

POST-ISSUANCE TAX COMPLIANCE SERVICES

FOR TAX-EXEMPT BOND ISSUERS

Increased IRS Scrutiny Calls for More Focus on Issuer Compliance

IRS regulations addressing the way tax-exempt bond proceeds are invested prior to being expended, as well as how the assets or facilities funded with these proceeds are used have been part of the tax code for many years. The goal for the IRS has long been to ensure that state and local governments comply with the applicable tax laws under which tax-exempt proceeds are borrowed.

In recent years, the IRS has made post-issuance tax compliance one of its top priorities, evidenced by both a series of questionnaires sent to governmental issuers of tax-exempt bonds and an increasing number of bond audits. Issuers must be able to support the tax position that the bonds are tax-exempt by showing compliance with respect to how tax-exempt bond proceeds were expended and how facilities financed with tax-exempt debt are being used over the life of the bonds. The regulatory structure for greater scrutiny is clearly in place, calling for more issuer focus on matters of post-issuance tax compliance in order to preserve the tax-exempt status of outstanding bonds.

Why Partner with BLX?

Few issuers of tax-exempt bonds are able to maintain the resources needed in-house to meet all IRS post-issuance tax requirements, so many issuers seek guidance from legal counsel and outside experts. To assist issuers in meeting their ongoing tax responsibilities, BLX offers a range of post-issuance tax compliance services including:

- Comprehensive review of the expenditures and use of bond proceeds
- Periodic review of all contracts, leases and arrangements with private parties relating to the use of bond financed facilities
- Annual private business use review and calculation
- Review of and recommendations relating to internal post-issuance tax compliance policies and procedures
- Preparation of individualized checklists to support compliance with bond document requirements
- Assistance with IRS inquiry and responding to post-issuance questionnaires

Benefits of a Comprehensive Post-Issuance Tax Compliance Program

- Removing the risk of non-compliance and the associated financial hazards
- Generating efficient and prompt responses to any IRS audit
- Completing an easy and cost-effective review process at the time of a refunding
- Identifying remaining portion of bond proceeds allowed for private business use
- Providing historic analysis of post-issuance tax compliance on outstanding tax-exempt debt
- Memorializing institutional memory in cases of staff turnover



What Can You Do To Be Prepared For IRS Audits?

Issuers that implement a post-issuance tax compliance program will be in a strong position in the event of an IRS audit. Four broad actions are vital to compliance:

1. ESTABLISH WRITTEN POLICIES AND PROCEDURES

The formulation of written post-issuance tax compliance policies and procedures identifies legal requirements, post-issuance filing deadlines and the parties within the organization responsible for compliance.

2. CALCULATE ACCURATE PERCENTAGE OF PRIVATE BUSINESS USE ON ALL FACILITIES FINANCED WITH TAX-EXEMPT BONDS.

Private business use calculations are time-intensive and require a comprehensive review of the use of bond financed property against complex private use tax rules. A private business use calculation will determine whether the bonds are being used in conformity with the federal tax law.

3. RETAIN RECORDS FOR ALL TAX-EXEMPT BOND ISSUES.

Issuers that borrow on a tax-exempt basis are required to maintain certain documentation for the life of the tax-exempt bonds and any refunding bonds plus three years, including closing documents and transcripts, lists of bond-financed facilities, documentation of the allocation of bond proceeds to expenditures, and more.

4. CONSIDER PROFESSIONAL POST-ISSUANCE TAX COMPLIANCE ASSISTANCE.

In light of the increased IRS scrutiny, you may wish to consider outside assistance with respect to your overall responsibility for monitoring tax compliance. Issuers that have effective post-issuance tax compliance programs in place are significantly more likely to respond to an IRS inquiry on a successful and cost-effective basis.

BLX does not provide legal services. Legal services are offered through our parent firm, Orrick, Herrington & Sutcliffe LLP.

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