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NABL: IRS Office of Chief Counsel Issues Memo Regarding the Use of Tax-Exempt Bonds to Advance Refund Taxable Bonds.

The Office of Chief Counsel of the Internal Revenue Service (IRS) has released a memorandum regarding the use of tax-exempt bonds to advance refund taxable bonds.

The memo, which is dated August 31, 2018, but which was released on October 26, 2018, applies to a particular transaction and sets forth a fact pattern in which tax-exempt bonds advance refund and cause a legal defeasance of tax-advantaged taxable bonds. Such legal defeasance caused an extinguishment of the tax-advantaged taxable bonds and a deemed new issue of non-tax-advantaged taxable bonds. The author of the memo states: “Section 149(d), as amended by § 13532 of the 2017 Act, does not preclude the issuance of tax-exempt bonds to advance refund non-tax-advantaged, taxable bonds under the facts described below. There will not be two sets of tax-advantaged bonds outstanding for the same project or activity.” This means that tax-exempt bonds may be issued to advance refund tax-advantaged taxable bonds that are legally defeased in the advance refunding, because a legal defeasance of tax-advantaged taxable bonds results in the loss of their tax-advantaged status.

The memo does not discuss tax-advantaged taxable bonds that cannot be legally defeased.

The memorandum from the Office of Chief Counsel can be found here.

Background: As you may recall, NABL sent a letter to the IRS Office of Indian Tribal Governments/Tax Exempt Bonds (ITG/TEB) requesting written guidance that section 13532 of the 2017 Act does not preclude the issuance of tax-exempt bonds to advance refund taxable bonds. The NABL letter is available here.