Bonds (Minn. Stat. § 429.091, subd. 5) |  |  |
| Emergency Certificates of Indebtedness (Minn. Stat. § 475.754) |  |  |
| Certificates of Indebtedness (Minn. Stat. § 366.095) |  |  |
| Reverse Repurchase Agreements/Securities Lending Agreements (Minn. Stat.  § 118A.05) |  |  |
| Conditional Sales Contract/Contract for Deed (Minn. Stat. § 365.025) |  |  |
| Lease Purchase Agreements (Minn. Stat. § 465.71) |  |  |
| Emergency Debt Certificates (Minn. Stat. § 475.755) |  |  |

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| Part I. Answer the following questions with respect to all types of **indebtedness that were issued during this fiscal year:** | | | | | | | | | | |
| § 475.51, et. seq. | A. | Was Town/Board approval obtained for new debt issued during this fiscal year? | | | | |  | |  |  |
| § 475.58, subd. 2 | B. | For debt funding or refunding obligations issued under Minn. Stat. § 475.58, subd. 2: | | | | |  | |  |  |
|  |  | 1. | | Did the entity’s outstanding gross debt exceed 1.62% of its estimated market value? | | |  | |  |  |
|  |  | 2. | | Was a listing of the indebtedness to be funded or refunded prepared by the treasurer and recording officer and filed in the office of the recording officer? | | |  | |  |  |
| § 475.58  subd. 2 |  | 3. | | Was the resolution, stating the amount of bonds to be issued and referring to the listing of indebtedness to be funded or refunded, published in the legal newspaper once each week for two successive weeks? | | |  | |  |  |
|  |  | Note: Refunding obligations may be authorized by Minn. Stat. § 475.67 for which the notice required here is not applicable. | | | | |  | |  |  |
|  | C. | Considering the issuance of the obligations, will the net debt (as defined in Minn. Stat. § 475.51, subd. 4) of the municipality not exceed the net debt limit as is applicable below: | | | | |  | |  |  |
| § 475.53,  subd. 1 |  |  | | For all towns, does the net debt not exceed three percent of the estimated market value of taxable property in the municipality? | | |  | |  |  |
| § 475.58,  subd. 1 | D. | Was the request to issue the obligations submitted for approval at an election? | | | | |  | |  |  |
| § 475.58,  subd. 4 |  | 1. | | If so, were the proceeds only spent: | | |  |  | |  |
|  |  |  | | a. | | (1) for the purposes stated in the ballot language; or (2) to pay, redeem, or defease obligations and interest, penalties, premiums, and costs of issuance of the obligations; and |  |  | |  |
|  |  |  | | b. | | were none of the proceeds spent for a different purpose or for an expansion of the original purpose without approval by a majority of the electors voting on the question of changing or expanding the purpose of the obligations? |  |  | |  |
| § 475.58,  subd. 1 |  | 2. | If not, was this issuance exempt from approval by the electors for one of the following reasons: | | | |  |  | |  |
|  |  |  | It represented an obligation characterized as: | | | |  |  | |  |
|  |  |  | a. | | any unpaid judgment against the municipality; | |  |  | |  |
|  |  |  | b. | | refunding obligations; | |  |  | |  |

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|  |  | |  | c. | an improvement or improvement program, the obligation for which is payable wholly or partly from the proceeds of special assessments levied upon property specially benefited by the improvement or by an improvement within the improvement program or from tax increments, including obligations which are the general obligations of the municipality, if the municipality is entitled to reimbursement in whole or in part from the proceeds of such special assessments or tax increments and not less than 20 percent of the cost of the improvement or the improvement program is to be assessed against benefited property or is to be paid from the proceeds of federal grant funds or a combination thereof, or is estimated to be received from tax increments. | |  |  |  |
|  |  | |  | d. | an obligation which is payable wholly from the income of revenue producing conveniences; | |  |  |  |
|  |  | |  | e. | an obligation exempt from electoral approval by the terms of the home rule charter; | |  |  |  |
|  |  | |  | f. | exempt under the provisions of a law which permits the issuance of obligations of a municipality without an election; | |  |  |  |
|  |  | |  | g. | an obligation to fund pension or retirement fund liabilities of a municipality pursuant to Minn. Stat. § 475.52, subd. 6; | |  |  |  |
|  |  | |  | h. | issued under Minn. Stat. §§ 469.1813 to 469.1815 (property tax abatement authority bonds), if the bonds are not used for a purpose prohibited under § 469.176, subd. 4g, para. (b); | |  |  |  |
| § 475.58,  subd. 1(10) |  | |  | i. | issued to fund postemployment benefit liabilities pursuant to Minn. Stat. § 475.52, subd. 6, of a municipality, other than a school district, and were the liabilities limited to: | |  |  |  |
|  |  |  | |  | (1) | satisfying the requirements of Minn. Stat. § 471.61, subd. 2b (insurance continuation); and |  |  |  |
|  |  |  | |  | (2) | other postemployment benefits, which the municipality no longer provides to employees hired after a date before the obligations are issued? |  |  |  |
| § 475.755 |  | |  | j. | issued under Minn. Stat. § 475.755 (emergency debt certificates)? | |  |  |  |
| § 475.58,  subd. 3a |  | |  | k. | issued to refund existing debt of an indoor ice arena that is used predominantly for youth athletic activity as provided in Minn. Stat. § 475.58, subd. 3a; | |  |  |  |
| § 475.58,  subd. 3b |  |  | | l. | issued for street reconstruction and bituminous overlays, and were the conditions of Minn. Stat. § 475.58, subd. 3b met? | |  |  |  |
| § 475.58,  subd. 1a | E. | If the issuance of obligations for the same purpose and in the same amount has previously been proposed to the electors and voted down, did this election take place at least 180 days after the first election? | | | | |  |  |  |
|  | F. | If this is the third request for the same purpose and in the same amount, did this election take place at least one year after the second election? | | | | |  |  |  |

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| § 475.60,  subds. 2 & 3 | G. | Was the sale of these obligations in accordance with the public notice and public sale requirements of Minnesota statutes? | | | |  |  |  |
| § 475.60,  subd. 2 |  | 1. | If no, was the sale exempt from public sale due to any of the following reasons: | | |  |  |  |
|  |  |  | a. | obligations issued under the provisions of a home rule charter, or under a law specifically authorizing a different method of sale or authorizing them to be issued in such a manner as the council/board may determine; | |  |  |  |
|  |  |  | b. | obligations sold by the municipality in an amount not exceeding the total sum of $1,200,000 in any 12‑month period; | |  |  |  |
|  |  |  | c. | except for those issued by a school board, obligations issued in anticipation of the collection of taxes or other revenues appropriated for expenditure in a single year, if sold in accordance with the most favorable of two or more proposals solicited privately; | |  |  |  |
|  |  |  | d. | obligations sold to any board, department, or agency of the United States of America or the State of Minnesota, in accordance with the rules of the board, department, or agency; | |  |  |  |
|  |  |  | e. | obligations issued to fund pension and retirement fund liabilities under Minn. Stat. § 475.52, subd. 6; obligations issued with tender options under Minn. Stat. § 475.54, subd. 5a; crossover refunding referred to in Minn. Stat. § 475.67, subd. 13; and any issue of obligations comprised in whole or in part of obligations bearing interest at a rate or rates which vary periodically referred to in Minn. Stat. § 475.56; | |  |  |  |
|  |  |  | f. | obligations to be issued for a purpose, in a manner, and upon terms and conditions authorized by law, if the governing body of the municipality, on the advice of bond counsel or special tax counsel, determines that interest on the obligations cannot be represented to be excluded from gross income for purposes of federal income taxation; | |  |  |  |
|  |  |  | g. | obligations issued in the form of an installment purchase contract, lease purchase agreement, or other similar agreement; | |  |  |  |
|  |  |  | h. | obligations sold under a bond reinvestment program; or | |  |  |  |
|  |  |  | i. | obligations which the governing body determines shall be sold by private negotiation if the municipality has retained an independent municipal adviser? |  | |  |  |
| § 475.55,  subd. 1 | H. | Were all obligations signed manually by one officer of the municipality or by a designated authenticating agent? | | |  | |  |  |
| § 475.65 | I. | Did the treasurer account for the receipt and disbursement of the proceeds of the issue, for the use named in the resolution, in a separate fund or account in the official financial records of the municipality? | | |  | |  |  |
| § 475.61,  subd. 2, &  § 475.62 | J. | Was the appropriate information reported to the county auditor for all new issues of indebtedness so that the county register could be updated? (Information to include: the purpose and date of the issue; the number, denomination, interest rate, and maturity date of each bond; place and time of payment of principal and interest; and the amount of the tax levied for the payment thereof.) | | |  | |  |  |

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| § 471.69 | K. | Limitation on Outstanding Warrants and Orders | | |  |  |  |
|  |  | 1. | Did the school district, county, statutory city, or town not contract debt, or issue any warrant or order in anticipation of taxes levied or to be levied, in excess of: | |  |  |  |
|  |  |  | - | the average amount actually received from tax collections for the last three years, plus |  |  |  |
|  |  |  | - | ten percent? |  |  |  |
|  | The Minn. Stat. § 471.69 limitations do not apply to government entities wherein the mineral net tax capacity exceeds 25 percent of its net tax capacity. Nor does it apply to a school district in a city of the first class, which constitutes a single school district. | | | |  |  |  |
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| **Part II. Answer only the questions below that relate to the specific types of**  **debt that were issued during the current fiscal year:** | | | | | | | |
| § 475.61,  subd. 1 | A. | GENERAL OBLIGATION BONDS: | | |  |  |  |
|  |  | 1. | Did the Town, prior to delivery of the obligations, levy by resolution a direct general ad valorem tax upon all taxable property to be spread each year of the obligations? | |  |  |  |
|  |  | 2. | For all Towns, were the levies specified and such that if collected in full they, together with estimated collections of special assessments and other revenues pledged for payment of the obligations, will produce at least five percent in excess of the amount needed to meet the principal and interest payments on the obligations when due? | |  |  |  |
| § 367.19 | B. | ORDERS: (For towns) | | |  |  |  |
|  |  | 1. | Were orders presented to the treasurer and registered in the order of their presentment? | |  |  |  |
|  |  | 2. | Were orders paid in the order they were registered out of the first money that came into the treasurer’s hands for that purpose? | |  |  |  |
| § 465.73 | C. | USDA RURAL BUSINESS-COOPERATIVE SERVICE, RURAL HOUSING SERVICE, OR OTHER AGENCY OF THE USDA: (For town halls, fire halls, and fire equipment only, or libraries or child care facilities if otherwise authorized by law. | | |  |  |  |
|  |  | 1. | Is the amount borrowed from the USDA Rural Business-Cooperative Service, Rural Housing Service, or other USDA agency, within the $450,000 statutory limit? | |  |  |  |
| § 475.754 | D. | EMERGENCY CERTIFICATES OF INDEBTEDNESS: | | |  |  |  |
|  |  | 1. | Do the certificates of indebtedness mature within three years? | |  |  |  |
|  |  | 2. | Do the certificates of indebtedness bear interest at a rate not in excess of the allowable rate? | |  |  |  |
|  |  | 3. | Are the certificates and interest thereon payable from taxes levied within existing limitations or from other available revenue? | |  |  |  |

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| § 471.3455 | E. | PUBLIC SAFETY EQUIPMENT - Certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease. | | | | |  |  |  |
|  |  | - | “Public Safety Equipment” means vehicles and specialized equipment used by a fire department in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response. | | | |  |  |  |
|  |  | - | | If the Town issued certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease, did the term not exceed 15 years? | | |  |  |  |
| § 366.095 | F. | CERTIFICATES OF INDEBTEDNESS: (Statutory cities and towns) NOTES: (Statutory cities) (For home rule charter cities, see Part II.B, above.) | | | | |  |  |  |
|  |  | Towns may issue certificates of indebtedness for any lawful purpose. | | | | |  |  |  |
|  |  | 1. | If such capital notes or certificates of indebtedness were issued, are they payable in not more than ten years? | | | |  |  |  |
|  |  | Note exception: If certificates were issued for projects to eliminate R-22 (refrigerant in ice making systems in existing public facilities) as defined in Minn. Stat. § 240A.09 paragraph (b) clause (2), then they must be payable in no more than 20 years. | | | | |  |  |  |
|  |  | 2. | If the certificates or notes were issued under Minn. Stat. § 366.095, was the issuance of the certificates approved by the voters at an election? | | | |  |  |  |
|  |  |  | If not, were the following criteria met: | | | |  |  |  |
|  |  |  | a. | | The amount of the certificates or notes to be issued does not exceed 0.25 percent of the estimated market value of taxable property in the city or town; or | |  |  |  |
|  |  |  | b. | | The council or town board resolution determining to issue these certificates or notes was published in the official newspaper, and no petition for an election was filed with the clerk before the expiration of a ten-day period? | |  |  |  |
|  |  |  | Published resolution required only if costs exceed 0.25 percent of market value of taxable property in the city or town. | | | |  |  |  |
|  |  | 3. | Was a tax levy made for the payment of the principal and interest on the certificates or notes? | | | |  |  |  |
| §§ 365.025 | G. | CONTRACT FOR DEED/CONDITIONAL SALES CONTRACT: | | | | |  |  |  |
|  |  | 1. | Is the seller of the property confined to the remedy of recovery of the property in case of nonpayment of all or part of the purchase price? | | | |  |  |  |
|  |  | 2. | Is the purchase payable over a period of time not to exceed five years? | | | |  |  |  |
|  |  | 3. | Was the contract approved by the voters at an election? | | | |  |  |  |
|  |  |  | a. | | If not, was the issue exempt from election because of one of the following reasons: | |  |  |  |
|  |  |  |  | | (1) | the contract price of the property to be purchased does not exceed 0.24177 percent of the estimated market value of the city or town; or |  |  |  |

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|  |  | |  | |  | (2) | the Town or Board resolution determining to purchase property by such a contract was published in the official newspaper, and no petition for an election was filed with the clerk before the expiration of a ten-day period? |  |  |  |
| § 475.755 | H. | | EMERGENCY DEBT CERTIFICATES | | | | |  |  |  |
|  |  | | * If at any time during a fiscal year the receipts of a town are reasonably expected to be reduced below the amount provided in the local government's budget when the final property tax levy to be collected during the fiscal year was certified and the receipts are insufficient to meet the expenses incurred or to be incurred during the fiscal year, the Town Board may authorize and sell certificates of indebtedness to mature within two years or less from the end of the fiscal year in which the certificates are issued. * The maximum principal amount of the certificates that it may issue in a fiscal year is limited to the expected reduction in receipts plus the cost of issuance. The certificates may be issued in the manner and on the terms the governing body determines by resolution. | | | | |  |  |  |
|  |  | 1. | | If emergency debt certificates were issued, was the maturity date within two years of the end of the fiscal year in which they were issued? | | | |  |  |  |
|  |  | 2. | | Was the principal amount of the certificates limited to the expected reduction in receipts plus the cost of issuance? | | | |  |  |  |
|  |  | 3. | | Did the Town Board levy taxes for the payment of principal and interest on the certificates in accordance with section 475.61? | | | |  |  |  |
|  |  | 4. | | To the extent that the Town issued certificates under Minn. Stat. § 475.755 to fund an unallotment or other reduction in its state aid, did the Town not use the special levy authority for aid reduction under section 275.70, subd. 5(22), or a similar or successor provision; and  Did it instead use the special levy authority for the repayment of indebtedness under Minn. Stat. § 275.70, subd. 5, clause (2), in order to levy under Minn. Stat. § 475.61 to fund repayment of the certificates with a levy that is not subject to levy limits? | | | |  |  |  |

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| **Part III. Answer the following questions for each type of issue that was**  **outstanding at some point during the fiscal year:** | | | | | | |
| § 475.61 | A. | Was the certified levy specified and such that it, together with estimated collections of special assessments and other revenues pledged for the payment of the obligations, will produce at least five percent in excess of the amount needed to meet the principal and interest payments when due? | |  |  |  |
|  |  | 1. | If not, did Town Board adopt a resolution levying another amount of such taxes? |  |  |  |

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| **Part IV. Audit Conclusion** | | | | | | |
| The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to public indebtedness. | | | | | | |
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| Conclusion: |  |  |  |  |  |  |
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