Bond Case Briefs

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IRS Releases New “Issue Snapshot” on Single-Family Housing Bonds: Squire Patton Boggs

The IRS has released another “issue snapshot,” which deals with qualified mortgage bonds (or, as they are often called in our lingo, single-family housing bonds). An issuer uses the proceeds of qualified mortgage bonds to make loans to private homeowners. Because of the private loan limitation, the bonds are private activity bonds. To be tax-exempt, then, the bonds must meet all of the requirements for qualified mortgage bonds (which recapitulate most of the other tax-exempt bond requirements, filtered through a fish-eye lens). Private activity bonds involving loan programs (such as single-family housing bonds or student loan bonds) rather than project financing raise the question of what to do when the issuer receives repayments of the loans made with the proceeds of the bond issue – can they be used to originate more loans, or must they be used to pay down bonds?

This new issue snapshot analyzes this issue, walking through the mechanics of a refunding of single-family housing bonds where the issuer has on hand repayments of some of the mortgage loans (often referred to as “replacement refunding” transactions). The issue snapshot also describes how long the refunding bonds can be outstanding without getting more volume cap. For most bonds subject to volume cap, refunding bonds don’t need additional volume cap as long as the amount of the refunding bond doesn’t exceed the amount of the refunded bond. For qualified mortgage bonds, there’s an additional back-stop – you can’t go longer than 32 years from the issuance date of the original mortgage bond without getting more volume cap. (The 32-year rule is intended as a rough-justice substitute for the fact that there isn’t truly a bond-financed “asset” with a “useful life,” in qualified mortgage bond financings in the same way that one exists in, say, a solid waste disposal facility financing; the typical length of a residential mortgage is around 30 years.) In addition, in general, mortgage repayments can be used to originate new mortgage loans only within 10 years after the issuance date of the original mortgage bond.

The issue snapshot contains “Issue Indicators or Audit Tips” for examining agents (and, by extension, us), which are worth a read. The full list of issue snapshots can be found here; the aspects regarding tax-exempt bonds continue to form quite an eclectic mix.

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By Johnny Hutchinson on July 24, 2018

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