

Client Alert

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CURRENT ISSUES RELEVANT TO OUR CLIENTS

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Have You Adopted Post-Issuance Compliance Procedures?

The Internal Revenue Service (the “IRS”) has announced that it will begin to include questions concerning post-issuance compliance procedures and the implementation of such procedures in the information document requests that it sends to issuers of tax-exempt and tax-advantaged bonds. “Tax-advantaged bonds” include build America bonds and tax credit bonds, such as Qualified Zone Academy Bonds. The IRS sends an “information document request” to an issuer on Form 4564, Information Document Request, when a bond issue is under examination.

Although there are currently no federal statutory or regulatory requirements that require an issuer or a conduit borrower of bond proceeds to adopt written compliance procedures for tax-exempt or tax-advantaged bonds, the IRS is increasingly asking issuers and conduit borrowers questions about such written procedures. For example, the IRS asks questions about written compliance procedures on Forms 8038, 8038-G, 8038-TC and Schedule K to Form 990 (a form filed by certain charitable and educational tax-exempt organizations). The IRS also asks about such procedures when it sends out compliance check questionnaires to issuers that target specific types of bond issues.

Written compliance procedures enable issuers and conduit borrowers to better comply with the federal tax provisions that apply to tax-exempt and tax-advantaged bond issues. In addition, the IRS has sought to encourage the adoption of written compliance procedures by providing that whether an issuer has appropriate written compliance procedures will be an “equitable factor” taken into consideration by the IRS in settlement with an issuer under the IRS Voluntary Closing Agreement Program (“VCAP”). VCAP is an IRS program under which issuers can voluntarily approach the IRS to correct problems with a tax-exempt or tax-advantaged bond issue.

We encourage issuers who do not currently have written post-issuance compliance procedures, or who wish to update such procedures, to contact us.

To discuss any topic covered in this Client Alert, please contact any attorney in our Public Finance Department or visit us online at chapman.com.

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