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Adequate Written Procedures Needed for Post-Issuance Compliance With Bond Requirements.

Issuers of tax-exempt bonds should maintain adequate written procedures to ensure continued compliance with the tax rules after the bonds are issued, panelists at a program on post-issuance compliance said June 21.

Christopher Woodin, a senior tax law specialist in the IRS tax-exempt bonds unit, said issuers have a fiduciary responsibility to look after bondholders' best interests. "As an issuer . . . you have to make sure that those bonds remain in compliance with the tax-exempt bond rules," he said at the American Institute of Certified Public Accountants Not-for-Profit Industry Conference in Washington. One way to do that is to adopt and implement written procedures for meeting the requirements "long after the bonds have been issued," he said.

Edward J. Jennings, tax director at the University of Michigan, agreed. "The IRS is looking for a written tax policy as part of due diligence," he said. "They're looking for more information from you." He added that a tax certificate, despite its discussion of arbitrage, private business use, and other areas of concern to the IRS, is not sufficient.

Woodin said the IRS is working on language in the Internal Revenue Manual that will tell revenue agents what to look for when determining whether an issuer's written procedures are adequate. "That's not a safe harbor and won't necessarily ensure that we would consider the procedures that were prepared adequate," he explained. "But at least it gives you some level of guidance to know at least what our examiners are looking at and what they need to see to say that a written procedure is adequate."

It is much easier to resolve a post-issuance compliance problem through the IRS's voluntary closing agreement program (VCAP) than by having a problem uncovered during an examination, which could result in higher penalties and taxability of the bonds, Woodin said. "With the VCAP program we try to work with issuers to come to some resolution that will work for you but does recognize that there is a violation," he said.

Woodin also discussed the IRS's market segment examinations of exempt bonds, explaining that the agency wants to look at the segments every three years through examinations tailored to each segment. Some segments are advance refundings, section 501(c)(3) bonds, exempt facility bonds, student loan bonds, student construction bonds, and Build America Bonds.

Woodin also announced that Clifford Gannett, the longtime director of the tax-exempt bonds unit, is retiring. No replacement has been named.

by Fred Stokeld

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